

**American Natures:
The Languages of Environmental Lawmaking**

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Although environmental law got underway as a self-conscious enterprise only in the early 1970s, the question of how Americans should engage the natural world has a long, fractious, and consequential history in law and politics. Our environmental law is the latest chapter in a series of rich and continuing arguments about how to value, use, and legally govern nature. All interpreters of the political community have joined these disputes, from legislators, presidents, and judges to commentators and social movements. These contests have produced statutory regimes to serve goals that would once have been entirely implausible, such as preserving untouched wilderness areas on behalf of “untrammelled” nature.¹ At the same time, many Americans have maintained competing ideas – for instance, that using natural resources productively fulfills nature’s purpose and also dignifies the user. The laws that turn certain environmental values into national commitments are also moments in a larger contest of visions.

This paper is built around a pair of themes: *environmental public language* and the *environmental imagination*. *Public language* is a polity’s lexicon of political and legal persuasion, the repertoire of its ongoing arguments. Public language encompasses recognized terms of condemnation and exhortation, and the principles, purposes, and dangers that one can credibly invoke in such settings as legislative debate, regulation, or adjudication.² *Imagination* refers to what public language typically presupposes, a shared image of the world and our situation in it, a blend of fact and value that includes ideas about how things work and how they matter. The environmental imagination helps to make ways of valuing and using the natural world self-evident, intelligible, or bizarre – categories that, as we shall see, have changed greatly over two-plus centuries.³

The two terms describe distinct aspects of a messy continuum between understandings of the world and the ways Americans invoke them in public argument. Thus, while the distinction should help to focus attention at the outset, this paper highlights the mutually creative interaction between the ideas – moral, aesthetic, and political – that make up the environmental imagination, and law and politics, where Americans use and change public language. Indeed, in much of the paper, the abstract

¹ 16 U.S.C. sec. 1131(c) (Wilderness Act of 1964).

² As these examples suggest, what counts as public language varies with the context and the problem at hand. I use the same term to organize a companion piece that overlaps with this paper: Jedediah Purdy, *The Politics of Nature: Climate Change, Democracy, and Environmental Law*, 119 Yale L.J. 1122 (2010).

³ *Imagination* is different from theory, whether ethical or scientific, in being less elaborate and articulate, often mainly implicit, and more widely shared. This formulation owes a lot to Charles Taylor’s discussion of “social imaginaries.” See CHARLES TAYLOR, *A SECULAR AGE* 171-76 (2007) and MODERN SOCIAL IMAGINARIES 23-30 (2004). I use a similar idea in discussing implicit social visions in the development of property law: JEDEDIAH PURDY, *THE MEANING OF PROPERTY: FREEDOM, COMMUNITY, AND THE LEGAL IMAGINATION* 9-12 (2010).

terms recede to invisibility in favor of attention to what the actors at issue were trying to achieve and the images of the world that motivated, aided, or constrained those efforts. Any pattern of environmental public language tends to invoke a portion of environmental imagination, yet there is no one-way relation between the two. When political actors call on shared images of the world, they may change the meaning of what they name, and with it the potential range of their own public language. Such changes can help to make new ideas and projects viable where once they would have been unacceptable, or they may impede options that once seemed open. That multifarious process frames this paper's story.

The substance of the story is this: Americans have created and acted on four distinct understandings of their place in the natural world. The oldest historically, and the dominant one in creating much private property in land, is *providential republicanism*. In this view, the natural world is made for productive use: nature has a *telos*, to be fruitful and support human life, and this purpose is realized only through human labor. Moreover, small-scale private ownership of land, the sort associated with the republican thought of the eighteenth and nineteenth centuries, uniquely produces fruitful use, so that political freedom and economic productivity go hand-in-hand. The second understanding, which arose in the later decades of the nineteenth century, is *progressive management*. In this view, natural systems will reliably serve human ends only with expert governance at the system level: irrigation networks, silviculture, game preserves, and parks administration were early paradigms of this understanding. Progressive management carries its own idea of political community: a form of broadly utilitarian solidarity, in which government has the duty to promote the aggregate interest of Americans across generations. It also introduces a paradigmatic human user of nature: not the individual owner, but the scientifically trained and public-spirited manager.

The third attitude, whose creators maintained a complex relation with the ideas of progressive management, is *romantic epiphany*. In this view, certain places, or certain qualities in the natural world, elicit or answer corresponding qualities in human experience. In sustained solitude, or facing the dramatic and foreboding vistas that Romantic aesthetics deemed sublime, people could shake off the accretions of habit and convention, come to know their own wishes and convictions, and become, in that respect, more free. Romantic epiphany has seemed a way to salvage individuality and meaning from a disenchanted and pervasively managed world. Its adherents have, sometimes paradoxically, demanded dedication of some of the country's most significant resources, particularly the more than 100 million acres of federal land reserved as statutory wilderness. The fourth American understanding of nature, *ecological interdependence*, developed most recently – within the last half-century – and remains the most open-ended in its meaning. This approach deepens and elaborates the progressive managers' account of the world as a system of systems, tracing environmental effects through remote and invisible pathways – relations that Aldo Leopold popularized as a kind of scientific pastoral, Rachel Carson as an apocalyptic account of undetectable yet deadly threat. Ecological interdependence has also been associated with a blended aesthetic and ethical attitude, a view of human life as continuous with a vast and complex web of natural phenomena, in which some have found inspiration, wonder, or humility.

The heart of this paper is an interpretation of the rise and interaction of these four views of the natural world. Each view is characterized by an account of what is valuable in nature and what kind of human activity – for instance, development, management, or preservation – best responds to that value. Each helped to produce representative legislation, designed to achieve the right human relation to the natural world (as it was then imagined). The story is cumulative: earlier views persist as new ones arise, both through their legislative offspring and as organizing ideas for competing groups. It is thus a story about how political ideas contribute to legal change, and also about how ideas, once established in identities and institutions, can both reinforce legal entrenchment and constrain ongoing political debates.

Part I describes how providential republicanism notionally cleared the continent for settlement by portraying Native Americans as too light and transient in their land use to establish claims to territory. This portrayal involved adapting both jurisprudence and anthropology to support the project of a continental settler empire. In the environmental imagination of providential republicanism, uncultivated ground was “wilderness” and “waste,” empty land that pioneers must “reclaim” by labor. The idea that settlement completed nature’s design helped to foster a rhetorical form that became perennial, the image of an ideal landscape that flourished in answer to good politics and right human use, and withered with tyranny or abuse. This cast of imagination helped to support a continental program of private-property creation, which dominated United States resource law until the end of the nineteenth century. It was also closely tied to a vision of dignity, which elevated labor – particularly the continent-taming work of the pioneer – from a mark of low status to a basis of respect.

Part II presents progressive management, explaining how a regime of expert governance over complex systems took natural resources as its core and extended that paradigm to a larger reform program. Developed in forestry and erosion control, *conservation* became the touchstone for public health and education, styled “human conservation,” and a larger concept of “national efficiency” that included labor relations and antitrust law. Management of natural resources was more than a convenient showcase of this larger agenda: it provided models and concepts that promised to reconcile difficulties in the progressive ideal of neutrally public-interested expert governance. Moreover, management of natural resources in particular mattered to each of several strands of progressive reform in distinct ways that highlight their different social visions. For utilitarian reformers such as pioneering forester Gifford Pinchot, it was the key issue in Americans’ maturation from a society of self-regarding pioneers to one of utilitarian patriots, whose loyalty should be to the well-being of the whole community, present and future. In Theodore Roosevelt’s civic-nationalist vision, it was a way of securing the material conditions of national greatness and, through outdoor recreation and adventure, preserving the civic virtues of solidarity and initiative that he feared would fade in industrial modernity. For the humanitarian visionary and *New Republic* editor Walter Weyl, natural resources, especially parks, were not about national muscularity or civic fiber, but instead played a key role in the “socialization of consumption” that should enable Americans to enjoy enriched experience in their

personal lives. Each of these values – responsibility, civic virtue, and the enrichment of leisure – figured and persisted in the language of progressive management.

Part III turns to romantic epiphany and explains how the Sierra Club, which the paper calls a romantic social movement, turned an established literary and aesthetic theme – the illuminating and redemptive power of natural beauty – into a form of social life and part of public language. John Muir’s writings were indispensable in this development, but the real work was in the spectrum of high-country pilgrimage, social festival, and political engagement that Club members built around Muir’s language and the Sierra Nevada landscape he evoked. While these activists succeeded in integrating their concern for scenic beauty into the dominant utilitarian language of progressive management, they also contributed their own strand of justification for public lands, so that by the end of World War One it was conventional to describe the national parks as temples of the American spirit. Their view of the natural world’s value was distinctive in its emphasis on personal enlightenment, its quasi-pantheist view of nature (or at least the most spectacular places), and its motive in resistance to a perceived disenchantment of modern life.

These themes return in Part IV, a treatment of ecological interdependence. *The environment*, an overarching concept that encompassed phenomena ranging from litter to species extinction, industrial effluents to population growth, emerged into public language in this time, rapidly assuming its now-familiar self-evidence. It took great force from a change in environmental imagination. All aspects of the natural world, including human beings, came to seem intensely permeable and thus interdependent and vulnerable. This picture framed a threat that toxins might travel through air and water, soil and bloodstreams, sickening people and even the planet, which the ecological image helped portray as a sort of meta-organism. That perception was aligned with larger doubts about technocracy and mastery of nature, and a perceived “environmental crisis” was often explicitly linked to the Vietnam War and nuclear weapons in a single, moralized story about hubris and comeuppance. Many also identified a redemptive potential in the ecological perspective, a marriage of “humility” on the one hand and enhanced vitality and awareness on the other. This amounted to a version of earlier romantics’ spiritualization of natural beauty, now extended to the entire natural world and the patterning of ecological dependence itself.

Part V draws on this typology to interpret one major development in environmental politics and sketch some other applications of the paper’s approach. Between the mid-1920s and mid-1960s, the wilderness movement established a new legal category, comprising large tracts of permanently undeveloped public land, and won it statutory status that now protects about 107 million acres. That movement sharpened a tension within the public language of romantic epiphany, between embrace of accessible scenery as an aesthetic public good and the drive to pursue the most intense and demanding encounters with “untrammelled” nature beyond the traditional democratic “temples” of the national parks. Seizing on the latter goal, wilderness advocates found they lacked a public language that could advance it. Through frustration and experiment, they created one. The arguments for wilderness preservation that they advanced in the

movement's most successful period anticipated, and formed a bridge to, the later language of ecological interdependence. This Part then moves beyond wilderness to argue a distinct point: that a history of environmental imagination can help to illuminate how certain instruments, such as "markets," take on contingent but persistent meaning within environmental politics, meaning that shapes and constrains debate. It then argues briefly that the study of imagination offers a fruitful relation between accounts such as this one, based in the history of language and ideas, and others based in interest. A short conclusion follows.

I. THE PROVIDENTIAL REPUBLICAN LANDSCAPE

The term *providential republicanism* names a way of imagining North America that infused much of nineteenth-century law and politics. The continent was empty "wilderness" or "waste," and settling it would "reclaim" the land from this condition. The emptiness had a double sense. Supporters of westward settlement imagined and portrayed the continent as thinly populated and uncultivated. They argued that the frontier was also *legally* empty because light and transient land use established, at best, weak and uncertain property rights. Reclaiming the continent meant filling both sorts of emptiness by pressing westward settlement and cultivation, private property and republican government. In the rhetoric of the time, these touchstones of economic and political progress joined in an image of a free American landscape, orderly and fruitful. This ideal stood in contrast to two alternatives: unredeemed wilderness, alarming but full of promise, and an infertile, withered landscape that was yoked rhetorically to political tyranny. Providential republicanism thus held two tasks to be mutually supporting: fulfilling the putative purpose of the natural world, which was to support human life amply, and achieving human freedom through self-government by equal citizens. These two tasks might even be identical, inasmuch as westward settlement indistinguishably advanced both.

A. The Law and Anthropology of Continental Settlement

To appreciate the idea that the continent was substantially unused and thus empty of legal claims, consider this argument from James Kent, New York's chancellor, lecturer in law at Columbia, and author of the influential *Commentaries on American Law*. Kent took up "the foundation of title to land" in the United States a short time after Chief Justice Marshall had addressed the issue in *Johnson v. M'Intosh*.⁴ Marshall, in ruling that citizens of the United States could not acquire title by purchase from Native Americans, expressly sidestepped issues of "abstract justice," such as the claim that farmers enjoyed a natural right to expropriate the lands of nomadic hunters.⁵ After recounting the essentials of Marshall's reasoning, Kent stepped squarely into the issue that the Court had avoided, arguing that abstract justice did support European expropriation.⁶ Kent first

⁴ 4 JAMES KENT, COMMENTARIES ON AMERICAN LAW 307; *Johnson v. M'Intosh*, 21 US 543 (1823).

⁵ 21 US at 572 (declining to base opinion "solely on ... principles of abstract justice"), 588 (declining to decide on "abstract principles" whether cultivators can displace non-cultivators). Marshall held that the federal government was the sole source of ownership cognizable in American courts. He reasoned from the custom of Europe's colonial powers and the early United States, with some emphasis on the reliance interest of Americans who had settled the continent deep into the Midwest.

⁶ 4 KENT at 312 "If the settled doctrine on the subject of Indian rights and titles was now open for discussion, the reasonableness of it might be strongly vindicated.")

argued for the continent's legal emptiness: "[e]rratic tribes" of "hunters" could not acquire lasting title to property, for their transient occupation gave them only "the loose and frail, if not absurd title of wandering savages."⁷ Second was the emptiness of non-use. This "immense continent" was "evidently designed by Providence to be subdued and cultivated, and to become the residence of civilized nations."⁸ Kent embraced "the true principles of natural law" expounded by Emmerich de Vattel, who had "observed, that the cultivation of the soil was an obligation imposed by nature upon mankind."⁹ The continent might not be literally empty, but it was devoid of its normative use, which was imparted by God and discernible by natural reason: to be fruitful and support extensive settlement. Native American occupation not only failed to establish property rights, but also violated what was taken to be the duty to cultivate the land. For Indians to resist settlement would be "usurp more territory than they can subdue," an act of unjust exclusion.

Although this theory had roots in the thought of Hugo Grotius and John Locke, the theorists of American settlement were not in the ineluctable grip of an idea.¹⁰ Rather, they were wielding one strand of a legal tradition to justify a settler-driven "empire of liberty" that aimed to extend its population and distilled political principles across the continent.¹¹ The idea that the continent was legally empty was much less influential in England and colonial North America than in revolutionary period and the early United States, when westward settlement became a national preoccupation.¹² In keeping with changing legal theory, both popular and legal materials in the early republic increasingly portrayed Native American land use as vagrant and irregular, a departure from earlier recognition that many indigenous peoples did cultivate and permanently occupy their lands.¹³ It took effort to recast North America as an empty land.

This view of the continent was not monolithic even in its heyday: some colonists and citizens of the early republic defended Native American claims to ownership

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ See JAMES TULLY, AN APPROACH TO POLITICAL PHILOSOPHY: LOCKE IN CONTEXTS 137-76 (1993) (describing the reception and use of Locke's natural-rights theory in relation to aboriginal land claims); David Armitage, *John Locke, Carolina, and the Two Treatises of Government*, 32 *Political Theory* 602 (2004) (on the interaction between Locke's involvement in colonial settlement and administration and his writing the *Two Treatises*).

¹¹ GORDON S. WOOD, EMPIRE OF LIBERTY: A HISTORY OF THE EARLY REPUBLIC, 1789-1815, at 357 (2009). See also Caroline Elkins & Susan Pedersen, *Settler Colonialism: A Concept and Its Uses*, in *SETTLER COLONIALISM IN THE TWENTIETH CENTURY* (Elkins & Pedersen eds., 2005) (describing the concept of settler colonialism); AZIZ RANA, THE TWO FACES OF AMERICAN FREEDOM 9-18 (forthcoming Harvard University Press, 2010) (on the interpretation of early American experience through the lens of "settler empire").

¹² See STUART BANNER, HOW THE INDIANS LOST THEIR LAND: LAW AND POWER ON THE FRONTIER 10-48, 121-60 (2005) (on the early belief that Native Americans enjoyed certain claims and the later erosion of this belief); LISA FORD, SETTLER SOVEREIGNTY: JURISDICTION AND INDIGENOUS PEOPLE IN AMERICA AND AUSTRALIA, 1788-1836, at 13-30, 183-203 (describing parallel growth of natural-rights claims to settlement in two settler colonies). *But see* ROBERT A. WILLIAMS, THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT (1990) (arguing that the natural-rights theory had a more continuous influence).

¹³ See BANNER, *supra* n. ___ at 121-60.

(sometimes in defense of their own putative purchases from indigenous occupants), and the federal government's practice was to take title to Indian land through the form of voluntary transactions, not by the Vattelian natural-rights claim that Kent endorsed.¹⁴ The doctrine of *Johnson v. M'Intosh* was a hybrid, assigning Native Americans a usufructuary right to occupy and use their traditional lands, which fell well short of ownership.¹⁵ Nonetheless, such halfway positions were routinely hedged around with assertions that Native American land use amounted to profligate waste of a continent.¹⁶ There was widespread and basic agreement with the thrust of John Quincy Adams's rhetorical question:

Shall the lordly savage ... forbid the wilderness to blossom like a rose? Shall he forbid the oaks of the forest to fall before the axe of industry, and to rise again, transformed into the habitations of ease and elegance? Shall he doom an immense region of the world to perpetual desolation ... [and] the fields and the valleys which a beneficent God has formed to teem with the life of innumerable multitudes, be condemned to everlasting barrenness?¹⁷

The continent belonged to those who could make it bloom.

B. The Language of Wilderness and Waste

These ideas underlay a lexicon for the American landscape. Thus the "wilderness" of the frontier was to be "reclaimed," brought into right use. John Tyler praised "our fellow-citizens who press forward into the wilderness and are the pioneers in the work of its reclamation,"¹⁸ and James Buchanan summarized the task of territorial settlement as "generally to reclaim the wilderness."¹⁹ Wilderness was not necessarily unpopulated (it might, in particular, be full of Native Americans); rather, what defined it was that it was uncultivated.²⁰ Thus, for the first half of the nineteenth century, *wilderness* seems to have been synonymous in public language with *waste*, literally empty terrain, but also unproductive land.²¹ Thus, while *wilderness* for the earliest New

¹⁴ See TULLY, *supra* n. ___ at 148-54 (describing colonial debates); Banner, *supra* n. ___ at 10-48 (describing purchase practices).

¹⁵ *Johnson*, *supra* n. ___.

¹⁶ See JOSEPH STORY, 1 COMMENTARIES ON THE CONSTITUTION 6-7 (rejecting the natural-rights theory but characterizing the European view of Native Americans as "a savage race, sunk in the depths of ignorance and heathenism [and] bound to yield to the superior genius of Europe", 106 ("We have ... seen that the title of the Indians was not treated as a right of propriety and dominion.... As infidels, heathens, and savages, they were not allowed to possess the prerogatives belonging to absolute, sovereign, and independent nations. The territory over which they wandered, and which they used for their temporary and fugitive purposes, was, in respect to Christians, deemed as if it were inhabited only by brute animals.").

¹⁷ JOHN QUINCY ADAMS, AN ORATION, DELIVERED AT PLYMOUTH, DECEMBER 22, 1802, at 22-24 (1802)

¹⁸ John Tyler, Annual Message to Congress (1843).

¹⁹ James Buchanan, Annual Message to Congress (Dec. 6, 1858).

²⁰ Thus to remove Indians from lands where they had been settled as cultivators was "to thrust them into the wilderness again." Rutherford B. Hayes, Annual Message to Congress (Dec. 3, 1877). See also Benjamin Harrison, Annual Message to Congress (Dec. 3, 1889) ("We can no longer push the Indian back into the wilderness").

²¹ See Thomas Jefferson, Annual Message to Congress (Dec. 3, 1805) (settled Indian tribes "find it in their interest ... to dispose of parts of their surplus and waste lands" to white settlers); Andrew Jackson, Annual Message to Congress (Dec. 4, 1832) ("a portion of the waste lands owned by the States should be ceded to

England colonists had a biblical resonance, as a horrid but significant place of sojourn and trial, it now signified land whose destiny was unfulfilled, and which awaited reclamation by the axe and plough.²²

As we shall see, changes in the sense of these two words later marked significant shifts in the public language of nature. *Waste* came to have something nearer its contemporary meaning, of land ruined by poor use. Cast as a more general idea of incompetent use of resources, it became the defining *bête noire* of progressive management. *Wilderness* took on a new, positive sense, as the repository of Romantic virtues inhering in untamed nature, and preserving it became a major goal of public-lands management. In the early nineteenth century, however, these two conjoined terms formed a defining contrast to the settled landscape that providential republicanism embraced, a contrast premised on the superiority of settling and using the land: wilderness or waste land was an invitation, even a call, to development.

C. Political Argument and the Ideal Landscape

Providential republicanism established a recurring feature of American environmental argument: the ideal landscape, which visually exemplified the right human relation to nature and was often contrasted to misused or disorderly landscapes. A sort of summation-by-diorama of a theory, the ideal landscape portrayed the fruits of collaboration between human effort and natural design. Such images served as exhortation and reassurance, by portraying nature as the unfailing helpmate of its human inhabitants, and also as reproach, by rendering vividly the bad consequences of departing from right use of the natural world.

A fruitful landscape bespoke both freedom and prosperity. It is well known that early Americans linked the prospects of republican freedom to the plenitude of the frontier.²³ In Eric Foner's formulation, free land was the condition for a nation of free men, because it made possible widespread and expanding ownership, giving everyone (in theory) the chance to become a proprietor.²⁴ The social ideal of small-scale ownership helped, in turn, to establish an ideal of personal dignity, *free labor*, in which manual and other productive work was revalued from a mark of low status to an egalitarian emblem of personal worth.²⁵ The frontier made this ideal a widely shared prospect, and, in rhetoric and to considerable degree in fact, the property-building activity of small-scale labor made the frontier.

What is easy to overlook in this familiar story is how fully its partisans enlisted a vision of American nature in its support. A free people was also a productive people, and

the United States for the purposes of general harmony and as a fund to meet [war expenses]"); Martin van Buren, Annual Message to Congress (Dec. 5, 1837) (settlers moving westward in rapid and opportunistic fashion "leaving immense wastes behind them and enlarging the frontier beyond the means of the Government to afford it adequate protection").

²² See generally PERRY MILLER, *ERRAND INTO THE WILDERNESS* (1956) (on the early New England sense of mission).

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nature answered success with fruitfulness. Political rhetoric knitted together freedom and prosperity in an image of the ideal American landscape – and its opposite, an infertile landscape of tyranny. James Wilson gave a model of this rhetoric in a 1788 Independence Day address, contrasting the era of ancient Roman liberty, when “smiling harvests bore testimony to the bountiful boons of liberty,” with the present: “Waste and barrenness appear ... in all their hideous forms With double tyranny the land is cursed.”²⁶ In republican North America, free Rome was reborn ecologically as well as politically: Wilson concluded with an “enrapturing prospect ... Placid husbandry walks in front, attended by the venerable plough. Lowing herds adorn our vallies; bleating flocks spread over our hills; verdant meadows, enamelled pastures, yellow harvests, bending orchards, rise in rapid succession from east to west.”²⁷ George Perkins Marsh, the pioneering naturalist whose *Man and Nature* laid the groundwork for progressive management, attributed his paradigm case of ecological decline, the Mediterranean, to “the brutal and exhausting despotism [of the Roman imperium and] the host of temporal and spiritual tyrannies which she left in her dying curse.”²⁸ Natural fertility thus went with ordered liberty, waste with unjust government, so that the land itself expressed the character of the polity that inhabited it.

The optimistic side of this coin ran to outright ecological fantasy, most famously in the theory that “rain follows the plow,” that cultivation of arid regions would train the atmosphere to moisture, a view whose champions included prominent geologist Ferdinand Hayden and Charles Francis Adams, editor of *The Nation*.²⁹ On the strength of this idea, the 1869 Report of the Commissioner of Agriculture reported of the Dakota Territory that “[a]pprehensions of drought” had given way to confidence that tree planting and “extension of the area of cultivation” would bring rain to settlers.³⁰ These forecasts encouraged rapid settlement of High Plains regions that could not sustain farming without irrigation. Disastrous droughts drove settlers back across the hundredth meridian, the approximate eastern boundary of the arid West.

These theories were sometimes vague on whether republican settlement produced ecological fertility or vice-versa, an ambiguity easy to maintain in the conviction that the two were mutually supporting. William Gilpin, governor of Colorado and among the most inspired rhetoricians of manifest destiny, declared that on a uniquely fruitful continent, where every region was suited to support human life, geographic and political forces led to the same end:

Political societies and empires have in all ages conformed themselves to emphatic geographical facts. This *Democratic Republican empire* of North America is, then, *predestined* to expand and fit itself to the continent In geography the *antithesis* of the old world, in society we are and will be the reverse Behold,

²⁶ JAMES WILSON, ORATION DELIVERED AT THE PROCESSION AT PHILADELPHIA 304 (1788). *Double tyranny* referred to the combination of political despotism and Catholicism, a formulation that persisted in these quasi-ecological polemics well into the nineteenth century.

²⁷ *Id.* at 310.

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³⁰ REPORT OF THE COMMISSIONER OF AGRICULTURE 608 (1869).

then ... the empire which industry and self-government create ... hewed out of the wilderness – its weapons, the axe and plow; its tactics, labor and energy; its soldiers, free and equal citizens.³¹

Gilpin predicted that the fertility of the Midwest and the Great Plains would gather 1.2 billion people in the watershed of the Mississippi River. In this passage, geography is literally destiny, carried out through the labor of agricultural settlement and realized in a political community of equal citizens.

Two rather opposite impulses helped to sustain the vision of a free and dignifying life on an endlessly fruitful continent, with sometimes cruelly paradoxical effect. One was a version of genuine egalitarianism within the polity, radical enough in some hands to make free labor an engine of anti-slavery.³² The other was refusal to tolerate, and what sometimes seemed incapacity to acknowledge, outside constraints on the expansion of the community – which would, after all, have implied limits to the logic of expanding proprietorship. The refusal of external limits had its most vivid expression in the erasure of Native American rights and, indeed, of many of the facts of Native American land use. Alongside that erasure ran a tendency to deny what we would now call ecological limits, and to insist that settlement, resource use, and expanding wealth could only be mutually supporting.

C. The Legal Program and Culture of Providential Republicanism

The providential republican program was to make the continent fruitful by disbursing land to private owners and promoting infrastructure to translate their labors into continental commerce. This is not the place even to summarize the legal details of these policies, which formed much of the federal government's domestic activity in the nineteenth century and persisted until Franklin Roosevelt withdrew the remaining federal lands from settlement in 1934.³³ The sweep of the story is susceptible to top-down portrayals, such as Willard Hurst's classic picture of a federal strategy of releasing human energy and initiative through the legal architecture of settlement, and bottom-up accounts emphasizing the settlers' shared conviction in their right to land and their cooperation in arrangements that Washington often ended up having to embrace or, at least, accommodate.³⁴ That the account runs well with either emphasis bespeaks pervasively shared ideas. Despite disputes about internal improvements and sectional and class conflicts over the terms of expansion, Americans from federal legislators to frontier settlers converged on the program of continental settlement.

We get a sharp expression of the ideas behind this program in cases where they were mobilized in resistance to early proposals that the federal government should retain and manage public lands. Congressional opposition to both federal management of

³¹ WILLIAM GILPIN, MISSION OF THE NORTH AMERICAN PEOPLE, GEOGRAPHICAL, SOCIAL, AND POLITICAL 69-70 (2d ed., 1874) (italics original).

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³³ For the best account of this history, *see generally* PAUL W. GATES, HISTORY OF AMERICAN LAND LAW DEVELOPMENT (1968).

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forests and creation of national parks vividly shows the lines of the settler imagination. In 1878, Interior Secretary Carl Schurz took unprecedented action against commercial cutting on public lands, fining and seeking prosecution of those who cut public timber without permission.³⁵ Traditionalist senators reacted furiously, rallying around the right of settlers to extract wealth from the public domain. They argued that Schurz’s policy would turn pioneers in the territories into second-class citizens and establish tyranny and desolation in the West. They linked clearing and using land with inviolable human rights, invoking the Declaration of Independence to compare the policy-makers of Washington, DC, to the despotic King George portrayed in that document – which had denounced the 1763 prohibition on settlement west of the Alleghenies.³⁶ Evoking the infertile landscapes of tyranny that were conventional in this rhetoric, they called Schurz’s prohibitions an attempt to lock each settler family into primitive autarky,³⁷ a “spoliation” and “robbery of the poor”³⁸ that would drive settlers into “barbarism” and end by “depopulating the Western lands.”³⁹ They also insisted that, because timbering had been permitted earlier waves of settlers in the East and Midwest, regulating Western cutting would deny the latest pioneers equal standing in the polity.⁴⁰

The same ideas showed up vividly in the Senate’s discussions of Yellowstone National Park, established in 1872, and the 1864 grant of Yosemite Valley to California “for public use, resort, and recreation.”⁴¹ The places that those acts set aside are today’s paradigms of public-minded preservation and, in particular, touchstones for romantic epiphany. In the original legislative debates, however, even the parks’ supporters treated them as anomalous departures from a general practice of disbursing public land for private, economically productive use. Moreover, the aesthetic value that supporters associated with the parks was much narrower than the ideas that would later define the romantic case for preservation. In both respects, these arguments highlight the dominance of providential republicanism and the absence from core land-use politics of ideas that would be conventional two generations later.

In an 1883 debate over administration and funding of Yellowstone, the threshold issue was whether any portion of federal public lands should remain in government ownership or, as Senator Ingalls of Kansas put it, “The best thing that the Government could do with Yellowstone National Park is to survey it and sell it as other public lands are sold.”⁴² Ingalls’s position expressed the larger idea that disbursing public lands to private owners would carry westward the empire of liberty and wealth, while permanent

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³⁶ 7 CONG. REC. 1722 (1878) (Statement of Sen. Blaine) (“I know nothing in the world to parallel it except that great assertion in our immortal Declaration of Independence that the King of England ‘has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.’”).

³⁷ *See id.* at 1861 (statement of Sen. Blaine).

³⁸ *Id.* at 1865 (statement of Sen. Eustis).

³⁹ *See id.* at 1867 (Statements of Sen. Sargent).

⁴⁰ *Id.* at 1722 (statement of Sen. Teller) (“I claim that nothing is demanded by the people in the Territories now that has not been conceded to all settlers in the new Territories.”).

⁴¹ CONG. GLOBE, 38th Cong., 1st Sess. 2300 (1864).

⁴² 4 CONG. REC. 3453, 3488 (1883).

government ownership meant monopoly and potential tyranny. Supporters of the parks did not deny that view as a general matter, but argued instead that the parks should be exceptions. Yosemite was “for all public purposes, worthless,”⁴³ while Yellowstone beyond its geysers (already recognized as a potentially lucrative tourist destination) was “simply useless ... mere leather and prunella.”⁴⁴ These, it may be worth repeating, were the parks’ *supporters*. Their arguments presupposed that the “public purposes” that defined the “worth” of most federal land were restricted to economic productivity, making the wild high country of the parks an anomaly whose preservation would subtract nothing from the priority of development.

Supporters’ praise for the parks expressed the same constraints, falling far short of the fulsome language of later preservationists. Senator Vest called Yellowstone “the great wonder-land of the world,” full of “great curiosities that exist nowhere else,”⁴⁵ and Senator Conness of California praised Yosemite for “some of the greatest wonders of the world.”⁴⁶ These phrases, though, should not be mistaken for a senatorial embrace of romantic epiphany. The stress belongs on *curiosities*. The “republican park[s]”⁴⁷ that the senate was prepared to offer Americans were one part spa, two parts circus, and no part spiritualized nature. Conness emphasized the freakishness of Yosemite’s giant sequoias, describing the incredulity that had met a cross-section of one tree at the London World’s Fair, where “the English who saw it declared it to be a Yankee invention, made from beginning to end.”⁴⁸ He also insisted, “There is no parallel, and can be no parallel for this measure, for there is not ... on earth just such a condition of things.”⁴⁹ The very oddness of the valley thus made its designation as a park *sui generis* and compatible with the general principle of privatizing the public domain.

Advocates in these decades were beginning to craft arguments based in progressive management and romantic epiphany, and to find audiences for these understandings of nature, but they were still working against a pervasive backdrop of providential republicanism. President Hayes spoke in favor of Schurz’s efforts to regulate timbering, warning that “a country cannot be stripped of its forests [without] the gravest consequences.”⁵⁰ His successor, Chester Arthur, sounded a similar note.⁵¹ The two presidents introduced conservationist ideas into the heart of political debate and marked the issue as a point of conflict between an executive seeking a new mandate to manage public lands in the name of utilitarian public interest and a Congress defending an older, privatizing conception of the public interest, whose adherents now found themselves

⁴³ CONG. GLOBE, 38th Cong., 1st Sess. 2300 (1864) (Statement of Sen. Conness).

⁴⁴ 4 CONG. REC. 3487 (1883) (Statement of Sen. Vest).

⁴⁵ 4 CONG. REC. 3453 (1883).

⁴⁶ 4 CONG. GLOBE, 38th Cong., 1st Sess. 2300 (1864)

⁴⁷ 4 CONG. REC. 3453 (1883) (Statement of Sen. Vest).

⁴⁸ 4 CONG. GLOBE, 38th Cong., 1st Sess. 2301 (1864)

⁴⁹ *Id.*

⁵⁰ Rutherford B. Hayes, First Annual Message to Congress (Dec. 3, 1877).

⁵¹ See Chester A. Arthur, Second Annual Message to Congress (Dec. 4, 1882) (“The condition of the forests of the country and the wasteful manner in which their destruction is taking place give cause for serious apprehension [T]heir total extinction cannot be long delayed unless better methods than now prevail shall be adopted for their protection and cultivation”).

redefined as a regional faction. Even earlier, Frederick Law Olmsted wrote a report to the California Legislature urging it to accept the grant of Yosemite, in which he argued that by managing the most beautiful tracts of federal land for public recreation, the United States could grant all its “republican” citizens the invigorating benefits of outdoors life and aesthetic contemplation that more hierarchical nations had reserved for their aristocrats.⁵² The progressive and romantic understandings of the natural world and the human relation to it were available by the later nineteenth century, but they were first nascent, then embattled, and it was not until the end of the century that their advocates could shape the law and, with it, the landscape.

II. PROGRESSIVE MANAGEMENT

Two statutes, the 1897 organic act of the U.S. Forest Service and the 1916 counterpart for the National Parks Service, crystallize the ideas of progressive management. Their instruments are federal retention and administration of land that would previously have been on track for privatization. Their technique is managerial and scientific expertise. Their goal is the greatest good of the greatest number across time. What that good was, and how government should serve it, were the major themes of progressive management. The perspective of progressive management recast the nineteenth century’s development policies as anachronistic, if not downright pernicious. The touchstone of progressive management was *conservation*, the rational use of resources to serve social ends; its antithesis was *waste*, which now came to mean use that undermined those ends. These ideas tied management of natural resources into broader reform programs; they also made natural resources management a paradigm, sometimes an indispensable one, for those programs.

A few distinctions help to organize the overlapping stakes that reformers identified with the management of nature. One is how they understood the legacy of nineteenth century privatization policy, which reformers tended to describe in its own mythic terms (though not always in praise), as a continental festival of laissez-faire mobility and self-help. For Gifford Pinchot, substantially the architect of the Forest Service and, through President Theodore Roosevelt, of early progressive public-lands policy in general, frontier settlement was a great success in increasing national wealth, but had become anachronistic in the industrial age, which required new means to the old aim of prosperity. Roosevelt agreed with his chief forester that nineteenth-century economic policy was anachronistic, but he also argued that the frontier had produced personal qualities with civic benefits, such as initiative and a capacity to overcome selfishness in time of shared need, and that Americans of the twentieth century would have to recover these virtues to avoid lassitude and social division. A third representative reformer, *New Republic* editor Walter Weyl, could hardly have disagreed more sharply with Roosevelt: he saw the mobility of the frontier as the source of a certain formlessness in American social and political life, an immature refusal to take seriously the problems of common life and a failure to develop ideas and institutions adequate to them.

Differing views of the recent – in some ways continuing – past corresponded to ideas about the purposes of public resource management. For Pinchot, the goal was to

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enable the United States to remain rich and powerful in a time when individual initiative was no longer adequate to that goal. Roosevelt substantially agreed, but also emphasized that common lands made possible both rugged adventure and cross-class mixing, and so might preserve his favored frontier qualities in new circumstances. For both, national wealth and patriotism were essential to American success in a geo-political great game: Roosevelt's imperial projects, notably the Philippines, were only instances in a larger story of expanding commerce, democracy, and Christianity that took continental manifest destiny to a global scale.

For Weyl, by contrast, management of public resources was part of turning Americans away from a laissez-faire view of themselves, as autonomous producers and authors of their own economic fates, that was false and pernicious from the start. He saw resource management as part of "the socialization of consumption," an agenda for economic regulation that aimed to reorient progressive reform to the consumerist satisfactions of refined leisure, such as the enjoyments of parks recreation might provide. Weyl aimed to enrich the everyday lives of citizen-consumers by allocating enjoyment of the economy's fruits rather than control of its productive powers. (Weyl saw imperialism as a violent and fruitless extension of nineteenth-century ideas into an era that could do with them.)⁵³

A. The Core of Conservation

These were competing inflections of a new idea of what it meant to manage natural resources for the public good. Both the National Parks and Forest Service organic statutes express the core of that idea. They established guiding purposes and governance frameworks for new categories of land: acreage permanently retained in the federal public domain for production or recreation.⁵⁴ According to the statutes, national forests were to provide "a continuous supply of timber" and to control downstream erosion and drought.⁵⁵ The parks' "fundamental purpose" was to "conserve the scenery and the natural and historic objects and wild life therein ... for ... enjoyment ... such ... as will leave them unimpaired for the enjoyment of future generations."⁵⁶ Each statute expressly aimed to manage present resources for undiminished future benefits, and each supposed, though neither asserted, that federal retention and management were the best means to this goal.

On their face, the two statutes' purposes – economic production on the one hand, beauty and recreation on the other – may seem quite distinct. They have sometimes been cast as antagonists in accounts of this period, their conflict crystallized in the famous dispute between the Sierra Club and the Department of Interior over damming Hetch Hetchy Valley in Yosemite National Park.⁵⁷ In fact, they were unified by the organizing

⁵³ See WALTER WEYL, *THE NEW DEMOCRACY* 197 (1912) ("The increasing social wealth shifts the basis of social morality from a mere war ethics ... to a new ethics which demands a full life for all members of society.... The old morality ... survives ... in the struggle between imperialism and industrial democracy, between battleships and libraries").

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concept of the Progressive environmental imagination: *conservation*. The word's meaning was built around the core of rational resource management, but was considerably richer than that. Conservation implied ways of imagining both natural and social life. It portrayed these as formed of complex systems that people must either master or be mastered by. It embraced a moral vision of a national community that could meet and match those forces. Its advocates insisted that rational policy could identify and achieve a common, national interest amid the clash of particular interests. As Pinchot put it in a touchstone treatment of the issue,

There is ... no interest of the people to which the principles of conservation do not apply ... in the education of our people as well as in forestry ... to the body politic as well as to the earth and its minerals.... It applies as much to the subject of good roads as to waterways, and the training of our people in citizenship is as germane to it as the productiveness of the earth.⁵⁸

Conservation was anchored at every point by its antithesis, *waste*, an old word to which conservationists gave a new sense.⁵⁹ As we have seen, *waste* had been used interchangeably with *wilderness* to mean undeveloped terrain, a sense rooted in its Latin root, *vastus*, meaning empty or desolate. While use of the word to denote a fruitless expenditure of energy or wealth was already well established, in progressives' hands this latter sense of *waste* became an obsessive indictment of any system or process that failed to make maximally productive use of its materials, whether those were minerals, trees, or human bodies and energy. In progressive accounts, waste arose from a point-for-point denial of the insights of conservation. Its sources were indifference to the complex effects of natural and social systems; defection from national community and purposes in favor of selfish personal interests; and absence of rational public policy. Taken together, these waste-making attitudes represented failure to leave behind the mentality of the frontier, or to adapt it to new circumstances. *Wasting* a resource, for progressive reformers, meant using land, forests, or human labor in ways that diminished their health and productive activity. Conservation was the principle and technique of eliminating waste.

B. The Natural Resources Paradigm and Its Extension to Public Health

In natural-resource management, the canonical expression of conservation ideas came from Gifford Pinchot.⁶⁰ Pinchot was the most visible representative of a network of foresters, engineers, and sportsmen who were convinced that without rational policy and muscular enforcement, the country's forests would soon be cleared, its mines exhausted, its soil barren, and its rivers clogged with the sediment of erosion. The same arguments, as to forests in particular, were presented to Congress as early as 1890 in a memorial from the American Forestry Association, a critical body in the interlocking public and professional development of these ideas.⁶¹ Already in 1891, the Interior Department's annual report to Congress announced the urgency of avoiding upstream erosion in

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⁵⁹ See PINCHOT, FIGHT at 44 ("conservation stands for the prevention of waste").

⁶⁰ See PINCHOT, FIGHT at 43-50 (setting out principles of conservation).

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irrigation systems, warned that without timbering limits “there will be little timber left to protect,” and urged that the President’s new power to reserve timberlands be used to these aims.⁶²

Conservation implied rational management of human beings as well as nature. Theodore Roosevelt declared, “[T]he health and vitality of our people are at least as well worth conserving as their forests, waters, lands, and minerals,”⁶³ and Charles van Hise, a leading Progressive scholar of regulation, concluded his landmark study on *The Conservation of Natural Resources* with a discussion of “The Conservation of Man Himself,” which focused on public health.⁶⁴ The 1909 National Conservation Commission report to Congress and the President, which unified a sweeping conservation agenda, included a *Report on National Vitality: Its Wastes and Conservation*, which opened with this assertion: “the problem of conserving our natural resources is part of another and greater problem – that of national efficiency [which] depends not only on the physical environment, but on the social environment, and most of all on human vitality.”⁶⁵ These formulations cast light on the moral gravamen of conservation and its antithesis, waste. What the Progressives warred against was not just failure to optimize use of the marginal unit of wood or coal, but spoliation of human bodies and energies.

Conservationists’ interest in human health made natural beauty and vigorous outdoor recreation essential elements of their program. As sanitation laws saved Americans from the medical hazards of urban crowding, so parks could save them from the mental strains and abrasions of loud, fast-paced neighborhoods and workplaces. From Frederick Law Olmsted in 1865 to John Muir in 1901, reformers argued that laborers and city dwellers could repair themselves in restfully contemplating gorgeous landscapes.⁶⁶

The management of nature and of society came together vividly in Woodrow Wilson’s first inaugural address. Picking up the core themes of conservation, Wilson described the nineteenth century’s legacy as both “riches” and “inexcusable waste,” the latter in failure “to conserve the ... bounty of nature” and in “the human cost ... of lives snuffed out, of energies overtaxed and broken.”⁶⁷ Throughout the speech, images of neglected forests and waters and “waste places unreclaimed” are interwoven those of sick, exhausted, and vulnerable bodies. The progressive responses to such social waste – resource conservation, public-health regulation, and labor laws – figured in Wilson’s language as forming a single remedy: “to purify and humanize every process of our

⁶² 1 REPORT OF THE SECRETARY OF THE INTERIOR TO CONGRESS XIII-XIV (1891).

⁶³ Roosevelt, *The New Nationalism*.

⁶⁴ See CHARLES VAN HISE, *CONSERVATION OF OUR NATIONAL RESOURCES* 514-23 (2d. ed., 1930) (1910).

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⁶⁶ See Frederick Law Olmsted, *The Yosemite Valley and Mariposa Big Tree Grove*, in *AMERICA’S NATIONAL PARKS SYSTEM: THE ESSENTIAL DOCUMENTS* (Larry M. Dilsaver ed., 1994) (1865) at 12, 20-22 (on benefits to public mental health from access of beauty); JOHN MUIR, *OUR NATIONAL PARKS* 3 (1901) (“Thousands of nerve-shaken, over-civilized people are beginning to find out that ... parks and reservations are useful not only as fountains of beauty, but as fountains of life.... [T]hey are trying ... to mix and enrich their own little ongoings with those of Nature, and to get rid of rust and disease.”) (1901).

⁶⁷ Woodrow Wilson, *First Inaugural Address* (Washington, DC, March 4, 1913).

common life” by replacing short-sighted self-interest with a commitment that law shall “keep sound the society it serves.”⁶⁸

C. Three Varieties of Moral Reform

Visions of moral renovation suffused reformers’ programs. Natural resources policy figured in distinct ways in Pinchot’s utilitarian rationality, Roosevelt’s civic nationalism, and Weyl’s agenda of consumer uplift. For each, the use of nature was a key to national character and a reference point for larger political ideas.

1. The Humanitarianism of Utilitarian Rationality

For Pinchot, conservation of natural resources was part of a program of moral reform that aimed at persuading Americans to look beyond selfish interests and pursue the prosperity of the present national community and future generations. Written into both the Forest Service and Parks Service organic acts, this idea animated Pinchot’s argument, which was built around denunciation of “short-sighted[ness]” and a call to “make ourselves ... responsible for [the country’s] future.”⁶⁹ “The conservation movement,” Pinchot wrote, “is calling the attention of the American people to the fact that they are trustees.”⁷⁰ The beneficiaries of that trust were all Americans, present and future, and their authoritative interests centered on the material welfare of classic utilitarian policy-making: “the difference between prosperity and poverty, health and sickness, ignorance and education, well-being and misery.”⁷¹ Identifying with this collective interest required what Pinchot called public spirit, which he defined, in opposition to selfishness, as “patriotism in action [and] the application of Christianity to the commonwealth.”⁷² Conservation was both a technocratic agenda and the touchstone of an ethic in which the good of all would become the object of each citizen’s patriotic loyalty.

In fact, there were two distinct moral standpoints in Pinchot’s account. The first was that of the citizen devoted to the common good. But this was necessarily an abstract loyalty, because Pinchot believed that the public interest demanded regulatory expertise that ordinary citizens lacked, and a scale of decision-making that only large institutions achieved. In practice, the commonweal required the engineering of systems, whether forests, schools, or labor and antitrust laws. Thus Pinchot’s account implied a second moral standpoint, that of the public-spirited expert manager qualified to interpret and implement the public interest. Conservation of natural and human resources was both a reformist program and a call for renovation of the national spirit, a new moral regard for all one’s fellow citizens and for future generations. It established a basic and perpetually vexed bond between a democratic public that progressive conservationists exhorted to embrace a common good and the expert managers who claimed authority to identify and pursue that good.

⁶⁸ *Id.*

⁶⁹ PINCHOT, *supra* n. ___ at 173, 180.

⁷⁰ PINCHOT, *FIGHT* at 77.

⁷¹ *Id.* at 88.

⁷² *Id.* at 95.

2. The Conservation of Civic Virtue

Conservationists such as Roosevelt wanted citizens to be committed to the long-term interest of the whole country, and they wondered whether that civic spirit was possible in their time. An anxiety rippled through their cohort of elite reformers: that a prosperous, peaceful, and sanitary democracy would prove self-undermining because citizens would grow indifferent to national ideals, the public interest, and the well-being of future generations.⁷³ Such small-spirited Americans might hurry to consume the country's natural resources, leaving it geopolitically vulnerable, as Pinchot warned;⁷⁴ they might fall into the interest-driven class conflict that Roosevelt feared;⁷⁵ or they might simply give up all great initiative, whether political or industrial, and "rot by inches, like China."⁷⁶ What united these concerns was not so much a theory as a mood and a pattern of fears, but those, at least, are fairly clear. For these reformers, the United States had been built in a spirit of individualism that was not simply selfish, but also daring and oriented to high ideals. The decline of that spirit would mean the end of national greatness and might even make national unity impossible.

Some, Roosevelt among them, saw answers in war and imperial projects.⁷⁷ At the same time, the search was on for civilian modes of character-building adventure, the famous moral equivalents of war.⁷⁸ Already established in Roosevelt's call for a "strenuous life" lived in search of adventure, this ideal was soon worked into the defense of outdoor recreation. According to the 1928 Report of the National Conference on Outdoor Recreation, with the closing of the frontier and rise of industry, "the individualism of the pioneer has been submerged in collective enterprise."⁷⁹ In such circumstances, recreation was "a needful social force" and source of "physical vigor, moral strength, and clean simplicity of mind."⁸⁰ Nature, then, could be the material continuum that joined American life across its eras, giving access to old qualities in new times. For the American landscape to play this role, however, it would have to be managed appropriately: individual daring and adventurousness were to be, just a bit paradoxically, products of an age of planning and administration, "needful social forces" to be husbanded like bodily health, timber stocks, and fossil fuel.

Roosevelt also saw forests and parks as civic commons where Americans could overcome the class segregation of urban, industrial life, which he believed exacerbated

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⁷⁴ See PINCHOT, FIGHT at 17-20 (on the threat of national decline from heedless consumption).

⁷⁵ See Roosevelt, Fellow-Feeling as a Political Factor, *Century*, Jan. 1900, reprinted in *The Strenuous Life: Essays and Addresses* at 74-75, 78 (on class and occupational segregation as a source civic division).

⁷⁶ Roosevelt, *The Strenuous Life* (speech at Chicago, IL, April 10, 1899).

⁷⁷ See *id.* ("If we do our duty aright in the Philippines, we will add to that national renown which is the highest and finest part of national life If we ... seek merely swollen, slothful ease and ignoble peace ... then the bolder and stronger peoples will pass us by, and will win for themselves the domination of the world.... [I]t is only through strife, through hard and dangerous endeavor, that we shall ultimately win the goal of true national greatness.").

⁷⁸ See William James, *The Moral Equivalent of War* (speech at San Francisco, 1906).

⁷⁹ Chauncy Hamlin, *Introduction*, in *REPORT OF THE NATIONAL CONFERENCE ON OUTDOOR RECREATION* 1-5, 1 (1928).

⁸⁰ *Id.* at 2-3.

pernicious social conflict.⁸¹ In these commons, Americans could mingle and share projects across their divisions, developing the quality that Roosevelt called “fellow-feeling,” the germ of the utilitarian public spirit that he and Pinchot both praised as a patriotism for their time.⁸² This was the civic value of the “free camping grounds for the ever-increasing numbers of men and women who have learned to find rest, health, and recreation in the splendid forests and flower-clad meadows of our mountains.”⁸³

3. The Humanism of Socialized Consumption

Progressive conservation took a different direction in Walter Weyl’s argument for “the socialization of consumption.” As Eric Foner notes, “[D]uring the Progressive era ... a consumer definition of freedom – access to the cornucopia of goods made available by modern capitalism – began to supplant an older version centered on economic and political sovereignty.”⁸⁴ In contrast to Roosevelt, Weyl was sharply critical of individualism and the frontier ethos, which he portrayed not as virtues to be transformed for new circumstances, but as defects to be overcome. Indeed, he seized on the providential republican trope that geography was destiny, but reversed the value of the plenteous frontier, arguing, “It made America atomic. It led automatically to a loose political coherence and to a structureless economic system.”⁸⁵ Thus the symptoms of exploitation and inequality, “[t]he trust, the hundred-millionaire, and the slum[,] were latent in the land which the American people in their first century of freedom were to subjugate.”⁸⁶ For Weyl, the Progressive embrace of social regulation, “an energetic campaign of human conservation”⁸⁷ brought not the potential enervation that Roosevelt feared, but pure progress from the destructive chaos of the frontier.⁸⁸

For Weyl, “the socialization of consumption” had a qualitative goal: to improve the character and experience of citizens by guiding their consumption. This implied social provision of public goods to offer experiences that Americans could not have enjoyed individually. Parks were a key example for Weyl; but here, in contrast to Roosevelt’s thinking, parks mattered for the satisfaction they provided for individuals,

⁸¹ See Roosevelt, *Fellow-Feeling as a Political Factor*, *Century*, Jan. 1900, reprinted in *THE STRENUOUS LIFE: ESSAYS AND ADDRESSES* at 78 (on class and occupational segregation as a source civic division).

⁸² See *id.* at 79-80 (“The only to avoid the growth of these evils [class conflict] is ... the creation of conditions iwhich will permit mutual understanding and fellow-feeling between the members of the different classes.... If the men can be mixed together in some way that will loosen the class or caste bonds and put each on his merits as an individual man, there is certain to be a regrouping independent of caste lines.”).

⁸³ See *id.*

⁸⁴ FONER, *THE STORY OF AMERICAN FREEDOM* at 146-47.

⁸⁵ WALTER WEYL, *THE NEW DEMOCRACY* 23 (XXXX).

⁸⁶ *Id.*

⁸⁷ *Id.* at 321. Weyl also wrote of his social vision, “the democracy,” that “[t]he most elemental phase of this social policy is conservation,” *id.* at 320, and, “The conservation of human resources is a step towards to equalization of the chances of life and health of the citizens.” *Id.* at 326. Weyl, unlike some Progressives, was skeptical of the concept’s value, arguing that it took currency from “the vogue of the analogous policy of the conservation of natural resources” but was too narrow to describe social policy’s goal of improving the population. See *id.* at 320.

⁸⁸ Weyl wrote acidly of the time when “the struggle for money and land waxed fiercer and fiercer ... and men wasted and garnered and laughed and fought, as the continent was conquered.” *Id.* at 29.

not their capacity to support civic virtues.⁸⁹ Regulated consumption should also enable ordinary Americans to explore a new dimension of satisfactions: the leisure and self-cultivation previously reserved to elites would now be available to everyone.⁹⁰ This was no simple gain, though: Americans would have to learn to use leisure well, developing their minds and character free of the immediate need to support life and provide shelter. Leisure thus presented a cultural challenge, one Weyl believed the aesthetic and recreational qualities of parks and other outdoor preserves could help to serve. Other conservationists would soon seize on the cultural problem of leisure in arguing for preserving open space and wild nature.

D. Conservation and the Claims to Public Interest in the New Nationalism

Conservation was central to Theodore Roosevelt's New Nationalism. Roosevelt called for recovering, in a large-scale and complex economy, the distributive ideal of rewarding effort, talent and the virtues of initiative and courage, all qualities that he associated, at least rhetorically, with frontier settlement. Roosevelt's vision of economic regulation aimed at "national efficiency," which he called "the principle of conservation widely applied."⁹¹ Elaborating on this idea, Roosevelt explained in his presidential introduction to the massive 1909 report of the National Conservation Commission, "The policy of conservation is perhaps the most typical example of the general policies which this government has made peculiarly its own."⁹² Roosevelt's examples of conservation-modeled regulatory policy included antitrust, control of corporate involvement in politics, and, above all, laws to deny corporations "unregulated control of the means of production and the necessaries of life."⁹³

The aim of "national efficiency" was to deploy all productive forces, human beings above all, without waste. This included a principle of distributive fairness: that each person's success should reflect (1) her effort and talent and (2) her contribution to the public welfare, within a regulatory regime that would calibrate reward to these principles. Roosevelt called this principle "freedom of opportunity" or "equality of opportunity," and it recurred throughout his account of the relation between conservation and the larger ideal of national efficiency.⁹⁴

⁸⁹ *See id.*

⁹⁰ *See id.*

⁹¹ Roosevelt, *The New Nationalism*. He also wrote that "conservation is the great fundamental basis for national efficiency." Theodore Roosevelt, *Special Message of the President, in 1 REPORT OF THE NATIONAL CONSERVATION COMMISSION 1-9, 4* (1909). In the same document, he explained, "National efficiency is the result of natural resources well handled, of freedom of opportunity for every man, and of the inherent capacity, trained ability, knowledge, and will, collectively and individually, to use that opportunity." *Id.*

⁹² Roosevelt, *Special Message, supra n. __* at 3.

⁹³ *Id.*

⁹⁴ *Id.* *See New Nationalism, supra n. __* ("every man will have a fair chance to make of himself all that in him lies; to reach the highest point to which his capacities, unassisted by special privilege of his own and unhampered by the special privileges of others, can carry him, and to get for himself and his family substantially what he has earned"). In his 1901 State of the Union address, Roosevelt declared, "The chief factor in the success of each man – wage-worker, farmer, and capitalist alike – must ever be the sum of his own individual qualities and abilities." In his "Special Message," Roosevelt proposed, "The man who serves the community greatly should be greatly rewarded by the community; as there is great inequality of

Achieving “national efficiency” was imperative for Roosevelt not just because reconciling distributive justice with aggregate productivity was theoretically attractive, but also because it provided a response to labor strife and political division. In “The New Nationalism” and other conservation addresses, national efficiency and equality of opportunity were protagonists on a landscape of brutally clashing interests, labor and capital above all.⁹⁵ Roosevelt was personally horrified by class conflict and saw in it a basic threat to social order. He insisted that, for all the inequity and social waste of industrial capitalism, an ideal reconciliation of interests was achievable within that economic order.⁹⁶

Conservation of natural resources served as synecdoche for this larger ideal. Renewable resources such as forests seemed to embody the gains to be won from expert public management relative to the hurried clear-cuts of the mid-nineteenth century. Private extractions from the public domain presented a concrete picture of selfish exploitation, a vivid antithesis to public-spirited management. In contrast to the notorious difficulties of economic regulation, such as reconciling formally free choice with substantive opportunity and distinguishing distributive fairness from rent-seeking politics, the efficient management of natural resources in the national interest may have seemed exactly the example to persuade the reformer and his audience alike that conservation, generalized as “national efficiency,” could reconcile competing interests and produce a just version of industrial, democratic capitalism.⁹⁷

The paradigm of natural resources may have had another, related advantage for the idea of national efficiency. It is often observed of progressive reformers, Roosevelt in particular, that while the public interest was their touchstone, fractious partisan politics left them impatient or disgusted.⁹⁸ Besides certain progressives’ temperamental distaste for democratic conflict, electoral politics, labor relations, and social movements expressed persistent clashes in both interest and social vision. These always threatened to confound the New Nationalist ideal of an all-reconciling public interest. Resource conservation was a paradigm case in which expert managers could preside over mute landscapes, seemingly achieving governance without politics, in the name of a public interest that they had considerable liberty to define. The model of government as benign and fully informed manager was easier to maintain in proprietorship of land than as mediator of always-clashing class interests and ideological programs.

E. Summary

service, so there must be great inequality of reward; but no man and no set of men should be allowed to play the game of competition with loaded dice.” Roosevelt, *Special Message* at 3.

⁹⁵ In his 1901 Annual Address to Congress, Roosevelt declared, “The most vital problem with which this country ... has to deal is the problem which has for one side the betterment of social conditions, moral and physical, in large cities, and for another side the effort to deal with that tangle of far-reaching questions which we group together when we speak of labor.”

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⁹⁸ Eric Foner quotes approvingly H.L. Mencken’s quip about Roosevelt: “He didn’t believe in democracy; he believed simply in government.” ERIC FONER, *THE STORY OF AMERICAN FREEDOM* 154 (1999).

Progressive conservationists' commitments were shaped by ambivalence about democracy's fidelity to popular will and utilitarianism's egalitarianism of satisfactions. Their thought had a recurrent double character. On the one hand, their lodestar was the greatest good of the greatest number. On the other, they believed that only individuals of refined judgment and strong character could be expected to embrace this principle and support a government that promoted it. Democratic will set the direction of national life, but only experts in natural and social systems could steer the course. Ordinary people were pervasively crude in their tastes and judgment, but access to the experience that conservationists most valued, such as outdoor adventure and appreciation of beauty, might make Americans more worthy of the democracy whose final law they, unsettlingly, represented. This double character seems to have helped conservation to be at once two things: a practical program of reform for a newly complex social and economic order and a vehicle for a status-marking version of refined taste, which gave cultural authority to a certain upper-class attitude toward the outdoors. Those who devised this marriage of scientific and aesthetic management thus created an account of industrial, democratic modernity, and of the role of government in responding to it, in which they played an indispensable role as both manipulators and interpreters of nature. The conservation movement had the ambiguous quality of a democratic ideal that kept a central place for an elite of both knowledge and taste.

III. ROMANTIC EPIPHANY

Beauty and outdoor recreation figured in progressive management as means to public health, civic virtue, or "socialized consumption." In the same period, natural beauty played a much more central role in another addition to public language: the attitude of romantic epiphany. Its core idea was that certain encounters with nature were revelatory, disclosing essential but obscured facts about one's identity and place in the world. This intuition had long been around as a literary, aesthetic, or sentimental delectation, but two changes helped bring it into environmental public language. One was federal retention of public lands, including national forests and the first parks, which created a forum in which arguments about beauty figured in concrete management decisions. The other was the rise of the Sierra Club, a romantic social movement with an agenda for management of public lands.

A. Personal Epiphany and Mutual Education

The Club transformed the literary and personal register of romantic epiphany into a form of sociability and, through the social movement that shared it, a public and political language. In this project, Club members made good use of their organization's icon, the nature writer and parks publicist John Muir, who was president of the Club from its founding in 1892 until his death in 1914. The Club's approach to the California high country was composed around Muir's writings, which formed a kind of field guide to epiphany.

These writings highlight what the distinctive values of Club culture were and what it was about Muir's rendering that helped the Club to bridge literary and political expression. Muir wrote travel narratives centering on description of landscapes, particularly those of the Sierra Nevada. At reliable intervals, the prose broke into soaring

evocations of delight in nature's beauty and announcements that this delight was morally instructive, even a form of revelation. These passages conveyed a cluster of ideas. Everyday life was spilled out in instrumental activity and drab settings, which left the eyes dull and the mind blunt.⁹⁹ In the most spectacular natural settings – mountain peaks, endless vistas, and sheer rock faces – something entirely different broke through in the mind: wonder, awe, even ecstasy.¹⁰⁰ This experience revealed, by a kind of overwhelming intuition, that both the world and the human mind that could be moved by it were morally good, formed to harmonies that Muir frequently compared to mystical intuitions of divinity.¹⁰¹ Encounters with nature's most dramatic landscapes would restore the harmony and vitality of the mind and bring a feeling of fraternity with all living things.¹⁰² These experiences were, in a sense, the birthright of sentient beings, but everyday life cast them in shadow and worse.

Such ideas had enjoyed wide literary circulation for more than a century, accompanied by various philosophical apparatuses, not least in three figures whom Muir expressly treated as forebears: Wordsworth, Emerson, and Thoreau.¹⁰³ Public receptivity was also prepared by the prominence in visual culture of spectacular landscape paintings that explicitly invoked the sublime, aesthetic touchstone of romantic epiphany.¹⁰⁴ Nineteenth-century American literature featured a line of quasi-pantheist poets running back from Walt Whitman to William Cullen Bryant, who declared, "The groves were God's first temples."¹⁰⁵

Muir's widely read books and magazines worked these ideas, and accompanying styles of nature description, into instruction in experience: Muir's writing enacted a journey on foot over spectacular landscapes; a precise, appreciative, even reverent way of

⁹⁹ See JOHN MUIR, *OUR NATIONAL PARKS* 3-5 (1901) (describing the parks' beneficiaries as "tired, nerve-shaken, over-civilized," suffering from "the stupefying effects of the vice of over-industry," and "choked with care like clocks full of dust").

¹⁰⁰ See JOHN MUIR, *MY FIRST SUMMER IN THE SIERRA* 115-16 (1917) ("Never before had I seen so glorious a landscape, so boundless an affluence of sublime mountain beauty.... I shouted and gesticulated in a wild burst of ecstasy"); 131 ("the whole body seems to feel beauty when exposed to it as it feels the campfire or sunshine, entering not by the eyes alone, but equally through all one's flesh like radiant heat, making a passionate ecstatic pleasurable glow not explainable").

¹⁰¹ See *id.* at 129 ("South Dome ... seems full of thought, clothed with living light, no sense of dead stone about it, all spiritualized, neither heavy looking nor light, steadfast in serene strength like a god"; 128 (droplets of water passing from "form to form, beauty to beauty, ever changing, never resting, all are speeding on with love's enthusiasm, singing with the stars the eternal song of creation"; 124 ("The whole landscape glows like a human face in a glory of enthusiasm, and the blue sky, pale around the horizon, bends peacefully down over all like one vast flower.")).

¹⁰² See John Muir, *A Wind Storm in the Forest*, reprinted in *AMERICAN EARTH* (Bill McKibben ed., 2007) at 89-95 (reporting as the epiphany of a morning spent in a wind-lashed treetop that relations among all things in nature are "no struggle ... but rather an invincible gladness as remote from exultation as from fear"); 97 ("After tracing the Sierra streams ... learning their language and forms in detail, we may at length hear them chanting all together in one grand anthem, and comprehend them all in clear inner vision.... The setting sun filled [the storm-wrecked trees] with amber light, and seemed to say, while they listened, 'My peace I give unto you.'").

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seeing the landscape as one moved across it; and a register of overwhelming yet exquisite emotional response, with a benign interpretation latent in it. To read Muir was to begin learning to make that experience one's own. It was nature writing as both aesthetic and practical instruction for a social movement of heartfelt high-country tourism.

The Club's members continued that education for one another. They pursued epiphany en masse, in summertime high-country camps of hundreds, from which smaller expeditions set out for nearby peaks. They understood Muir's accounts of back-country tourism to have inducted them into a new way of experiencing nature. Admirers described him as "a prophet[] and interpreter of nature," who had trained others, as the favored metaphor had it, to see through his eyes.¹⁰⁶ In addition to their annual expeditions, Club members' great vehicle of mutual education was the *Sierra Club Bulletin*, which published continuously from 1895. It featured vivid and often emotional accounts of large, small, and solo expeditions; spectacular photographs of the Sierra Nevada; and, from the earliest years but with increasing frequency shortly before World War One, calls for preservation and recreation-friendly management of national forests and parks, agendas that drew the club permanently into environmental politics.

Contributors to the *Bulletin* described their high-country expeditions as full of small epiphanies and glimpses of the sacred, which restored them for ordinary life by giving access to the vitality and moral clarity that natural beauty disclosed.¹⁰⁷ Marion Randall, a longtime club member, wrote in a typical passage that, on an outing, "For a little while, you have dwelt close to the heart of things ... and in the whispering silences of the forest you have thought to hear the voice of Him who 'flies upon the wings of the wind.'"¹⁰⁸ Much more than Muir, whose frequent solitude was part of his charisma, Club members in these early writings presented Sierra Club expeditions as enabling uniquely authentic social relations, unburdened by the conventional roles and social and ideological divisions of everyday life.¹⁰⁹ It was a convention of *Bulletin* writing that, in the mountains, individuals could see one another face to face, their genuine qualities

¹⁰⁶ See William Frederic Bade, *To Higher Sierras*, 10 SIERRA CLUB BULL., 1916-1919, at 38, 40 (counting Muir among "prophets and interpreters of nature" and predicting, "Thousands and thousands, hereafter, who go to the mountains, streams, and canons of California will choose to see them through the eyes of John Muir, and they will see more deeply because they see with his eyes."); *Notable Books in Brief Review: John Muir's Account of His Historic Thousand-Mile Walk to the Gulf and Other Recent Publications*, N.Y. TIMES, Jan. 21, 1917, at BR 4 ("many who have sought a vision of truth beneath the surface of nature have found it through the eyes of John Muir"); John Muir, Doctor of Laws, University of California (honorary degree), reprinted in 10 SIERRA CLUB BULLETIN, 1916-1919, at 24 (calling Muir "uniquely gifted to interpret unto other men [nature's] mind and ways").

¹⁰⁷ See Helen M. Gompertz, *A Tramp to Mt. Lyell*, 1 SIERRA CLUB BULLETIN, 1893-1896, at 136, 141 (referring to "[h]ours pass[ing] like moments" in "this sacred spot"); John R. Glascock, *A California Outing*, 1 SIERRA CLUB BULLETIN, 1893-96, at 147, 161 ("We ... learned to interpret and love the 'various languages' in which nature speaks to the children of men.... We were acolytes in the grand temple of the eternal").

¹⁰⁸ Marion Randall, *Some Aspects of a Sierra Club Outing*, 5 SIERRA CLUB BULLETIN, 1904-1905, at 221, 227-28).

¹⁰⁹ See Glascock, *supra* n. _ ("[t]he varnish of civilization rubbed off, and the true strata of individual organism developed"); Randall, *supra* n. _ (on Sierra Club outings as transient "socialist utopia" in which emotional affinity and "natural aristocracy" replace conventional social distinctions).

shining through the social detritus that obscured them in the lowlands.¹¹⁰ In contrast to more civic ambitions of progressive management, the Sierra Club's members sought perfect respite from an imperfect world, not civic renewal but personal restoration, in which the projects and distinctions of ordinary life fell away for a few days or weeks.

B. Public Lands and Public Language

Despite its members' ambivalence about whether their high-country "socialist utopia"¹¹¹ had bearing on the world below, the Club was intensely worldly in working for preservation of the open lands where expeditions and epiphanies happened. Sierra Club meetings were devoted as early as 1895 to support for national forests, and, in the decade before World War One, the *Bulletin* dedicated increasing space to forest management and parks policy.¹¹² In 1911, it ran a series of technical reports on prospects for increased parks funding and unified management of the parks system under a single federal agency (which would be created in 1916).¹¹³ Editorials in the same year placed the club squarely in the midst of public-lands politics, staking out positions on creation of a Bureau of National Parks (for), expansion of Sequoia National Park (for), increased funding for Yosemite National Park (for), and development of Hetch Hetchy valley for San Francisco's municipal water supply (emphatically against).¹¹⁴ A movement founded in devotion to aesthetic and spiritual experiences of nature had become a major participant in land-use politics.

From its early years, the Club's leaders worked to set their views about the value of nature in productive relation to the utilitarian language of progressive management. In a representative missive to state governors in attending a 1908 presidential conference on natural-resource conservation, they presented

[O]ur strong sense of the paramount value of scenic beauty among our natural resources. The moral and physical welfare of a nation is not dependent alone upon bread and water. Comprehending these primary necessities is the deeper need for recreation and that which satisfies also the esthetic sense ... an ever present human desire. Our ... wealth of natural beauty ... is an untaxed heritage ... whose influence upon the life of the nation, physically, morally, mentally, is inestimable, and whose preservation is the greatest service that one generation can render to another.¹¹⁵

All the themes of conservation are present in this passage: treating beauty as an aspect of resource management, promoting the public welfare, and honoring trusteeship among generations. At the same time, the Club's language does not subsume its distinct perspective. Material welfare figures here as an incident of a "deeper need" for recreation and "esthetic" satisfaction, which for Club members meant the experiences

¹¹⁰ See note immediately preceding.

¹¹¹ Randall, *supra* n. __.

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they described as spiritually revelatory and restorative. In this context, the “mental” and “moral” “influence” that the letter ascribes to natural beauty also evokes the benefits of epiphany. This is a departure from the public-health arguments of reformers such as Olmsted, who had praised Yosemite for the mental relaxation it brought overstressed visitors.¹¹⁶

The distinctive public language that the Club pioneered was soon at the center of public conversation about the parks. Romantic epiphany joined and frequently superseded the language of conservation and recreation. While serving as director of public education for the recently formed National Parks Service, Robert Sterling Yard argued that while all manner of outdoors spaces provided recreational opportunity,

[T]he national parks are far more than recreational areas. They are the supreme examples. They are the gallery of masterpieces. Here the visitor enters in a holier spirit. Here is inspiration.... The spirit of the great places brooks nothing short of silent reverence.... It is the hour of the spirit. One returns to daily living with a springier step, a keener vision, and a broader horizon for having worshipped at the shrine of the Infinite.¹¹⁷

This is not the language of Roosevelt, Pinchot, or Weyl. It is John Muir’s account of nature’s meaning (or, more exactly, the meaning of nature’s most spectacular places), carried through the social movement of the Sierra Club, and serving here as public justification and guiding principle for a major area of public lands policy. A new language was in place, distinct from progressive management and a world away from the senate’s parks debates fifty years earlier.

C. What the Romantics Were Against

What made romantic epiphany so important in the minds of its social-movement adherents? A part of the answer may lie in what their convictions helped them to deny. This was certainly true of other approaches to the natural world. Providential republicanism rejected “tyranny” from above the community of political equals and constraints from without, notably those of indigenous land claims. Progressive conservationists defined themselves against selfishness, the fissure of social life into competing classes or interest groups, and the lassitude of prosperous ease. Such self-defining contrasts took power from a picture of the natural world: its need to be developed by free settlers and boundless fruitfulness under their tools; or its need to be managed as a complex system of systems, susceptible to publicly interested expertise. What did the Sierra Club’s conception of nature help its adherents to reject, and what could they then assert instead?

The answer seems to have had two parts. For one, romantic epiphany was an escape from the perception that the world was drab and wearying, as Muir often

¹¹⁶ Depending on their purpose, Club advocates could shift registers: Muir’s account of the benefits of the national parks at the opening of his book-length promotion, *Our National Parks*, had as much of Olmsted as, one might say, of Muir. *See supra* n. ____.

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portrayed life's less charismatic places and tasks. Muir was at pains to contrast the experience of the mountains with the dominant tone in "these hot, dim, strenuous times ... [when people are] choked with care like clocks full of dust, laboriously doing so much good ... they are no longer good for themselves."¹¹⁸ In the mountains was "No pain ... no dull empty hours, no fear of the past, no fear of the future."¹¹⁹ When "one's heart [went] home" to wild country, as Muir promised, it left an everyday world where those who sought the mountains' balm seem not to have felt themselves entirely at home. Romantic epiphany offered its practitioners a glimpse of "divinity," something transcendent and benign and, at least in the most spectacular places, immanent in nature and accessible in themselves. The "holier spirit" that Robert Sterling Yard identified with the parks was haunted by contrast with the profane world; without a view of nature that gave its "temples" near-mystical significance, only the profane might have remained.

One motive, then, was to deny that life was inescapably gray and flat, in a word, disenchanting. Another was to deny the image of "Nature, red in tooth and claw," scene of a relentless struggle for survival that extended into social life and made traditional moral views of either nature or society obsolete and naïve. Moral and natural harmony was the great lesson of Muir's intuition. Describing a morning spent atop a Douglas Spruce that he had climbed to observe the drama of a windstorm, Muir reflected of this natural violence, "We hear much nowadays concerning the universal struggle for existence, but no struggle in the common meaning of the word was manifest here ... but rather an invincible gladness as remote from exultation as from fear."¹²⁰ Violence might be one of nature's basic facts, but its *meaning* resided in a larger harmony that an attuned observer could perceive.

The engagement with evolutionary theory was even more explicit in the work of Sierra Club co-founder and longtime officer Joseph Le Conte. A professor of geology at Berkeley, Le Conte devoted much of his career to arguing that evolution was compatible with theism because nature's patterns bespoke the orderly mind of God, with its highest expression in the human capacity to appreciate the beauty and harmony of all lesser forms.¹²¹ The world was thus at once natural and divine, and humanity both continuous with nature and apart from it, our special status exemplified in the aesthetic experience that brought nature, through its highest expression in the human mind, to self-consciousness and to consciousness of God.¹²² Le Conte answered an atheistic interpretation of evolution with "a God *immanent*, a God resident *in* Nature" so that "the phenomena of Nature are ... objectified modes of divine thought."¹²³ Apprehending this relation, he contended, would enable believers to "return *home* to our inner higher

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¹²¹ See JOSEPH LE CONTE, RELIGION AND SCIENCE 269-81 (1898) (divinity expresses itself throughout nature, with increasing individuation, culminating in human consciousness).

¹²² See id. at 281 ("[I]n plants and animals, spirit is deeply submerged, and, as it were, drowned in Nature, and in perfect darkness. In man alone, spirit appears above the surface and emerges into the light. It looks downward upon Nature; it looks around upon other entities like itself; it looks upward to the heavens above. It rises out of Nature, above Nature, and becomes the interpreter of Nature").

¹²³ JOSEPH LE CONTE, EVOLUTION AND ITS RELATION TO RELIGIOUS THOUGHT 282-83 (emphasis original).

life.”¹²⁴ It was by understanding themselves as the highest expressions of “Nature, gestative mother of spirit,”¹²⁵ that people could turn to their role as “interpreter[s] of Nature.”¹²⁶ Le Conte’s highest human activity, to apprehend and interpret the beauty of nature, had unmistakable harmony with the Club’s merger of aesthetic and spiritual concerns and Muir’s promise of a this-worldly homecoming for those haunted by the suspicion that life was an arena of meaningless struggle. This set of anxieties and wishes would persist throughout the environmental developments of the twentieth century.

IV. ECOLOGICAL INTERDEPENDENCE

It is no longer conventional to say that modern environmental politics emerged in “a movement without a history,”¹²⁷ some combination of a 1960s side-effect and legislative hyper-reaction to highly salient events such as an oil spill off Santa Barbara and the burning of the Cuyahoga river in Cleveland.¹²⁸ The dramas of the time mattered, and so did salient fires and spills, but such simple stories ignore the role of ideas in framing the events and responses. Oil slicks and chemical fires (not least on the Cuyahoga) were nothing new. What was new was their perceived significance as signs a broader crisis of human-nature relations. The ideas that helped lend events this meaning were partly inherited, partly invented or adapted for the moment.

Although “the environmental era” was no simple break with the past, the landmark statutes of this era, such as the National Environmental Policy Act (NEPA) (1970), Clean Air Act (1970), and Clean Water Act (1972) established a new model of environmental governance. The major public acts from 1785, the date of the first law for public disposal of frontier lands, through the 1964 Wilderness Act, shared an operational principle: geographic dedication, or, perhaps better, continental zoning. They allocated tracts of land to private ownership or public management, the latter by creating parks, national forests, and wilderness, and finally closing the remainder of the public domain to privatization. Each vision of nature thus claimed its acreage, dedicated to favored uses, and relatively little thought went into the connections among uses and regions. By contrast, the anti-pollution statutes set out to govern, in the ungainly term of the field, “media” such as air and water that cut across and connect all places. In the same spirit, NEPA directed the federal government to consider systematically the environmental effects of *all* its “major ... actions,”¹²⁹ from building a road in a national park to approving a nuclear power plant. The new model of governance sought principles (substantive in the anti-pollution statutes, procedural in courts’ construction of NEPA) to govern systems that crossed and confounded the borders that geographic dedication had established. This meant direct and extensive regulation of the private entities whose effluents the rivers and winds carried everywhere, and of federal action on public land. This type of regulation typifies post-1965 environmental law, and it departs basically from the link between ownership and management that was the basic strategy of

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geographic dedication. The change in governance came with a new understanding of both the practical character of environmental problems and their meaning.

A. Ecological Interdependence: Natural and Human

The institutional developments of this period were interwoven with the era's defining view of the human place in nature, *ecological interdependence*. This was founded in an image of the physical world as composed of complex, long-distance, and frequently invisible webs of cause and effect, forming an interdependent whole rather than a collection of relatively freestanding parts. The most salient implication of interdependence was that people and natural systems were alike vulnerable to the effluents of industrial technology: once released, wastes could return in unexpected and undetectable ways, through wind, rivers, food chains, and bloodstreams. Rachel Carson's *Silent Spring* is a polemical poetics of interdependent systems, treating the passage of pesticides through air, water, and land, plants and animals, and, finally, human bodies.¹³⁰ By the end of the 1960s, it had become standard to say that industrial society endangered everyone in novel ways, and that ecology, the science of interdependent relations, was the key to understanding this.¹³¹

These images contributed to the signal innovation of the period, one so pervasive and taken-for-granted today that it is easy to miss. This is the idea of *the environment*, an encompassing fact integrating many issues that would otherwise have seemed disconnected. This idea made possible new kinds of public assertions. Consider, for instance, *Time* magazine's 1968 warning of "an ecological crisis that ranges from the lowly litterbug to the lunacy of nuclear proliferation."¹³² This is familiar, perhaps banal, today, but it was new: it would not have occurred to early conservationists or wilderness advocates that a single concept – the environment – unified invisible chemical pollution and the beauty of an undeveloped landscape, the fossil-fuel economy and the prospect of a species' extinction.

The idea that everything in the natural world, including its human inhabitants, is connected in consequential and potentially very dangerous ways helped to frame two newly powerful motives for environmental concern. First was the widespread fear of an

¹³⁰ See RACHEL CARSON, *SILENT SPRING* at 39-83 (detailing ecological interactions that form channels for the passage of pesticides from organism to organism); 187-98 (connecting these same dynamics to human vulnerability and arguing, "For each of us, as for the robin in Michigan or the salmon in the Miramachi, this is a problem of ecology, of interrelationships, of interdependence"); 199-216 (describing the internal activity of the human organism as a quasi-ecological system displaying the same sorts of vulnerability as other such systems).

¹³¹ In this period, one finds liberal-establishment voices assessing the crisis of "technological man" and forecasting a basic change in values, anchored in ecology. See *The Age of Effluence*, *TIME*, May 10, 1968, at 52, 52 ("[T]echnological man, master of the atom and soon the moon, is so aware of his strength that he is unaware of his weakness – the fact that his pressure on nature may provoke revenge"; *Fighting to Save the Earth from Man*, *TIME*, Feb. 2, 1970, at 56, 62 (portraying "technological man as the personification of Faust, endlessly pursuing the unattainable"); *The Age of Effluence*, *supra* ("The biggest need is for ordinary people to learn something about ecology, a humbling as well as fascinating way of viewing reality [M]odern man could do with some of the humility toward animals that St. Francis tried to graft onto Christianity").

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unfolding public-health disaster, in which a “poisoned world” would sicken ecosystems and people alike.¹³³ The second was mainstream embrace of the idea that environmental threats were apocalyptic, threatening to produce a world “as devoid of life as are now the mountains of the moon.”¹³⁴ Both ideas, which arose and captured public imagination over just a few years, borrowed plausibility from the perception that what harmed one part of an interdependent network of systems would also harm the rest, gravely weakening a planet that could be portrayed, for the first time in American public life, as a sort of meta-organism.

B. Ecological Interdependence and the Moral Image of Nature

The new image of nature as “the environment,” then, helped to highlight and integrate – and, in cases, exaggerate – the importance of a set of practical problems. It was also the vehicle for a new view of nature’s moral significance. The idea was that accurately perceiving the interconnections between organisms and their environments, and among nature’s many life-sustaining processes, was morally educative. It became almost commonplace to assert that seeing the natural world in this way created respect for it by revealing value inherent in the integrity, resilience, and complexity of life.¹³⁵ Apprehending this value was said to impart humility, a byword of the period, which typically meant denying that nature should be valued exclusively for human needs, in favor of a willingness to adjust goals and priorities to natural patterns and constraints.¹³⁶ As a contributor to the *Sierra Club Bulletin* argued in 1969, the only way to avert ecological disaster was “to recognize that we are not masters of the living system on which we depend for our life but parts of it, just as much as cells are part of the body.”¹³⁷

This blend of prudential warnings and calls for respect and humility toward nature kept company with another idea, that ecologically sensitive perception brought positive human goods. In the early 1970s, environmentalists increasingly asserted that “ecology [which yesterday] was a science ... had better become something like a religion,”¹³⁸ and called for a “cultural transformation” marked by “personal commitment to a new philosophy and poetry of ecology.”¹³⁹ This seems to have implied a form of self-knowledge and enriched personal experience that grew from awareness of being embedded in a same web of ecological relations. Paul Shepard wrote in *The Subversive Science*, a 1969 treatment of the political and ethical meaning of ecology, “we must ... affirm [nature’s] metabolism as our own – or, rather, our own as part of it. To do so means ... a wider perception of the landscape as a creative, harmonious being.... [W]e must affirm that the world is a being, a part of our own body.”¹⁴⁰ In the same spirit, Buddhist popularizer Alan Watts argued that continuity among all things, joined with the role of perception in creating experience, meant that, “Our whole knowledge of the world

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is, in one sense, self-knowledge,” a conclusion he claimed should be deeply reassuring.¹⁴¹ If the world was “creative, harmonious” and continuous with the body and mind of a fully alert human being, then one should find those same qualities in one’s self. Such instincts about enriched personal experience seemed to lie behind pronouncements that ecology could found a “religion” or “poetry,” a new form of identity anchored in living within the larger living world.

These formulas were in the line of romantic epiphany, but markedly extended its scope. The emotionally vivifying, morally clarifying connection to an immanent “divine” that John Muir and Joseph Le Conte taught Sierra Club members to seek in spectacular places was now relocated to the whole natural world. Nature’s contribution to human consciousness came not through the spiritual re-broadcast towers of Half Dome and El Capitan, but in the circuitry of everyday complexity and interdependence. The basic sense of a world saved from drabness and moral flattening, though, was much the same: ecological nature, like romantic nature, seemed to provide a response to disenchantment. If there was something to T.E. Hulme’s dismissal of romanticism as “spilt religion,” the positive good that some environmentalists now found in ecology was religion soaked through and saturating the natural world. Because this moral and aesthetic legacy rapidly became part of environmentalism’s culture, it was possible in 1982 for a contributor to *Sierra* (and chancellor of Sloan-Kettering) to invoke Le Conte’s themes (without naming Le Conte, and probably unaware of him) more explicitly than the original *Bulletin* had ever done: “[I]t is up to us ... to become the consciousness of the whole earth. We are the planet’s awareness of itself.”¹⁴²

This moralized picture supported assertions that the widely perceived “ecological crisis” could be traced to Americans’ failure to value nature in the right way, and that adopting a different moral relation to the non-human world could be the key to ecological restoration. So *Time* ascribed the “ecological crisis” to “[t]he false assumption that nature exists only to serve man”¹⁴³ and the *Washington Post* warned that “blind technology and arrogant abuse of nature” had produced the “deep horror ... that we live with the [environmental] horror so calmly.”¹⁴⁴ The *Sierra Club Bulletin* and many activists claimed that the Vietnam War was a symptom of the wish for technocratic mastery.¹⁴⁵ Sounding a note of eco-moral restoration, *Time* predicted that, “By changing

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¹⁴² Lewis Thomas, *Are We Fit to Fit in?* SIERRA, Mar.-April 1982, at 49, 52. (The *Sierra Club Bulletin* was renamed *Sierra* in 1977 and continued publishing without interruption.)

¹⁴³ *The Age of Effluence*, supra n. ___.

¹⁴⁴ Editorial, *The Environment: Clean Up or Patch Up?*, WASH. POST, Feb. 11, 1970, at A20.

¹⁴⁵ See *A Fable for Our Times*, 55 SIERRA CLUB BULL., 1970 at 16, 16 (retelling the story of the Vietnam war as one of a self-destructive American fascination with technology: “Sadly, America had one fatal flaw – its inhabitants were in love with technology and thought it could do no wrong. A visitor to America ... would probably have guessed [the war’s] outcome after seeing how its inhabitants were treating their own country. The air was mostly foul, the water putrid, and most of the land was either covered with concrete or garbage. But Americans ... set out to save Vietnam with the same enthusiasm and determination their forefathers had displayed in conquering the frontier. They bombed.... Thousands of herbicide and defoliant missions were flown before anyone seriously questioned their long-range effect on humans and animals ... By the time deformed fetuses began appearing and signs of lasting ecological damage were becoming increasingly apparent ... Vietnam had been saved. But the country was dead.”).

national values [environmentalism] may well spur a profound advance in U.S. maturity and harmony with nature,”¹⁴⁶ while the columnist Flora Lewis, a stalwart of liberal-establishment commentary, concluded that environmental ideas were “so fundamentally new, so drastically opposed to the heritage of many centuries, they are painful to absorb” but nonetheless utterly necessary.¹⁴⁷

Both the practical and the moral dimensions of the new environmentalism appeared in Congressional debates on the anti-pollution statutes. Some legislators described the statutes as addressing a potentially cataclysmic public-health crisis, even the threat of human extinction.¹⁴⁸ They described the legislation under debate as establishing new principles of categorical respect for the natural world.¹⁴⁹ They asserted that those principles were dictated by recognition of ecological principles.¹⁵⁰ It is not necessary to speculate about the sincerity or consistency of these views to note that they had already – which is to say, rapidly – entered the repertoire of public argument about American environmental commitments.

To be sure, the conceit that new moral insights emancipated nature from “serv[ing] man”¹⁵¹ was severely incomplete. It would be more illuminating to say that ideas of nature had once again been enlisted to help furnish a language and imagination in which (some) Americans could navigate the cross-currents of their time. As commentators observed, both the acute anxiety and the spirit of moral revival that gathered around the new environmentalism took energy from the wishes of a trying time. The Vietnam War and the threat of nuclear annihilation had convinced many Americans that something in technocratic mastery of nature had turned destructive and self-consuming.¹⁵² Many felt beset by political and cultural divisions around the war, civil rights struggles, riots, and a youth culture of stylized dissent, and environmental restoration was openly embraced as a unifying principle in an otherwise fractured country.¹⁵³ This appeal to an idea of nature to resolve a difficulty in broader themes of

¹⁴⁶ *Issue of the Year: The Environment*, TIME, Jan 21, 1971, at 21, 21. See also, e.g., Joseph Shapiro, Earth Day Speech at Fordham University, Apr. 22, 1970 (“The Vietnam war and the ecological crisis have the same roots. Both are products of a highly technological, mechanistic, dehumanized society.”).

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¹⁴⁹ See 118 CONG. REC. 36,873 (1972) (statement of Sen. Muskie) (“These policies [of the bill] simply mean that streams and rivers are no longer to be considered part of the waste treatment process.”); *id.* at 10,259 (statement of Rep. Vanik) (“The basic concept of the Senate bill is that: ‘The use of any river, lake, stream, or ocean as a waste treatment system is unacceptable.’ In other words, no one has the right to pollute.”); 117 CONG. REC. 38,798 (1971) (statement of Sen. Muskie) (“[T]he use of any river, lake, stream, or ocean as a waste treatment system is unacceptable.”); *id.* at 38,722 (statement of Sen. Cooper) (“[T]he bill declares that no one has the right to use the Nation’s waters as a waste disposal mechanism; that there is no right to pollute, but rather an obligation to maintain the quality of those resources traditionally looked upon as free to all, but which we now wish to protect for all.”).

¹⁵⁰ See 117 CONG. REC. 38,800 (1971) (statement of Sen. Muskie) (“The stated objective of the act reflects the committee’s decision to recognize fundamental principles of ecology.”); *id.* at 38,819 (statement of Sen. Cooper) (“[T]he bill and its purpose goes even further than asserting that a public right resides in clean water. In a way, it recognizes an even more fundamental condition. It asserts the primacy of the natural order, on which all, including man, depends.”).

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politics, values, and identity was not new. As we have seen, the Sierra Club's appreciation of spectacular and "divine" features of nature helped salve a crisis of faith that affected some in the later nineteenth century, while the conservation agenda helped its adherents to define themselves against selfishness and lassitude and create a version of national greatness in which they played a central role.¹⁵⁴ Such cross-cutting motives are typical of the ways that new environmental values have entered American public language.

These new ideas, though, were hardly spun from whole cloth for the cultural and psychic demands of the moment. As the next Part of this paper argues, they were available, in part, because of the arguments developed in the course of another political effort, wilderness advocates' search for an account of the value of nature as such, which settled on contemplation of ecological processes as a source of moral insight and aesthetic satisfaction. The moral themes of ecological interdependence were also continuous in ways with earlier accounts of humanity and nature. Progressive conservationists saw the laissez-faire economic and natural-resource policies of the nineteenth century much as the new environmentalists saw technological mastery: as a form of self-immolating hubris. In the conservation era, though, the prescription was to perfect technological mastery by replacing a (partly imagined) legacy of laissez-faire with public-spirited expert management, creating conditions in which wealth and liberty would remain viable. The doubts of 1960s environmentalism were more basic. Skeptics questioned not just an approach to public policy, but an entire ethos, asking whether pursuing wealth and liberty through technological mastery could, in principle, be sustainable. The new environmentalism thus promised, or threatened, to pose a basic challenge to material aspiration, as progressive management had never been.

The positive side of the new environmental language also departed from older forms. For the Muir-inspired Romantics of the Sierra Club and later wilderness advocates, the key to nature's instructiveness was the extremity of the highest and most dramatic terrain and the solitude of trackless wilderness. That extremity elicited the highest qualities of its devotees: originality, individuality, vitality, and a sense of being washed clean of the habits of everyday life. Now, at least notionally, it was precisely everyday life that had to be understood and reformed in light of ecological insight. Whatever it meant for one's awareness to be enriched by knowledge of interdependent natural processes, it did not seem to sanction periodic shuttling between the High Sierras of insight and an everyday life basically untouched by that elevated experience. Nature was no longer a treasure-house for a smarter kind of resource user, nor was it simple balm for the Romantic tourist. Progressive management and romantic epiphany each prescribed an ideal interaction between human beings and the natural world. Ecological interdependence described not a kind of action, but a condition, a predicament that promised to inform and constrain how people would act and how they would understand themselves.

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V. USING THE TYPOLOGY: INTERPRETING CHANGE AND CONTINUITY

A. Interpretive Review of the Argument

Each approach to nature describes an ideal relationship between people and the natural world. That ideal provides a feature of a larger image of good human activity. This works in several ways. For one, each approach to nature helps to power an image of personal dignity: the free self-governance and producerist competence of the settler in providential republicanism; the rationality, humanitarianism, and mastery over complex systems of the progressive manager; the spontaneity, capacity for aesthetic delight, and potential self-knowledge of the seeker after Romantic epiphany; and the intense awareness of interwoven living systems that marks the condition of ecological interdependence, which many have claimed induces the wish to act in a way that maintains the health of all. Second, each approach sets its representative person in an ideal relation to social life: the egalitarianism of settlement on an open continent; the elite public service of the progressive manager, which at once makes him the instrument of the authoritative public interest or democratic will and designates him its authoritative interpreter and executive; the Romantic's freedom to depart for a time into the wild, a concept that has always described both a region of the continent and one of the mind, without which "the country would become a cage"¹⁵⁵; and, perhaps more vaguely, the ideal of healthful belonging that accompanies ecological interdependence – and has as its shadow the threat of invisible streams of poison or of systems driven past cataclysmic tipping points. In each case, the image of personal dignity and that of social relations are parts of a single picture.

Each approach has also been associated with a style of environmental governance that promises to uphold an ideal human-nature relationship. The major United States land policy of the nineteenth century, to create private property and spur development of the continent, was providential republicanism in action. Progressive management brought the second paradigm regime, in which large tracts of land remained in federal ownership to be managed for dedicated uses – sustainable production, recreation, aesthetics – while the two-thirds of the continent already in private hands continued under mainly common-law regulation. In a geographic division of labor and jurisdiction, the latter lands were mainly untouched by the ambitions of progressive management.

As for Romantic epiphany, it is best understood as having introduced new goals for expert public-lands manager to pursue, but not a new style of governance. The institutional innovation in the politics of Romantic epiphany took the form of social movements that could help to carry personal and aesthetic experience into public language. By contrast, the language of ecological interdependence did accompany a new model of governance, the far-reaching regulation of the anti-pollution statutes and the Endangered Species Act, which aim to maintain the health of systems with no neat spatial bounds. Instead of allocating acreage among competing uses and governance regimes, this new generation of statutes sought to change the environmental consequences of production and consumption at large, from power plants to tailpipes.

¹⁵⁵ 1961 CONG. REC. 18, 382 (Statement of Sen. Church).

Each approach to the natural world, then, persists in a set of laws and, frequently, on specific acreage dedicated to favored purposes such as private use, public commodities production, or publicly accessible recreation or aesthetics. Each approach also persists in features of environmental public language, structuring and powering conflicts over environmental priorities today. In some instances, the means of this political persistence is easy to trace: groups such as the Sierra Club have cultivated intergenerational constituencies around their ideals of human-nature interaction, even as they have increasingly integrated the Romantic themes of their founders with the imagery of ecological interdependence. In other cases, the passage of attitudes through time requires more detailed attention than I have yet been able to give it. The language of providential republicanism, linking liberty and dignity to productive resource use, and abuse of power to the regulation or prohibition of such use, has recurred in the justification of continental settlement, nineteenth-century political resistance to timber management on public lands, and the Sagebrush Rebellion and Counties Movements that attacked federal lands policy and denied federal supremacy in the 1980s and 1990s. At this stage, this paper does not attempt to connect these various uses of providential republican language, but only observes that, in several times and places, the same versions of personal dignity, political liberty, anti-managerial sentiment, and the purpose of the natural world have formed a single constellation.

The following studies examine in more detail how the distinct modes of environmental imagination and public language interact and persist across eras. On the one hand, they show how political efforts can change the content of public language and imagination, sometimes with large unforeseen consequences. On the other, they suggest that sometimes actors' options and understanding of their own priorities are limited by imagination and public language.

B. Wilderness as a Bridge from Conservation to Environmentalism

Wilderness has been a crucible of change in environmental imagination. The word has passed through though various definitions, each identified with distinct values. We have seen how, in the nineteenth century, wilderness stood for empty land, devoid of both cognizable legal claims and settlement and development. For progressives of the New Nationalist stripe, wilderness changed meaning as untamed country became a proving ground for the masculine virtues that Theodore Roosevelt thought essential and endangered in modern life, while, in the language of romantic epiphany, undeveloped and spectacular places were where nature's spiritual lessons were most accessible. In these positive registers, *wilderness* could mean nearly any place not dedicated to productive use, and Muir, in particular, frequently used it to refer to the national parks.¹⁵⁶

In the early and middle decades of the twentieth century, the idea of wilderness became a wedge that split romantic and progressive approaches to nature, as devotees of solitude and wild places increasingly objected to recreational development and easy public access to parks. Preserving undeveloped land and the "freedom of the wilderness" that it provided became the organizing value of movement, centered on the Wilderness Society but coming in time to include more traditional conservation groups. As they

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struggled to craft arguments for the value of “untrammelled” nature, wilderness advocates pressed beyond both progressive management and romantic epiphany. In doing so, they helped create the language of ecological interdependence.

1. The rise of the wilderness movement

The wilderness movement began as a departure from the all-reconciling claims of progressive management, a departure driven by an increasingly radical version of the values of romantic epiphany. Where parks and other recreation areas enabled city dwellers to enjoy a good view and spend time in the open air, wilderness served those souls who would find life “scarcely bearable in its horrible banality” unless they could “tot[e] a fifty-pound pack over an abominable trail” or “snowshoe[] across a blizzard-swept plateau.”¹⁵⁷ If Yosemite’s vistas soothed tourists’ weary brains, wilderness advocates claimed that solitude gave them radical individuality, a God’s-eye view of the social world, and even mystical experience, free of self-consciousness and merged with what Robert Marshall called “pure aesthetic rapture.”¹⁵⁸ This was a purification of the Romantic creed of nature that John Muir and the Sierra Club had cultivated in their circles, but which in many respects had been absorbed into the utilitarian account of recreation.

The wilderness advocates were responding to an established tension between progressive management and romantic approaches to nature. Success in persuading Americans that encounters with dramatic nature were valuable inspired tourists in numbers that seemed to threaten the integrity of those very encounters. To take a telling example, John Muir’s 1901 advocacy work, *Our National Parks*, was organized around two values that he, like many in the Sierra Club at that time, presented as harmonious: the preservation of spectacular places and ready public access to them for recreation. The book promised readers a “profound solitude ... full of God’s thoughts,” and assured them that thanks to highways and railroads, “in a few minutes you will find yourself in the midst of ... the best care-killing scenery on the continent.”¹⁵⁹ It was not long before these two promises came to seem mutually contradictory. Devotees of wild nature feared that their parks would be overrun as tourism rose with mobility, prosperity, and – ironically – love of scenic places.

These disputes crystallized in managing the increasingly popular parks. Visitors eager to follow Muir’s example demanded roads to speed their way. The National Park Service, alert to the benefits of increased budgets, was generally eager to comply.¹⁶⁰ In the 1920s, major destinations such as Yosemite became instances of the “show business” that Senator Ingalls had balefully imagined in 1882 (balefully, that is, on account of federal involvement, not because of the tone of the shows), with jazz concerts, bear circuses, and nighttime light shows dancing over the famous waterfalls.¹⁶¹ Such

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¹⁵⁸ Id. Marshall admiringly quoted Thoreau’s claim that one must “have gone behind the world of humanity, seen its institutions like toadstools by the wayside.” Id.

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developments spurred major conflicts within the Parks Service, with director Stephen Mather supporting them as important recreational opportunities for the public, while Robert Sterling Yard, author of *The Book of National Parks*, opposed them as profanations of nature's sanctums.¹⁶² A series of clashes with Mather over such issues led Yard to leave the Parks Service and become, first, an advocate for wild and primitive conditions as head of the independent National Parks Association, then a founder of the Wilderness Society.¹⁶³

The advocates of wilderness were elitists and perfectionists, ambivalent participants in the mobile, industrialized democracy of the early twentieth century, yet the idiosyncratic excellence that they sought depended on the solitude of the state. They believed that their compass-points, physical and mental vigor, intellectual independence, and aesthetic rapture, could exist only with access to what the Wilderness Act would call (echoing the Wilderness Society's platform) primeval land. Their version of excellence both set them apart and made them supplicants to a democracy that they mistrusted.

2. The Wilderness Society and the 1964 Wilderness Act

The 1964 Wilderness Act, the crowning legislative achievement of the wilderness movement, has so far preserved about 107 million acres of federal land in undeveloped condition. It defines *wilderness* as "an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain."¹⁶⁴ This definition is "in contrast with those areas where man and his own works dominate the landscape."¹⁶⁵ The statute's preamble announces the purpose of checking the otherwise inexorable growth of human-dominated landscapes: "to ensure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States."¹⁶⁶

The Wilderness Act, then, both announces a defensive purpose, to save a certain type of landscape from encroachment by a growing and increasingly mobile population, and defines the landscape to be preserved as one mostly unshaped by human activity. It also specifies the human interests to be served by such preservation. The statute defines wilderness areas as offering "outstanding opportunities for solitude or a primitive and unconfined type of recreation" in "land retaining its primeval character."¹⁶⁷ The idea that these solitary and unconfined experiences serve important human values lies at the heart of the cultural and political argument behind the Wilderness Act.

The language of the statute was also that of Wilderness Society, which had been struggling to incorporate "wilderness values" into environmental public language.¹⁶⁸ The parallels in language represent the larger continuity of ideas. *Solitude*, a key human benefit in the statute's scheme, was at the heart of the Wilderness Society's arguments

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from the beginning. The Society's platform, which appeared in the first issue of its newsletter, *Living Wilderness*, was largely built around that concept.¹⁶⁹ The platform's first point defined wilderness as "the environment of solitude."¹⁷⁰ Because it provided solitude, wilderness was as "a natural mental resource" essential to "thought and culture."¹⁷¹ The platform insisted that "scenery and solitude are intrinsically separate things" a distinction that was critical to wilderness advocates. "Scenery," the value preserved in accessible and beautiful lands such as the national parks, was by then a well-recognized goal of public policy. Conserving scenery, however, did not mean preserving opportunities for solitude; in fact, the more people sought the delights of scenic areas, the less chance for solitude remained.¹⁷² That might be small loss for scenery-seekers, but the denial of solitude was a disaster for devotees of wilderness.

The statute's defensive purpose, too, reflected a victory for the Wilderness Society's program. The Society's platform denounced "the brutalizing pressure of a spreading metropolitan civilization" which made wilderness especially necessary, and warned that, at this crucial juncture, the need for wilderness was "being sacrificed to the mechanical invasion in all its killing forms."¹⁷³ The "mechanical invasion" in the Society's platform would echo three decades later in the "growing mechanization" that the Wilderness Act identifies as threatening to "occupy and modify all areas" of the country.¹⁷⁴ When senators supporting the legislation warned, "without wilderness, this country will become a cage,"¹⁷⁵ and announced that "one of the soundest reasons for the support of the wilderness bill is from the standpoint of what it will do for the spiritual needs of Americans,"¹⁷⁶ their words expressed the success of the Wilderness Society's campaign.

3. The Wilderness Act debate and the second break with conservation

The Wilderness Act and the campaign behind it also deepened a rupture in the would-be all-reconciling language of conservation. In important ways, that rupture followed the lines of tension that had produced the wilderness movement in the first place, as devotees of beauty and solitude found themselves intractably at odds with constituents of more traditional public-lands uses. Opponents of the Wilderness Act saw it as expressing a new kind of absolutism that necessarily excluded legitimate non-wilderness interests. If conservation had been about appropriate use of resources, wilderness preservation seemed to its opponents to be a program of non-use. If recreation – the utilitarian benefit of parks and wildlife preservation – was about public access to pleasing and salving experiences, wilderness seemed to enshrine a principle of no access. So Senator Gordon Allott, an adamant opponent of the legislation, announced

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that, contrary to wilderness advocates' claims, the proposed Act "is neither conservation nor recreation."¹⁷⁷

To critics such as Allott, the Wilderness Act broke with traditional conservation policy in two ways. First, it betrayed the conservationist commitment to serve the greatest good of the greatest number over the longest time. By contrast with that utilitarian principle, wilderness preservation was a land grab by a small minority, and an elite minority at that.¹⁷⁸ Thus, Allott could invoke against the Wilderness Act Theodore Roosevelt's classic formula of conservation: "The forest reserve should be set apart forever for the use and benefit of our people as a whole and not sacrificed to the shortsighted greed of a few."¹⁷⁹ As Allott cast it, the Wilderness Act would betray Roosevelt's principle by closing public lands to both economic production and recreation by car-borne families, the elderly, and the unfit. Decades of conflict between elite and popular versions of public-lands recreation are prefigured in a kind of standup routine conducted between Allott and the populist Senator Earl Long of Louisiana, in which Allott, playing straight man, willingly conceded under Long's interrogation that the Wilderness Act offered little to middle-class campers who would prefer to "put a tent and oilstove in the back of their car and drive in there."¹⁸⁰

Opponents of the Wilderness Act also saw it as falling outside the reasonable pluralism of conservationist goals. Conservation encompassed a variety of values – resource extraction, recreation, aesthetic pleasure – within a pluralist framework in which interest groups and expert administrators negotiated over shares of the public lands. Wilderness preservation went too far in excluding other uses to uphold values that opponents considered either the aristocratic playthings of a few wealthy aesthetes or the fetish of bizarre spiritual seekers.¹⁸¹ Either way – and it seems to have been both in opponents' minds – wilderness could not be a credible part of a conservation policy.

4. Wilderness advocacy as a bridge to the environmental era

This political split was prefigured in the development of advocacy arguments within the wilderness movement. After beginning squarely within the utilitarian argumentative frame of progressive management, wilderness advocates in the 1940s and 1950s soon began developing a new and distinct argument about the value of the natural world. The new argument rested on what would later be termed an ecological idea, that the complexity, health, and resilience of natural systems are valuable and that perceiving these qualities can be both pragmatically useful and morally enlightening. This line of

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¹⁷⁸ See 1961 CONG. REC. 18, 359 (Sept. 6, 1961) ("Those who use the wilderness areas constitute eight-tenths of 1 percent of the total number of people who use the national forests.") (Statement of Sen. Allott)

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¹⁸¹ See 1961 CONG. REC. 18,085 (statement of Sen. Allott) ("we must decide whether it is better to preserve an absolute wilderness area for those few people to commune with their own souls and be by themselves")

argument was new in environmental public language, though it gave a political twist to themes that had animated passages of American nature writing since Thoreau.¹⁸²

The new approach grew increasingly prominent as wilderness advocates' elitism came under attack even from their allies, while the advocates themselves grew discontented with the utilitarian arguments of progressive management that defined their early campaigns.¹⁸³ The basic problem was that familiar utilitarian arguments, based in scenery and recreation, made no room for valuing places that most Americans would never see, and forbidding means of access. An argument was needed that separated the value of a place from the quantity of its human use. Advocates addressed this need by claiming that the integrity of intact wilderness, its status as a living preserve of natural systems, was the key to its value, and that, while visiting it would indeed be uplifting, the very act of preserving it, and knowledge of its existence, would be keys to its human benefit.

These arguments developed on the pages of *Living Wilderness* and in other public statements by prominent wilderness advocates. A central figure throughout this period of wilderness advocacy was Aldo Leopold, whose posthumous classic, *A Sand County Almanac*, was the first major statement of an ecological perspective in American letters. A survey of Leopold's arguments in *Living Wilderness* and elsewhere shows the development.¹⁸⁴ In 1928, the National Conference on Outdoor Recreation submitted to Congress a report quoting Leopold on the recreational virtues of undeveloped land, warning against losing the rugged landscapes that had made "Kit Carson and Jim Bridger."¹⁸⁵ This was a classic argument of the New Nationalist variety, treating the masculine virtues of the frontier as endangered species that public lands managers must preserve. By 1935, in an essay complementing the Wilderness Society's platform, Leopold turned from civically virtuous recreation to what he called "the scientific values" of wilderness.¹⁸⁶ These were mainly pragmatic, having to do with lessons for soil management, game populations, and water supply, and in these respects the arguments were essentially those of such progressive managers as Gifford Pinchot. At the same time, however, Leopold made a different and novel claim, that recognizing how little Americans yet knew about these matters could also undergird a fresh ethical attitude: "The Wilderness Society is, philosophically, a disclaimer of the biotic arrogance of *homo americanus*. It is one of the focal points of a new attitude – an intelligent humility toward man's place in nature."¹⁸⁷

Leopold was well on his way to his final version of this argument in 1942, when he asserted, "What matters is our ability to see land as an organism," a style of perception

¹⁸² To appreciate exactly how far this development really fell from Thoreau's own thought, see LAURA DASOW WALLS, *SEEING NEW WORLDS* (1995) (setting out the implicit theories of science and knowledge that informed Thoreau's treatments of nature and those of other transcendentalists, notably Emerson).

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that focused on interconnections and interdependence.¹⁸⁸ The idea here was threefold. Pragmatically, approaching natural systems on the assumption that their complexity outran present human understanding might inspire study and caution rather than rash efforts at engineering. Ethically, this attitude would foster what Leopold and others called humility, a modesty about human powers and purposes, and a supposition that both might adjust to accommodate a growing understanding of nature. Aesthetically, Leopold cultivated a move away from the romantics' emphasis on the spectacular and sublime, but also from certain recreationists' calls to cultivate beautiful and reassuring landscapes. He proposed instead that aesthetic response might be anchored in nature's complexity and resilience.¹⁸⁹ This aesthetics fed back into the ethical and pragmatic attitude that Leopold sought to cultivate, for finding the resilient interrelations of a natural system beautiful was a way of seeing those qualities as valuable, and also drew attention to the features of a natural system that might outrun deliberate human control.

Leopold was an original thinker whose arguments emerged from years of work in forestry, game management, and farmland restoration, as well as public advocacy, and although he formulated these arguments in the 1930s and 1940s (before his early death in 1948), his Wilderness Society colleagues did not immediately adopt them. By the mid-1950s, though, Howard Zahniser, longtime editor of *Living Wilderness* and thus a rhetorical strategist of the organization, seems to have recognized that some version of Leopold's ideas formed his most effective arguments for wilderness. At the start of 1956, the *Sierra Club Bulletin* ran a back-cover statement by Howard Zahniser on "the underlying philosophy of the wilderness idea."¹⁹⁰ It was an important moment: several years of conflict over a proposed dam in Dinosaur National Monument had greatly increased the national visibility of the conservation movement and brought its major organizations into what Sierra Club director David Brower called "new unity."¹⁹¹ A coalition of conservation groups, led in this case by the Wilderness Society, would soon turn its attention to the Wilderness Act, which Zahniser had played an important part in drafting.¹⁹² Making the case for the priority of the wilderness agenda, Zahniser (as excerpted by the Club's editors, probably meaning Brower) wrote,

[W]e have a profound, a fundamental need for areas of wilderness – a need that is not only recreational and spiritual but also educational and scientific, and withal *essential to a true understanding of ourselves, our culture, our own natures, and our place in all nature.* The need is for *areas of the earth within which we stand without our mechanisms that make us immediate masters over our environment* – areas of wild nature in which *we sense ourselves to be, what in fact I believe we are, dependent members of an interdependent community of living creatures that together derive their existence from the sun ...* [original] *We deeply need the humility to know ourselves as the dependent members of a great community of*

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¹⁸⁹ See id. (discussing the importance of new patterns of "perception"); LEOPOLD, A SAND COUNTY ALMANAC 295 (embracing the goal of "building receptivity into the still unlovely human mind") (1949).

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*life, and this can indeed be one of the spiritual benefits of the wilderness experience. Without the ... contrivances with whereby men have seemed to establish among themselves an independence of nature, without these distractions, to know the wilderness is to know a profound humility, to recognize one's littleness.*¹⁹³

The same themes traveled from movement literature to Congressional debate on the Wilderness Act when supporters entered a canonical statement of wilderness values into the Congressional Record. They selected "Our World and Its Wilderness," also by Zahniser, which, like his *Sierra Bulletin* excerpt, was devoted mostly to the ethics of ecological awareness.¹⁹⁴ Encounters with wild country, he argued, would keep Americans "in touch with the fundamental reality of the universe of which we are a part," aware of their status as "dependent members of this great community of all life," and alert to "our human existence as spiritual creatures nurtured and sustained by and from the great community of life on this earth."¹⁹⁵ This awareness would induce a "a sense of ourselves as a responsible part of a continuing community of life" with "the understanding to deal wisely with all the resources of the earth."¹⁹⁶

The argument for wilderness had completely changed from the quasi-aristocratic adventure, ascetic extremism, and aesthetic rapture of "the freedom of the wilderness." Nor was it any longer an attempt to describe the "intellectual and cultural natural resource" of wilderness that would have slotted it into the language of utilitarian management. Instead, advocates argued for the moral instructiveness of contemplating nature in all its complexity, and the insight that humanity exists within, not apart from, that nature. They proposed that this perspective would induce "humility" and a sense of moral responsibility arising from "interdependence." These were the keystones of the arguments that Aldo Leopold had developed in decades of arguments over wilderness and land conservation. They were also the core ethical ideas that would soon emerge in the public language of ecological interdependence.

The ideas seemed to invite their extension beyond wilderness, for the qualities that wilderness advocates praised were present, to varying degrees, in all viable natural systems. Interdependence and complexity, unlike sublimity, are not restricted to the most spectacular public preserves – quite the opposite. In this respect, the ethics and aesthetics of the new ecological sensibility tended to portray nature's value as present everywhere, while the aesthetics of romantic epiphany had tended to restrict it to "temples." Perhaps not surprisingly, in Leopold's own thought wilderness was only part of a larger "conservation esthetic" that also treated agricultural land and traditional recreation as having their own value for human perception and ethics.¹⁹⁷ Stewart Udall, a friend of the wilderness movement who served as Secretary of the Interior under Presidents Kennedy

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¹⁹⁷ See LEOPOLD, SAND COUNTY ALMANAC at 237-58 (discussing "land ethic" in relation to agriculture"; 137-41 (same themes in context of wildlife management); 280-95 (integrating discussions of recreation, agriculture, and wilderness solitude as elements of a "conservation esthetic").

and Johnson, used Leopold's ideas to similarly broad ends in the call for "a new land ethic" that concluded his influential 1963 argument for increased environmental regulation and awareness, *The Quiet Crisis*.¹⁹⁸

These were not the only sources of the language of ecological awareness, nor their only conduits into public argument.¹⁹⁹ Members of the wilderness movement, though, seem to have given these ideas some of their earliest expression, and then to have carried them into the larger, and growing, conservation community and the debate on the Wilderness Act. Wilderness advocates were well positioned to make this contribution: they were heirs to romantic epiphany, who found that way of valuing nature too compromised by its alliance with progressive management and too narrow in its dedication to parks and other spectacular places. Their discontent helped produce the wilderness program, and advancing that program, in turn, inspired them to return to their core, romantic values and develop those into a new account of how awareness of nature's complex and interdependent processes could inform moral judgment and elevate human consciousness. Their portrayal of self-awareness as grounded in awareness of one's natural setting turned out to offer, not just an account of the value of wilderness, but an updated romanticism for those who sought meaning in the age of ecological interdependence.

C. Some Further Applications

What comes of looking at environmental law's sources through the overlaid lenses of public language and environmental imagination? The discussion of the wilderness movement is one part of an answer by example. Paying attention to how people engage in persuasion highlights the constraints that existing public language places on their arguments, their efforts to overcome such constraints, and the ways that these efforts can change what is say-able, creating new arguments that are then taken up in other disputes. These efforts at persuasion are instrumental, even essentially so: they aim at political and legal effect. At the same time, the language traced in this paper also expresses experiences of the natural world that were both real and motivationally powerful to those who had them. In the case of movements such as the Sierra Club and the Wilderness Society, putting words to these experiences helped draw others into them. When such language entered the lexicon of public argument, it enabled political actors to invoke values that would once have been inadmissible or even unintelligible.

So the work of persuasion in this history is linked to efforts at articulation – putting in words something that has been difficult to say – which, once named, can be recognized as common experience or established as a shared aim. In this respect, public language can feed back into the environmental imagination, recasting the ways that Americans implicitly envision the natural world. Each of the four approaches to nature

¹⁹⁸ See STEWART L. UDALL, *THE QUIET CRISIS* 188-91 (1963) (presenting "notes on a land ethic for tomorrow").

¹⁹⁹ For instance, Rachel Carson was influenced by Rene Dubos, a medical scientist who speculated on the meaning of life's complex processes for human self-understanding, and Paul Shepard, who became a founding eco-psychologist. See CARSON, *SILENT SPRING* at 12 (approving quoting Shepard's call to replace mere survival with quality of life as a standard for human dealings with nature) 189 (praising Dubos as "a wise physician").

that this paper sets out is partly the source, partly the product, of a specific cast of environmental imagination. More specific disputes, such as wilderness, are also implicitly framed by the larger themes of imagination and public language. The relatively brief arguments that follow are instances of what attention to this framing can bring to light.

1. Instruments and Identities: Environmental Imagination and Economics

The life of environmental law since 1970 has been less epiphany than economics. The design, implementation, and interpretation of environmental statutes have been deeply affected by two related trends: use of market-based regulatory instruments, such as tradable emissions permits, and recognition of cost-benefit analysis as (at least) very important in choosing the goals of environmental policy. Legal scholarship has helped to drive these trends with criticism of inflexible and cost-insensitive instruments and ambitious attempts to set environmental regulation within a larger cost-benefit framework.²⁰⁰ These developments have been controversial: critics in Congress, the environmental movement, and the legal academy have charged that both cost-benefit analysis and market instruments obscure or violate the distinctive value of the natural world and inhibit the future growth of environmental values.²⁰¹ The last portion of a long paper is not the place to set out these complex developments in any detail, nor to assess the debates.

Instead, the point here is to highlight that “economic” regulation (running together cost-benefit analysis and market instruments) has a valence in environmental politics that depends on the larger image of the world in which it is set. Do prices flatten moral distinctions, or emissions permits imply a “right to pollute”? Does cost-benefit analysis foster an instrumental view of the natural world? Which answers enjoy the ring of the intuitive will depend on how one imagines “economics” or “markets” – how market actors assess value, how this may differ from “civic” or “moral” assessment, whether market evaluation tends to colonize other sorts, and so forth.

Those who helped create the forms of environmental imagination that this paper discusses had, at various times, sharply differing views of these questions. The most interesting moment here is a sharp break in how “economics” was cast in the mainstream environmental movement. Amid the rise of ecological interdependence in the 1960s and 1970s, “economics” went from being an assumed part of the movement’s argumentative repertoire to playing the role of nemesis, portrayed as embodying the instrumentalism and obsessive wealth-maximization that the new environmentalists defined themselves against. There was also, however, a counter-current in which environmentalists imagined an allegedly very different, “ecological” economics. Today we live in a sometimes fractious *mélange* of the three perspectives, with the third recently in the ascendant.

The Sierra Club in the 1950s and 1960s was an uncritical and mostly upbeat participant in the cost-benefit politics of the public-lands agencies, and regarded the economics discipline as an ally whose rigor helped the Club to refute spurious claims that

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dams, roads, and logging sales would serve the public welfare. During the dispute over damming Echo Park in Dinosaur National Monument, the *Bulletin* ran photo-spreads of the landscape along the Utah-Colorado border, but its article-length arguments tended to emphasize that alternative developments could achieve the same power and water benefits at lower cost.²⁰² Fourteen years later, in 1968, the Club was instructing its members on the “Uses and Abuses of Highway Benefit-Cost Analysis,” a technical primer on discount rates, secondary benefits, and the assumed useful life of a road project, intended to enable activists to comment intelligently on agency decisions.²⁰³ The tone of the piece is in no way critical of cost-benefit procedure, but notes that development interests may try to inflate the benefits totals, a reason for Club members to be numerate. A year later, a similar piece invoked the authority of “economists” and “nearly every resource economist” to argue that sophisticated cost-benefit analysis cut against large dam projects.²⁰⁴ The Club’s arguments worked within cost-benefit analysis, not against it.

The *Bulletin* even contended that cost-benefit analysis could integrate beauty. This came in connection with the establishment of the “aesthetic injury” basis for federal standing in the dispute over a proposed Consolidated Edison power plant at the Hudson Valley’s Storm King Mountain: “The [Club] attorneys’ position has been that that scenic beauty can be objectively analyzed and degrees of scenic beauty can be stated.”²⁰⁵ The Club’s underlying brief argued, “There ... are standards and experts, and natural beauty can be the subject of analysis, with sufficient definiteness to distinguish that which is worthy of protection” relative to economic costs and benefits.²⁰⁶

This style of argument was not simply a product of the Club’s status as a mature interest group in public-lands politics. Club leaders made very similar arguments in the first decade of the twentieth century, in their canonical, losing fight against San Francisco’s proposal to dam Yosemite’s Hetch Hetchy Valley as a municipal water supply.²⁰⁷ And, as their arguments supposed he would, Secretary of the Interior James R. Garfield considered “the standpoint of [Hetch Hetchy’s] scenic effects, natural wonders, and health and pleasure” in the statutorily mandated public-interest analysis that accompanied his approval of the proposed dam.²⁰⁸ The premise of all of these arguments is that cost-benefit analysis is a flexible, forceful means of specifying competing considerations and establishing an authoritative public interest. It is not the enemy of beauty or wonder, but the way those aesthetic values are translated into public policy. The problem was not calculation, but that persons and groups that lacked sensitivity to natural beauty would try artificially to exclude it from the public-interest calculus, in favor of a purely material view of welfare – hence the Club’s assertion that the “moral and physical welfare of a nation is not dependent alone on bread and water”²⁰⁹ and its

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founders' contempt for "gain-seekers" who could see in a landscape only potential income.²¹⁰ In both the faith in calculation and the embrace of interests beyond one's own material welfare, the Club belonged to the progressive political culture in which it matured.

Something changed, however, with the language of ecological interdependence. Essays calling for "a religion" of ecology and "extraordinary commitment to an entirely new way of life"²¹¹ cast "exploit[ation]"²¹² of nature and "limitless expansion of the economy"²¹³ as their nemeses. Soon the nemeses were gathered in "economics." *Bulletin* contributors asserted, "We are told that we must have growth because economists insist upon it"²¹⁴ and argued that "the displacement of spiritual goals by the drive to accumulate wealth has its origins in the belief that man is separate from nature and is its master."²¹⁵ Economics was cast as the embodiment of the relentless focus on nature's instrumental value that the new environmentalists, with their language of humility and interdependence, understood themselves to be defying. Economics became, in a peculiar sense, the opposite of ecology. This opposition was sounded in movement literature, but it had roots in more systematic arguments about the consequences of an ecological perspective. Lynton K. Caldwell, the most important intellectual architect of the National Environmental Policy Act, argued in 1970 that "two major ways of looking at the world have characterized man's attitude ... the first may be termed *economic*, the second *ecological*."²¹⁶ The first he described as embracing a simple ethic: "to make nature serve man's material needs."²¹⁷ Ecology, by contrast, adjusted human purposes and values in recognition of the continuity and interdependence of life.²¹⁸

The language of ecological interdependence may have required an antithesis: its affirmations were vague enough that a focusing negation was a great rhetorical help. Moreover, there was symmetry in the scope of the descriptive projects – economists' study of choice under constraint and ecologists' of interdependence, each implicating all human use (or non-use) of "resources" – that might have invited a sense that the two were struggling over the same domain. All the same, the opposition was contingent and, as we have seen, a switch from an earlier attitude. Nonetheless, the identification of "economics" with instrumental mastery over nature and obtuseness to non-monetary values became reflexive for many environmentalists, who called environmental benefits "a qualitative advance that is to be enjoyed, not measured."²¹⁹

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²¹⁶ LYNTON K. CALDWELL, *ENVIRONMENT: A CHALLENGE FOR MODERN SOCIETY* 237 (1970) (emphasis original).

²¹⁷ *Id.*

²¹⁸ *See id.* at 238.

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At the same time, the attitudes of progressive management never disappeared. Those attitudes persisted in movement engagement with public-lands decisions, akin to those discussed above, and they powerfully influenced both neo-progressive scholars and such post-1970 groups as the Environmental Defense Fund (now Environmental Defense), noted for its early and controversial embrace of tradable emissions permits.²²⁰ The encounter between economics and ecological interdependence also produced a second, very different result from the initial casting of the two as opposites. This was a sort of eco-utopian economics, the ideal of a market system whose pricing would reflect complete ecological information, building complex and systemic costs and benefits into the structure of every production and consumption choice. Anticipated already in Caldwell’s acknowledgment that his opposed standpoints might converge “if all relevant factors were considered,”²²¹ this idea emerged in popular polemics in the 1990s and today is a conventional, if hard-to-specify, endpoint in evocations of environmental goals.²²² On the basis of this admittedly superficial sketch, it seems fair to describe much of the present debate over the proposed cap-and-trade policy for climate change as inflected by these three attitudes: a traditional progressive view of the policy as an imperfect but potentially adequate piece of utilitarian legal engineering;²²³ a critical view of the policy’s market instruments as obscuring and undermining any moral commitment to care for the natural world;²²⁴ and an eco-utopian view of full ecological pricing as the key to an economy that will automatically reconcile wealth and environmental health.²²⁵

We know, somewhat unsettlingly, that perceptions of environmental problems (among others) are strongly affected by the instruments that the problems seem to demand.²²⁶ For instance, libertarians and cultural conservatives are more likely to find evidence of climate change persuasive when it is presented as implying market-based responses, less so when it comes with a call for regulation.²²⁷ The reverse holds for government-friendly egalitarians. Whether or not one finds this a revelation, it does suggest that there is value in understanding how policies come to stand for either the promise or the antithesis of a version of environmental imagination. Histories similar to the one sketched here could be written for the association of federal management with “tyranny” that has persisted in the West from the first efforts at regulating frontier forestry, through the closing of the public domain in 1934 and 1976, in a consistent rhetorical tradition that echoes in today’s Tea Party; or for the environmentalists’ enamored relation to courts and lawsuits from the mid-1970s through the 1990s. These imaginative associations are an inescapable but under-explored part of environmental politics, and reflection on them might loosen, or at least help explain, their hold on so many minds.

2. Interests and Imagination

²²⁰ See sources cited in *supra* n. ____.

²²¹ CALDWELL, ENVIRONMENT at 238.

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It isn't news that political actors invoke values, and their doing so might seem perfectly compatible with the thought that values are just tools of convenience for advancing interests. If that were the whole story, this paper's approach would seem to overlook the engine driving history in favor of the crepe paper on the floats. And, indeed, it is evident that interests shape environmental law in powerful and pervasive ways.

Nonetheless, the approach this paper follows has a couple of things to offer those whose accounts center on the play of interests. For one, some "interests" motivate actors only because of changing ideas of nature's value. An interest-based account of twentieth-century public-lands law, emphasizing the influence of groups of well-organized preservationists and their agency allies, works only because those groups had developed a new view of the value of the landscapes they worked to preserve. Assuming a spectrum of motives, with wealth toward one pole and more elusive aims such as dignity or escape from disenchantment on the other, the latter may benefit a great deal from interpretative effort even if they are varieties of self-interest.

For another public language is an important filter of interests' translation into political and legal persuasion. It amplifies some interests as bases for claims on the political community while excluding others or requiring that they be recast. Frontier settlers' interest in access to land and other resources took special force from the influence of providential republicanism. The introduction of romantic epiphany to public language made a value that would once have seemed personal and effete into a canonical justification of parks and other scenic lands. By the same token, certain wilderness advocates concluded that the dominant public language of progressive management either distorted or excluded the aspect of nature that they wanted to preserve, and their effort to legitimate wilderness expanded public language.

This paper is not idealist in either the theoretical sense of asserting that ideas drive history or the colloquial sense that high-minded motives drive most actors. Nonetheless, Americans' relation to nature has been full of perceptions of personal dignity, natural beauty, national greatness, and the enrichment of everyday life. These have helped to constitute both the interests at work in environmental politics and the boundaries of speak-able claims in public persuasion. Setting them out may contribute to a fruitful exchange between the history of ideas and self-understanding, on the one hand, and that of interests on the other.

CONCLUSION

The natural world is a plain and obdurate fact of American life and also an object of rich imagination. Through ideas such as wilderness, waste, conservation, and even the concept of the environment, Americans have re-envisioned the continent while we have physically remade it. Many of the interests our laws serve depend on ways of seeing and using the natural world, from settler dignity to the paradoxically elevating humility of the wilderness. Each statutory episode that this paper describes helped to create a landscape in keeping with the vision behind it, and continues to structure American interaction with nature. These laws also express persistent disagreement about nature's value,

disagreement that touches both material interests and the environmental imagination. Once established, modes of environmental public language become focal points for further conflict and also sources of new ideas and appeals. We can enrich our map of both history and contemporary disputes by beginning to locate environmental law in the longer story of American environmental imagination and public arguments about the natural world.