

## Art and the History of Environmental Law

David Schorr\*

This article is an initial exploration of what the history of environmental law can learn from the arts. Looking at visual art (mainly paintings, with some drawings, prints, photographs, and poster art), supplemented by occasional glances in the direction of literary works, it asks what, if anything we can learn about the environmental law of the industrialized West of nineteenth and twentieth centuries before 1970, when environmental problems certainly abounded but before there was "environmental law".<sup>1</sup> The focus will be on pollution law, especially air pollution, with some attention paid also to land use law.

The first reason for my turn to art is prosaic. Traditional legal sources—treatises, digests, national legislation, and appellate decisions—clearly dedicated to identifiably environmental topics were few and far in between in this period, and so legal-historical research of even the simplest sort—identification of the norms of positive law—needs to

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\* Senior Lecturer, Faculty of Law, Tel Aviv University. Thanks to participants in "The Arts in Legal History" conference and the editors for their valuable comments.

<sup>1</sup> Standard accounts of environmental law claim that it began around 1970; *see, e.g.*, Richard J. Lazarus, *The Making of Environmental Law* (2004). Karl Boyd Brooks, *Before Earth Day: The Origins of American Environmental Law, 1945–1970* (2009), pushes the time frame back a few decades. Though law treating the environment certainly existed before 1970 (and probably is as old as law itself), the lack of a category, "environmental law", in earlier periods makes it difficult to piece together its history.

take up whatever tools, however indirect, it can find. Though the physicality of the environment seemingly makes environmental law a good candidate for historical investigation based on visual sources, the legal element of environmental issues has been foregrounded only infrequently in art, even when environmental issues are clearly the subject of that art. Beyond this seemingly technical task, art may be a useful source for two further dimensions of the historical understanding of environmental law: it might provide insight into the background conditions—environmental and cultural—against which and in reaction to the law developed; and it might provide data for assessing the effectiveness of environmental law.

It is, of course, problematic to assume that a work of art presents an accurate representation of historical reality;<sup>2</sup> even on the level of subjective perception, assuming that the work of an individual artist is somehow representative of general attitudes may be unwarranted. Nonetheless, the potential profit to be gained from this heretofore unexamined set of sources seems great enough to justify a tentative attempt at using art to try to learn something about the history of environmental law that we might not be able to learn otherwise. In this article I would like to use art mostly as evidence of historical *attitudes* towards environmental issues, but I believe that it also has some value as evidence of the physical environment in history. As Peter Brimblecombe writes:

Surroundings must influence the way in which an artist paints, no matter how much he may wish to paint mental images rather than the physical world. A picture will contain much of the artist's personal view about the environment,

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<sup>2</sup> See P. Brimblecombe & C. Ogden, *Air Pollution in Art and Literature*, 32 *Weather* 285, 285-86 (1977).

but we can also expect to find some aspects that are an objective portrayal of reality.<sup>3</sup>

Moreover, the subjectivity of the artist is a less formidable problem than might be thought once we take into account the fact that photographs, official and non-official reports, and other historical sources are each "tainted" by their own biases of medium and author, so that the personal biases of the painter are just one more factor to be taken into account by the historian weighing the sources.

The use of art as a source for environmental history research—though not necessarily related to law—is not new. The journal *Environmental History's* "Gallery" section, with its essays on historical visual sources, has been running four times a year since 2003.<sup>4</sup> More specifically related to the period and topics of this paper, historians and scientists have produced a significant body of work on air pollution and climatic phenomena as reflected in paintings and writings of the industrial age.<sup>5</sup> In legal history, Al Brophy has

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<sup>3</sup> *Id.*, 290.

<sup>4</sup> <http://environmentalhistory.net/galleries/>.

<sup>5</sup> Brimblecombe & Ogden, *supra* note 2; John E. Thornes & Gemma Metherell, Monet's 'London Series' and the Cultural Climate of London at the Turn of the Twentieth Century, in *Weather, Climate, Culture* 141 (Sarah Strauss & Ben Orlove eds., 2003); Marilyn S. Olson, Donald W. Olson, and Russell L. Doescher, On the Blood-Red Sky of Munch's the Scream, 12 *Environmental History* 131 (2007); Ann Haley MacKenzie, An Analysis of Environmental Issues in 19<sup>th</sup> Century England Using the Writings of Charles Dickens, 70 *The American Biology Teacher* 202 (2008); James H. Rubin, *Impressionism and the Modern Landscape: Productivity, Technology, and Urbanization from Manet to Van Gogh* (2008) ; Soraya Khan et

used landscape paintings to illuminate aspects of American property law in the antebellum period.<sup>6</sup> I believe that the present study is the first to delve into art as a source for the history of environmental law, seeking to test the limits of using art not merely to illustrate environmental-legal phenomena known from other sources, but as a source for insights and knowledge that might otherwise be unavailable to us.

The paper will explore the three aforementioned dimensions of the history of environmental law: first, art reflecting the conditions against which environmental laws developed (or did not); next, indications in art of the effects of environmental law; and finally environmental law itself as depicted in art. It will touch only briefly (at the end of Part I below) on another important issue, the place of art in the creation of environmental law.<sup>7</sup>

Before proceeding to this exploration, a word about my use of the term "environmental law" for a period before the term existed. I use it in an intentionally anachronistic way to signify law and legal discourse regarding the regulation of human activities relating to the physical environment, including environmental pollution (itself an

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al, Monet at the Savoy, 42(2) Area 208 (2010); Philip V. Allingham, Charles Dickens and 'the Big Stink', The Victorian Web ([www.victorianweb.org/authors/dickens/bigstink.html](http://www.victorianweb.org/authors/dickens/bigstink.html));

Research Project 1: Images of Environmental Activism, Universal Dickens

(<http://universaldickens.wordpress.com/research-project-1/>).

<sup>6</sup> Alfred L. Brophy, Property and Progress: Antebellum Landscape Art and Property Law, 40 McGeorge Law Review 603 (2009).

<sup>7</sup> For a recent analysis of the place of visual images in creating environmental consciousness generally, see Finis Dunaway, *Seeing Green: The Use and Abuse of American Environmental Images* (2015).

anachronistic term for much of the period under consideration)<sup>8</sup> and the use of natural resources. Not just protective, but also permissive regulation is included in the scope of this study, as is the absence of regulation. The motives behind the law—economic, ecological, patriotic, or whatever—are of no bearing on its identification as "environmental".

## I. Art and the Conditions of Environmental Law

A survey of paintings and other works of art from western Europe and North American reveal that air pollution was a salient fact in the pre-1970 industrialized West. This point, while basic, is not trivial, as one might have imagined that the relative lack of advanced legislation in this area was due to clean skies, or at least to a lack of awareness of the problem. Yet it is clear that artists from Turner to the French Impressionists and on through the American WPA were fascinated by air pollution. The aesthetics and politics of this fascination will be explored later; at this point it will suffice to demonstrate its prevalence.

A good place to start is the French Impressionists. Though associated today with paintings in and of nature, they were strongly attracted to scenes of industrialization and modernizing landscapes. The movement was named after Claude Monet's *Impression, soleil levant* (1872-3, Figure 1), a painting relevant to our topic. The rising sun is indeed prominent in this landscape of Le Havre harbor, but the left side of the painting is dominated by smoke-belching smokestacks and their reflections in the water. Their activity suggests that the gray

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<sup>8</sup> Adam W. Rome, *Coming to Terms with Pollution: The Language of Environmental Reform, 1865-1915*, 1 *Environmental History* 6 (1996).

"mist" enshrouding the rising sun and streaked through the sky above and to the right is in fact the product of air pollution, not morning mists or the artist's hazily romantic vision.

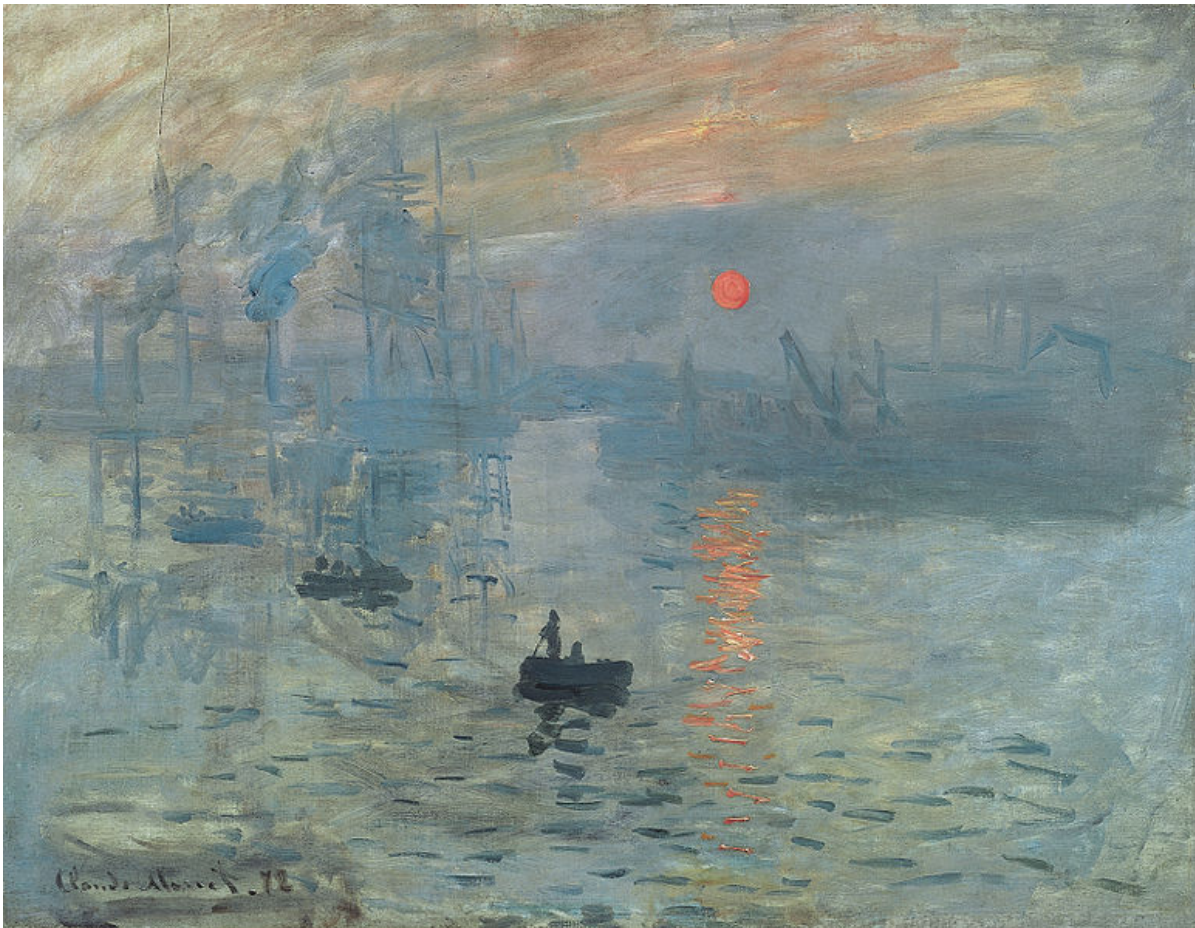


Figure 1. Claude Monet, *Impression, soleil levant*, 1872-3, Musee Marmottan Monet

Many of Monet's other paintings feature air pollution, as well. His paintings of London typically feature chimneys and smokestacks spewing thick clouds of smoke into the air of a city covered in a thick layer of air pollution (often denoted "fog" in the works' titles).<sup>9</sup> Perhaps most striking are the paintings purporting to be studies of the effect of

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<sup>9</sup> See, for instance, *Boats in the Pool of London*, 1871, private collection, <http://bit.ly/1TbK4p7>; *The Thames Below Westminster*, 1871, National Gallery, London,

sunlight on the thick London air; the reference to sunlight in the names of these paintings seems almost ironic. In *Le Parlement, effet de soleil* (1903, Figure 2), for instance, the sunlight indeed plays upon the Thames on the right of the picture, yet in the overall composition the sun's rays are overwhelmed by the thick, polluted air, much as they are in other paintings in the Houses of Parliament series.<sup>10</sup>

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<http://bit.ly/1RXHeBy>; *Waterloo Bridge*, 1901, private collection, <http://bit.ly/1HDvd4z>;  
*Waterloo Bridge, Morning Fog*, 1901, Philadelphia Museum of Art, <http://bit.ly/1CRg48k>;  
*Waterloo Bridge, Overcast*, 1903, Ordrupgaard Collection, Charlottenlund,  
<http://bit.ly/1GWLUS6>.

<sup>10</sup> For the Houses of Parliament paintings with "fog" overwhelming the sun, see, for instance, *Houses of Parliament, London*, 1900-1, Art Institute of Chicago, <http://bit.ly/1NFOVM5>; *The Houses of Parliament (Effect of Fog)*, 1903-4, Metropolitan Museum of Art, <http://bit.ly/1GW6ZwZ>; *Londres, le Parlement. Trouée de soleil dans le brouillard*, 1904, Musée d'Orsay, <http://bit.ly/1AANUK>. For other London paintings purporting to have sunlight as their subject, see *Waterloo Bridge, The Sun in a Fog*, 1903, National Gallery of Canada, <http://bit.ly/1TbKtb0>; *Waterloo Bridge, Effet de Soleil*, 1903, McMaster Museum of Art, <http://bit.ly/1dE6XkK>.



Figure 2. Claude Monet, *Le Parlement, effet de soleil*, 1903, Brooklyn Museum

Dickens provides a literary counterpart to Monet's paintings of London's air pollution, among other places in the opening of *Bleak House*:

London. Michaelmas term lately over, and the Lord Chancellor sitting in Lincoln's Inn Hall. Implacable November weather.... Smoke lowering down from chimney-pots, making a soft black drizzle, with flakes of soot in it as big as full-grown snowflakes—gone into mourning, one might imagine, for the death of the sun....



Fog everywhere. Fog up the river, where it flows among green aits and meadows; fog down the river, where it rolls defiled among the tiers of shipping and the waterside pollutions of a great (and dirty) city. Fog on the Essex marshes, fog on the Kentish heights. Fog creeping into the cabooses of collier-brigs; fog lying out on the yards and hovering in the rigging of great ships; fog drooping on the gunwales of barges and small boats. Fog in the eyes and throats of ancient Greenwich pensioners, wheezing by the firesides of their wards; fog in the stem and bowl of the afternoon pipe of the wrathful skipper, down in his close cabin; fog cruelly pinching the toes and fingers of his shivering little 'prentice boy on deck. Chance people on the bridges peeping over the parapets into a nether sky of fog, with fog all round them, as if they were up in a balloon and hanging in the misty clouds.

Gas looming through the fog in divers places in the streets, much as the sun may, from the spongy fields, be seen to loom by husbandman and ploughboy. Most of the shops lighted two hours before their time—as the gas seems to know, for it has a haggard and unwilling look.<sup>11</sup>

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<sup>11</sup> Charles Dickens, *Bleak House* (1853), chapter I, Gutenberg Project

([www.gutenberg.org/ebooks/1023](http://www.gutenberg.org/ebooks/1023)). For more on Dickens and pollution, see MacKenzie, *supra* note 5.

Monet's aforementioned *Impression*, with its sun rising over Le Havre harbor, was only one of several depictions by him of air pollution at this site.<sup>12</sup> His contemporaries, too, were drawn to the industrialized landscapes of the Channel ports. Pissarro was a prolific painter of polluting sources and air pollution in the Channel ports, especially Rouen. In *Le Pont Boieldieu à Rouen, soleil couchant, temps brumeux* (1896, Figure 3), for instance, smoke has a dominant presence: smoking steamships, smoking locomotives, tall chimneys belching black plumes, ominous clouds of pollution, and over it all a gloomy pall; so much so that the sunset of the title is hardly felt.<sup>13</sup> Raoul Dufy's early *Fin du journée au Havre* (1901, Figure 4), with its realist depiction of tired workers in an industrial wasteland of mud, coal heaps, and smoke, is a far cry from the bright and colorful scenes usually associated with the

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<sup>12</sup> See *The Entrance to the Port of Le Havre* (formerly *The Entrance to the Port of Honfleur*), c. 1867-8, Norton Simon Museum, <http://bit.ly/1NFPpIq>; *Port of Le Havre*, 1874, Philadelphia Museum of Art, <http://bit.ly/1H5T6OP>.

<sup>13</sup> See also, for example, *L'Île Lacroix, à Rouen*, 1887, Yale University Art Gallery, <http://bit.ly/1G0eiBV>; *L'Île Lacroix, Rouen (The Effect of Fog)*, 1888, Philadelphia Museum of Art, <http://bit.ly/1LO5RSy>; *Pont Boieldieu in Rouen, Rainy Weather*, 1896, Art Gallery of Ontario, <http://bit.ly/1G0eq4j>; *The Saint-Sever Bridge, Rouen: Mist*, 1896, North Carolina Museum of Art, <http://bit.ly/1Ch2D7g>; *Matin, Temps Gris, Rouen*, 1896, Metropolitan Museum of Art, <http://bit.ly/1HCYV86>; *Port de Rouen, Saint-Sever*, 1896, Musée d'Orsay, <http://bit.ly/1erq0jd>; *Quai de la Bourse, Rouen, soleil couchant*, 1898, MuMa Museum of Modern Art, <http://bit.ly/1KA7rqG>; *Port de Rouen, déchargement de bois*, 1898, private collection, <http://bit.ly/1JEwhWp>; *Dieppe, bassin Duquesne. Marée basse, soleil, matin*, 1902, Musée d'Orsay, <http://bit.ly/1H5S31u>.

artist. It is perhaps necessary to keep this painting in mind when trying to make sense of the smoky mists on the margins of his otherwise gay *Le Yacht pavoisé au Havre* (c. 1905, Figure 5), painted when he had moved on to a Fauvist style.



Figure 3. Camille Pissarro, *Le Pont Boieldieu à Rouen, soleil couchant, temps brumeux*, 1896,

Musée d'Orsay



Figure 4. Raoul Dufy, *Fin du journée au Havre*, 1901, courtesy of MuMa- Musée d'art

Moderne André Malraux



Figure 5. Raoul Dufy, *Le Yacht pavoisé au Havre*, c. 1905, MuMa Museum of Modern Art

Monet and Pissarro also produced many landscapes of the industrializing Seine Valley around Paris, as did other Impressionists and Post-Impressionists. Manet's 1874 *Argenteuil, les canotiers* (1874, Figure 6), with its idyllic foreground and smoky background, seems uncertain in its attitude to industrial pollution. It was ridiculed by a contemporary critic who insinuated that the blue of the river must have been the product of industrial pollution, yet T.J. Clark sees it as the picture in which effort was made to place in order the

middle class, the countryside, and industry "and insist they belong together".<sup>14</sup> Gustave Caillebotte's depictions of the same site show a cubist-like ability to shatter reality into multiple points of view. While his *Boats Moored at Argenteuil* (1883, Figure 7) shows no hint of the industry in the area, *Factories at Argenteuil* (1888, Figure 8) shows a bleak industrial landscape with gray smoke feeding gray skies, reflected again in the gray water. *La Seine à Argenteuil* (c. 1892, Figure 9), with its almost natural landscape dominating the foreground and smoking factories in the background, juxtaposes these two aspects of reality, distinguishing, on the one hand, between pristine nature and industrial pollution, yet at the same time melding chimney smoke and natural clouds.<sup>15</sup> Are these depictions of Argenteuil simply the artist's attempt to depict different facets of reality, a celebration of industrialization, or a critique and warning of the threat posed by modern pollution to the aesthetic of nature and countryside?<sup>16</sup>

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<sup>14</sup> Paul Hadol, *Le Salon Comique*, in *L'Eclipse*, May 30, 1875, p. 4, cited in T.J. Clark, *The Environs of Paris* 115-16, in *Critical Readings in Impressionism and Post-Impressionism: An Anthology* (Mary Tompkins Lewis, ed.).

<sup>15</sup> See Alexis Goodin, *The Seine at Argenteuil*, in *1 Nineteenth-Century European Paintings at the Sterling and Francine Clark Art Institute* (Sarah Lees, ed., 2012).

<sup>16</sup> Goodin, *id.*, 92, writes that *The Seine at Argenteuil* "celebrates the dichotomy of this area's natural beauty and its growing industrialization".



Figure 6. Edouard Manet, *Argenteuil, les canotiers*, 1874, Musée des Beaux-Arts, Tournai



Figure 7. Gustave Caillebotte, *Boats Moored at Argenteuil*, 1883, Denver Art Museum





Figure 8. Gustave Caillebotte, *Factories at Argenteuil* 1888, private collection



Figure 9. Gustave Caillebotte, *La Seine à Argenteuil*, c. 1892, Clark Art Institute

Pissarro's paintings of smokestacks seem particularly open to multiple interpretations. In *Bords de l'Oise à Pontoise* (1867, Figure 10), and *Factory Near Pontoise* (1873, Figure 11), among others, the smokestacks clearly echo or reflect the trees in the scene.<sup>17</sup> Do these artificial trunks, with their smoky plumage, represent the regrettable, modern defilement of the French countryside, or are we meant to see in them the march of

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<sup>17</sup> See also *The River Oise Near Pontoise*, 1873, Kimbell Art Museum, <http://bit.ly/1NFQCCi>; *L'île Lacroix à Rouen*, 1883, Worcester Art Museum, <http://bit.ly/1C9x52E>.

progress? The gentleman in the top hat striding toward the smokestack in the first painting might indicate the latter.



Figure 10. Camille Pissarro, *Bords de l'Oise à Pontoise*, 1867, Denver Art Museum



Figure 11. Camille Pissarro, *Factory Near Pontoise*, 1873, Museum of Fine Arts, Springfield

Degas's *Henri Rouart in front of his Factory* (Figure 12) is less ambiguous; here the pollution filling the sky seems to bellow not just from the chimneys of the factory, but from chimney pot hat of its owner, the artist's close friend.<sup>18</sup> Given Degas's relationship with Rouart, it seems the pollution cannot be taken as anything but a positive result of the subject's activities, a sign of productivity and progress.

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<sup>18</sup> Theodore Reff, *Degas: The Artist's Mind* 267 (1976).



Figure 12. Edgar Degas, *Henri Rouart in front of his Factory*, c. 1875, Carnegie Museum of Art

Thus, while here and there, as in Dufy's *Fin de journée* (1901, Figure 4), a critical tone toward pollution emerges, the general tone of much of the Impressionists' work on the industrial landscapes of their time seems closer to Degas's attitude. "In the end", as James Rubin writes, "Impressionist representations of economic productivity were as allied with bourgeois interests as its representations of leisure were."<sup>19</sup>

But what are we to make of all this—the factories, the chimneys, the smoke, the gray haze? The personal and expressive nature of art, seemingly an obstacle to recovering

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<sup>19</sup> Rubin, *supra* note 5, 185.

physical realities, may actually be leveraged for historical understanding of cultural attitudes. Even granting that painters are likely to be possessed of greater than average visual sensitivity and opportunity to contemplate the environment, the fact that countless painters found the air pollution of the industrial revolution a worthy subject is probably an indicator that this was an issue that did not pass unnoticed by contemporaries, including the law-making professions and classes. Artists' depictions of pollution may have also contributed to public consciousness, as argued by Oscar Wilde's Vivian in *The Decay of Lying*:

Where, if not from the Impressionists, do we get those wonderful brown fogs that come creeping down our streets, blurring the gas-lamps and changing the houses into monstrous shadows? To whom, if not to them and their master, do we owe the lovely silver mists that brood over our river, and turn to faint forms of fading grace curved bridge and swaying barge? The extraordinary change that has taken place in the climate of London during the last ten years is entirely due to a particular school of Art.... At present, people see fogs, not because there are fogs, but because poets and painters have taught them the mysterious loveliness of such effects. There may have been fogs for centuries in London. I dare say there were. But no one saw them, and so we do not know anything about them. They did not exist till Art had invented them. Now, it must be admitted, fogs are carried to excess. They have become the

mere mannerism of a clique, and the exaggerated realism of their method gives dull people bronchitis.<sup>20</sup>

So if we pose the historical question, why did environmental law not really "take off" until the 1960s and '70s, art might at least help us consider two possible answers: that pollution was not a serious problem until then; and that it was somehow not perceived until then.<sup>21</sup> Both these answers, late nineteenth-century art suggests, are wrong. While for the question of the scientific reality of pollution we cannot rule out the possibility that artists exaggerated its severity, their testimony in any case actually corroborates what we know from other sources. As for the perception of industrial pollution, the range of artistic sources indicates that contemporaries very much *saw* the pollution--possibly, as Wilde pointed out, as a result of those same artistic sources.

Why, then, did it take lawmakers a century to begin to grapple effectively with the problem? Here the artistic record is ambiguous yet suggestive. The wasted landscape and wasted workers of the early Dufy's *Fin du journée* (1901, Figure 4), or Dickens's depictions of the oppressive London pollution seem to leave little doubt where their sympathies lay, and the fact that *Bleak House's* publication was followed hard on by the enactment of an air pollution control statute for London<sup>22</sup> is indicative that Dickens's position was representative of wider sentiments (and possibly influenced them). Yet the attitude of other artists to the pollution they recorded is less clear. Artists like Monet seemed more excited

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<sup>20</sup> Oscar Wilde, *The Decay of Lying* (1891) in *Intentions* 38-40 (1913), *Corpus of Electronic Texts* ([www.ucc.ie/celt/published/E800003-009](http://www.ucc.ie/celt/published/E800003-009)). See Thornes & Metherell, *supra* note 5.

<sup>21</sup> See also Bribblecombe & Ogden, *supra* note 2.

<sup>22</sup> *Smoke Nuisance Abatement (Metropolis) Act 1853* (16 & 17 Vic c 128).

by the visual novelties of the choking London smog or the factories taking over the French countryside than concerned by any deleterious effects on human health or cultural heritage, let alone habitats or ecological systems.<sup>23</sup> To many, furthermore, pollution symbolized progress, not danger or destruction. Art can thus help us understand better some of the forces behind the retarded development of environmental law in the late nineteenth and early twentieth centuries: not lack of pollution, not lack of awareness of pollution, but a tolerance or even an embrace of smoke and what it represented that appears to have been prevalent among many.

In the first half of the twentieth century air pollution seems to take on a progressively darker cast, both literally and figuratively speaking. While it is difficult to read the pollution in many posters of the interwar era, such as one (1925, Figure 13) for the 1925 Paris Exposition Internationale des Arts Décoratifs (from which the art deco style got its name) as anything but a symbol of progress, in the works of the German Expressionists such as George Grosz and Franz Marie Jansen (see Figure 14), pollution often seems an inseparable part of their generally bleak world view.

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<sup>23</sup> Compare the observation by art historians that the Impressionists' scenes are notable for their absence of signs of proletarian labor; Clark, *supra* note 14, 128-9; Rubin *supra* note 5, 184-5.





Figure 13. Charles Loupot, *Exposition Internationale Arts Decoratifs et Industriels Modernes*,

1925, The Wolfsonian–Florida International University



Figure 14. Franz Marie Jansen, untitled, from *Industrie*, 1920, Los Angeles County Museum of Art

Beyond the cultural and aesthetic, American art in this period also seems to begin to engage with pollution as a political issue, and thus potentially a legal one. An early but suggestive understanding of pollution is offered by the symbolist Elihu Vedder's mural *Corrupt Legislation* (Figure 15) created for the new Library of Congress building around 1898.



Figure 15. Elihu Vedder, *Corrupt Legislation*, 1898, Jefferson Building, Library of Congress

Art historian Richard Murray explains:

A plaintive figure with an empty distaff and spindle and backed by idle factories is waved away in favor of the bribe.... Industry chums out the smoke of prosperity behind the figure of Corrupting Wealth, who presides over bags of money and a

strongbox as well as an overturned voting urn: "In his lap he holds the book of law, which he is skilled to pervert to his own ends."<sup>24</sup>

While in Murray's view pollution may be identified with prosperity, it would seem that the smoke is also the font of corruption; the grease on the wheels of industry greases also the palms of the legislator.<sup>25</sup>

And a yet more critical reading is also possible. The smoke belching from the chimneys of Corrupting Wealth may be not only the source of that wealth and corruption, but its result. Might the corrupting figure be bribing the legislature precisely in order to allow his factories to pollute without restraint? Might the Corrupt Legislation of the work's title be environmental law, rendered ineffective by Corrupting Wealth? The juxtaposition of law, corruption, and pollution the Library of Congress mural suggests an environmental consciousness in which pollution is something to be regretted at the very least and law has a potential role in mitigating its effects.

Given its setting, title, and content, Vedder's mural is political in a way that the Impressionists' work—and even Dufy's and Jansen's paintings and Dickens's prose, with all

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<sup>24</sup> Richard Murray, *The Art of Decoration* 223-24, in *Perceptions and Evocations: The Art of Elihu Vedder* (1979). The quote within the quote is from Herbert Small, *Handbook of the New Library of Congress* 37 (1901).

<sup>25</sup> The connection made by Murray between smoke and prosperity is questionable; not only does Vedder's *Peace and Prosperity*, 1896, Library of Congress, <http://bit.ly/1LO7bow>, part of the same Library of Congress series, depict no heavy industry or smoke, but the figure to the left of the seated figure (the same position as "Corrupting Wealth" in *Corrupt Legislation*) is Agriculture, shown planting a tree. See Murray, *supra* note 24, 225-6.

their social and moral sensitivities—are not. For Dickens, air pollution *symbolizes* the law's corruption and failure; for Vedder, it is the very source of that corruption. In that sense his mural is a precursor of the explicitly political environmental poster art of the 1970s and '80s, such as a photomontage poster created for the first Earth Day in 1970, depicting the US Capitol as fairly drowning in a sea of smoke and congestion (Figure 16).



Figure 16. *April 22, 1970*

By the time of the New Deal, American artists associated with the Works Progress Administration, including Joseph Stella,<sup>26</sup> Frank Fousek (see Figure 17), and Todros Geller (see Figure 18), were presenting environmental pollution as a physical manifestation of the injustices of industrial capitalism.



Figure 17. Frank Fousek, *Heritage of Smoke*, 1937, Case Western Reserve University Kelvin Smith Library Special Collections, WPA Collection

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<sup>26</sup> For examples of Stella's socially conscious depictions of pollution see *Pittsburgh*, c. 1908, Carnegie Library of Pittsburgh, [www.clpgh.org/exhibit/stell23.html](http://www.clpgh.org/exhibit/stell23.html).



Figure 18. Todros Geller, *South of Chicago*, 1937, Art Institute of Chicago, Works Progress Administration

The WPA also sponsored much explicitly conservationist poster art, including at least one in which air pollution and its regulation were the explicit subject, *Smoke over Des Moines, Why* (c 1940, Figure 19). Works such as these testify to a growing concern over air pollution and its effects, a concern that provided the background for the postwar wave of environmental legislation.<sup>27</sup>

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<sup>27</sup> For the post-1945 environmental legislation, see Brooks, *supra* note 1.

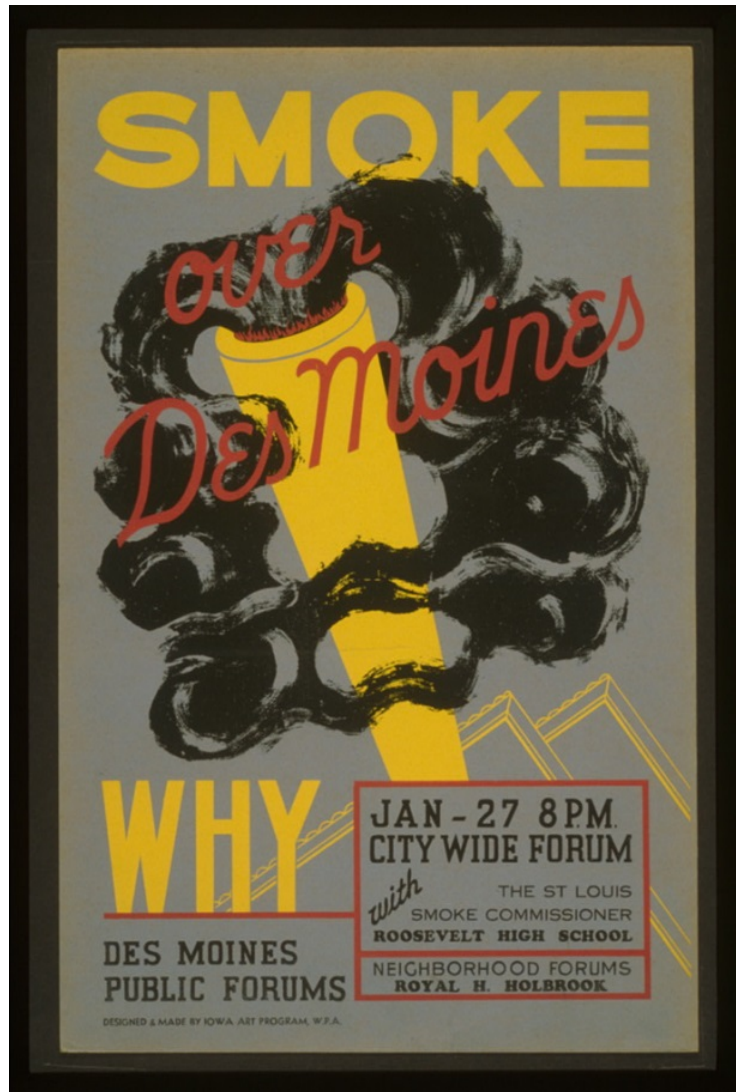


Figure 19. Iowa Art Program, W.P.A., *Smoke over Des Moines. Why*, c. 1940, Library of Congress

Interestingly, when we get to the "modern" environmental law of the early 1970s, it is art which is often credited with a prominent role in the commonly told origin stories of the environmental movement behind the laws. Icons said to have spurred the wave of environmental legislation after the first Earth Day in 1970 include Rachel Carson's *Silent Spring*, and visual images of Planet Earth as seen from space (see Figure 20), the Santa Barbara oil spill, and the Cuyahoga River on fire. It might be argued that the recent failure of



global society to deal effectively with climate change is at least in part the result of the difficulty in translating the problem into a visual medium.<sup>28</sup>

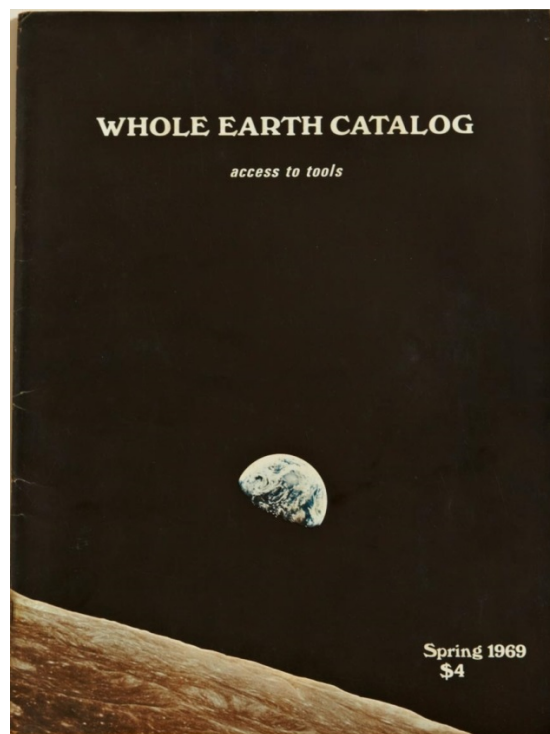


Figure 20. Cover, *Whole Earth Catalog*, 1969

To sum up, environmental law is always enacted (or fails to be enacted) against a background of societal and cultural attitudes to the environment and perceived problems. Art documents these attitudes, and thus can help explain when and why environmental law developed the way it did. The fact that the view of environmental conditions that art presents is mediated and highly stylized, often unreliable from a scientific perspective, only strengthens its value as a tool for understanding environmental consciousnesses of the past. As we have seen, while artists of western, industrial societies have been sensitive to

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<sup>28</sup> For the ways in which the film *An Inconvenient Truth* uses traditional environmental iconography, see Dunaway, *supra* note 7, 258-76.

environmental conditions for a long time, their attitudes to pollution were often ones of toleration or even celebration. Changing cultural attitudes to environmental issues, as reflected in art, can supply historical explanation for the direction and pace of environmental law's historical evolution.

## **II. Art and the Effects of Environmental Law**

Art not only reflects the society and culture which serve as the background for law, it is created against a background of law. As such, it can help inform as to one of the most fraught issues in environmental law—the actual effect of the law on the ground (and air and water).

The effects of law on landscape are clearly seen in the case of land use law. The US Northwest Ordinance's imposition of Cartesian order on the living earth is perhaps best appreciated through often beautiful satellite or aerial images (e.g. Figure 21). The effects of New York City's famous zoning ordinance of 1916 were given visual form in Hugh Ferriss's drawings and in photographs of the architectural icons built under the code (see Figure 22 and Figure 23). And the environmental upheaval wrought by American postwar suburban zoning ordinances was given early expression in the utopian/dystopian photographs of places like Levittown, Long Island (Figure 24).<sup>29</sup>

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<sup>29</sup> For more on photos of Levittown, see Adam Rome, *The Bulldozer in the Countryside* 17, 257-8 (2001).



Figure 21. James W Earl, *Twelve Square Miles*, 2010 (courtesy of the artist)



Figure 22. Hugh Ferriss, *Study for Maximum Mass Permitted by the 1916 New York Zoning Law, Stage 4*, 1922, Smithsonian Design Museum, Cooper Hewitt collection (courtesy of the Smithsonian Institution)



Figure 23. Samuel Gottscho, *Chrysler Building Midtown Manhattan New York City 1932*,

Library of Congress



Figure 24. Thomas Airviews, Aerial view of Levittown, 1949, courtesy of Levittown Public Library

As for pollution law, we return to Monet, whose visits to London in 1870-71 and again in 1899-1901 spanned a period of intensive environmental lawmaking activity in Britain. The Public Health Acts, the Alkali Acts, and other laws mandated consumption of smoke, required best practicable means for mitigation of air pollution, provided for summary process against nuisances, and more.<sup>30</sup> Yet when comparing paintings from Monet's first visit, such as *Boats in the Pool of London* (1871, Figure 25) or *The Thames Below Westminster* (Figure 26) with those from around the turn of the century (e.g. *Le*

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<sup>30</sup> Smoke Nuisance Abatement (Metropolis) Act 1853, *supra* note 22; Alkali Act 1863 (26 & 27 Vict c 124); Alkali Act (1863) Amendment Act 1874 (37 & 38 Vict c 43); Public Health Act 1875 (38 & 39 Vict c 55); Public Health (London) Act, 1891 (54 & 55 Vict c 76).

*Parlement*, Figure 2), no improvement in air quality is evident. Again the issue of the artist's objectivity is raised—perhaps Monet's paintings are less evidence of the actual condition of the environment than of his subjective sight—but yet again this problem is slighter than it may seem at first. If London's air quality actually improved between 1870 and 1900 in the wake of the contemporary wave of environmental legislation, while this improvement made little impression on contemporary observers, who continued to view London as a smoggy city, that, in itself, is worthy of note. We seemingly have here evidence of the failure of Victorian environmental legislation to achieve its goals, at least in the eyes of one influential observer. Similar conclusions, based on the paintings of the Impressionists and Post-Impressionists, might be reached about the effects of French environmental regulation, going back to a Napoleonic decree of 1810 and before.<sup>31</sup>

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<sup>31</sup> Geneviève Massard-Guilbaud, *La régulation des nuisances industrielles urbaines (1800-1940)*, 64 *Vingtième Siècle. Revue d'histoire* 53 (1999); Pierre Claude Reynard, *Public Order and Privilege: Eighteenth-Century French Roots of Environmental Regulation*, 43 *Technology and Culture* 1 (2002).



Figure 25. *Boats in the Pool of London*, 1871, private collection



Figure 26. *The Thames below Westminster*, 1871, National Gallery, London



Similarly, mid-twentieth-century American visual depictions of pollution can tell us a lot about the effects of environmental law. The city of Des Moines enacted an anti-smoke ordinance as early as 1911,<sup>32</sup> yet the thick plumes of the WPA's *Smoke over Des Moines*, printed around 1940 (and discussed above), tell us that the city's anti-smoke ordinance had failed to clean up the air—or at least was perceived as having failed to do so.<sup>33</sup> In contrast, the city of St. Louis seems to have taken pride in the success of its 1940 anti-smoke ordinance (discussed below), credited with drastic improvements in the city's air quality. The *St. Louis Post-Dispatch* explained the manipulated photos on the cover of an edition of its "Pictures" (Figure 27) as follows: "By joining together two aerial photographs of the downtown section of St. Louis, the one at left taken in the fall of 1939, the other in the fall of 1940, PICTURES is able to present in a single framework the whole dramatic story of the transition from darkness into light effected by the smoke ordinance."<sup>34</sup>

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<sup>32</sup> See *Northwestern Laundry v. City of Des Moines*, 239 U.S. 486 (1916). The ordinance was part of a wave of similar laws passed throughout the country; see Arnold W. Reitze, *Air Pollution Control Law: Compliance and Enforcement* 10 (2001).

<sup>33</sup> The Library of Congress catalog, [www.loc.gov/pictures/item/98512479/](http://www.loc.gov/pictures/item/98512479/), dates the poster to between 1936 and 1941. The copy held by the Library is stamped Jan 29 1941. The event advertised in the poster is given as January 27, with no year specified.

<sup>34</sup> *St. Louis Post-Dispatch Pictures*, 2 Feb., 1941, University of Pittsburgh Smoke Control Lantern Slide Collection, Image SCLS027, <http://digital.library.pitt.edu/images/pittsburgh/smokecontrol.html>.

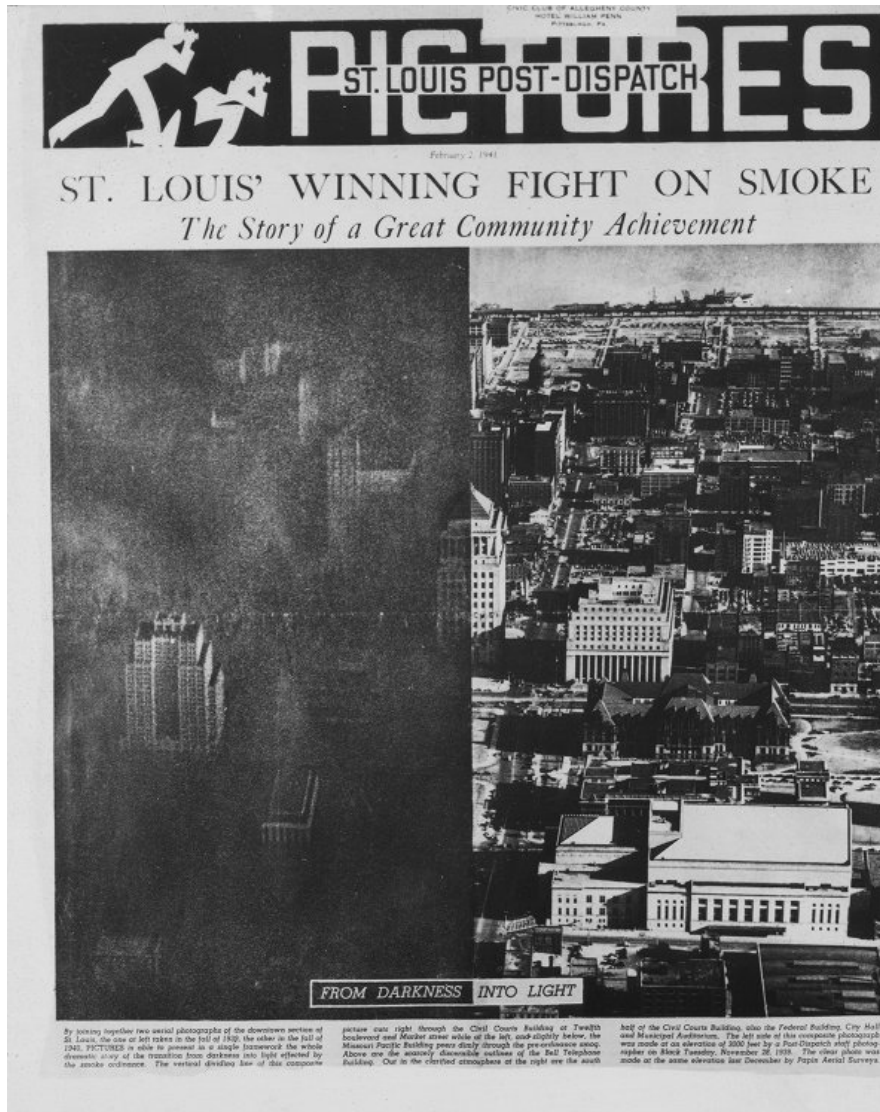


Figure 27. St. Louis Post-Dispatch Pictures, *From Darkness into Light*, 1941, Smoke Control Lantern Slide Collection, AIS.1978.22, Archives Service Center, University of Pittsburgh

Art can thus be a useful tool for the legal historian wishing to move beyond environmental law on the books and evaluate the effects of environmental law on the ground (and in the air). As with any historical artifact, artistic "texts" need to be read critically in light of their creators' subjective views and political goals, and may not always provide an accurate depiction of the physical effects of environmental law. But here, too, as for the issue of the cultural background of law discussed above in Part I, the perceptions of

environmental law's effects and effectiveness are often of interest to the historian, and art can serve as a faithful witness to these.

### III. Art and Hidden Environmental Law

We have so far discussed art as a tool for understanding the background to environmental law, and for appreciating its effects. But what about the law itself? Might works of art document environmental law itself, exposing law we might otherwise not know about?

*Smoke over Des Moines*, discussed above, does more than document the contemporary concern over air pollution that served as the background for the mid-twentieth century's wave of environmental legislation or the failure of early legislation to solve the problem; it also alerts us to the very existence of air pollution regulation in mid-twentieth-century America, penetrating even to a relatively small Midwestern city. The poster is useful on yet another level, too, disclosing the legal and institutional form—local ordinances and smoke commissions—that the regulation often took in this period, thereby helping the modern historian bridge the conceptual and semantic gap between today's legal forms and those of the past.

The WPA poster also opens further avenues of inquiry about environmental law *circa* 1940. We know from other sources that smoke commissioners and inspectors were appointed under a local, Des Moines ordinance.<sup>35</sup> Yet it was the St. Louis Smoke Commissioner, not a local official, who was the featured speaker of the advertised event.

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<sup>35</sup> See *Northwestern Laundry v. City of Des Moines*, *supra* note 32, 489.

Historians have noted that the St. Louis Commissioner, Raymond Tucker, was a particularly effective and influential figure in the American anti-smoke movement, and the 1940 St. Louis ordinance that he pushed through and zealously enforced attracted attention outside the city.<sup>36</sup> The poster's recording of Tucker's visit to Des Moines, probably in early 1941,<sup>37</sup> might indicate the arteries of legal influence through which environmental norms flowed between jurisdictions in this period, raising questions about whether law traveled as a disembodied printed text or as a companion to flesh-and-blood travelers, and about the possibly limited geographic scope of legal diffusion in this period.

Turning now to land use law, Monet's work is once again suggestive. His 1870 paintings of the beach and boardwalk at Trouville (e.g. Figure 28) display an interesting feature—the apparently flush building line and open beach.<sup>38</sup> Beach setbacks are a hot environmental issue today, but a supposedly recent one, as evidenced by historic building right up to the shoreline in many places. Assuming Monet's depiction of the beach setback is historically accurate—its repetition in at least two paintings suggests it is—why did the owners of the expensive real estate in the trendy Norman resort not take advantage of the

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<sup>36</sup> Raymond R. Tucker, *Smoke Prevention in St. Louis*, 33 *Industrial & Engineering Chemistry* 836 (1941); Frank Uekoetter, *The Age of Smoke: Environmental Policy in Germany and the United States, 1880-1970* 77-86 (2009); Joel A. Tarr, *The Metabolism of the Industrial City: The Case of Pittsburgh* 27, in *City, Country, Empire: Landscapes in Environmental History* (Jeffrey M. Diefendorf & Kurkpatrick Dorsey eds., 2009).

<sup>37</sup> See *supra*, note 33.

<sup>38</sup> See also *La Plage à Trouville, 1870*, private collection,

[www.sothebys.com/en/auctions/ecatalogue/lot.pdf.L08007.html/f/10/L08007-10.pdf](http://www.sothebys.com/en/auctions/ecatalogue/lot.pdf.L08007.html/f/10/L08007-10.pdf).

full extent of the beach to increase the built areas of their casinos and hotels? Why did they leave the beach open to the public?



Figure 28. Claude Monet, *The Beach at Trouville*, 1870, Wadsworth Atheneum

The straight building line indicates a measure of coordination, and the owners' withstanding of temptation to "defect" and extend their buildings further out toward the sea suggest a degree of legal coercion. What kind of legal norm operated here is a mystery. Was it a French version of the "public trust doctrine"? A local initiative to preserve the tourist-attracting beach, anchored in local ordinance, contract, or servitude? An early law aimed at beach preservation, or perhaps one that sought to prevent storm damage to built

structures? In any case, the fact that Monet's eye was drawn to this feature seems to attest to both its salience and its aesthetic value in the eyes of contemporaries.

Similarly, while Victorian environmental law may not have brought about clean skies, some paintings hint at other effects. Though the expedient of mandating minimum chimney heights in order to lift pollution away from populated areas (transferring the fallout somewhere downwind) was apparently a product of the twentieth century, earlier paintings suggest that minimum chimney heights were being established already in the nineteenth. The multiple smokestacks in Caillebotte's *Factories at Argenteuil* (Figure 8) and Pissarro's *Bords de l'Oise à Pontoise* (Figure 10), among others,<sup>39</sup> appear to be of uniform height, towering above the squat chimneys in earlier paintings, such as De Louthembourg's early nineteenth-century depictions of the iron works at Coalbrookdale, Shropshire (Figure 29).

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<sup>39</sup> See for example by Pissarro, *The Oise in Spate*, 1873, Collection of Earl of Jersey, <http://bit.ly/1HCYpab>; *The Factory at Pontoise*, 1873, Israel Museum, <http://bit.ly/1TbLeAW>; *L'île Lacroix à Rouen*, 1883, *supra* note 17; *Dieppe, bassin Duquesne. Marée basse, soleil, matin*, 1902, *supra* note 17.



Figure 29. Phillipe Jacques de Louthembourg, *Iron Works, Colebrook Dale* (engraving William Pickett), 1805, Science Museum at Wroughton

The standardization of heights evident in Caillebotte's and Pissarro's paintings from the latter part of the century suggests a legal moment behind the smokestacks' specifications. Whether the elongated stacks were a uniform response to legislation requiring consumption of smoke,<sup>40</sup> to more specific technical requirements imposed by legislation or licensing procedures such as the *enquête de commodo et incommodo*,<sup>41</sup> or an

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<sup>40</sup> E.g. Smoke Nuisance Abatement (Metropolis) Act 1853, *supra* note 22.

<sup>41</sup> See Reynard, *supra* note 31.

attempt to head off nuisance suits by adopting industry-wide best practices needs to be investigated, but their artistic rendering at least opens this avenue of historical inquiry.

These examples suggest that while it may be difficult to discern the precise content of environmental law from artistic sources, these sources can at least alert us to the presence, and sometimes the form, of environmental legal norms, in historical contexts in which we might not have suspected their presence. Art can thus be a tool for understanding not only the preconditions and effects of environmental law, but the law itself.

#### **IV. Conclusion**

Art can provide a valuable set of historical sources for understanding the cultural attitudes toward the environment against which environmental law did or did not develop. It can also help evaluate the effects of environmental law, particularly as these were perceived in history. While its utility for uncovering environmental law itself is probably more limited, we have seen that it can at least suggest lines of historical inquiry into the presence of environmental law and the form it took.