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The Politics of Nature: Returning Democracy to Environmental Law

Jedediah Purdy ♥

Environmental crises will likely be among the defining challenges of the next few decades. Climate change,¹ conflict over fresh water,² and the ecological viability of food systems³ have entered public and scholarly agendas. In discussions of how law and politics might address these problems, a cluster of assumptions has become conventional. The narrow occasion of this paper is the wish to challenge those assumptions. The broader aim is to contribute to an understanding of how the natural world figures in American public language, the repertoire of arguments and appeals by which we can intelligibly seek to persuade one another of the content and implications of shared commitments.

The sum of the assumptions challenged here is that there is little in the way of such a public language, and that what there is will scarcely help in the problems ahead. The first conventional assumption is that, whatever distinctly normative or civic motives we may have, their bearing on pressing environmental problems is weak, hopelessly vague, or both.⁴ People may be motivated to act in ways they regard as morally appropriate, and they may have moral reasons for action that arise specifically from their membership in political communities.⁵ As these motives apply to environmental

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¹ For a survey of the range of potential impacts, see Intergovernmental Panel on Climate Change, Summary for Policymakers, in *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (S. Solomon et al. eds., 2007).

² See *The World's Water 2006-2007: The Biennial Report on Freshwater Resources* (Peter H. Gleick et al., eds., 2006); Fred Pearce, *When the Rivers Run Dry: Water – The Defining Crisis of the Twenty-First Century* (2006); Sandra Postel & Brian Richter, *Rivers for Life: Managing Water for People and Nature* (2003); Robert Glennon, *Water Follies: Groundwater Pumping and the Fate of America's Fresh Waters* (2002); Postel, *Last Oasis: Facing Water Scarcity* (1999); Marc Reisner, *Cadillac Desert: The American West and Its Disappearing Water* (1993).

³ See Paul Roberts, *The End of Food* (2008); Michael Pollan, *The Omnivore's Dilemma: A Natural History of Four Meals* (2006); Jason Clay, *World Agriculture and the Environment: A Commodity-by-Commodity Guide to Impacts and Practices* (2004); Sandra Postel, *Pillar of Sand: Can the Irrigation Miracle Last?* (1999).

⁴ Rather than attempt to survey a field of environmental problems, I concentrate hereafter on climate change as a contemporary instance. Not everything I say in characterizing that problem is intended to apply also to the examples of water and agriculture, though I take it the argument that environmental public language does have relevance to climate change will generally apply as well to these and other issues.

⁵ For a discussion of moral identity as a source of motivation, see Jonathan Glover, *Humanity: A Moral History of the Twentieth Century* 26-30 (2001). For on particularly rich account of its action in an episode long assumed to be governed by conventional economic self-interest, see David Brion Davis, *Explanations of British Abolitionism, in Inhuman Bondage: The Rise and Fall of Slavery in the New World* 231, 231-49 (2006) (arguing that free-labor ideology and an attendant conception of civic dignity motivated laboring and middle classes to demand abolition of slavery at recognized and substantial economic cost to the

problems, however, the assumption is that they operate weakly or lack the kind of clear, action-guiding content that might make them tractable to observers.⁶ There is not much that is worth saying about them.

The second conventional assumption is that “environmentalism,” which we might otherwise imagine as a source of such values, is unhelpful in significant ways. In one account, environmentalism comprises an essentially negative politics: suspicious of

empire). For a partisan but fairly careful account of the character of motives inseparable from membership in a political or other community, see Charles Taylor, *Irreducibly Social Goods*, in *Philosophical Arguments* 127, 127-45 (1995). For rich considerations of how citizens actually use one class of such arguments, see Robert Post & Reva Siegel, *Roe Rage: Democratic Constitutionalism and Backlash*, 42 *Harv. C.R.-C.L. L.Rev.* 373, 427 (“So long as groups continue to argue about the meaning of our common Constitution, so long do they remain committed to a common constitutional enterprise ... [O]ur constitutional system consists of an historically extended tradition of argument whose integrity and coherence are to be found in, not apart from, controversy.”) (2007) (internal quotes and ellipses omitted); Jack Balkin & Reva Siegel, *Principles, Practices, and Social Movements*, 154 *U. Pa. L. Rev.* 927 (describing role of social movements in opening up settled points of interpretation in constitutional culture and bringing new commitments to previously closed debates) (2006); Reva B. Siegel, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the De Facto Era 1350-66* (2006) (setting out an account of the role of social movements in contesting and contributing to the meaning of basic but underspecified public values).

⁶ See Eric Posner & Cass R. Sunstein, *Should Greenhouse Gas Permits Be Allocated on a Per Capita Basis?* 97 *Cal. L. Rev.* 51, 86-91 (arguing that the incentives of self-interested states should be regarded as intractable constraint on distributive policies of any global climate agreement, not discussing domestic politics) (2009); Kirsten Engel & Barak Y. Orbach, *Micro-Motives for State and Local Climate Change Initiatives*, 2 *Harv. L. & Pol’y Rev.* 119 (lumping moral and otherwise other-regarding motives into a residual category) (2008); Steven Pinker, *The Moral Instinct*, *N.Y. Times Mag.*, Jan. 13, 2008 at 32, 58 (“[N]owhere is moralization more of a hazard than in our greatest global challenge Our habit of moralizing problems, merging them with intuitions of purity and contamination, and resting content when we feel the right feelings, can get in the way of doing the right things.”); Cass R. Sunstein, *The World vs. The United States and China? The Complex Climate Change Incentives of the Leading Greenhouse Gas Emitters*, 55 *U.C.L.A. L. Rev.* 1675 (2008) (concentrating analysis on respective national self-interest, then arguing that political action depends on a combination of diffuse moral sentiment and confusion about the inefficacy of local action, which might together push along a norms cascade); Jonathan B. Wiener, *Climate Change Policy and Policy Change in China*, 55 *U.C.L.A. L. Rev.* 1805, 1812-15 (2008) (setting aside “constructivist persuasion” as fraught with threats of “moralizing,” too weak to overcome economic interests, carrying potential to backfire or cause unintended consequences, and too slow); Sunstein, *Of Montreal and Kyoto: A Tale of Two Protocols*, 31 *Harv. Envtl. L. Rev.* 1, 44-46 (2007) (acknowledging the possibility that public opinion is not fixed and might respond to leadership, but analyzing the failure of Kyoto as overwhelmingly a matter of national-interest calculations relative to Montreal Protocol); Wiener, *Think Globally, Act Globally: The Limits of Local Climate Policies*, 155 *U. Pa. L. Rev.* 1961 (2007) (using interest-based analysis to argue that state and local climate initiatives are likely to be ineffective at best, counterproductive at worst); Sunstein, *On the Divergent American Reactions to Terrorism and Climate Change*, 107 *Colum. L. Rev.* 503 (discussing of rational, boundedly rational, and extra-rational motives for assessment of the two threats, but not engaging development of normative culture as other than an explanandum); Richard B. Stewart & Jonathan B. Wiener, *Reconstructing Climate Policy: Beyond Kyoto* (2003) (concentrating on interest-mediating structure of prospective global climate architecture). These scholars are not ethical nihilists: indeed, they conduct normative analysis in the manner of normative realists, i.e., those who believe moral assertions are unproblematic. See Posner & Sunstein, *Should Greenhouse Gas at 71-86* (conducting “welfarist” and “fairness” analyses of the per-capita principle); Posner & Sunstein, *Climate Change Justice*, 96 *Geo. L.J.* 1565 (2008) (conducting normative analysis of distributive considerations in climate change remedies). What they do not do is to connect their political and normative analyses to understand values as political causes, potentially in more than a weak and secondary role, and as products of political and cultural contest.

human agency, always on the defensive against incursions into natural systems, and temperamentally associated with sacrifice, austerity, and guilt.⁷ It is athwart, or at best apart from, the projects of progress and justice.⁸ In another, frequently overlapping view, environmentalism is nostalgic and ontologically naïve, inseparably attached to an essential “nature” which environmentalists insistently contrast with the intruding human species.⁹ In the face of problems on the scale of climate change, the argument goes, a negative and defensive stance cannot inspire the public energy and commitment that might drive a political response.¹⁰ Similarly, a politics premised on a nostalgic contrast between human beings and the natural world is conceptually rudderless in the face of the thorough interpenetration and mutual constitution of people and the planet.¹¹ This holds most markedly of climate change, in which human action and natural systems have joined in irreversible symbiosis.

Not all who hold one or two of these assumptions hold the rest, and of course the ideal types conceal a variety of more specific ideas. Nonetheless, together they form a

⁷ See Pinker, *supra* n. 6 (characterizing environmentalist attitudes to climate change as “moralizing” about allegedly excessive consumption and calling for a “post-moralism era” to address climate); Wiener, *Climate Change Policy*, *supra* n. 6 (warning against “moralizing” as counter-productive); Ted Nordhaus & Michal Shellenberger, *Break Through: From the Death of Environmentalism to the Politics of Possibility* 120 (“environmentalists have long defined their politics in the negative”), 154 (characterizing environmentalism as “the ethics born of living in a fallen world pervaded by fears of the eco-apocalypse to come”), and 7-133 (arguing that environmentalism as presently constituted is narrow and elitist, indifferent to progress and justice, and hostile to the human appetite for hope); William Cronon, *The Trouble with Wilderness, or Getting Back to the Wrong Nature*, in *Uncommon Ground: Reconsidering the Human Place in Nature* (William Cronon, ed., 1996) (arguing that a fixation on wilderness values has made environmentalists indifferent to the justice and grace, or otherwise, of most of the human environment); Gregg Easterbrook, *A Moment on the Earth: The Coming Age of Environmental Optimism* (1995) (arguing that environmentalism has been defined by pessimism about human agency, technology, and their effects on nature); Luc Ferry, *The New Ecological Order* 57-126 (arguing that both European and American environmentalism are characterized by nostalgic hostility to the Enlightenment projects of humanism and reason) (Carol Volk, trans., 1995) (1992).

⁸ See Nordhaus & Shellenberger, *supra* n. 7; Cronon, *supra* n. 7; Ferry, *supra* n. 7.

⁹ See Nordhaus & Shellenberger, *supra* n. 7 at 105-29 (arguing that environmentalism is defined by a “pollution paradigm” in which unspoiled nature is invaded by harmful human activity), 216-40 (arguing that environmentalism is committed to a philosophically discredited and practically counterproductive “essentialist” divide between humanity and nature); Bill McKibben, *The End of Nature* (2d ed. 2006) (arguing that environmentalism depends on an idea of undisturbed and permanent nature, which climate change renders infeasible); Cronon, *supra* n. 7 (arguing that environmentalism has been defined by idealization of a “wilderness” radically opposed to and unsullied by human activity); Easterbrook, *supra* n. 7 (arguing that progress in relation to the natural world will mean re-engineering it to satisfy human aims, including such humanitarian considerations as averting predation among wild animals, all in opposition to environmentalists’ static conception of nature).

¹⁰ Those who make this claim usually offer to cure the defect with a more “positive” agenda, such as Nordhaus and Shellenberger’s “politics of possibility” or McKibben’s remark that “If [the effort to address climate change] has success, it won’t be environmentalism anymore. It will be something much more important.” Bill McKibben, *What “Green” Means*, *Orion*, July-August 2005. Near the heart of this paper’s argument is that the offer of radical remedial breaks with a caricatured “environmentalism” mistakes the situation almost entirely: environmental public language has always been connected with ideas of progress, civic dignity, and national purpose.

¹¹ See Nordhaus & Shellenberger, *supra* n. 7; Cronon, *supra* n. 7. For an application of this idea to legal scholarship, see Julia D. Mahoney, *The Illusion of Perpetuity and the Preservation of Privately Owned Lands*, 44 *Nat. Res. J.* 573 (2004) (arguing that a favorite legal tool of environmentalists, the perpetual conservation easement, is based on a naïve conception of nature as static).

dominant attitude in which the realistic, hence responsible, approach to climate change and allied problems is one of prudential resource management constrained by interest-based politics.¹² The questions of what kinds of non-instrumental value the planet's atmosphere might have, or how recognition of that value might interact with politics, appear fleetingly and mostly as will-o-the-wisps.¹³

A minority strand of commentators begins from the opposite assumption: that the resources of environmental public language are greater than is conventionally recognized.¹⁴ I begin with these observers, or, more accurately, where they leave off.¹⁵ The central argument of this paper is that environmental public language has been involved throughout American history in contests over the nature of progress, the role and scale of government, and the meaning of national identity, social membership, and civic dignity. It has taken shape from these contests, and it has lent its shape to them. Environmental public language has not, mainly, been attached to any naïve contrast between humanity and nature, but has instead been the vehicle for exploring the complex ways in which interaction with the natural world can serve, inform, and constitute human purposes. The tendencies that recent critics identify are real, but they are hardly touchstones of a monolithic environmentalism. On the contrary, more subtle and

¹² See sources gathered in n. 6, *supra*.

¹³ See sources gathered in n. 6, *supra*.

¹⁴ See Douglas A. Kysar, *The Consultants' Republic* (reviewing Nordhaus & Shellenberger, *Break Through*), 121 *Harv. L. Rev.* 2041(2008) (arguing that the book's characterization of environmentalism, among other defects, overlooks the diversity of environmentalist' institutional strategies and normative conceptions in the early 1970s); Kysar, *Discounting ... on Stilts*, 74 *U. Chi. L. Rev.* 119 (2007) (arguing that a direct engagement with substantive normative issues is unavoidable in assessing intergenerational allocation of climate change burdens); Kysar, Kysar, *Climate Change, Cultural Transformation, and Comprehensive Rationality*, 31 *B.C. Envtl. Aff. L. Rev.* 555 (arguing that moral reflection about environmental values may be engaged through cultural transformation, which necessarily draws on the existing normative resources of the culture) (2004); Daniel C. Esty, *The World Trade Organization's Legitimacy Crisis*, 1 *World Trade Rev.* (1) (2002) (engaging normative questions at the intersection of environmental and economic governance); James Gustav Speth, *The Bridge at the Edge of the World: Capitalism, the Environment, and Crossing from Crisis to Sustainability* (arguing that the only prospect for successfully engaging current panoply of global environmental problems is to engage basic questions about human purposes, sources of satisfaction, and moral obligations); Richard J. Lazarus, *The Making of Environmental Law 47-50* (similarly noting diverse ideas in the early 1970s of the directions in which environmental law might develop) (2004); Cronon, *supra* n. 7 (using criticism of the wilderness idea to urge a broader engagement with cultural and moral sources, in hope of correcting the defects Cronon ascribes to wilderness-focused environmentalism).

¹⁵ Each of the figures just invoked sets the stage in some way for this project. Doug Kysar's work makes the case that an inquiry like the one this paper undertakes is analytically unavoidable and culturally promising, but he has not so far undertaken it himself. Gus Speth makes a similar case, but his treatment of the issues he raises includes very little engagement with developments before roughly 1970. Lazarus gestures at a connection between the environmentalism of the 1970s and public-health and other reformist movements of earlier decades, but does not develop it or engage the other themes of this paper. Cronon's landmark essay on wilderness is closest in scope to what this paper attempts, but its manner is very much that of the impressionistic and associative essay: Cronon does not engage issues such as democratic self-interpretation, the contested question of national purpose, or the complex interaction between wilderness and managerial conservationism. What one wants is to see the historical and interpretive richness of his earlier work on environmental history brought to bear on the themes he beautifully paints in this essay. His essay, which I have long admired, is thus a kind of cue for this project, however short of Cronon's standard I will inevitably fall.

affirmative ideas have been the leading qualities of a richly multifarious tradition of argument. One product of this paper is an initial typology of that tradition.¹⁶

Previous accounts of the sources of environmental law and politics have taken two paths. One is cultural history conducted at a fairly high level of abstraction.¹⁷ The other pole is rich in empirical particulars but lacking in theoretical ambition and, where it has a theoretical element, presents itself as a history of interests.¹⁸ Some of the most interesting work falls into neither category. Exemplified by the work of William Cronon, the third strand integrates natural and social history as mutually constitutive processes, but does not engage the topic of this paper: the ways in which people create their shared public language by participating in it, by seeking to persuade one another.¹⁹ A major

¹⁶ By invoking “tradition,” I mean not something that befalls us from the past, but what the living make of the materials available in the world they find. One of the suppositions of this paper is that awareness of those inherited materials can enrich the forward-looking repertoire of a public, so recollection can stand in support of innovation.

¹⁷ See Donald Worster, *Nature’s Economy: A History of Ecological Ideas* (2d. ed. 2000) (setting a history of scientific conceptions of nature alongside an account of changing practices of use and habitation of the natural world); William Cronon, *The Trouble with Wilderness, or Getting Back to the Wrong Nature*, in *Uncommon Ground: Reconsidering the Human Place in Nature* (William Cronon, ed., 1996) (using cultural history to track the idea of wilderness through American history, with particular attention to the various human motives it has been imagined to serve); Roderick Nash, *Wilderness and the American Mind* (1982) (tracing the idea of wilderness through American history); Carolyn Merchant, *The Death of Nature: Women, Ecology, and the Scientific Revolution* (1980) (arguing that the rise of an instrumentalizing idea of nature arose with and in mutual support of a male-centered and oppressive version of subjecthood); Leo Marx, *The Machine in the Garden: Technology and the Pastoral Ideal in America* (1964) (tracing the ambivalent American relationship to nature and technology).

¹⁸ See Donald Worster, *Rivers of Empire: Water, Aridity, and the Growth of the American West* (1985) (a history of Western water policy joined with a Marxian-informed account of the power relations attendant on irrigation systems); Craig W. Allin, *The Politics of Wilderness Preservation* (1982) (tracing primarily the legislative and other political processes eventuating in the 1964 Wilderness Act); Paul Gates, *History of Public Land Law Development* (1968) (an extraordinarily rich and informed history of the political processes and interests at work in the development and disbursement of the United States public domain); James Willard Hurst, *Law and Economic Growth: The Legal History of the Lumber Industry in Wisconsin, 1836-1915* (1964) (setting out in detail the massive, often illegal lumbering of the nineteenth and early twentieth centuries); Phillip O. Foss, *Politics and Grass: The Administration of Grazing on the Public Domain* (1960) (setting out the history of grazing policy development); Roy M. Robbins, *Our Landed Heritage: The Public Domain 1776-1936* (1950) (a history of the development from disbursement to retention and regulation of the public domain as a story of rationality and progress, albeit fraught with politics).

¹⁹ The most impressive of this work is William Cronon’s. See William Cronon, *Nature’s Metropolis: Chicago and the Great West* (1991) (setting out the development of a commodity economy in the Midwest, with Chicago as its epicenter, as a history of economic systems, interests, and ideas); Cronon, *Changes in the Land: Indians, Colonists, and the Ecology of New England* (2d ed. 2003) (describing as ecological practices the Anglo settler and Native American forms of life that co-existed in early New England). What I do not in Cronon is a focus on the self-interpretation of democratic communities in relation to nature. In that respect, my interests are complementary to and, I hope, in the spirit of his. Some more popular but very interesting and influential work has taken its cue from Cronon in combining systems theory with accounts of culture. See Michael Pollan, *The Omnivore’s Dilemma: A Natural History of Four Meals* (2006) (describing food-production systems and the relation to ideas of food’s purpose and cultural role); Jared Diamond, *Collapse: How Societies Choose to Fail or Succeed* (2005) (an account of ecological catastrophe and the conditions for averting it in light of both natural systems and cultural judgments). Other environmental histories have adopted a sub-altern concern with the experiences and perspectives of

purpose of this paper is to set environmental ideas within this field of democratic self-interpretation and action.

The paper does so through two interwoven inquiries. The first aims at understanding the emergence of environmental public language. How have new claims about the value of the natural world become intelligible, even authoritative, as parts of a public vocabulary? Some of the answer lies in the activity of social movements, some in the language of politicians, and some in innovations from relatively rarefied domains such as literature, spirituality, and science. These rarefied innovations, however, enter public language in the sense that this paper treats only through politics and social movements. The intelligibility and authority of environmental public language emerge and change through the ongoing activity of a democratic community.

Two broad patterns emerge. In one pattern, advocates anchor their arguments in an existing or emergent public vocabulary. One such anchor was the Progressive ideal of expert management, which was closely tied to the advent of permanent resource-management regimes for federal public lands, most notably in the National Forests. A second was the perception of technology-driven crisis, even apocalyptic threat amid failed technocratic mastery, which helped to inspire the environmental movement of the 1960s and 1970s. Even in these cases, environmental language did more than take the shape of an existing conversation. Rather, those who found new ways to articulate environmental values contributed to the development of the larger public language of their times, making the American relation to the natural world a paradigm of broader themes.

The other pattern involves more innovative work. Here, environmental advocates added new kinds of values to public argument. The national parks and wilderness reserves exist in part because their advocates developed arguments that certain kinds of aesthetic and spiritual experience were uniquely available in spectacular natural settings. Romantic and Transcendentalist aesthetics formed a backdrop to these ideas, but a new kind of personal encounter with nature became a premise of public vocabulary, available for claims on editorial pages, in sermons and public hearings, and on the floor of Congress, only through the labor of popularizing innovators, notably John Muir, and, especially, social-movement practitioners of the new language, such as the Sierra Club and Wilderness Society. In a related but distinct innovation, wilderness advocates in the 1940s and 1950s contributed to a new account of the natural world as such (rather than its most spectacular places) as intrinsically valuable and a source of moral instruction for human beings. Although it formed only a portion of the key national debate on

those omitted from “traditional” history and often the objects, rather than the authors, of environmental management schemes. See, e.g., Karl Jacoby, *Crimes Against Nature: Squatters, Poachers, Thieves, and the Hidden History of American Conservation* (2001) (describing the experiences and perspectives of local populations in the Adirondack State Park and Yellowstone National Park); Ramachandra Guha, *Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya* (2000) (describing the political lives and activity of local dwellers in the face of harvesting from outside their communities). A final class of work treats sub-altern environmental history in connection with a critique of modernity as characterized by an imperializing form of instrumental reason and hyper-rational technocracy. See James C. Scott, *Seeing Like a State* (1997) (describing nineteenth-century “scientific forestry” as an instance of “high modern” aesthetics and management); Carolyn Merchant, *Ecological Revolutions: Nature, Gender, and Science in New England* (1989) (arguing that early New England settlers enjoyed a relatively ecologically minded, pre-capitalist relation to the natural world, which gave way in time to a market-driven instrumental attitude).

wilderness between 1956 and 1964, this new account of nature's value became central to the version of environmentalism that developed in the 1960s and early 1970s.

This paper's second inquiry aims at an initial typology of the appeals Americans make in arguing about environmental commitments. These have been of three broad types, each with a variety of particular inflections. The first is a utilitarian ideal of rational resource management, historically connected with Progressive images of economy and society as complex systems requiring expert governance. It has market-friendly and market-hostile versions, versions that disregard aesthetic and spiritual values and others (important in the parks and wilderness movements) that treat these as important resources for public well-being. It is marked by commitment to intelligent mastery of the natural world, understood as an aspect of humans' rational self-governance generally. In the second type of appeal, nature figures as a source of inspiration and instruction for human consciousness: whether through epiphany or more measured contemplation, it changes us by helping us to change our minds. Important versions of this appeal include the Romantic conviction that intense, even transformative aesthetic and spiritual experiences are uniquely available in encounters with the natural world, and an ideal, famously articulated in Aldo Leopold's "land ethic," that heightened awareness of human participation in nature's complex and interdependent systems is not just prudentially useful, but a source of both humility and delight. A third type of appeal is a warning, with roots in both jeremiads and the apocalyptic possibility of nuclear warfare, that technological civilization will prove self-undermining unless it develops a new relation to the natural world.

Environmental appeals may also be classified by the domain of values that they invoke, rather than the substance. Some appeals are at the level of national identity, asserting that the country will be diminished or fall short of potential in the absence of certain public actions, such as preserving parks or wilderness. Others are in the register of aggregate individual interests, arguing that these will be disserved without national action, such as creation and scientific management of national forests.²⁰ A third type of appeal has affinity with perfectionist approaches to normative political theory: it relies on the qualitative importance of the interests environmental law can serve.²¹

Other major areas of public law, such as constitutional law, the statutory law of civil rights and employment relations, and criminal law are studied and taught as parts of the ongoing self-definition of the political community. Nothing commensurate has developed in environmental law. There are at least three concrete reasons to begin addressing this lack. For one, legal scholars' picture of American public language is incomplete without an account of the place that the natural world has played in it. Second, our understanding of existing environmental laws can gain from appreciating how they emerge from, and contribute to, changes in public language – that is, by locating them in the tradition of argument that they both emerge from and help to shape.²² Third, a sense of the resources of history can enrich choices for the future. In

²⁰ While the first kind of argument supposes that individuals have interests that are constituted by the character of their political community, the second holds merely that the political community contains (and responds well or poorly to) the aggregate interests of its members. So understood, the first is an argument of a broadly communitarian type, the second a liberal argument of a methodologically individualist sort.

²¹ Of course, while these distinctions serve to fix ideas, they delineate ideal types that overlap in practice.

²² See Bruce Ackerman, *Canonizing the Civil Rights Revolution: The People and the Poll Tax* (unpublished paper, on file with author) (arguing for the status of certain statutes as embodying enduring commitments

addressing new environmental challenges such as climate change, lack of a tractable vocabulary for discussing the debate over values has helped push scholarship toward a somewhat narrow variety of political economy, which neglects the ways political persuasion and cultural change can recast preferences and values. This omission underestimates our cultural resources and can produce a blinkered view of actual and potential political responses to new environmental questions.

Finally, a few words about what this project is not: First, it is not idealist history in either the strict sense of supposing that ideas drive events or the colloquial sense of denying that people generally engage in self-interested behavior. The supposition is that ideas about what matters morally, and why, inform a range of motivations, not all of them usually described as moral. For instance, such ideas may shape our sense of what our interests are, affect our perception of which among others' interests form legitimate bases for claims on us, or motivate us to "do the right thing," either for its own sake or out of status-seeking. This paper is an interpretive study of normative language, but it is meant to complement, not simply contradict, interest-based accounts. Second, this project does not aim at a general theory of why cultural innovators and social movements succeed or fail in changing public language. As an examination of certain successful efforts and their contemporary successors, it contributes to a picture of the tradition they constitute, but does not explain why this tradition arose rather than another, nor predict the future shape of public language.

In Part I of this paper, I describe the prevailing attitude toward the natural world in the American politics of the early and middle nineteenth century and the rise of a new and very different view, which form the basis of much of today's environmental public language. The earlier view emphasized the utilitarian value of natural resources and the individual right to expropriate unused or unclaimed lands, which was often invoked as a mark of equal political membership and thus an emblem of the democratic character of the polity. In that view, there was little room for two ideas that later became central to environmental public language: that of nature as repository of non-utilitarian values, and that of a permanent public domain, subject to expert management and embodying a set of civic interests either distinct from aggregate individual interests or, if reducible to those, nonetheless best pursued through public governance. I then describe a series of innovations that introduced a new mode of valuing the natural world, first in literary expression and personal experience, and eventually in public language: the Romantic mode. Beginning in aesthetic theory and literature, it moved, signally through the popularizing work of John Muir, into the hands of a social movement, the Sierra Club, which created a limited public in which the Romantic valuation of nature was common currency and became a publicly available account of the motives for conservation. I then set out the interplay of this Romantic mode of valuation with another basis of conservation politics, the "new nationalism" of Teddy Roosevelt and the larger Progressive development in which it was set. Romantic and Progressive rationales for public management of natural resources coincided in important programmatic respects and in their opposition to the perceived individualism and materialism of nineteenth-

of the polity); William Eskridge, "A Republic of Statutes" (unpublished paper, on file with author) (arguing that the Clean Water Act embodies a national commitment of an especially deep kind, around which subsequent interpretive debate takes place on the meaning of the commitment).

century laissez-faire, but they also rested on quite distinct views of both nature and social life.

Part II traces one of the most important developments in twentieth-century conservation: the creation of wilderness as a cultural and legal category, which in turn laid the groundwork for much of the environmental language of the 1960s and 1970s. Incubated in a relatively small and elite social movement, centered on the Wilderness Society, the wilderness idea came into its own with the passage of the 1964 Wilderness Act. Wilderness debates helped produce new arguments that nature as such, rather than certain kinds of spectacular places, has high and intrinsic value which both enriches human experience and demands respect in its own right. These arguments later burst into view, seemingly from nowhere, in the efflorescence of environmental politics during the years 1968-73.

Part III sets out the major developments of the 1960s and early 1970s, especially the rise of a new category, the environment, as an organizing concept for a set of issues, problems, and demands; the valence of this idea as a moral account of the perceived failures of technological society and technocratic mastery, newly described as departures from ecological principles; and an apocalyptic view of the consequences of that departure. These developments were in some respects displacements of broader anxieties, which “the environment” served to organize and partially reconcile. They also represented a new public use of arguments generated, in good part, in the more specialized debates of the wilderness movement. Turning to the legislative landmarks of that period, I argue that the structure of the Clean Air Act and Clean Water Act make most sense when one understands that their drafters and sponsors intended them as enactments, not just of specific regulatory instruments, but of a new set of defining national commitments. Features of the acts that have come in for persistent and cogent criticism, notably their embrace of unattainable goals and relative indifference to cost-benefit accounting, made sense to those who created them because they seemed to fit the statutes’ status as national commitments.

Part IV comes to the present, asking how we might look at today’s environmental politics differently if we regarded it as part of the practice of public dispute that this paper traces. Concentrating on the superficially mysterious initiatives of local governments to address climate change, I argue that these are much more readily intelligible if they are understood as parts of a continuing argument among citizens, addressed to the issue of what values bear on our relation to the natural world. A brief conclusion follows.

I. The Rise of Conservation Language in the Nineteenth Century

A. Early Attitudes: the imperative of use and a limited exception

Alexis de Tocqueville in 1831 bewildered Michigan frontiersmen by expressing a wish to see the primeval American forest, not for timber or land speculation, but for aesthetic contemplation.²³ Tocqueville wrote, “To break through almost impenetrable forests, to cross deep rivers, to brave pestilential marshes ... those are exertions that the American readily contemplates, if it is a question of earning a guinea; for that is the point. But that one should do such things from curiosity is more than his mind can take.”²⁴ The absence of aesthetic response is hard to prove, but here is another suggestive instance.

²³ Alexis de Tocqueville, *Journey to America* 335 (J.P. Mayer, ed., George Lawrence, trans., 1959).

²⁴ *Id.*

The journals of trapper and cartographer Jedediah Smith, recording extraordinary journeys across the continent in the decade before Tocqueville's visit, are rich with curiosity, piqued by everything from the manners of British commanders in Oregon to the religious observances of Spanish California, as well as a great deal of humane sympathy for Native Americans (some of whom would slay Smith a few years later). The journals lack a single expression of awe, even admiration, toward the landscapes Smith crossed.²⁵

1. The imperative of use

The indifference had an affirmative corollary, the conviction that the land existed for productive use. This belief found exemplary expression in Congressional debates over management of forests on federal land. Early Secretaries of the Interior tried to assert control over massive timber pirating on western lands, an effort which culminated in the creation of the National Forest system in 1890. Suddenly on the defensive, traditionalists indignantly set out their worldview, which rested on the right of individual settlers to extract resources from the public lands.

In 1878, Interior Secretary Carl Schurz, a veteran of Germany's liberal 1848 revolutions, anti-slavery activist, and former senator from Missouri, invoked a broadly drafted 1831 statute (originally intended to ensure a supply of wood for building naval vessels) to stop unauthorized timbering on federal land.²⁶ Besides genteelly delivered nativist slurs, senators (many of them recently Schurz's colleagues) accused him of instituting tyranny, violating the traditional prerogatives of settlers, and hamstringing western development.²⁷ The arguments were woven together from several strands. Senators invoked the Declaration of Independence, which in its bill of particulars had complained of the 1763 prohibition on settlement west of the Alleghenies.²⁸ They argued that timbering was a traditional prerogative of settlers, and that equitable treatment as between the settlers of Midwestern public lands and those of the West required maintaining the right.²⁹ They claimed that settlers had earned the right to timber by embracing the risks and burdens of developing the West.³⁰ They argued finally that commercial-scale timbering was functionally necessary to develop the Western economy, lest the settlers be thrown back into primitive self-reliance without division and specialization of labor.³¹ They denounced restrictions on timbering as "spoliation" and "robbery of the poor";³² as driving settlers into "barbarism";³³ and as "depopulating" the Western lands.³⁴

²⁵ Jedediah Smith's Journals – first and second visits to California, available at <http://www.xmission.com/~drudy/mtman/html/jsmith/index.html> (last visited Jan. 31, 2009).

²⁶ See Paul Gates, *History of Public Land Law Development* 531-61 (1968).

²⁷ 1878 Cong. Rec. 1861-69, 1719-23. On "slurs," see *id.* at 1721 (statement of Sen. Blaine) ("The Secretary of the Interior does not happen to be a native of this country.").

²⁸ *Id.* at 1722 (statement of Sen. Blaine) ("I know of nothing 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.'").

²⁹ *Id.* (Statement of Sen. Teller) ("I claim that nothing is demanded by the people in the Territories now that had not been conceded to all settlers in the new Territories.").

³⁰ See *id.* at 1721 (statement of Sen. Blaine) ("it is a thing which has been conceded by the Government, that the hardy pioneer who goes forth and bears the flag of civilization onward against difficulties and dangers that appall stout hearts ... shall have the air and the water and the wood").

³¹ See *id.* at 1861 (statement of Sen. Blaine).

³² *Id.* at 1865 (statement of Sen. Eustis).

A rhetorical shell game was at work in these arguments, to be sure: the small settlers whose rights the indignant senators invoked were not the real occasions of Schurz's action. Those were large timber operations, often working through the nominal homesteading claims of settlers, and engaged in – depending how one saw the matter – plunder or pioneering development.³⁵ The character of the arguments is nonetheless revealing. These arguments, deliberately echoing those of rebellious Atlantic seaboard colonists a century earlier, linked equal status in the political community with open access to frontier resources: to restrict settlers' access was to demote them to a sort of imperial vassalage.³⁶ They also partook of the anti-monopoly, open-market impulses of Jacksonian and Free Labor agendas, in which the freedom to participate in markets was essential to full standing in the polity.³⁷ The archetypal contrast for these arguments was between full social and political participation for all and monopolistic constraint protecting particular interests. This view implied a conception of the public domain: as held in trust for open use by, and prompt disbursement to, the citizens who had the only ultimate and just claim to it. Federal retention of public lands was, in this view, monopoly – and of an especially pernicious sort, because the lawmaker assigning the privilege was also its beneficiary.³⁸ There was scant room for any idea of the public domain as an enduring legal category subject to a distinct set of principles.³⁹

2. A limited exception: “curiosities and wonders” in the early parks

A signal exception highlights the rule. Congressional discussion of Yellowstone National park, established in 1872, and the 1864 Congressional grant of Yosemite Valley to California “for public use, resort, and recreation,”⁴⁰ involves places that are today's paradigms of public-minded preservation. In these debates, even defenders of the parks treated them as anomalies in a general practice of use and disbursement, and the aesthetic value they associated with the parks was much narrower than later Romantic ideas. In an 1883 debate over administration and funding of Yellowstone,⁴¹ the threshold issue was whether any portion of federal public lands should remain in government hands or, as Senator Ingalls of Kansas put it, “The best thing that the Government could do with the Yellowstone National Park is to survey it and sell it as other public lands are sold.”⁴² Ingalls's position was a representative fragment of the general view that government's

³³ Id at 1867 (statement of Sen. Sargent).

³⁴ Id.

³⁵ See Gates, History at 531-61 (setting out the history of unauthorized timbering on public lands).

³⁶ See generally Aziz Rana, *Settler Empire and the Promise of American Freedom* (manuscript forthcoming from Harvard UP: on file with author).

³⁷ See Eric Foner, *Free Soil, Free Labor, Free Men* 11-18, 27-29 (1970) (setting forth these ideas).

³⁸ See 1878 Cong. Rec. 1869 (statement of Sen. Teller) (denying that “there is any law ... that authorizes the Secretary of the Interior to turn himself into a wood-peddler and to peddle out the timber from the public domain”).

³⁹ The narrow exception was that class of semi-public goods traditionally governed by the public trust doctrine. That the doctrine has in some instances become a principle of environmental management in the twentieth century is an ironic development. For an introduction to this issue, see David C. Slade, R. Kerry Kehoe, & Jane K. Stahl, *Putting the Public Trust Doctrine to Work* (2d. ed., 1997).

⁴⁰ 1864 Cong. Globe 2300 (May 17).

⁴¹ In its early years, Yellowstone was the scene of poaching massacres and general lawlessness, and federal troops oversaw the park for some time. See Jacoby, *Crimes Against Nature* at 121-46.

⁴² 1883 Cong. Globe 3488 (March 1).

role was to disburse public lands to citizens and corporations that would use them productively.

That view defined the arguments available for parks conservation. Senators defending the parks described them as bizarre and wondrous, but without the spiritualized conception of nature that later became prominent. Defending Yellowstone, Senator Vest of Missouri sounded what, to a carelessly anachronistic eye, could seem a twenty-first century argument. The park was “the great wonder-land of the world,” a “great breathing-place for the national lungs,” and a dignifying national project, a “republican park” on par with the royal parks of Europe, “free to the people of the States, with these great curiosities that exist nowhere else[.]”⁴³ This appears on its face to be the Romantic aesthetics of morally educative nature, John Muir slightly *avant la lettre*. A bit earlier in the debate, however, Vest clarified just what he valued in Yellowstone. Addressing the call to dispose of the valley to private owners, he declared, “If I had control to-day of 5,000 acres of that park, the rest of it could be disposed of ... Nobody goes to that park to see any of it except the geysers and the falls and the Yellowstone Lake. Take those out and the rest of it is simply useless ... mere leather and prunella.”⁴⁴ The argument, then, was for preserving, and ensuring public access to, the most extraordinary features of the American landscape; but Vest’s emphasis on the freakishness of that landscape sets his terms, “wonders” and “curiosities,” in a revealing light. His Yellowstone was one part spa, two parts circus, and no part spiritualized nature. When Vest referred to Yellowstone’s geysers as “the most wonderful, the most singular of all the productions of nature upon this continent,”⁴⁵ he intended a sense of the park’s significance that was quite compatible with Ingalls’s objection: “I do not understand myself what the necessity is for the Government getting into the *show business* in the Yellowstone National Park.”⁴⁶

The Senate’s brief discussion of the Yosemite grant to California also highlights both the primacy of nature’s use-value and the narrowness of the aesthetic grounds for preservation. John Conness of California, defending the grant, argued that the acres at issue “are for all public purposes worthless, but ... constitute, perhaps, some of the greatest wonders of the world.”⁴⁷ The pairing of worthlessness and uniqueness highlights both the use-based meaning of “worth” and the sense in which “wonders” was meant. Conness went on to defend the grant with a description of the incredulity that a section from one of the valley’s giant sequoias had caused at the London World’s Fair, where “[t]he English who saw it declared it to be a Yankee invention, made from end to end.”⁴⁸ It was the very oddness of the valley that made the special federal grant *sui generis* and thus compatible with the conventional program of privatizing the public domain for productive use. Conness 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 It was important that the grant be unique, for those who opposed reserving land in public hands were ready

⁴³ Id.

⁴⁴ Id. at 3487 (internal quotations omitted). According to casual internet research, prunella provides an herbal cure for syphilis – an interesting glimpse into the mind of a nineteenth-century senator.

⁴⁵ Id. at 3484.

⁴⁶ Id. at 3488 (emphasis added).

⁴⁷ 1864 Cong. Globe 2300 (May 17).

⁴⁸ Id. at 2301.

⁴⁹ Id.

with Ingalls's argument that federal administration of Yellowstone was "an incubus," the demon-seed of bureaucratic management.⁵⁰

B. New Ways of Experiencing Nature: from Romantic aesthetics to the politics of Romanticism

1. Background innovations

For all their instrumentalism, ideas of nature in mid-nineteenth century America had already come far from the stark, Puritan perspective of William Bradford, governor of the Plymouth colony in many of its earliest years, who described the new land as "a hideous and desolate wilderness" of "wild and savage hue."⁵¹ In 1814, the young William Cullen Bryant promised "To him in whom the love of Nature holds/Communion with her visible forms, she speaks/A various language[.]"⁵² Bryant's poetry, in which he later declared, "The groves were God's first temples," would contribute mightily in later decades to the project of American literary nationalism.⁵³ These Romantic sentiments, however, remained literary delectations, unavailable as terms of political persuasion and commitment.

Between Governor Bradford's Plymouth and Tocqueville's Michigan, the same terms that Bradford applied to unwelcoming Massachusetts had become the keys to the aesthetic concept of the sublime. Sublimity, as Edmund Burke described it, arose in response to enormous power, vast size, and profound obscurity – whatever tended toward infinity.⁵⁴ Arising from innate terror of death, it was literally overwhelming, a surrender of mental self-control to the power of encounter with nature's extremes.⁵⁵ Yet the sublime was, in its terror, "delightful," a kind of recreational awe, an experience of one's own impending obliteration without the dire consummation.⁵⁶ Immanuel Kant turned Burke's account to a different end, claiming that the resistance the mind offered to sublimity's terror provided a symbol of freedom, a hint of the noumenal will, which enabled rational beings to choose and legislate for themselves.⁵⁷ Sublimity thus edified by inspiring rational independence from the same instinctual terror it excited. William Wordsworth sounded similar themes, describing sublime nature as both source and symbol of the potential sublimity of the mind.⁵⁸ Vitality, moral knowledge, and

⁵⁰ 1883 Cong. Globe 3488 (March 1).

⁵¹ See William Bradford, *A Hideous and Desolate Wilderness*, 282, 283 in *Environment: An Interdisciplinary Anthology* (Glenn Adelson et al., eds.) (2008). It would be a mistake to understand Bradford's view as simple abhorrence of wilderness, as some, notably Roderick Nash, have done. See Nash, *Wilderness* at 23-25. Much more helpful is William Cronon's recognition that wild nature was associated with biblical ideas of spiritual testing and sojourn, with tied into turn into the idea of the settling of North American as a covenantal project. See Cronon, *Trouble with Wilderness*. This paper essentially begins in the nineteenth century, and does not engage these themes.

⁵² William Cullen Bryant, *Thanatopsis*, opening lines (1814).

⁵³ William Cullen Bryant, "A Forest Hymn," first line.

⁵⁴ See Edmund Burke, *A Philosophical Inquiry into the Origin of Our Ideas of the Sublime and Beautiful* 71 (James T. Boulton, ed., Notre Dame Press, 1968) (1757).

⁵⁵ Burke described sublimity as "productive of the strongest emotion which the mind is capable of feeling," the terror of death. *Id.* at 39-40.

⁵⁶ *Id.* at 40 ("When danger or pain press too nearly, they are incapable of giving any delight, and are simply terrible; but at certain distances, and with certain modifications, they may be, and they are delightful").

⁵⁷ Kant, *Critique of Judgment* 109-14 (Meredith trans.).

⁵⁸ See William Wordsworth, *The Prelude*, Book 13, lines 290-93 ("the forms/Of Nature have a passion in themselves,/That intermingles with the works of man/To which she summons him"). In the philosophical

spontaneous love all coursed through nature. Access to them was concentrated in the most spectacular places, and to find the mutual consummation of those currents with the corresponding forces in one's own mind "alone is genuine liberty:/... one perpetual progress smooth and bright[.]"⁵⁹

In the United States, Ralph Waldo Emerson had proposed a view close to Kant's and Wordsworth's: the human mind and the natural world bodied forth the same organizing principles.⁶⁰ To apprehend nature directly was to encounter one's self in external form.⁶¹ That self-knowledge, in turn, enabled freedom of a certain sort: life lived only by the constraints indigenous to one's own being.⁶² In *Walden*, Henry David Thoreau tried to perform what Emerson had urged, setting out a practice of attentiveness to nature's places and processes as a path to self-awareness.⁶³

These literary and philosophical developments make up the backdrop from which John Muir's popularizing innovations emerged to provide the lexicon of new social movements. All these figures were engaged in inaugurating and giving voice to a mode of experience, in which religious inspiration was relocated in the natural world and recast in terms both aesthetic and vitalist: the touchstone was visual and intellectual stimulus that embodied nature's most vital forces and, in so doing, called forth the corresponding forces in human observers.

2. John Muir's Popular Innovation

John Muir, whom his Sierra Club acolytes called without irony "John of the Mountains," was not an innovator in ideas. His writing is inconsistent on the relations

summation of his early poetry, he drew particular attention to the Welsh peak Snowdon "A fixed, abysmal, gloomy, breathing-place--/[where] Mounted the roar of waters, torrents, streams/Innumerable, roaring with one voice!" *Id.*, Book 14, lines 57-59. In that sublime setting "I beheld the emblem of a mind/That feeds upon infinity, that broods/Over the dark abyss, intent to hear ... A mind sustained/By recognitions of transcendent power[.]" *Id.* at lines 70-74.

⁵⁹ *Id.* at lines 132-34.

⁶⁰ See Ralph Waldo Emerson, "Nature" 5, 33 in *The Essential Writings of Ralph Waldo Emerson* (Brooks Atkinson, ed., 2000) (1836) ("[S]pirit creates ... behind nature, throughout nature, spirit is present; one and not compound, it does not act on us from without ... but spiritually, or through ourselves ... [t]he world proceeds from the same spirit as the body of man.... We are as much strangers in nature as we are aliens from God.").

⁶¹ See *id.* ("man has access to the entire mind of the Creator and is himself the creator in the finite"); Emerson, *The American Scholar* (1838), in *Essential Writings* 43, 45 ("[T]o this schoolboy under the bending dome of day, is suggested that he and it proceed from one root; one is leaf and one is flower; relation, sympathy, stirring in every vein. And what is that root? Is it not the soul of his soul?").

⁶² See Emerson, *American Scholar* at 54 ("the definition of freedom, 'without any hindrance that does not arise out of his own constitution'"); *Nature* at 37-38 ("Man is the dwarf of himself. Once he was permeated and dissolved by spirit. He filled nature with his overflowing currents.... The problem of restoring to the world original and eternal beauty is solved by the redemption of the soul.... The reason why the world lacks unity, and lies broken and in heaps, is because man is disunited with himself. He cannot be a naturalist until he satisfies all the demands of the spirit.").

⁶³ See Henry David Thoreau, *Walden* (Modern Library, 2000) (1854) 149 ("When my hoe tinkled against the stones, that music echoed to the woods and the sky, and was an accompaniment to my labor which yielded an instant and immeasurable crop. It was no longer beans that I hoed, nor I that hoed beans"); 176 ("A lake is the landscape's most beautiful and expressive feature. It is the earth's eye, looking into which the beholder measures the depth of his own nature"); 290 (concluding upon careful examination of a bank of thawing soil that "[t]he earth is not a mere fragment of dead history ... but living poetry"); 300-12 (arguing that all knowledge of the world is only knowledge of one's self, which is the great goal).

among theism, pantheism, and paganism; between humanism and the bio-centric “inhumanism” of such later figures as the California poet Robinson Jeffers,⁶⁴ and between the utilitarianism of his sometime ally Gifford Pinchot and an alternative identifying incommensurable value in nature’s aesthetic, spiritual, or intrinsic significance.⁶⁵ His deliberate identification with Romantic traditions, however, is unmistakable. Muir was schooled in the poetry of Wordsworth, to whose grave at Grasmere he made a pilgrimage in 1893.⁶⁶ He sought to present himself as a successor to Emerson in the vein of American prophecy, particularly in an account of the aged New Englander’s visit with the young adoptive Californian in Yosemite.⁶⁷ He was directly responsible for converting Thoreau’s “In Wildness is the preservation of the world,” a psychological and perhaps metaphysical principle, into a rhetorical endorsement of “wilderness,” literal untouched places.⁶⁸

For a man who did much to shape a new social movement, he held vague views on the great disputes of his time: labor, industrialism, imperialism, and racial and gender relations.⁶⁹ It may have been because of his vagueness that Muir so readily became symbol and muse of the first generation of American environmental politics. His writing amounted to a pastiche of landscape description and travel narrative, with episodic flights of soaring prose describing intense delight and a sense of revelation in the face of nature’s beauty. Although these passages lacked theological and metaphysical structure, they consistently conveyed certain ideas. Everyday life was spent in instrumental activity, spilled out in drab settings, which blunted the eyes and the mind.⁷⁰ In the most spectacular natural settings, particularly those that an earlier generation of aesthetic theorists would have called sublime – mountain peaks, endless vistas, sheer rock, glacial faces – something entirely different broke through in the mind (though, as Yeats later wrote of love, it came in at the eye).⁷¹ It had, as Muir described it, none of the terror of earlier sublimities, but its other sensations were aligned with those: awe, rapture, ecstasy, and wonder. This aesthetic and emotional torrent had moral import: it revealed the world and mind as good, benign, characterized by harmonies in which even death (though mostly invisible) played a fitting role and mortally threatening events such as storms and earthquakes were welcome reminders of nature’s vitality. Periodic encounter with

⁶⁴ See Robinson Jeffers, “Hurt Hawks.”

⁶⁵ Muir often referred to animals as “animal people” to emphasize their equal standing with his own species, but he also accepted the near-extinction of the American bison as progress. See John Muir, *Our National Parks* 19-21 (on “animal people”) 361-62 (on the buffalo), (1901).

⁶⁶ See Donald Worster, *A Passion for Nature: The Life of John Muir* 160-61, 336-37 (2008).

⁶⁷ See John Muir, *Our National Parks* 144-50 (1901) (setting out Muir’s disappointment that the aged could not join him in the high mountains, suggesting that this represented the exhaustion of New England transcendentalism as a cultural force, and concluding with a recollection of his own visit to Emerson’s grave).

⁶⁸ See Worster, *A Passion for Nature* at 319 (point out Muir’s 1890 Thoreau-echoing and Thoreau-revising claim, “In God’s wildness lies the hope of the world – the great fresh unblighted, unredeemed wilderness.”).

⁶⁹ See Worster, *A Passion for Nature* at 276-330.

⁷⁰ See, e.g., John Muir, *Our National Parks* 3 (1901) (proposing proposed outdoor recreation as a tonic for “tired, nerve-shaken, over-civilized people ... [a]wakening from the stupefying effects of the vice of over-industry and the deadly apathy of luxury”).

⁷¹ See William Butler Yeats, *A Drinking Song*

nature's most dramatic landscapes, Muir insisted, would restore to the mind its own proper harmony and vitality.⁷²

The sensation was not new, of course, nor had it been altogether restricted to literary expression.⁷³ Muir's widely read books and magazine articles, though, provided something new: a manual for experience of a certain type. Muir's writing enacted a journey on foot over extreme and spectacular landscapes; a precise, appreciative, even reverent way of seeing the land as one moved across it; and a register of overwhelming yet exquisite emotional response, with a benign moral interpretation already latent in it. To read Muir was to learn to make that experience your own. It was in this capacity, as progenitor of a mode of widely shared experience and a language for expressing it, that he contributed most to the social movement in which the Romantic strain of environmental public language emerged.

3. A Romantic social movement: the language of experience in the Sierra Club

This was the view of Muir's accomplishment among his admirers in and outside the Sierra Club, whose presidency he held for 22 years after its founding in 1892. William Frederic Bade, a scholar of Near Eastern religion and archeologist at Berkeley, wrote a typical passage in a memorial issue of the *Sierra Club Bulletin* after Muir's death in 1915: Placing Muir among "prophets and interpreters of nature," he forecast: "Thousands and thousands, hereafter, who go to the mountains, streams, and canons [sic] 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."⁷⁴ A year later, commenting on the posthumous appearance of a book drawn from early journals, the *New York Times* reflected, "many who have sought a vision of truth beneath the surface of nature have found it through the eyes of John Muir."⁷⁵ Even Muir's honorary doctorate of laws from the University of California picked him out as "uniquely gifted to interpret unto other men her mind and ways."⁷⁶ The premise of nature's mindedness, even as a rhetorical flourish, shows the pervasiveness among Muir's admirers of the broadly Transcendentalist and pantheistic attitudes that he frequently displayed: the nature he taught his followers to encounter was, in its order and vitality, the ideal type of their own minds.

From its earliest issues, the Sierra Club's *Bulletin* served as a public space in which members could give voice to the sentiments that Muir put down and create a limited public culture of aesthetic and spiritual resonance with nature. The many accounts of journeys to the high Sierra echo Muir's style and themes and set them within

⁷² See Muir, *Our National Parks* at 82, 86 (promising readers "a multitude of still, small voices ... directing you to look through all this transient, shifting show ... into the truly substantial spiritual world" and "everything ... hospitable and kind, as if planned for your pleasure, ministering to every want of body and soul"). For a summary of Muir's thought, see Donald Worster, *A Passion for Nature: The Life of John Muir* 5-10, 99-102, 366-431 (2008).

⁷³ In 1851, L.H. Bunnell, a member of a federal military mission to punish California Indians who had resisted the incursions of gold miners, reported of entering Yosemite Valley: "As I looked, a peculiar exalted sensation seemed to fill my whole being, and I found myself in tears of emotion." Allin, *The Politics of Wilderness Preservation* at 25.

⁷⁴ William Frederic Bade, *To Higher Sierras*, 10 *Sierra Club Bulletin*, No. 1, 38-40, 40 (Jan. 1916).

⁷⁵ *Notable Books in Brief Review*, *N.Y. Times Book Rev.*, at 4 (Jan. 21, 1917).

⁷⁶ *John Muir, Doctor of Laws, University of California*, 10 *Sierra Club Bull.*, No. 1, 24 (Jan. 1916).

a mode of sociality defined by aesthetic encounter with nature. Marion Randall, an early and longtime member of the Club, wrote in 1905 that its expeditions restored its members for ordinary life by reconnecting them with morally educative beauty: “For a little while [on an outing] you have dwelt close to the heart of things ... lived daylong amid the majesty of snowy ranges, 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.’ And these things live with you ... back in the working world ... even until the growing year once more brings around the vacation days, and you are ready to turn to the hills again, whence comes, not only your help, but your strength, your inspiration[.]”⁷⁷ An account of an ascent of Mt. Lyell describes “[h]ours pass[ing] like moments” in “this sacred spot.”⁷⁸ A group of college friends, divided by ideological conflict (one is a sort of socialist, another, the author, a conservative Congressional representative) find in the high Sierra “The varnish of civilization was rubbed off, and the true strata of individual organism developed. ... We ... learned to interpret and love the ‘various language’ in which nature speaks to the children of men. ... We were acolytes in the grand temple of the eternal.”⁷⁹ Another reporter – as it happened, no tourist but a very serious mountaineer – emerged from a life-threatening snowstorm into sunlight reflecting, “to be confronted with a sight that touches to the quick the aesthetic nature, and thrills the immaterial soul within as it had never thrilled before – what a lesson in the duality of man!”⁸⁰

The Sierra Club’s correspondents developed and reinforced a language within their movement in which expressions of nature’s aestheticized spirituality were ordinary features of the journey into extraordinary landscapes. They were, to be sure, lessons for visitors, not saints: such pieces frequently ended by wistfully acknowledging that transient, recreational encounter with sublime nature must in end return to the settled world.⁸¹ When written by more serious explorers, the same articles were also practical how-to guides for outdoors spiritual seekers, with detailed descriptions of routes, seasons, and appropriate gear. Taking Muir’s language as its starting point, a movement was inaugurating a way of experiencing the natural world and a (for them, at least) morally authoritative way of expressing that experience, which both confirmed its reality and trained others to feel it themselves.

C. The New Conservation Politics: Romantics and Progressives

1. Two contrasts with “materialism”: the Sierra Club and the new nationalism

The elite, professional, and middle-class reformers of the late nineteenth century, often ranged together under the rubric “Progressive,” defined themselves against what they saw the wasteful and exploitative economic individualism of the nineteenth century.⁸² Some adopted public-lands management as a paradigm of rational, expertise-

⁷⁷ Marion Randall, *Some Aspects of a Sierra Club Outing*, 5 *Sierra Club Bull.* 221, 227-28 (1905).

⁷⁸ Helen M. Gompertz, *A Tramp to Mt. Lyell*, 1 *Sierra Club Bull.* 136, 141 (1894)

⁷⁹ John R. Glascock, *A California Outing*, 1 *Sierra Club Bull.* 147, 161 (1895).

⁸⁰ Theodore S. Solomons, *A Search for a High Mountain Route from the Yosemite to the King’s River Canon*, 1 *Sierra Club Bull.*, 221, 236 (1895).

⁸¹ See, e.g., Randall, *Some Aspects* at 227-28.

⁸² See Theodore Roosevelt, *The New Nationalism* (Speech delivered Aug. 31, 1910, Osawatomie, KS); Gifford Pinchot, *The Fight for Conservation* (1910). For more general introductions to the development, see Daniel T. Rodgers, *Atlantic Crossings: Social Policies in a Progressive Age* (1998) (detailing the rise of Progressive thought with an emphasis on themes uniting British, Continental, and American reformers);

driven state action in the public interest.⁸³ Such reformers typically denounced the spoils-driven and often corrupt politics of the post-Civil War era and called for reclaiming principle and higher purpose for politics.⁸⁴ Uniting these views of political and economic life was a perception that the orienting values of industrial, democratic America had grown narrow, selfish, and debasing of individuals and, by extension, the nation.⁸⁵

Their alternative involved expanded conceptions of the role of government, particularly at the national level, and an elaboration of the idea of “the public interest,” as distinct from individual, class, or sectional interests.⁸⁶ These ideas had several bases. A part of the motive was in empirical accounts of problems. New descriptions of complex,

Morton Keller, *Regulating a New Society: Public Policy and Social Change in America, 1900-1933* (1994) (surveying the motives and programmatic agendas of Progressives); Keller, *Regulating a New Economy: Public Policy and Economic Change in America, 1900-1933* (1990) (same, with an emphasis on economic regulation); Thomas K. McCraw, *Prophets of Regulation* (1984) (using portraits of Charles Francis Adams, Louis Brandeis, James Landis, and Alfred Kahn as touchstones in portraying the diversity and uniting concerns of Progressivism); Hays, *Conservation and the Gospel of Efficiency* (connecting an account of Progressive commitments to natural resource regulation); Richard Hofstadter, *The Age of Reform: Bryant to FDR* (1955) (arguing in particular for the importance of status anxiety among the motives of Progressives).

⁸³ See Richard N.L. Andrews, *Managing the Environment, Managing Ourselves: A History of American Environmental Policy* 136-38 (2d. ed. 2006) (on conceptions of the public interest in the Progressive approach to conservation); Rodgers, *Atlantic Crossings at 1-93* (setting out the worldview of reformers); McCraw, *Prophets* at 302-05 (describing reformers’ ideas of the goals of regulation and of the condition of an unregulated economy); Hays, *Conservation and the Gospel of Efficiency* 3-4 (noting the centrality of the idea of the public interest in Progressive reformers’ self-understanding and criticizing historians for adopting the idea uncritically); Theodore Roosevelt, *The New Nationalism* (arguing that both economic regulation and management of natural resources must favor the public interest, not special interests, to secure progress and avert social conflict); Theodore Roosevelt, *First Annual Message to Congress* (Dec. 3, 1901) (stressing throughout the mutual consistency of all legitimate interests in a properly regulated economy); Gifford Pinchot, *Prosperity, in American Earth: Environmental Writing Since Thoreau* (Bill McKibben, ed., 2008) 173, 173-80 (arguing that appropriate regulation and management of natural resources is essential to stopping destructive exploitation by individual users and instead serving long-term national interest).

⁸⁴ See Eric Foner, *Reconstruction: America’s Unfinished Revolution 1863-1877* 469-99 (1988) (describing the rise of reformism in the face of massive perceived and actual corruption).

⁸⁵ See Roosevelt, *New Nationalism*. *supra* n. __ (arguing that the country needed a new civic spirit); Roosevelt, “The Strenuous Life” (speech delivered April 10, 1899, Chicago, IL) (warning that selfishness and lassitude threatened to sink the country into severe decline); Oliver Wendell Holmes, Jr., “A Soldier’s Faith” (speech delivered May 30, 1895, Cambridge, MA) (lamenting the rise of materialism over heroic values); William James, *The Moral Equivalent of War* (speech delivered 1906, San Francisco, CA) (praising heroic and warrior-like forms of motivation and declaring mere comfort and inconvenience intolerable as social goals). It seems clear that at least some of this criticism reflected the reformist constituencies’ decline in civic and economic status and their wish to create a culture in which their values and cultural characteristics, their “refinement,” would attract respect. That is not to say, of course, that their reformist program was insincere, only that it expressed a complex interplay of interests and ideas, in which distinctions between the classes of motivation could only be approximate, as status-based interests made certain principles attractive, and those principles in turn helped constitute and reinforce status-based interests by articulating and justifying them. See Hofstadter, *Age of Reform*.

⁸⁶ See Keller, *Regulating a New Economy* at 7-19 (on competing ideas of the nature of the industrial economy and the appropriate role of government in its management); Foner, *Reconstruction* at 469-80 (on the rising idea of public interest); Hays, *Conservation* at 261-76 (on the role of conservation in the Progressive agenda of a regulatory national state).

industrial society concentrated on issues such as public health, the growth of cities, and the terms and conditions of employment, which seemed both paradigms of interdependence and occasions for rational management.⁸⁷ There was parallel development in natural resources management. Early conservationists identified spatial and temporal externalities from unregulated timber exploitation.⁸⁸ Rapid cutting might leave future generations too few trees, while resulting erosion threatened downstream irrigators and settlements with flood, drought, and siltation.

Another part of the Progressives' motive was lodged in social vision. Conservationist Gifford Pinchot, President Theodore Roosevelt, and their allies were persuaded that the laissez-faire view of society inculcated narrow selfishness and sapped civic energies. They sought to impart a distinctly civic register of motivation, insisting that Americans owed unacknowledged debts to one another and to future generations, and that duty should be a dignifying source of satisfaction, not an unwelcome burden.⁸⁹ Roosevelt's and Pinchot's image of the public domain combined the empirical and social-vision elements of Progressivism. In that image, rational management of productive resources was both practically necessary to avoid waste and spoliation and normatively appropriate as an act of government on behalf of the whole community.⁹⁰ Where the laissez-faire social vision had located citizen dignity in the ideal of equal social and economic status, the Progressive image found citizen dignity in belonging and contributing to a polity that acknowledged and competently executed its duties to the community.⁹¹

⁸⁷ See Andrews, *Managing the Environment* at 109-35 (2d. ed. 2006) (on the role of public-health activists in the development of the conservation movement); Hays, *Conservation* at 176 (noting a "conservation committee" composed of prominent individuals in 1908 proposed a federal public health agenda as part of its agenda and that the National Conservation Congress in 1909 adopted as its purpose "to seek to overcome waste in all natural, human, or moral forces"); Charles van Hise, *The Conservation of Natural Resources in the United States* 359-79 (1910) (arguing for public-health measures, protective labor law, and eugenics as aspects of "the conservation of man"); Declaration of Principles, North American Conservation Congress (Appendix II in van Hise, *Conservation* at 385, 385-93 (an organization chaired by Gifford Pinchot) (Feb. 23, 1909) (presenting "public health" first among its priorities, ahead of forests, waters, and "lands").

⁸⁸ See Gates, *History* at 548-49 (on early American ecologist George Perkins Marsh's influence); George Perkins Marsh, *Man and Nature* (David Lowenthal, ed., Harvard UP, 1965) (1864) (setting out complex effects of ecological interdependence); Hays, *Conservation* at 5-26 (on growing understanding of the relation between forest conservation and flood control).

⁸⁹ See Roosevelt, *New Nationalism* (arguing for the importance and value of civic spirit); Roosevelt, *Strenuous Life* (same); James, *Moral Equivalent* (same); Pinchot, *Prosperity* at 179-80 (arguing for importance of a view to long-term shared interests as necessary to both conservation and national success); van Hise, *Conservation* at 378-79 (arguing that conservationism implies, and requires, putting the long-term success of humanity over one's own interests).

⁹⁰ See Hays, *Conservation* at 121-23 (arguing that by 1908, "the threads of resource policy had become interwoven in a single coherent approach," an ideal "new world which conscious purpose, science, and human reason could create out of the chaos of a laissez-faire economy," ushering in "[t]he Millennium ... when humanity shall have learned to eliminate all useless waste... to apply the common sense and scientific rules of efficiency to the care of body and mind and the labors of body and mind" as well as to the natural world) (internal quotations omitted); Pinchot, *Prosperity* at 173-75 (arguing that "the real future of the Nation" depends on overcoming "waste in use" of all resources, natural and human).

⁹¹ See, e.g., James, *Moral Equivalent* ("Why should men not some day feel that it is worth a blood tax to belong to a collectivity superior in *any* respect? Why should they not blush with indignant shame if the community that owns them is vile in any way whatsoever?"); Woodrow Wilson, *First Inaugural Address*

Two inflections of this reformist spirit interacted with nascent environmental public language. One, which was a frequent refrain in the Sierra Club, was a contrast between “materialism” and the aesthetic and spiritual values that the Club’s members associated with nature. In his memorial for Muir, William Colby, earliest secretary of the Club, warned that “Muir will never be fully appreciated by those whose minds are filled with money getting and the sordid things of modern every-day life” and lamented the indifference of “those ... engaged in making everything within reach ‘dollarable[.]’”⁹² Robert W. Underwood Johnson, editor of the *Progressive Century* magazine, opened his memorial to Muir by predicting, “Sometime, in the evolution of America, we shall throw off the two shackles that retard our progress as an artistic nation – philistinism and commercialism – and advance with freedom toward the love of beauty as a principle,” and forecast that Muir would be recognized as a prophet of that transformation.⁹³ The Sierra Club was meant to be, on the one hand, a microcosmic alternative to the mainstream world, what Marion Randall called (nicely combining the radical and nostalgic aspects of the critique) “the socialist’s utopia which you inhabit for a few short weeks[,]” in which the “aristocrats,” those gifted with generosity, fellowship, and physical strength, “are sooner or later bound to appear.”⁹⁴ She described the Club as embodying in equal part “great and noble” public purposes and “an ideal” of “comradeship and chivalry, simplicity and joyousness, and the care-free life of the open.”⁹⁵

High-minded moral dissent merged as early as 1895 with programmatic reformism in the development of the Club’s conservation politics. Members gathered to discuss taking a stand on the pathbreaking conservationist issue of creating permanent national forests in the federal public domain. Joseph le Conte – Sierra explorer, Berkeley professor of engineering, and scion of a prominent family from the South – opened the discussion with an attack on “individualism ... run mad.”⁹⁶ He identified individualism as the dominant idea “in modern times” and accused its adherents of reducing of all social endeavor to selfishness, “the maxim, that society and the government are made for the greatest good of the greatest number. True; but the greatest number is Number One!”⁹⁷ This logical slide from utilitarianism to egoism expressed the ambivalence many Progressives, including early conservationists, felt about the utilitarian account of social life. On one hand, they did not call it false: its axioms, that human interest was the compass of public policy and that each person must count alike, were the cornerstones of principled reformism and bulwarks against both traditional aristocracy and corrupt democracy. On the other, they suspected that, without some higher civic or spiritual

(March 20, 1913) (arguing that the Democratic political victory had brought “a new insight into our own life ... a vision ... of our life as a whole,” prominently including the need for regulation of the economy in the interest of personal security and fair opportunity). For a general discussion of Progressive conceptions of civic dignity, see Jedediah Purdy, *Presidential Popular Constitutionalism* (forthcoming Fordham Law Review) (on file with author).

⁹² William E. Colby, *John Muir – President of the Sierra Club*, 10 *Sierra Club Bull.* 2, 2-3 (1916).

⁹³ Robert Underwood Johnson, *John Muir as I Knew Him*, 10 *Sierra Club Bull.* 9, 9 (1916).

⁹⁴ Marion Randall, *Some Aspects of a Sierra Club Outing* at 222-23.

⁹⁵ *Id.* at 227.

⁹⁶ *Proceedings of the Meeting of the Sierra Club* (Nov. 23, 1895), 1 *Sierra Club Bull.* 268, 270 (1895).

⁹⁷ *Id.*

motive, placing human interests at the center of the moral calculus would invite unchecked selfishness.

With reference to this ambivalence, Le Conte argued that rational public policy depended on personal enlightenment, arguing, “If we compare the cultured man with the uncultured man ... the most striking difference [is] the uncultured man is trying to live for the interests of the ‘now,’ but the cultured man – and in proportion as he is cultured – looks to the future as well as to the present.”⁹⁸ Le Conte identified this “cultured” outlook with recognition that individuals are part of a “social organism” that ties persons together across space and time.⁹⁹ On the basis of this account, he concluded that “nothing can save our timber land except complete reservation by the Government. Every particle of it that is yet left should be reserved ... and used in a thoroughly rational way for legitimate uses only ... removing only such as can be steadily replaced by fresh growth.”¹⁰⁰ This path to expert management, and the utilitarian rationality that justified and guided it, ran through the moral and aesthetic renovation that the Club’s members sought among themselves and throughout society.¹⁰¹

2. Conservation and the new nationalism

The other reformist sentiment that interacted with early environmental language and policy was crystallized in Theodore Roosevelt’s “new nationalism.” Roosevelt shared a worry with figures as various as Oliver Wendell Holmes and William James: that the achievements of modern life – security and prosperity – would erode certain human characteristics that made such achievements possible in the first place and, moreover, comprised qualitatively superior values. These included initiative, heroism, self-sacrifice, and a taste for danger and adventure.¹⁰² Roosevelt conjured up a society of petty self-seeking and lassitude, in which, he warned, the American nation would “rot by inches, like China.”¹⁰³ He also had a horror of social conflict, particularly between economic classes, which he portrayed as another symptom of materialistic self-seeking.¹⁰⁴ He warned that if such conflict prevailed, “tyranny and anarchy were sure to

⁹⁸ Id.

⁹⁹ Id.

¹⁰⁰ Id.

¹⁰¹ Pinchot and other utilitarian reformers of the time also emphasized that conservationist public policy stood or fell with citizens’ commitment to the health and prosperity of future generations in the same polity. See Pinchot, *Prosperity* at 173 “marvelous hopefulness of the American is, as a rule, as short-sighted as it is intense,” 175 (“The vast possibilities of our great future will become realities only if we make ourselves, in a sense, responsible for that future.”); van Hise, *Conservation* at 379 (concluding lines of book) (“Conservations means the greatest good to the greatest number – and that for the longest time.”) (internal quotations omitted).

¹⁰² Holmes, “Soldier’s Faith” (arguing that spiritual poverty was the result of a world of self-interest and prudence, with heroic acts of devotion and sacrifice); Roosevelt, “Strenuous Life” (arguing that the country would decline, not least in the virility of its men and fertility of its women, if its self-interested citizens put their own concerns over national well-being and greatness); James, “Moral Equivalent” (arguing both versions – that a lack of heroic commitment is spiritually impoverishing and bad for the polity as a practical matter, while seeking to make the arguments compatible with pacifist reformism).

¹⁰³ Roosevelt, “Strenuous Life.”

¹⁰⁴ See Theodore Roosevelt, *Fellow-Feeling as a Political Factor*, *Century* (June 1900) (“[M]en are pited against one another in accordance with the blind and selfish interests of the moment. Each is thus placed over against his neighbor in an attitude of greedy class hostility, which becomes the mainspring of his

alternate” as the condition of a collapsed republic.¹⁰⁵ Much like the Sierra Club’s mainly elite members, Roosevelt believed that utilitarian public policy was not self-sustaining but required support from distinct sentiments, above all patriotism and personal boldness and initiative. As he put it, “Conservation is a great moral issue for it involves the patriotic duty of ensuring the safety and continuance of the nation.”¹⁰⁶

Roosevelt devoted much attention to fostering the qualities he saw as civic virtues. Several of his favored approaches centered on public lands. One was to promote common cynosures of the national imagination, shared projects and ideas that would make American identity more salient and potent than sectional, class, or religious alternatives. This idea formed the heart of his “new nationalism,” and its civically sacred objects included war¹⁰⁷ and ostensibly liberalizing imperialism.¹⁰⁸ A second technique was to create conditions in which Americans could mingle and share projects across class and other divisions, and so develop the “fellow-feeling” that Roosevelt praised.¹⁰⁹ A third was to encourage vigorous character, the kind that would embrace challenge and overcome the lassitude and imaginative narrowness that Roosevelt saw at the base of both enervation and class conflict. Ways of making Americans vigorous ranged from the spirit-rallying national projects just described to raising children (always “boys” for Roosevelt) into brave and energetic citizens.¹¹⁰

Progressive conservation policy figured in all three strategies for creating civic virtue. First, land management “in the national interest,” in contrast to the wishes of the extractive industries, was a visible act of commonality transcending faction. In other areas of policy, Roosevelt struggled mightily to portray Progressive regulation of the private economy as perfectly reconciling the interests of labor and capital in a higher public interest. The public lands seemed to present a far easier case. In declaring that

conduct, instead of each basing his political action upon ... his own disinterested sense of devotion to the interests of the whole community as he sees them.”).

¹⁰⁵ Id.

¹⁰⁶ Roosevelt, *New Nationalism*.

¹⁰⁷ Roosevelt, *Fellow-Feeling* (“The war with Spain was the most absolutely righteous foreign war in which any nation has engaged during the nineteenth century, and not the least of its many good features was the unity it brought about between the sons of the men who wore the blue and of those who wore the gray.”).

¹⁰⁸ Roosevelt praised “the might lift that thrills ‘stern men with empires in their brains’” and scorned those who “shrink from seeing us do our fair share of the world’s work, by bringing order out of chaos in the great, fair tropic islands from which the valor of our soldiers and sailors has driven the Spanish flag.”

Theodore Roosevelt, *The Strenuous Life* (Chicago, April 10, 1899).

¹⁰⁹ “The only way to avoid the growth of these evils is, so far as may be, to help in the creation of conditions which 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 caste bonds and put each on his individual merits, there is certain to be a regrouping independent of class lines.” Even more important, “[M]en who work together for the achievement of a common result in which they are intensely interested are very soon certain to disregard, and, indeed, to forget, the creed or race origin or antecedent social standing or class occupation of the man who is either their friend or their foe. They get down to the naked bed-rock of character and capacity.” Roosevelt, *Fellow-Feeling*.

¹¹⁰ “If you are rich and are worth your salt, you will teach your sons that though they may have leisure, it is not to be spent in idleness[.]” Roosevelt, *Strenuous Life*. “Of course what we have a right to expect of the American boy is that he shall turn out to be a good American man. ... He must not be a coward or a weakling, a shirk or a prig. He must work hard and play hard. He must be clean-minded and clean-lived, and able to hold his own under all circumstances and against all comers. It is only on these conditions that he will grow into the kind of American man of whom America can be really proud.” Theodore Roosevelt, *The American Boy*, St. Nicholas (May 1900).

“natural resources must be used for the benefit of all our people, and not monopolized for the benefit of the few,” he could also call the ideal of reconciling economic interests in a regime of fair opportunity and fair reward, “a necessary result of the principle of conservation widely applied.”¹¹¹ Conservation was thus exemplar, even synecdoche, for the ideal of a transcendent public interest pursued by national power, “set apart forever for the use and benefit of our people as a whole and not sacrificed to the shortsighted greed of a few.”¹¹² Second, forest reserves and parks created civic commons in which Americans could escape the class segregation that Roosevelt feared especially pervasive in urban and industrial America:¹¹³ they provided “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.”¹¹⁴ Third, open lands were the ideal training-ground for the masculine virtues Roosevelt set against the lassitude of industrial democracy. He had remade himself as an adult to his own satisfaction by adventuring and ranching in the Dakotas, and he saw the greatest prospect for “a good American man” in “boys who live under such fortunate conditions that they have to do either a good deal of outdoor work or a good deal of what might be called natural outdoor play.”¹¹⁵ The best assurance that the strenuous life would remain available and attractive was to keep open lands where all Americans could test themselves against the elements.

3. Like and unlike

The strands of environmental public language that emerged in the Sierra Club and Roosevelt’s new nationalism were both like and unlike each other. Adherents of both rejected what they saw as the materialism, selfish individualism, and lack of high principle in American life at the close of the nineteenth century. They also shared an ambivalent relationship to utilitarian public policy, seeing it as on the one hand imperative for conservation of public lands, but on the other hand deeply implicated in the same values they decried. Most pointedly, they saw utilitarian policy as unable to produce or sustain the commitments necessary for its own political viability – a view that was of a piece with their conviction that higher values were necessary to preserve and advance American nationhood. Both looked to the natural world, and the public lands in particular, as a source of those higher values.

Here the two strands diverged. In Roosevelt’s nationalism, the American landscape contributed to a this-worldly project of civic virtue, promoting deeper engagement in the concrete projects of national life. In the language that Sierra Club members developed and propagated, encounters with the natural world freed the mind from transient, mundane entanglements in favor of the other-worldly indifference that

¹¹¹ Roosevelt, *New Nationalism*.

¹¹² Theodore Roosevelt, *First Annual Message to Congress* (Dec. 3, 1901).

¹¹³ In “the larger cities ... the conditions of life are so complicated that there has been an extreme differentiation and specialization in every species of occupation, whether of business or pleasure. The people of a certain degree of wealth and of a certain occupation may never come into any real contact with the people of another occupation, of another social standing. ... This produces the thoroughly unhealthy belief that it is for the interest of one class as against another to have its class representatives dominant in public life.” Roosevelt, *Fellow-Feeling*.

¹¹⁴ Roosevelt, *First Annual Message to Congress*.

¹¹⁵ Roosevelt, *American Boy*.

was typical of Muir's attitude to political reform outside his immediate concerns. The high-country pilgrim returned to work and city renewed, but the transformation ultimately sought was inward, and political engagement was mainly instrumental to preserving that possibility by saving beautiful places for spoliation. The new nationalism was spiritually conservative, basically instrumental in its view of nature, and enthusiastically engaged in the politics of institution-building and reform. The Club's way of meeting nature was spiritually radical, inclined to suggest that nature had non-instrumental value, and, outside of the specific problems of lands preservation, politically vague. The two approaches were unmistakably products of the same era and overlapping milieus. Roosevelt, a sometimes brilliant politician, sensed as much when he recruited Muir for a two-man Yosemite expedition, tying his own persona as a Progressive civic prophet to that of the prophet of American nature.¹¹⁶ They produced, however, distinct ways for Americans to understand and dispute their relation to the natural world: as civic and utilitarian *res publica* and a domesticated sublime, an accessible portion of divinity in an otherwise fallen world.

II. Wilderness: From Conservation to Environmentalism

The themes and episodes discussed in the last Part are conventionally described as “conservationist,” in contrast to the “environmentalism” that developed in the 1960s and inspired statutes such as the National Environmental Protection Act, Clean Air Act, and Clean Water Act.¹¹⁷ It is true that the 1960s brought a new set of themes to the heart of public engagement with the natural world: an “ecological” awareness of natural and human phenomena as pervasively interconnected; concern with the public-health effects of pollution; and an emphasis on the intrinsic value of nature itself, not restricted to spectacular places or charismatic species.¹¹⁸ Because of its sudden appearance and novelty, some commentators have called environmentalism “a movement without a history,” a characterization that lends support to suspicion of superficiality and faddishness.¹¹⁹ Others aptly emphasize environmentalism's roots in earlier public-health and good-government campaigns such as those of the League of Women Voters, but fail to account for its distinctiveness.

¹¹⁶ See Worster, *A Passion for Nature* at 276-330.

¹¹⁷ See Andrews, *Managing the Environment* at 201-26 (on “the rise of modern environmentalism” in the 1960s and 1970s, in contrast to earlier modes of conservation); Samuel Hays, *Beauty, Health, and Permanence: Environmental Politics in the United States, 1955-1985* 13-39 (1989) (detailing a transition “from conservation to environment”); cf. Richard Lazarus, *The Making of Environmental Law* 47-54 (2004) (noting the conventional contrast and arguing that the role of public-health activists in both movements forms a continuity that somewhat confounds the distinction).

¹¹⁸ See James Gustav Speth, *The Bridge at the Edge of the World: Capitalism, the Environment, and Crossing from Crisis to Sustainability* 199-218 (2008) (arguing that this change represents the beginning of an unfinished revolution in human values); Robert Gottlieb, *Forcing the Spring: The Transformation of the American Environmental Movement* 81-114 (locating the roots of modern political environmentalism in “the search for a new politics” of awareness and interconnection); Hays, *Beauty* at 527-40 (on new environmental values).

¹¹⁹ See Gottlieb, *Forcing the Spring* at 113 (“Ultimately, the environmental issue and the newly defined environmental movement was [sic] afforded instant recognition by a media suddenly discovering the issue for the first time. Environmentalism became a movement without a history, with an amorphous social base[.]”). But see Lazarus, *Making* at 49 (contesting the claim, but on considerably thinner grounds than argued for in this paper).

The argument of this part is that the wilderness movement formed an essential and underappreciated bridge between the two eras. This network of outdoors enthusiasts and professional conservationists, centered in the Wilderness Society and including Aldo Leopold, author of *A Sand County Almanac*, worked mainly to preserve large tracts of undeveloped public land. In doing so, they shaped new arguments for the special value of that land and, in time, for the value of the natural world as such. Beginning as a purifying offshoot of public-lands efforts such as the Sierra Club's, the Wilderness Society became an incubator of public language that entered the political mainstream in the 1960s, first in debates over wilderness preservation, then in the larger rise of environmentalism. Although by no means the whole story, its bridging role reveals some of environmentalism's allegedly missing history and highlights the interaction of continuity and innovation in environmental language across the twentieth century.

Much of the Wilderness Society's early advocacy grew out of, and sought to continue, both the Progressive and the Romantic strands of earlier conservation efforts. Wilderness advocates ascribed to wild places many of the experiential values that Sierra Club members associated with the most spectacular landscapes. At the same time, they followed Progressives in seeking to integrate these values into a broadly utilitarian account of the preconditions of mental health and personal development in industrial modernity. This synthesis did not seem entirely satisfactory even to its proponents. By 1948, Leopold impatiently rejected utilitarian defenses of preservation as evasions that obscured the real commitments of the movement: the idea of nature's intrinsic value and a human obligation to preserve it that was more deontological than instrumental.¹²⁰ Debates memorialized in *Living Wilderness*, the journal of the Wilderness Society, suggest that Leopold's judgment arose from a larger conversation about nature's value and its place in public language. By 1960 when the Wilderness Society was at the heart of the multi-year effort to write wilderness conservation into federal statutes (culminating in the 1964 Wilderness Act), a view akin to Leopold's had come to the fore. Advocates, including senators, emphasized the spiritual and aesthetic significance of wild nature as such and contended that knowledge of the undisturbed natural order had restorative power for a complex and confused society. The politics of wilderness incubated a view of nature's importance that came to the center of environmental language in 1968 and afterward.

A. Wilderness to Wilderness: from Muir to the Wilderness Society

1. Muir's Ambivalence and Thoreau's Ambiguity

John Muir's 1901 classic, *Our National Parks*, was organized around two Sierra Club values that soon came to seem mutually contradictory: preservation of beautiful places and public access to them for recreation. The book promised readers a "profound solitude ... full of God's thoughts,"¹²¹ and assured them that thanks to highways and

¹²⁰ See Aldo Leopold, *A Sand County Almanac* 246 (1949) ("No important change in ethics was ever accomplished without an internal change in our intellectual emphasis, loyalties, affections, and convictions"), 251 ("a system of conservation based solely on economic self-interest... tends to ignore, and thus eventually to eliminate, many elements in the land community that lack commercial value, but that are (as far as we know) essential to its healthy functioning").

¹²¹ John Muir, *Our National Parks* 86 (1901)

railroads, “in a few minutes you will find yourself in the midst of ... the best care-killing scenery on the continent.”¹²²

There had always been an ambiguity in Thoreau’s “In wildness is the preservation of the world,”¹²³ a phrase included in an essay concerned with a quality of mind and imagination available anywhere, and only symbolically connected with literal wilderness.¹²⁴ Writing from Glacier Bay, Alaska, in 1890, Muir committed a semi-plagiarizing equivocation that perfectly expressed the relation of his writing to Thoreau’s ideas: “In God’s wildness lies the hope of the world – the great fresh unblighted, unredeemed wilderness.”¹²⁵ Muir and the movement of rugged aesthetes that followed him located Thoreau’s spiritual principle uniquely in the spectacular places of the natural world. In the opening passage of *Our National Parks*, Muir identified the insight of the age as this: “that wildness is a necessity”,¹²⁶ but his concern, far from Thoreau’s conception of wildness, was with the most dramatic landscapes.¹²⁷

Securing public opportunity to experience nature’s spectacular places was a major goal of expert management. In the 1920s, preservationists’ success at persuading Americans of the value of encounters with nature seemed to threaten the future integrity, even the possibility, of those encounters. Wealth and mobility, especially the rise of the car, were creating a middle-class tourist culture eager to follow Muir’s guidance, and demanding roads to help them do so. The National Park Service, alert to the benefits of

¹²² Id. at 21. Accessibility was a major theme of the book. Muir wrote, “All the Western mountains are still rich in wildness, and by means of good roads are being brought nearer civilization every year.” Id. at 5. He promised that the best destinations were “easily and quickly reached by the Great Northern Railroad,” Id. at 21, and noted of Yosemite’s appeal that “it is ... the most accessible portion” of the Sierra, connected to San Francisco by railways and roads that Muir listed for the tourist’s convenience. Id. at 87-88.

¹²³ Henry David Thoreau, *Walking*, in *Walden and Other Writings* 627, 644 (Brooks Atkinson, ed., 2000) (1862).

¹²⁴ See id. at 644-63, in which Thoreau presents “the wild” as a literary principle associated with Shakespeare and Homer (649), the pathos of mythology (649-51), a principle of virtue (“all good things are wild and free,” 652), childlike playfulness (656), and an epistemic principle connected with the revelation of one’s true nature by intuition and symbol rather than proposition claim (657). It seems unavoidable that in these passages, we are in the same terrain as the closing passages of *Walden*, at 300-12, in which Thoreau makes clear his allegiance to the Transcendentalist principle that exploring the world is a way of exploring one’s self, and nature a master-metaphor for consciousness, while both nature and conscious body forth a universal design. On this principle, see the discussion of Emerson, *Nature*, supra n. __. All this being said, Thoreau did call for the conservation of primitive forests in each New England town, a proposal that does not seem to have been metaphoric. See Thoreau, *Huckleberries* in McKibben, *American Earth* at 26, 35 (c. 1861) (“I think that every town should have a park, or rather a primitive forest, of five hundred or a thousand acres, either in one body or in several – where a stick should never be cut for fuel – nor for the navy, nor to make wagons, but to stand and decay for higher uses – a common possession forever, for instruction and recreation.”). Thoreau wanted to preserve access to the symbol of a “wild” quality of mind that he believed inherited in relatively undisturbed natural areas.

¹²⁵ Quoted in Worster, *A Passion for Nature* at 319.

¹²⁶ Muir, *Our National Parks* at 3.

¹²⁷ Suggesting a capacity for subtler thought than his writings usually expressed, Muir paused to note, “To the sane and free it will hardly seem necessary to cross the continent in search of wild beauty, however easy the way, for they find it in abundance wherever they chance to be. Like Thoreau they see forests in orchards and patches of huckleberry brush, and oceans in ponds and drops of dew. Few in these hot, dim, strenuous times are quite sane or free[.]” *Our National Parks* at 4-5.

increased budgets, was generally eager to comply.¹²⁸ The perceived overcrowding and commercial degradation that followed inspired the founders of the Wilderness Society to advocate a new class of preservation: roadless lands, free of built structures, and substantially unaffected by human activity.¹²⁹

2. The Wilderness Society and its early arguments

The organized response began in January 1935 with the creation of the Wilderness Society and, later in the year, the appearance of its journal, *Living Wilderness*.¹³⁰ The Society's platform defined wilderness as "the environment of solitude" and designated it "a natural mental resource ... a public utility ... [and] a human need rather than a luxury and plaything."¹³¹ The value of solitude was distinct from, and sometimes incompatible with, the tourism that had come to define use of national parks: "scenery and solitude are intrinsically separate things ... the motorist is entitled to his full share of scenery, but ... motorway and solitude together constitute a contradiction" and car-accessible scenic areas, no matter how "should not be confused in mental conception or administration with those reserved for the wilderness."¹³² Absent a clear definition and constituency, wilderness "is being sacrificed to the mechanical invasion in its various killing forms."¹³³

Early efforts to establish wilderness as a viable category in public language were of a piece with conservationist precedents. Aldo Leopold, writing in the early years of *Living Wilderness*, described the wilderness idea as Muir has parks tourism: as an achievement of a mobile, prosperous, and scientific society. Unlike pioneers, he noted, "we can get in and out of it," making wilderness one of two terms in an "alternation of sociality and solitude."¹³⁴ Early Wilderness Society's arguments were attempts, perhaps paradoxical, to integrate the aesthetic and somewhat rarefied attachment to wild-lands solitude into the utilitarian vocabulary of public-lands management. What sort of

¹²⁸ See David Gerard, *The Origins of the Federal Wilderness System*, 211, 211-38 in Anderson, ed., *Political Environmentalism* (tracing competition for funding between the National Parks Service and the Forest Service through the early and middle decades of the twentieth century); Allin, *Politics of Wilderness Preservation at 60-68* (describing both growing tourist pressure on parks and inter-service rivalry for funds and land).

¹²⁹ As Bob Marshall, a founder and icon of the Wilderness Society, put it in 1930, "I shall use the word *wilderness* to denote a region which contains no permanent inhabitants, possesses no possibility of conveyance by any mechanical means and is sufficiently spacious that a person in crossing it must have the experience of sleeping out. The dominant attributes of such an area are: first, that it requires and one who exists in it to depend exclusively on his own effort for survival; and second, that it preserves as nearly as possible the primitive environment. This means that all roads, power transportation and settlements are barred. But trails, temporary shelters, which were common long before the advent of the white race, are entirely permissible." Bob Marshall, *The Problem of the Wilderness*, 30 *Scientific Monthly* 141 (Feb. 1930).

¹³⁰ The organization described itself as responding to "an emergency in conservation." *A Summons to Save the Wilderness*, 1 *Living Wilderness* 1 (Sept. 1935).

¹³¹ *The Wilderness Society Platform*, 1 *Living Wilderness* 2 (Sept. 1935).

¹³² *Id.*

¹³³ *Id.*

¹³⁴ Aldo Leopold, *Wilderness Values*, 7 *Living Wilderness* 24, 24 (March 1942). Leopold went on to call the "value inherent in contrasting environments ... too obvious to need discussion" and praise "the rich contrasts between wilderness and city life," passages showing a basic embrace of the transient encounter with nature as especially valuable and restorative. Leopold also noted that awareness of scarcity had increased appreciation of wilderness and argued that deepened scientific understanding of nature had the same effect: "we can (if we take the pains) perceive a little of its inner workings." See *id.*

“human need,” as the Society’s platform put it, did the “mental natural resource” of wilderness solitude answer, and was it really a general need, or the eccentricity of a particular class? Bob Marshall, who co-founded the Wilderness Society and, as the Forest Service’s Chief of the Division of Recreation and Lands, wrote the 1940 wilderness regulations that provided the operational foundation of the 1964 Wilderness Act, wrestled with these questions in a 1930 *Scientific Monthly* essay, “The Problem of the Wilderness.”¹³⁵ There he opened by paying obeisance to utilitarian management, describing the method for assessing wilderness conservation as “balancing the total happiness” of preservation against that of development.¹³⁶ He then offered a synopsis of wilderness values, sorting them into three sets. The physical included fitness, the toughening effect of self-sufficiency, and the opportunity for strenuous adventure, without which life “would be for many persons ... scarcely bearable in its horrible banality.”¹³⁷ The mental benefits included solitary reflection (to which Marshall credited “America’s most virile minds”), the chance for “repose ... convalescing ... from .. the terrible neural tension of modern existence,” and (perhaps most creatively) the release of repressed aggression that could otherwise find its way to a passion for war.¹³⁸ Marshall’s third category, aesthetic benefits, included sublimity and, above all, a unique opportunity to be ravished by beauty: “The purely esthetic observer has for the moment forgotten his own soul; he has only one sensation left and that is of exquisiteness. In the wilderness, with its entire freedom from the manifestations of human will, that perfect objectivity which is essential for pure aesthetic rapture can probably be achieved more readily than among any other forms of beauty.”¹³⁹ The precise mechanics of this theory are worse than vague, but the drift is clear: mystical self-forgetfulness and merger, relocated from the divine, via the aesthetic, to wilderness. One meets here the values of Roosevelt, and of a Muir more intense and mystical than Muir himself, all ostensibly representing denominations of utilitarian currency.

Marshall conceded that many Americans were unmoved by the strenuous solitude that wilderness devotees deemed uniquely important, while many others lacked the health or means to travel on foot over wild lands.¹⁴⁰ What, then, was the basis for a claim on millions of acres of public land by a fragment of a minority? Marshall made two arguments, which typified wilderness politics in its utilitarian mode. First, consistent with the Platform’s presentation of wilderness as a “mental natural resource,” he argued that “there is a point where an increase in the joy of the many causes a decrease in the joy of the few out of all proportion to the gain of the former.”¹⁴¹ Marshall reminded readers of other public spending “to satisfy the expensive wants of only a fragment of the community,” such as museums, galleries, botanical gardens, and golf-links – hardly a devastating riposte to critics, then and later, who called wilderness an elite fixation.¹⁴²

¹³⁵ Bob Marshall, The Problem of the Wilderness, 30 *Scientific Monthly* (2) 141-48 (Feb. 1930).

¹³⁶ Id.

¹³⁷ Id.

¹³⁸ Id.

¹³⁹ Id.

¹⁴⁰ See id.

¹⁴¹ See id.

¹⁴² Id.

The second was different, a claim that, at least in this case, government should provide the resources that a minority found necessary to fulfillment, on account of a general right to self-development and expression:

Such are the differences among human beings in their sources of pleasure, that unless there is a corresponding diversity in their modes of life, they neither obtain their fair share of happiness, nor grow up to the mental, moral, and aesthetic stature of which their nature is capable. Why then should tolerance extend only to tastes and modes of life which extort acquiescence by the multitude of their adherents? It is of the utmost importance to concede the right of happiness also to people who find their delight in unaccustomed ways.

Most of the passage just quoted is taken directly from John Stuart Mill's *On Liberty*. Aptly so: Marshall had followed Mill from the Benthamite summing of happiness to an ideal of the full and harmonious development of personality. Marshall sought government support, in the form of vast reservations of land, for those who believed they could flourish only in the solitude, adventure, and rapture of wilderness.

Behind both versions of the claim lurked the argument that wilderness values were not just the pleasures of some, but *higher* satisfactions that deserved particular support. Marshall's comparison of wilderness preservation to highbrow cultural and recreational subsidies would recur through the debate on the 1964 Wilderness Act and beyond, and more frankly elitist expressions of the same attitude sometimes appeared in *Living Wilderness*.¹⁴³

3. The Value of Nature as Such

A self-questioning and experimental conversation within the wilderness society soon developed its arguments in a new direction, less focused on vindicating the tastes and temperaments of wilderness enthusiasts, and instead making the case that nature as such was morally important and educative. A central figure in that conversation was Howard Zahniser, the longtime editor of *Living Wilderness*, whose importance in these developments has been eclipsed by the reputation of Aldo Leopold. In the winter of 1947-48, for instance, Zahniser chose to open *Living Wilderness* with an exchange between himself and Frederick Baker, a forestry professor at the University of California, Berkeley, who had written Zahniser a letter accusing wilderness advocates of "snobbery."¹⁴⁴ Zahniser denied the charge and recounted the Society's utilitarian arguments, insisting on the "research values" wilderness served and the "relief and inspiration" it provided.¹⁴⁵ Baker responded, in effect, that he considered wilderness a kind of fetish, a shortcut to spiritual experience for those who could find it only *in*

¹⁴³ The journal published as an essay a letter from a reader who warned, "We cannot afford to risk destroying our wilderness by encouraging a flocking thereto of a multitude, only a small portion of whom would really appreciate it because it *is* a wilderness. These would be just as happy in more accessible recreation places.... Were the multitudes turned loose in primitive areas ... we would find many of them failing to receive what the wilderness has to offer, though they would undoubtedly enjoy themselves well enough.... We do not with special emphasis urge people to visit our art galleries, our libraries or similar places." Olaus Marie, Wilderness is for Those who Appreciate, 5 *Living Wilderness* 5 (July 1940).

¹⁴⁴ 12 *Living Wilderness* No. 23, 1 (Winter 1947-48).

¹⁴⁵ *Id.* at 2.

extremis.¹⁴⁶ Zahniser changed tack, accepting a Thoreauvian sentiment from Baker, “the wilderness ... is essentially within us.”¹⁴⁷

Zahniser then made the following claim for the benefit of an encounter with literal wilderness: “many [visitors to wilderness] experience a better understanding of themselves in relation to the whole community of life on the earth and rather earnestly compare their civilized living with natural realities – to the improvement of their civilization.”¹⁴⁸ This was not an instrumental argument, except in the broadest sense, in which enlightenment counts as a human interest. Nor was it the perfectionist account of an eccentric elite. Pressed past the more conventional utilitarian arguments, Zahniser made a new type of claim for the morally educative value of ecological consciousness as such. It is revealing that Zahniser set this progression of argument in the opening pages of the Wilderness Society’s main public vehicle. He seems to have regarded it as an important moment in the organization’s advocacy for a new conception of preservation.

Zahniser’s argument was close to the one Aldo Leopold advanced two years later in the posthumous *Sand County Almanac*, which concluded in favor of the power of outdoors experience to cultivate “perception,” advancing the “job ... of building receptivity into the still unlovely human mind.”¹⁴⁹ Seeing Leopold in the context of the Wilderness Society debate in which he participated illuminates the real character of his work. He was not, as he is sometimes remembered, a prophet in the line of Thoreau and Muir (and we have already seen that Muir must be understood as a publicist and movement instigator), but a participant in the debate of a limited public, the network of wilderness advocates who together tried to create a public environmental language for a new preservation agenda.

B. The debate on the 1964 Wilderness Act

The 1964 Wilderness Act set in motion a process by which about 107 million acres of federal public land to date have entered a new statutory category of wilderness, one very close to the formula Bob Marshall set out shortly before founding the Wilderness Society, and which the Society embraced in the inaugural issue of *Living Wilderness*: roadless areas of at least 5,000 acres, substantially unaffected by human activity, in which motorized transport and commercial activity are prohibited.¹⁵⁰ The

¹⁴⁶ *Id.* at 3.

¹⁴⁷ *Id.* at 4.

¹⁴⁸ *Id.*

¹⁴⁹ Leopold, *Sand County Almanac* at 294-95 (final words of the book).

¹⁵⁰ The statute sets out the following purposes: “to assure that an increasing population ... expanding settlement and growing mechanization, does not occupy and modify all areas ... leaving no lands in their natural condition,” designated public lands shall be preserved “for the use and enjoyment of the American people as wilderness, and so as to provide for ... the preservation of their wilderness character(.)” 16 U.S.C. sec. 1131(a). It defines a wilderness as being “in contrast with those areas where man and his own works dominate the landscape ... an area where the earth and its community of life are untrammeled by man ... an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired conditions; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.” 16 U.S.C. sec. 1131(c). Note particularly the emphasis on

statute's aims tracked the agenda of the Wilderness Society: its announced purpose was "to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States ... leaving no lands designated for preservation and protection ... in their natural condition."¹⁵¹ Its definition of "wilderness" included "an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain," and that "has outstanding opportunities for solitude or a primitive and unconfined type of recreation."¹⁵² That should be no surprise: the legislation was strongly influenced by Howard Zahniser whose case for the urgency of preservation persuaded Hubert Humphrey to become the bill's lead sponsor in its early versions.¹⁵³

The 1964 Act emerged from eight years of Congressional wrangling in which pro-wilderness senators drew on the arguments that Zahniser and other Wilderness Society figures had developed in their internal debates. Senators introduced paradigms of this growing language into the *Congressional Record*. One, Zahniser's 1955 "Our World and its Wilderness" asserted that, through wilderness, Americans were "keeping ourselves in touch with true reality, the fundamental reality of the universe" and "our primeval origin, our natural home."¹⁵⁴ Contact with this reality, Zahniser argued, underlay what would today seem an ecological spirituality: recognition of the natural world as a site of intrinsic value, from which a part of the meaning of human life derives, and which we risk obliterating if we assert instrumental mastery over all things.¹⁵⁵ Zahniser argued that "access to wilderness" upheld "the humility to see ourselves as the dependent members of this great community of all life" and thereby "continuing hope for the survival of our culture." The argument about cultural survival was a two-headed thing, as it would remain for decades. It referred on the one hand to the alleged spiritual threat of a world fully mastered, made flat by categorical obeisance to human will.¹⁵⁶ On the other hand, Zahniser claimed, "as a species ... we actually run a risk of annihilation if we forget conservation," and wilderness preservation, with the relinquishment of mastery that it

"solitude," which the Wilderness Society from the beginning had identified as a key value, see 1 Living Wilderness 2 (Sept. 1938) and the emphasis on the integrity, or apparent integrity, of natural systems "untrammelled" by human activity.

¹⁵¹ 16 U.S.C. S. 1131(a).

¹⁵² 16 U.S.C. S.1131(c).

¹⁵³ See Allin, *Politics of Wilderness Preservation* at 104-06. Zahniser's writing on "The Need for Wilderness" directly inspired Humphrey's decision to introduce Wilderness legislation in 1956, following the lines of Zahniser's proposal, which was roughly that of the Society's program. Humphrey brought other organizations into the process, including the Sierra Club, the National Wildlife Federation, the National Parks Association, and the Council of Conservationists, among others. See *id.* at 105.

¹⁵⁴ 1961 Cong. Record 18356 (Sept. 6).

¹⁵⁵ See *id.* (In "unmodified wilderness ... we not only can seek relief from the stress and strain of our civilized living but can seek also that true understanding of our past, ourselves, and our world, which will enable us to enjoy the conveniences and liberties of our urbanized, industrialized, mechanized civilization – and yet not sacrifice an awareness of our human existence as spiritual creatures nurtured and sustained by and from the great community of life on this earth.")

¹⁵⁶ In this spirit, Zahniser quoted Thoreau's assertion that "we require that all things be mysterious and unexplorable, that land and sea be infinitely wild, unsurveyed, and unfathomed by us because unfathomable.... We need to witness our own limits transgressed, and some pasturing freely where we never wander." *Id.*

embodied, was synecdoche for “a sense of ourselves as a responsible part of a continuing community of life.”¹⁵⁷

Participants in the Senate Debate sounded the same themes in their own voices. Wayne Morse of Oregon 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” and echoed the Romantic-religious language of the early Sierra Club: “you cannot go into the canyons ... through the primeval forests, you cannot associate with the grandeur of this great heritage which God Almighty has given the American people, and not come out of such a trip a better man or a better woman for having come that close to the spirit of the Creator himself.”¹⁵⁸ Morse even claimed, in a register of personal testimony, the superiority of primeval nature over organized religion as a path to spiritual insight. Recalling an official visit to virgin forest, he reflected, “one knew that we were closer to the Almighty in that natural cathedral than probably ever again we would be in any artificial cathedral ... because we stood in God’s cathedral, in the natural beauty of the forest.”¹⁵⁹ In the spirit of the Romantic epiphany that the Sierra Club milieu had perfected as a mode of moral insight, Morse ascribed his confident support of the Wilderness Act to such experience and suggested that opponents would vote differently had they shared his experience.¹⁶⁰ Frank Church of Idaho, too, adopted the Wilderness Society version of Sierra Club language, praising “the spiritual values, the enrichment that comes from the solitude to be found in the wilderness.”¹⁶¹ Paul Douglas of Illinois declared, “Some people may laugh, but beauty is as much a part of life as drinking water,”¹⁶² and Church foreshadowed the bleak mood that would enter environmental public language in the next decade, warning, “without wilderness, this country will become a cage.”¹⁶³

These debates show the full emergence of a public language pioneered in voluntary associations such as the Sierra Club and which, in earlier decades, activists had struggled to shoehorn into the categories of utilitarian resource management. In these passages, the modes of experience that turn-of-the-century outdoors acolytes explored in their outings and publications have become free-standing bases for public normative claims, independent of their power to produce virtuous citizens or return refreshed laborers to their jobs at the close of vacation. These speeches are also less beholden than

¹⁵⁷ Id. Zahniser continued, “From the wilderness we truly gain this sense and thus in wilderness preservation we see a key to all our conservation problems. From our contact with it and its continuing influence, comes the understanding to deal wisely with all the resources of the earth which we share now, but which will also be the need of those who come after us.” Id.

¹⁵⁸ 1961 Cong. Record 18353 (Sept. 6).

¹⁵⁹ Id.

¹⁶⁰ “If I had ever had any doubts – I have never had any, but if I had ever had any – as to whether I should do all I could to preserve that kind of an area for the spiritual benefit of future generations of American boys and girls, those doubts would have been resolved on that occasion.” Id. “Would that Members of the Senate could have been with me on the occasion to which I have just referred. I am satisfied that if they had been there and had experienced the thrill I experienced, standing on the platform in the midst of that natural cathedral of primeval trees, the vote in some instances would be different[.]” Id.

¹⁶¹ 1961 Cong. Rec. 18365 (Sept. 6). More nearly continuing Theodore Roosevelt’s rhetoric, William Proxmire of Wisconsin, known as a fitness fanatic, praised wilderness adventure as a “test” of “spiritual attitude ... in a nation in danger of going soft.” Id.

¹⁶² 1961 Cong. Rec. 18382 (Sept. 6).

¹⁶³ 1961 Cong. Rec. 18365 (Sept. 6).

earlier arguments to the tortuous wrestling with the status of subjective and idiosyncratic values that marked the writing of Bob Marshall and early issues of *Living Wilderness*.¹⁶⁴ Instead, there is a tendency here to announce wilderness preservation as a self-evident national goal linked to intangible but shared “spiritual” values and national progress toward a less materialistic consciousness.

C. Summary

At the outset, wilderness advocates made arguments primarily from the points of view of utilitarian resource management and, awkwardly related, liberal perfectionism. The arguments they offered were essentially borrowed from those developed around national parks and other accessible recreational spaces: that they would invigorate the body and relieve the mind. But as these arguments came to seem special pleading for elite tastes, or simply ill-suited to vindicating large tracts of inaccessible space, wilderness advocates began to develop new arguments about the moral significance and educative power of nature. Instead of another version of spectacular Yosemite, wilderness came to be synecdoche for nature itself, in the full range of its processes.

In this argument, nature invited a distinctive consciousness: neither the extreme spiritual elevation of the sublime nor the simple restfulness of the beautiful (aesthetic categories which Muir and others had confounded in their case for the parks),¹⁶⁵ but ecological awareness, knowledge of one’s place in schemes of interconnection and interdependence. Although premised on a physical and conceptual boundary between human and natural activity, wilderness came to stand for, and wilderness advocates pioneered the argument for, integration of ecological awareness into human consciousness. This argument was thus developed and available when members of the “new” environmentalism of the 1960s went looking for an account of the relationship between environmental commitments and a broader crisis of faith in technocratic mastery. They brought the wilderness argument, as it were, out of the wilderness and into a new idea of “the environment” as an encompassing category of problems and political commitments.

¹⁶⁴ These strains of argument persisted, though. Senator Church acknowledged that “only a minority of our people are interested in the spiritual values [of] wilderness” and responded, as Marshall had, that the majority should not “be entitled to trample upon the rights of minority.” Church characterized development as “den[ying] that right” to “seek the sanctuary of the wilderness.” 1961 Cong. Rec. 18365 (Sept. 6). It is probably most accurate to say that the earlier arguments persisted in a cumulative body of environmental public language.

¹⁶⁵ Olmsted was of course well aware of the distinction, and described Yosemite as representing “union of the deepest sublimity with the deepest beauty of nature,” a claim he supported with descriptions of soaring cliffs and plunging waterfalls alongside gentle streams and meadows. See Olmsted, *The Yosemite Valley* at 14-16. It is less clear whether Muir was in firm control of the theoretical distinction, but he made just the same sorts of claims as Olmsted, writing of Yosemite “Nowhere will you see the majestic operations of nature more clearly revealed beside the frailest, most gentle and peaceful things,” *Our National Parks* at 86, and that, while “Nearly all the park is a profound solitude,” it was also “full of charming company ... a place of peace and safety.” *Id.* The radically benign and reassuring character of the aesthetic and emotional experience that Muir associated with nature makes it fair to say, I think, that he drew the sting of fear from sublimity. That spur of feeling was so essential to the founding accounts of the sublime that, if there is any integrity to those accounts, one might wonder whether Muir’s concern to divinize nature in a thoroughly human-friendly form did not leave it a feeble God. Perhaps it was this – the power of a wild experience to induce disruption, novelty, and fear – that wilderness advocates sought in *their* wild places, which Muir’s casual pilgrims could not enter.

The authors of these social-movement texts and Senate speeches presented themselves as continuing a canonical tradition of American nature prophets, in which they included Thoreau, Muir, and Aldo Leopold.¹⁶⁶ This presentation was much too simple. It concealed three democratic achievements: the transformation of an often subjective body of literary evocations into a widely shared mode of experience of the natural world; working this experience, and the language that accompanied it within limited and specialized publics, into a set of increasingly robust programmatic commitments; and contributing a new set of terms to normative public language, the repertoire of arguments and invocations by which Americans could seek to persuade one another of the content and meaning of shared commitments. They were generating, not just reciting, a moral register in which the natural world was increasingly understood as a source of intrinsic rather than instrumental value; a source of deontological imperatives for preservation, and a key to insight about the place of human beings in an interdependent world.

III. The Invention of the Environment: the 1960s and 1970s

The developments set out next occurred against growing anxiety about the fate of technocratic mastery, a mood informed foremost by the threat of atomic warfare. An important anchoring simile in Rachel Carson's *Silent Spring*, nuclear destruction stood in for the larger, Faustian idea that new powers without corresponding moral and prudential insight could destroy humanity. That shadow flits through much of the public environmental language of the 1960s and early 1970s, which in turn is the source of much of today's language. The association of technology with moral error and ecological obtuseness made possible a kind of total critique of modern life. An existing sense of something gone wrong created a question that users of new environmental public language proposed to answer. While environmental language in this period carried a sense of crisis, it only partly created that sense, and in other respects rather gave it a distinctive expression.

Temporal landmarks are somewhat inadequate to capture the transition here, because there is considerable ambiguity and overlap. This era began in important ways in 1962, with Rachel Carson's *Silent Spring*. Interior Secretary Stewart Udall's 1963 *Quiet Crisis* developed Carson's warnings into an updated version of the Progressive story: Americans had long disregarded the environment in favor of a myth of plenitude and a civic religion of individualism, but now must arrive at a new moral appreciation of nature.¹⁶⁷ Congressional hearings on the public-health and environmental consequences

¹⁶⁶ See, e.g., 1961 Cong. Rec. 18356 (Sept. 6, 1961) (text of Howard Zahniser's "Our World and Its Wilderness," inserted by Sen. Church) (crediting appreciation of wilderness values to "the influence of such men as Henry Thoreau, Verplanck Colvin [a cartographer and poetic publicist of the Adirondacks], John Muir, Stephen Mather [first head of the National Park Service], Aldo Leopold, and Robert Marshall"). This text devoted particular attention to Thoreau and Muir, combining their tropes in the claim that in wilderness "We ... propose to maintain our access to wildness [Thoreau's term], to what John Muir called 'fountains of life.'"; Benton MacKaye, A Wilderness Philosophy, 11 *Living Wilderness* (16) 1, 4 (March 1946) (urging readers to "emulate Thoreau" and "imagine 'Henry David' as a member of the Wilderness Society"); Harold C. Anderson, The Unknown Genesis of the Wilderness Idea, 5 *Living Wilderness* 15 (July 1940) (tracing the idea to a passage of Thoreau's in *The Maine Woods*).

¹⁶⁷ See Stewart L. Udall, *The Quiet Crisis* (1963). For a consideration of this family's role in the environmental politics of the period, see Henry B. Sirgo, *Establishment of Environmentalism on the U.S. Political Agenda in the Second Half of the Twentieth Century – The Brothers Udall* (2004).

of weakly regulated air and water pollution set the stage for the public and media eruptions of the late 1960s and the legislative efflorescence of the early 1970s.¹⁶⁸ Traditional civic organizations such as the League of Women Voters paid increasing attention to the human consequences of industrial and municipal effluents.¹⁶⁹ All these currents contributed to the (nonetheless abrupt) appearance of new defining themes in environmental public language.

The 1960's saw environmental language break far outside the confines of the traditional concern with specific acreage, land-use issues, and recreational and aesthetic values. An important incubator of the new language was the Wilderness Society, whose internal debates pressed its advocacy in the direction of arguments for the moral importance and educative power of natural systems as such: a view of ecology as a normative principle and ecological awareness as a morally important form of consciousness. The environmental language of this period moved through more diverse movements and communities than earlier developments. It also developed in greater abstraction from those sources, often through elite cultural interpreters who proposed to make sense of youth dissent, malaise, and a perceived crisis of technological mastery by using the environmental as a master-narrative.¹⁷⁰

A. The New Environmental Language

Two passages exemplify this transformation in environmental public language, not simply in what they say, but in the fact of their existence and intelligibility. The first comes from *Time* in 1968: "The false assumption that nature exists only to serve man is at the root of an ecological crisis that ranges from the lowly litterbug to the lunacy of nuclear proliferation. At this hour, man's only choice is to live in harmony with nature, not conquer it."¹⁷¹ Consider that for a moment. The claim is that tossing a bottle from a car window and building weapons of planet-destroying potential are more alike than unlike, that they are two parts of the same crisis. Today the claim that environmental problems arise from an unreflectively instrumental attitude toward the natural world is not hard to understand, though not all will endorse it. But even before engaging that diagnosis, consider the concept on which it relies: *environmental problems*. That category contains everything from the beauty of a wilderness landscape to invisible chemical pollution in an urban neighborhood, from the fossil-fuel energy economy to the loss of a species to the extinction of life on earth. *The environment*, so conceived, was not an idea that would have occurred to members of the early Sierra Club as uniting their aesthetic response to "wild" nature, their everyday economic activity, and whatever

¹⁶⁸ See Robert G. Dyck, *Evolution of Federal Air Pollution Control Policy* (1971) (setting out legislative developments of the 1950s and 1960s).

¹⁶⁹ See Louise M. Young, *In the Public Interest: The League of Women Voters, 1920-1970* 174-77 (1989) (setting out the League's involvement in the press for comprehensive national clean-water legislation, which had become a consensus priority of the organization by the late 1950s).

¹⁷⁰ Thus one finds liberal-establishment voices such as *Time*, the *New York Times*, and columnist Flora Lewis assessing the crisis of "technological man" and forecasting a basic change in modern values and identity. See *Fighting to Save the Earth from Man*, *Time* (Feb. 2, 1970) (invoking an account of "technological man as the personification of Faust, endlessly pursuing the unattainable"); *The Age of Effluence*, *Time* (May 10, 1968) ("technological 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").

¹⁷¹ *The Age of Effluence*, *Time* (May 10, 1968).

misgivings they had about the industrial economy. For them, a register of moral and aesthetic response elevated the wild and spectacular above the settled and mechanical, demoting the latter as ugly and uninspiring; but that common thread of judgment did not make the phenomena part of one thing, an “ecological crisis.” The environment had to be named, and in some measure invented, before it could be understood as endangered and available for saving.

The second passage comes from the *Sierra Club Bulletin* in 1970, a year in which the Club – this time following more than leading a larger cultural development – moved from its traditional public-lands focus to embrace the rising environmentalism. It is a single paragraph, sprawled over two pages, titled “A Fable for Our Times” and retelling, in faux-naïve allegory, the fate of “a small, beautiful, green and graceful country called Vietnam,” which “needed to be saved,” though “[i]n later years no one could remember exactly what it needed to be saved from, but that is another story.”¹⁷² America sought to save Vietnam, but,

Sadly, America had one fatal flaw – its inhabitants were in love with technology and thought it could do no wrong. A visitor to America during the time of this story would probably have guessed its 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 were never much on introspection and they didn’t foresee the result of their loving embrace on the small country. They 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 as well as on plants. By the time deformed fetuses began appearing and signs of lasting ecological damage were becoming increasing apparent success had been achieved. Vietnam had been saved. But the country was dead.¹⁷³

Set aside the plausibility (or otherwise) of the “fable,” its elision of geopolitics, domestic politics, and political ideology in favor of a single strand of technophile hubris.¹⁷⁴

¹⁷² A Fable for Our Times, 55 *Sierra Club Bull.* No. 7, 16, 16 (July 1970).

¹⁷³ *Id.* at 16-17.

¹⁷⁴ The crisis and legislative response partook of deeply inconsistent perceptions of the same theme, Americans’ technological mastery. On one hand, from the Vietnam fable to attacks on instrumental reason and “technological man,” the environmental master-narrative, particularly the portent of apocalypse, expressed a mood of discontent, even despair of rational, technological human mastery over nature. On the other, the major anti-pollution statutes of the 1970s reflected confidence in the capacity of government and industry to solve complex problems through technological innovation. Contemporary observers were not blind to the paradox. See Issue of the Year: The Environment, *Time* (Jan. 4, 1971) (“The relatively sudden passion about the environment seemed to spring from two different sources. On the one hand, it represented the response to a problem which American skills, including technology, might actually solve, unlike the immensely more elusive problems of race prejudice or the war in Viet Nam. On the other hand, it represented a creeping disillusionment with technology, an attempt by individuals to reassert control over machine civilization.”) That confidence found voice in media discussions, Congressional debate, and the structure of the legislation itself. In hindsight, the legislation of the period seems to have arisen from a very specific, and probably paradoxical, conjunction of self-doubt and self-confidence: on the one hand, a

Consider instead its intelligibility: environmental degradation, the category set out in the *Time* piece just above, had become available as a moral master-narrative, able to organize vice and virtue, hubris and comeuppance, crisis and imperative response, across a variety of particulars. The *Bulletin's* fable recasts the Vietnam War as a symptom of American technophilia, then neatly ascribes an American environmental crisis to the same source, linking the two in one story of the essential problem: a runaway faith in technological instruments, devoid of a sense of nature's order, delicacy, or limits. Once invented, the environmental crisis could encompass many crises.

A set of innovations emerged together and remade environmental public language. The first two, just presented by way of exemplars, were the discovery or invention of the environment as a unified phenomenon and the use of environmental crisis as a moral master-narrative of modern life. The others can be understood as elaborations on these two. The first subsidiary innovation was apocalypse: the claim arose suddenly from every editorial board, social-movement publication, and even Congressional debate that an environmental crisis threatened the survival of the species or the planet.¹⁷⁵ The literal warning of human extinction, going well beyond the, was a new theme in environmental public argument.¹⁷⁶

Second was a change in the connection between environmental problems and public health. This link had been a persistent but attenuated theme of both Sierra Club

potentially apocalyptic crisis brought on by technological hubris; on the other, a rational, technological program to cleanse the country's air and water within the decade.

¹⁷⁵ See Gladwin Hill, *Activity Ranges from Oratory to Legislation*, N.Y. Times (April 23, 1970) (referring to "ecological problems ... which many scientists say urgently require action if the earth is to remain habitable"; Americans Rally to Make it Again Beautiful Land, Chicago Tribune (April 23, 1970) (referring to "pollution which, according to the warnings of some scientists, threatens the very existence of life on this planet"; Earth Week, Wash. Post (April 20, 1970) ("American air, land, and water ... has become ... the world's most expensive monument to pollution ... a monument that threatens to topple of its own weight ... man is running out of soon"); Earth Day and Space Day, N.Y. Times (April 19, 1970) ("this flowering little planet ... may become as devoid of life as are now the mountains of the moon and the polar regions of Mars"); Time, *Age of Effluence* ("many scholars of the biosphere are now seriously concerned that human pollution may trigger some ecological disaster").

¹⁷⁶ Of course the conjoined themes of eschatological history and excoriating prophecy formed an old tradition in American public life. See Harry S. Stout, *The New England Soul: Preaching and Religious Culture in Colonial New England* 3-12, 67-85 (on the genre of the election or fast-day sermon, which called a strayed people back to their covenant) (1986) (Sacvan Bercovich, *American Jeremiad* (1978) (setting out the history of this genre more generally). Their arrival in environmentalism marked an important rhetorical confluence. It also contributed to a curious symmetry of cultural dissent. Two inheritors of this tradition, evangelical Protestants and environmentalists, set themselves against what they see as the materialism and human-centered excesses of the culture, but (1)in favor of sharply different alternatives, one traditional theism and other a blend of pantheism, paganism, and Romantic humanism; and (2) with quite different cultural profiles, marked for the past four decades by opposite responses to the efflorescence of the 1960s. Earlier activists had warned against the extinction of wilderness, and Howard Zahniser's essay on untouched lands as synecdoche for life itself anticipated this development. Declensionist arguments had been a trope at least since George Perkins Marsh, and even the most pessimistic work of post-World War Two environmental writing, Fairfield Osborne's *Our Plundered Planet*, did not go much beyond Marsh. See Fairfield Osborne, *Our Plundered Planet* (1952) (arguing on prudential grounds that human beings must adopt rational recognition of ecological constraints or face shortages of critical resources). If my initial research is accurate, Osborne seems to have been a wealthy and prominent white supremacist and anti-Semite who reinvented himself as a prophet of environmental decline after World War Two. The affinity of environmental sentiment with various forms of misanthropy, anti-liberalism, and anti-modernity presents important and difficult questions, which I hope to take up in another setting.

and New Nationalist strands of nineteenth-century conservation, and was even more badly stretched in the early efforts the Wilderness Society to establish a public-health rationale for wilderness. In the 1960s, the environmental problem came to be understood as one of a “poisoned world,” a self-inflicted crisis of industrial society.¹⁷⁷ Where earlier public-health arguments had focused on the restorative power of recreation, the new environmentalism took some of its urgency from the perception of an unfolding public-health disaster.

Third was the belief – glimpsed in the fable of Vietnam – that environmental problems were rooted in distorted values and identity, and ecological renovation must work on those levels as well as more practical ones.¹⁷⁸ The editors of *Time* wrote in 1970, “Behind the environment crisis in the U.S. are a few deeply imagined assumptions ... that nature exists primarily for man to conquer [and] that nature is endlessly bountiful” and ascribed “the whole environmental problem [to] a dedication to infinite growth on a finite planet.”¹⁷⁹ The *Washington Post* was harsher: “The deep horror concerning the environment is not that we have ravaged and poisoned our section of the planet – but that we lived with the horror so calmly.... Today America is under siege from its own waste, blind technology and arrogant abuse of Nature; instead of resisting these horrors, we have adjusted – like mule-beasts with a heavier and heavier load.”¹⁸⁰

The final innovation was the proposal that environmental insight offered not just an account of crisis, but a formula for renovating a damaged world, a new way of understanding problems that could produce hitherto unimagined solutions.¹⁸¹ This

¹⁷⁷ See Fighting to Save the Earth from Man, *Time* (Feb. 2, 1970) (“What most Americans now breathe is closer to ambient filth than to air”); Now or Never, *N.Y. Times* (Jan. 21, 1970) (“communities and campuses across the nation will observe ‘Earth Day’ by committing themselves to reclaim an already dangerously poisoned world”); Hubert H. Humphrey, Fight Against Pollution Needs Leadership, More Money [source TK] (Aug. 25, 1969) (“It has become a national emergency ... If the Nixon Administration is not forced to act, most Americans will be trapped in cities of gray, dirty air and oozing, befouled rivers”); To Clean the Nation’s Air, *N.Y. Times* (Jan. 31, 1967) (“The United States is in serious danger of running out of its most important natural resource – the air that supports life”); Menace in the Skies, *Time* (Jan. 27, 1967) (noting warnings that “all of civilization will pass away ... from gradual suffocation by its own effluents”);

¹⁷⁸ See Gladwin Hill, Environmental Movement Registers Gains in 3 Years, *N.Y. Times* (April 9, 1973) (“the whole idea of growth, social and economic, an American shibboleth, has undergone skeptical scrutiny and recurrent repudiation”); In an Urban Wasteland? *N.Y. Times* (April 22, 1970) (“The end toward which this is all dangerously tending is a technological monstrosity, a sterile monument of concrete and steel unfit for human habitation. Earth Day offers an opportunity for that embattled minority ... who are willing to stand up for human values against the dehumanizing demands of development for development’s sake.”).

¹⁷⁹ Fighting to Save the Earth from Man, *Time* (Feb. 2, 1970).

¹⁸⁰ The Environment: Clean up or Patch up? *Wash. Post.* (Feb. 11, 1970).

¹⁸¹ See Issue of the Year: The Environment, *Time* (Jan. 4, 1971) (“By changing national values, [concern for the environment] may well spur a profound advance in U.S. maturity and harmony with nature”); Flora Lewis, Instant Mass Movement, *L.A. Times* (April 29, 1970) (“The ideas themselves are so fundamentally new, so drastically opposed to the heritage of many centuries, they are painful to absorb.... Environmental harmony requires a much deeper review of western thought, now challenged on almost every level. It is becoming evident that, to begin, a new measure must be made of affluence...”); Irving S. Bengelsdorf, Dear Students: Our Spaceship Earth’s in Trouble; So Are We, *L.A. Times* (April 16, 1970) (“to survive on our spaceship, we must learn to do as nature does”); *Time*, Age of Effluence (“The biggest need is for ordinary people to learn something about ecology, a humbling as well as fascinating way of thinking ... modern man ... could do with some of the humility toward animals that St. Francis tried to graft onto Christianity”);

argument arose partly in the Wilderness Society's arguments for the morally educative power of nature as such, a development from the Romantic and Progressive idea that specific places had revelatory or edifying effect. This development interacted with the theme of apocalypse: the atomic bomb made apocalyptic narratives unsurprising, and all but invited nature's moral elevation as counterpoint. By June of 1946, the claim appeared in *Living Wilderness* that "the atomic bomb ... opens a vast field of public education" in which wilderness could inform the conscience and aid the "the perspective that is necessary as a foundation for world peace."¹⁸² *Time* called for "a new way of thinking" in which "Americans must view the world in terms of unities rather than units" and declared, "The biggest need may be a change in values."¹⁸³ Their solution was "[e]cology, the subversive science [which] enriches man's perceptions, his vision, his concept of reality. In nature, many may find the model they need to cherish."¹⁸⁴

B. The Clean Air and Clean Water Acts as Exemplars of Their Time

Two environmental statutes, the Clean Air Act of 1970 and the Clean Water Act of 1972, are widely recognized as paradigms of the law that emerged from this episode of ferment. They are also widely regarded as models of the design failure of the statutes of that period, often expressed by rubrics such as "command and control."¹⁸⁵ This line of criticism focuses on several features of the statutes. First, they were drafted with deliberate indifference to any comprehensive cost-benefit analysis that would set their environmental goals alongside economic costs in a single master-currency.¹⁸⁶ Instead, drafters established the following principles. By 1983, all United States waterways should be clean enough for fishing and swimming, and by 1985, all water pollution

¹⁸² 17 *Living Wilderness* 23 (June 1946) (describing and quoting a discussion by Benton MacKaye).

¹⁸³ *Fighting to Save the Earth from Man*, *Time* (Feb. 2, 1970).

¹⁸⁴ *Id.*

¹⁸⁵ See Bruce Ackerman & Richard B. Stewart, *Reforming Environmental Law: The Democratic Case for Market Incentives*, 13 *Colum. J. Envtl. L.* 171 (1988) (arguing that market-based CAA regulation would be superior in both economic efficiency and political accountability and transparency); Richard B. Stewart, *Regulation, Innovation, and Administrative Law: A Conceptual Framework*, 69 *Cal. L. Rev.* 1256 (1981) (setting out approach to identifying and avoiding innovation costs of overly directive regulatory strategies); Bruce Ackerman & William Haslett, *Beyond the New Deal: Coal and the Clean Air Act*, 89 *Yale L.J.* 1466 (1980) (surveying in detail the efficiency costs of Congressional selection of regulatory instruments and failure to direct independent agency to engage in comprehensive cost-benefit analysis; examining the special susceptibility of this strategy to review-proof legislative exacerbation by political dealmaking; engaging in a model of comprehensive cost-benefit accounting in the manner of an ideal independent agency; and identifying the efficiency failure of the CAA as the fruit of a Congressional decision to select instruments rather than goals in the course of a departure from New Deal model of independent agency); Bruce Ackerman, Susan Rose-Ackerman, et al., *The Uncertain Search for Environmental Quality* (1974) (setting out the technocratic goal of maximizing net social benefit from environmental regulation and considering the capacity of alternative regulatory regimes to approximate this goal, in light of political and other constraints); William F. Baxter, *People or Penguins: The Case for Optimal Pollution* (1974) (setting out the basic economic argument that choices under constraints imply tradeoffs, and a decision-maker must thus consider all goals, including environmental quality, in terms of their opportunity costs); cf. Howard Latin, *Ideal Versus Real Regulatory Efficiency: Implementation of Uniform Standards and 'Fine-Tuning' Regulatory Reforms*, 37 *Stan. L. Rev.* 1267 (1985) (arguing that departures from uniform technology standards impose excessive information burdens on administrators); Ackerman & Stewart, *Reforming Environmental Law*, 37 *Stan. L. Rev.* 1333 (1985) (rebutting Latin's claims).

¹⁸⁶ See, e.g., Ackerman & Rose-Ackerman, *Uncertain Search* at 165-207 (considering inefficiencies arising from absolutist or at least underspecified statutory valuation of environmental quality).

should have come to an end.¹⁸⁷ As for air pollution, the Clean Air Act directed the Environmental Protection Agency to create uniform national standards for six major “criteria pollutants,” based on “public health” rather than cost-benefit analysis.¹⁸⁸ Second, the statutes’ choice of regulatory tools displayed indifference to incentive-based efficiency in implementation. The Clean Water Act’s effluent standards were insensitive to local variation: each facility faced the same rules, regardless of either its marginal environmental harm or the marginal cost of compliance, with no trading mechanism for reallocating pollution to reduce costs or distribute impacts.¹⁸⁹ Although the Clean Air Act later became the arena for market-based regulatory experiments, its statutory design included no means for cost-based allocation of regulatory burdens. (Its air quality-based standard did, unlike the uniform effluent limitations of the Clean Water Act, take into account the baseline of local conditions, varying requirements according to the cumulative environmental effect of pollution.) Third, as the Clean Water Act’s deadlines suggest, the statutes set wildly unrealistic goals for overcoming industrial pollution.¹⁹⁰ Unreachable standards risked the impression of triviality and farce and, more important for regulators and the regulated, provided little help in navigating the middle ground between the existing and the impossible.

Trenchant criticism of this generation of statutes has organized more than a generation’s worth of scholarship and reform efforts in environmental law, which has produced notable theoretical and practical achievements.¹⁹¹ It has also produced a body of counter-criticism focused on the limits of markets and cost-benefit rationality, and some efforts to integrate the competing perspectives.¹⁹²

¹⁸⁷ See 33 U.S.C. 1251(a)(1)-(2).

¹⁸⁸ See Mary Rose Kornreich, Setting National Ambient Air Quality Standards, in *The Clean Air Act Handbook* (Robert J. Martineau, Jr. & David P. Novello, eds., 1998) 11, 11-32 (setting out the basic regulatory strategy of the CAA).

¹⁸⁹ See, e.g., Ackerman & Hassler, *Beyond the New Deal at 1478-88* (surveying the context-insensitivity of uniform technology standards under the CAA); Ackerman & Stewart, *Reforming Environmental Law: The Democratic Case at 178-84* (surveying the benefits to efficiency and innovation of proposed market-based CAA regulation).

¹⁹⁰ See, e.g., James Salzman & Barton H. Thompson, Jr., *Environmental Law and Policy* 127-28 (2003) (noting unrealistic goals and the complaints and confusion they have occasioned).

¹⁹¹ The work cited in n. ___, *supra*, is the anchor here. For recent developments, see, e.g., Carol M. Rose, *From H2O to CO2: Lessons of Water Rights for Carbon Trading*, 50 *Ariz. L. Rev.* 91 (2008); Cass Sunstein, *Worst-Case Scenarios* (2007) (applying cost-benefit analysis to issues of high uncertainty and great potential cost, including climate change); James Salzman & J.B. Ruhl, *Currencies and the Commodification of Environmental Law*, 53 *Stan. L. Rev.* 607 (2001) (setting out working pieces of an attempt to integrate unpriced “ecosystem services” into a comprehensive market fully incorporating environmental benefits); Daniel C. Esty & Andrew Winston, *Green to Gold: How Smart Companies Use Environmental Strategy to Innovate, Create Value, and Build Competitive Advantage* (2006). On the power of interest-group explanations in accounting for the political frustration of market-based reforms, see Thomas W. Merrill, *Explaining Market Mechanisms*, 2000 *U. Ill. L. Rev.* 275 (arguing ultimately for a synthesis of wealth-maximization and distributional versions of interest-based account).

¹⁹² See, e.g., Douglas A. Kysar, *Discounting ... On Stilts*, 74 *U. Chi. L. Rev.* 119 (2007) (arguing that cost-benefit analysis can encourage reckless indifference to the catastrophic potential of climate change); Kysar, *Climate Change, Cultural Transformation, and Comprehensive Rationality*, 31 *B.C. Envtl. Aff. L. Rev.* 555 (2004) (arguing against a “comprehensive rationality” that notionally forecloses the possibility of cultural change by seeking to account for all relevant values from the standpoint of the present); Frank Ackerman & Lisa Heinzerling, *Pricing the Priceless: Cost-Benefit Analysis of Environmental Protection*, 150 *U. Pa. L. Rev.* 1553 (2002) (arguing that conventional cost-benefit analysis depends on morally unacceptable

This paper's discussion of the 1970s statutes does not directly engage these debates on the merits of competing regulatory models. Instead, it makes two arguments about how to understand the structure of the Clean Air Act and Clean Water Act. First, although the drafters of these statutes were, by and large, aware of arguments against the approach they took, they regarded their approach as uniquely consistent with, even required by, the task of adopting environmental protection as a defining national purpose. In explaining this, they invoked the larger environmental themes of the time: ecological consciousness as a key to understanding and solving complex problems; public-health crises and apocalyptic danger; and a need for a change in national values. Whether or not the policy instruments they chose were dictated by, or even ultimately supported, these goals, the choices reflected their idea of the undertaking. Second, the adoption of environmental values as national purposes was, ironically, invaluable in establishing the force of the criticisms that the statutes soon attracted. The argument that the statutes inefficiently pursued their purposes makes sense on its own terms, of course; but it is urgent, and not just another accountant's reproach to shoddy lawmaking, because of the political and cultural status of the values being disserved. The same statutes that attracted so much meritorious economics-based criticism also helped to empower that criticism by confirming the place of environmental protection among public values.

1. Rejection of comprehensive cost-benefit analysis

Begin with Congress's decision to reject comprehensive cost-benefit analysis. Drafters took this choice in the face of a presidential veto of the Clean Water Act based on its projected cost and a daunting economic forecast from the recently formed Council on Economic Quality.¹⁹³ They also had in hand a CEQ analysis of the pollution crisis as a product of the failure to price ecosystem services, making the air and water "free dumps," the key conceptual ingredient in a comprehensive accounting of environmental costs and benefits.¹⁹⁴ It was no surprise when the National Water Commission, a bipartisan group assembled under Lyndon Johnson, denounced the Clean Water Act for attaching "an extravagant social value to an abstract concept of water purity" – that is, implying by the refusal to weigh costs and benefits that clean water was of infinite value.¹⁹⁵

Drafters of the legislation made five interrelated arguments against these efforts at comprehensive cost-accounting, three relatively pragmatic, two more principled. First, they argued that the novelty of complex environmental and public-health threats meant

premises, particularly the fungibility of human lives and the discounted value of the future); but see John Donahue, *Why We Should Discount the Views of Those Who Discount Discounting*, Yale L.J. (1999)

¹⁹³ See *Federal Water Pollution Act – Veto Message*, 1 Leg. Hist. of the Water Pollution Control Act Amendments of 1972 137-39 (Oct. 17, 1972) [hereafter 1 CWA Leg. Hist.]. For a discussion of the CEQ cost estimate, issued under Russell Train, soon to be the head of EPA, see 2 Leg. Hist. of the Water Pollution Control Act Amendments of 1972 1262-64 [hereafter 2 CWA Leg. Hist.].

¹⁹⁴ See 1 CWA Leg. Hist. 123 ("The common property resources – air and water – are not included in the market exchange. They are used as free 'dumps' for consumption and production residuals. But such dumping exacts social costs – in degraded air and water, impaired health, loss of fish and wildlife, loss of recreational opportunities and aesthetic values, and added costs of treatment necessary for downstream water users. Environmental problems stem largely from this fundamental failure of the economic system to take into account environmental costs.").

¹⁹⁵ National Water Comm'n, *Final Report: Water Policies for the Future* 70 (1973).

vast uncertainty about the consequences of any level of pollution.¹⁹⁶ Because environmental protection addressed a new class of problem with a new model of regulation, it was premature to try to specify public-health effects precisely enough for meaningful accounting.¹⁹⁷ Second, senators argued that projecting the financial cost of compliance was similarly premature because in adopting of strong goals, they made a national commitment that would alter the path of innovation. One could not know the cost of future compliance based on existing technology.¹⁹⁸ Drafters rejected the CEQ's cost projection for the CWA as an attempt to sow fear in Congress and the public.¹⁹⁹ They invoked the technology-forcing precedents of World War Two aircraft production and the Apollo Project, and asserted that the environmental crisis was graver and thus potentially more transformative than either the Second World War or the Space Race.²⁰⁰ The third argument drew on the apocalyptic backdrop in public discussion, linking immediate public-health threats to the survival of the species and life on earth.²⁰¹ It is arresting, from the vantage of a time accustomed to regarding pollution control as a matter of the expert management of costs and benefits, to see it repeatedly identified in Congressional debate as a question of survival.

The fourth and fifth lines of argument expressed the non-instrumental conception of nature's moral significance that emerged in the debates of the Wilderness Society and became prominent in the late 1960s. The fourth was a roughly deontological idea set athwart the ecosystem services concept: that it was wrong to use waterways as waste-disposal systems, full stop. This right-and-wrong classification was strikingly and

¹⁹⁶ See 2 CWA Leg. Hist. 1264 (Statement of Sen. Muskie) (“[W]hat we do not know, and what we cannot predict accurately, are the long-range effects upon man of prolonged exposure to bigger and bigger doses of pollution. Man, no less than the Peregrine Falcon and the Mountain Lion, is an endangered species.”); 1 CWA Leg. Hist. 499-500 (Statement of Cong. Vanik) (“[I]f we continue to allow harmful discharge and the waste of resources – even small amounts – we will continue to rapidly disrupt, in ways which we do not now understand, the natural balance of the world – a balance that evolved over billions of years and which supports all living things, including ourselves.... If we can destroy Lake Erie, we can destroy the sea. Similarly, we can destroy the delicate balance of the world’s atmosphere. That destruction is happening each hour of every day.”).

¹⁹⁷ See CWA Leg. Hist. 1326-27 (Statement of Sen. Muskie) (describing the difficulty of linking emissions to environmental and public-health effects).

¹⁹⁸ See CWA Leg. Hist. 1262 (Statement of Sen. Muskie) (“The committee recognizes that there are technical limits to what can be done in order to achieve the no-discharge objective. More importantly, the committee is concerned that program administrators and enforcement officers do not know what these technical limits are.”).

¹⁹⁹ See *id.* at 1263 (“[T]o apply a price tag ... to a 100-percent elimination of pollutants can serve no purpose other than to frighten the people and intimidate the Congress.”).

²⁰⁰ See CAA Leg. Hist. 232 (Statement of Sen. Muskie) (“Here, in the case of a national objective more serious than either [World War Two or the Space Race] – the national health, I think that we have an obligation to lay down the standards and requirements of this bill. I think that the industry has an obligation to try to meet them. If, in due course, it cannot, then it should come to Congress and share with the Congress ... the need to modify the policy. That is the philosophy of the bill.”).

²⁰¹ See CWA Leg. Hist. 122-23 (Statement of Sen. Muskie) (“Can we afford life itself?... If we entertain any serious hopes of preserving life on this planet, the water pollution bill will have to be paid – soon.”); *id.* at 161 (“These are not merely the pious declarations that Congress so often makes in passing its laws; on the contrary, this is literally a life or death proposition for the Nation.”); 2 CWA Leg. Hist. 1263 (Statement of Sen. Muskie) (“Man ... is an endangered species.”).

repeatedly invoked as “the basic concept” of the Clean Water Act.²⁰² Fifth, some supporters of pollution-control legislation identified it as the keystone of a new kind of moral calculus, this one not exactly deontological, but instead premised on the idea that ecological interdependence is the condition of first importance in assessing human interaction with the natural world, and that it must imply a comprehensive reevaluation of economic life.²⁰³ Although this idea was not worked out in any systematic way, its core perception seems to have been that there were moral as well as scientific reasons for not presuming that anything resembling a price could be confidently attached to the health of natural systems: both knowledge and the relevant values were changing too fast for that.

These were the reasons the statutes’ drafters gave for rejecting comprehensive cost-benefit accounting, specifically proposals to weigh the projected costs of compliance and assess the marginal effects of pollution on public health. The drafters’ arguments reflected the broader contemporary sense of environmental protection as a uniquely urgent and complex crisis in which important yet inchoate moral lessons resided. They understood their statutes in two concurrent ways: as instruments for pursuing certain policy ends, and as existential acts committing the country to a new set of values and a distinct path of development.²⁰⁴ Their refusal to incorporate comprehensive cost-benefit accounting struck them as integral to the second dimension of the statutes.

2. Unreachable goals

The drafters of the Clean Air Act and Clean Water Act were aware that the statutes set unattainable goals, and pointed this out unprompted in floor debate. Their

²⁰² See CWA Leg. Hist. 121 (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 495 (Statement of Cong. 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.”); *id.* at 1245 (Statement of Sen. Muskie) (“[T]he use of any river, lake, stream, or ocean as a waste treatment system is unacceptable.”); CWA Leg. Hist. 1303 (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.”).

²⁰³ See CWA Leg. Hist. at 1261 (Statement of Sen. Muskie) (“The stated objective of the act reflects the committee’s decision to recognize fundamental principles of ecology”); *id.* at 1303 (Statement of Sen. Cooper) ([T]he bill and its purposes goes [sic] 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.... [I]t does have an underlying theme, one which seems to me to rely on the natural order”).

²⁰⁴ See CWA Leg. Hist. 119, 122 (Statement of Sen. Muskie) (“The whole intent of the bill is to make a national commitment.... Can we afford clean water? ... Can we afford life itself? Those questions were never asked as we destroyed the waters of our nation, and they deserve no answers as we finally move to restore and renew them. These questions answer themselves. And those who say that raising the amounts of money called for in this legislation may require higher taxes, or that spending this much money may contribute to inflation simply do not understand the language of the crisis.”); CAA Leg. Hist. 223 (Statement of Sen. Muskie) (“One of the most troubling aspects of our national mood is the crisis in confidence which afflicts too many Americans in all walks of life. It is a crisis marked by self-doubt, by a fear that our problems may be greater than our capacity to solve them, that our public and private institutions may be inadequate at a time when we need them most.... This legislation will be a test of our commitment and a test of our faith: in our institutions, in our capacity to find answers to difficult economic and technological problems, and in the ability of American citizens to rise to the challenge of ending the threat of air pollution”).

reasons have already been glimpsed in their comparisons of pollution control to earlier periods of innovation driven by newly adopted national purposes. They regarded technological constraints on their political goals as known unknowns: constraints whose magnitude they could assess only by running full force against them.²⁰⁵ They argued that setting goals already known to be attainable would only make innovation beyond those goals less likely.

Another reason the drafters adopted then-unreachable goals was symbolic: they believed they were announcing a national commitment that would require civic as well as technological mobilization. It became a frequent refrain in debates on the Clean Air Act, in particular, that it would succeed only if the public were willing to accept new costs, adopt new attitudes about mobility and consumption, and take independent action to enforce pollution controls.²⁰⁶ In an echo of the civic themes of Teddy Roosevelt's conservationism, some supporters described the statutes as harbingers of a new era of personal responsibility for common well-being.²⁰⁷ The statutes of the early 1970s were thus part of a conscious reorientation of public commitments toward environmental protection. Whether or not the structure of the statutes contributed to (or impeded) that change, that structure arose partly out of the attempt to achieve the change.

²⁰⁵ See supra n. __ (statement of Sen. Muskie on CWA constraints); supra n. __ (Statement of Sen. Muskie on technological constraints and CAA).

²⁰⁶ See CAA Leg. Hist. 149 (Statement of Sen. Cooper) ("This bill will place great responsibilities on nearly every aspect in our society.... [I]t will place great burdens on the people generally for they will ultimately have to bear the expense and, for the first time, possibly experience inconvenience so that we might achieve clean and healthful air."); id. at 258 ("The bill ... establishes a very high national priority for the goal of clean air. It will not succeed without a massive effort ... by industry and through the willingness of citizens throughout the country to make the sacrifices necessary and to pay the price of accomplishing the goals of clean air"); id. at 335-36 (Statement of Sen. Muskie) ("This bill is going to require that the American motorist change his habits, his tastes, and his driving appetites.... The consumer must also make sacrifices in addition to those made by the manufacturers."). On the background discussion, see Clean Air and Autos, N.Y. Times (Feb. 12, 1973) ("New Yorkers are going to have to adapt to some possibly shocking changes in their way of life" to accommodate the goals of the Clean Air Act)

²⁰⁷ See CAA Leg. Hist. 145 (Statement of Sen. Randolph) ("The implementation ... of this measure will test the determination in this country to achieve a livable environment, not only for ourselves but for future generations. In turn, the legislation will test the willingness of the citizens – not just the various levels of government, but the citizens of this country – to control, prevent, and abate environmental pollution. And may I compliment [Sen. Muskie] that ... he has emphasized the personal obligation which must be recognized – a rebirth, I should say, of responsibility on the part of the individual citizen of this country"); id. (Reply of Sen. Muskie) ("Completely... There has to be a commitment to it by every citizen, not only with respect to the activities of others, but with respect to each citizen himself"). On the broader background perception, see Earth Week, N.Y. Times (April 19, 1972) ("a far greater sense of urgency and effort is essential"); Every Day an 'Earth Day,' L.A. Times (April 24, 1970) ("Reclaiming the environment at this late date ... is a task so immense and costly that only the strongest and broadest support can assure its accomplishment. The danger is that the national concern generated Wednesday will fade and the pressure on government and industry will diminish Our survival depends upon how we respond."); The Environment: Clean up or Patch up? Wash. Post (Feb. 11, 1970) ("To keep the politicians from stalling ... to get them to see pollution not as a 'social problem' but as a survival problem – that is the challenge the public must now take up ... with democratic outrage"); The State of the Environment, L.A. Times (Jan. 23, 1970) ("what is also needed is the kind of mass understanding and commitment that is necessary to the success of any great enterprise"); The Politics of Pollution, L.A. Times (Nov. 7, 1969) ("[California] can be saved – if the people will it. No pollution or politician can withstand the pressure of an aroused citizenry.");

3. Neglect of market-based implements

In the course of floor debates on the Clean Water Act, Senator William Proxmire of Wisconsin proposed adding a Pigouvian tax to the statute's regulatory toolkit, which he presented as providing "[t]he missing ingredient [for effective enforcement] – an economic incentive."²⁰⁸ He also noted the efficiency advantages in enabling industry to choose its own means to reduce pollution to the level established by the tax.²⁰⁹ As he stressed in making the case for his amendment, it would have neither removed nor weakened any other portion of the legislation.²¹⁰ Nonetheless, the bill's sponsors opposed the amendment, and the Senate defeated it.²¹¹ Part of their reasoning was the empirical claim that it was too difficult to identify the degree of harm produced by any unit of pollution.²¹² Another set of arguments, however, had to do with the nature of the national commitment that the anti-pollution statutes represented. The bill's sponsors indignantly inquired whether Proxmire meant to suggest that citizens were moved only by the threat of tax enforcement.²¹³ The Clean Water Act was a national commitment to a new way of doing things, not a marginal adjustment in regulation: by a kind of implicit crowding-out logic, its sponsors seemed to take Proxmire's proposal as threatening to undermine the moral and civic commitments that they saw anti-pollution legislation as establishing.

The more familiar claim that charging for pollution amounted to issuing a "right to pollute" slipped into the debate when Muskie declared that approach unacceptable and Proxmire denied that his proposed tax represented such a license.²¹⁴ The larger debate over his proposal, and the still larger themes in which it was set, cast light on that long-exhausted canard. Rather than a simple charge of commodification or crowding out (though it had aspects of both), it was an objection to the idea that the country's environmental commitments had reached a resting place from which a neat calculation of costs and benefits was available. The reason behind the objection was that Congress was in the process of implementing a new set of defining commitments in response to intense public ferment. It was establishing the ideas that human interests depend on a web of ecological interdependence; the natural world matters morally as such and not only as a

²⁰⁸ CWA Leg. Hist. 1318 (Statement of Sen. Proxmire) (proposing to "Give industry the incentive present law lacks ... to spend the money it should on water pollution control... [by] impos[ing] effluent charges on industrial water polluters in proportion to the amount of waste discharged. Thus [sic] makes each polluter financially responsible for his own pollution. It says to industry, 'Pay or stop polluting.' This is a language industry understands.").

²⁰⁹ Id. at 1321 ("this gives industry ... a chance to determine how best to abate its pollution").

²¹⁰ See id. at 1321 (Statement of Sen. Proxmire) ("My amendment, I stress, is a supplement ... I am proposing today that effluent charges be used as an enforcement tool, in conjunction with the procedures [in the unamended bill]"); id. at 1335 ("The amendment I am proposing would not delete one section of [the] bill. It would simply add to it.").

²¹¹ Id. at 1321-36 (transcript of debate and report of defeat of the amendment).

²¹² See id. at 1325-27 (setting out the difficulty of quantifying the harm ascribable to any unit of pollution).

²¹³ See id. at 1335 (Statement of Sen. Baker) ("I do not accept the implication by the Senator from Wisconsin that the people of the United States are more willing to abide by an Internal Revenue statute categorical prohibition ... it seems to me ... that [Proxmire] is suggesting that the only laws the people of the United States really take seriously are the internal revenue laws, and that is not so").

²¹⁴ See id. at 1325 (Statement of Sen. Muskie) ("We cannot give anyone the option of polluting for a fee. We are saying that our aim is to have no discharge"); id. (Statement of Sen. Proxmire) ("I am certainly not licensing the discharge of a pollutant.").

source of human convenience; and we disregard these complex facts at peril to both our interests and our duties.

4. The character and motives of the anti-pollution statutes

The regulatory devices of the anti-pollution statutes were rigid: deadlines, emission limits, uniform permits. The drafters and sponsors of the statutes, however, seem to have imagined this rigidity as a way of pressing forward a fluid process: the country's adoption, definition, and pursuit of new commitments. This project was fluid in empirics, engaging the question of just what could technology and civic mobilization could accomplish, and normatively, asking what it meant to acknowledge the moral importance of the natural world. Legislators rejected more flexible instruments because they understood those as tending to fix values that were in flux and neglecting the novelty and importance of the commitments the country was undertaking.

In hindsight, these objections seem to rest on false binaries and an unsophisticated sense of the reach and power of market-based instruments. In one sense this is plainly true: no such inhibitions meaningfully constrain today's discussions of climate change, in which environmental values and market instruments figure as mutually reinforcing. Nonetheless, efficiency is an instrumental quality, necessarily relative to purposes. The public power of arguments that an instrument fails to achieve its ends efficiently is partly relative to the recognized importance of those ends. In this respect, the criticism of the anti-pollution statutes takes some of its force from the very features that the drafters believed they were defending in rejecting more market-based instruments.

Whether the drafters were helping or hurting their own cause is not the question I mean to address. They were right in recognizing the importance of the process they supposed they were assisting: adopting a new set of commitments, which would make new arguments and demands forceful in public language. Those included the acute and, as it turned out, productive criticisms that would soon attach to the anti-pollution statutes.

C. Summary

In the decade-plus that ran from the publication of *Silent Spring* to the passage of the Clean Water Act, and particularly the five years beginning in 1968, a new set of claims became available in public environmental language. Ideas that would previously have been parochial, eccentric, or even unintelligible entered into the repertoire of arguments and authority by which Americans could appeal to one another in disputes over the use of political power, the duties of citizenship, and the character of the national community. These new claims nonetheless had real limits. They were not asserted, refined, and implemented against sustained opposition, nor did they arise from a movement commensurate to the scale of the cultural and conceptual ambition they expressed. A crisis and shift in values routinely described as transformative, even revolutionary, was not thematized and tested by opposition in a national election, although representatives targeted as unfriendly to environmental issues proved vulnerable in the early 1970s.²¹⁵ The consequences of taking the new commitments seriously, as a

²¹⁵ Rather than produce a movement-president, environmental politics benefited from the opportunistic endorsement of Richard Nixon, who for a time seized on environmental issues in hopes of outflanking liberals and claiming a potential consensus issue in a fractious country. Early in his second term, however, he gave up on claiming the issue and vetoed the 1972 Clean Water Act, a veto which a self-confident

matter of public policy or personal conduct, remain disputed at best, inspiring argument over whether the country has adopted them in any real sense.²¹⁶ This should not, however, lead us to neglect that debate over their meaning continues today.

IV. Climate Change: Rapture, Continuity, or Reinvention?

A. The Case Against Environmental Language, Revisited

This paper began by challenging two kinds of claims about environmental public language. One is that “environmentalism” is unsuited to the nature and scale of today’s problems, especially climate change. Environmental values are negative and defensive on the one hand, and on the other hand committed to a naïve and untenable contrast between humanity and nature.²¹⁷ The second challenged claim is that, whatever its more specific defects, such language is vague, motivationally weak, and thus a presumptively poor resource for addressing the next generation of environmental challenges.²¹⁸

The first claim depends on simplistic accounts of environmental politics. That it is plausible is a cost of failure to attend to the history of environmental public language. Only two strands of the developments treated here are at all compatible with the argument that environmentalism is essentially defensive and hostile toward human aspiration: the disdain for “materialism” in early Sierra Club culture and the alarm in 1960s environmentalism that industrial society might be headed for apocalyptic crisis.²¹⁹ But even these strands do not support the proffered portrayal of environmentalism. The hostility toward “materialism” was not ascetic but precisely in favor of enriched experiences of rapture and awe, as well as the fellowship that Sierra Club members praised in their paeans to outdoor culture.²²⁰ The apocalyptic strains of 1960s

Congress overrode. Both public discussion and legislative action on the issue ran somewhat ahead of any mobilized public, let alone a coherent movement able to produce nationally visible leaders with strong and widespread support. It was not until the 1980s, when public and Congressional resistance stymied Ronald Reagan’s efforts to repudiate the environmentalist turn of the 1970s and, particularly, open public lands to exploitation, that a popular test emerged, and that was more in the nature of ordinary-politics trench warfare than thematized struggles over national self-definition.

²¹⁶ From the start, the environmental crisis was perceived a unifying challenge, even the occasion of a unifying change in values, for a divided country. See *Earth Week – No Vogue*, N.Y. Times (April 19, 1971) (“[the environment] has become deeply embedded in politics – not in a partisan way but almost as a qualification for office”); *Issue of the Year: The Environment*, Time (Jan. 4, 1971) (“With remarkable rapidity, [the environment] became a tenet in the national credo”) This promise seemed vindicated in broad expressed support for environmental protection in the early 1970s and thereafter, largely down to the present day. It also, perhaps, underlay a second conservative feature of the new environmental language: that people proved able to adopt its radical critique, at least nominally, without changing their behavior in serious ways. This would be compatible with the thought that the “environmental crisis” and “revolution” borrowed some of their felt urgency from authentically divisive struggles: Vietnam abroad, race at home, and the disconcerting eruption of youthful dissent from norms of respectability and success. In this view, [second-generation environmental public language] would be an example of the great American genre of cheap talk: frisson-inducing dissent that does not make itself too inconvenient in practice for the current arrangement of interests and ideas. See *The Good Earth*, N.Y. Times (April 23, 1970) (“Is the sudden concern for the environment merely another ‘nice, good middle-class issue,’ as one organizer put it, conveniently times to divert the nation’s attention from such pressing problems as the spreading war in Indochina and intractable social injustice at home?”).

²¹⁷ See TAN 7-12, *supra*.

²¹⁸ See TAN 7, *supra*.

²¹⁹ See TAN 88-110, 184-90, *supra*.

²²⁰ See TAN 63-110, *supra*.

environmentalism did sometimes express a technophobic impulse, notably in the Sierra Club's Vietnam "parable"; but most environmentalists did not simply denounce technology. Instead, they proposed to redirect it in a more ecologically responsive fashion.²²¹ The goal has been to reconcile prosperity with more qualitative satisfactions such as aesthetic inspiration and spiritual enrichment. Even the staunchest advocates of the Wilderness Society agenda presented their ideals as among the finest fruits of prosperity, not reasons to reject it.²²²

Neither the utilitarian nor the Romantic strain of American environmentalism has relied on an essential idea of undisturbed nature. Even the leaders of the wilderness movement, who would seem the most promising targets of this charge, explicitly proposed to manage nature for a specific kind of landscape and experience. Similarly, the Sierra Club's commitment to spectacular landscapes was indeed based on an idea of harmony between nature's vitality and that of the untrammelled mind; but this idea never depended on literally primordial nature persisting in the modern world.²²³ Muir and his cohort sought parks, readily accessible and cleansed of threats, as conduits from nature to the human mind. Precisely this tolerance for human construction of nature's "cathedrals" spurred the creation of the Wilderness Society, with its own, starker agenda for human management of public landscapes.²²⁴ More basically, this Romantic tradition was based in the idea that perception importantly constitutes the world, and thus that any encounter with nature is also an encounter with one's own mind, and, ideally, part of a process of revising it.²²⁵ Finally, imagining environmentalism as opposing humanity to nature ignores the central role of expert management in environmental public language and policy.²²⁶ The managerial paradigm has been both important on its own terms and deeply influential on Romantic and wilderness agendas.²²⁷

In answer to the argument that environmental public language has negligible practical relevance, this paper has tried to recast the problem. The question is not simply whether a static and discrete set of concerns called "environmentalism" has more or less force. Environmental public language has been thoroughly interwoven with other era-defining themes, around which citizens have sought to persuade one another that their values and interests are different from those they have previously recognized. To be a little too schematic about it, the persuasion has generally aimed at two kinds of changes. One has been to recognize substantively new purposes. The kind of aesthetic encounter with nature that the Sierra Club and Wilderness Society pioneered and moved from eccentricity to a cornerstone of environmental public language is exemplary of this sort of substantive innovation. The other kind of change involves the scope of interests outside one's self that one takes into account, rather than their content. An exemplar is Gifford Pinchot's case for utilitarian management of forests, which required not just empirical recognition of the remote effects of deforestation, but also an ethical and, perhaps, imaginative identification with the interests of Americans far away in space and,

²²¹ See TAN206-30, *supra*.

²²² See TAN 140-52, *supra*.

²²³ See TAN 132-36, *supra*.

²²⁴ See TAN 129-35, *supra*.

²²⁵ See, e.g., Emerson, *supra* n. 59.

²²⁶ See TAN 88-110, 144-49 *supra*.

²²⁷ See, e.g., *supra* n. 101-04.

more radically, in time.²²⁸ In both kinds of changes, environmental public language has been inseparable from broader contests about national purpose, civic dignity, and the role and scale of government.

With these points in view, the paper next turns to a distinct argument that climate change, in particular, renders environmental politics mostly irrelevant. This influential and forceful argument contends that climate change presents a uniquely difficult collective-action problem. The basic structure of the argument is that the global scale, long time horizon, and pervasive causal uncertainty of climate change impede political action because the costs associated with addressing the problem will outweigh the benefits for members of most jurisdictions and, arguably, most generations. These facts do tend to confound politics. In light of this, the paper asks why we do, in fact, see a municipal politics of climate change. The argument here is that this politics is most intelligible if we regard its participants as engaged in the same kind of persuasion and contest over public purpose and identity as earlier generations of environmental politics.

B. The Special Confoundments of Climate Change

Climate change threatens to be the externality that ate the world. Within a year of its release, carbon dioxide is dispersed uniformly through the earth's atmosphere. Whoever uses energy derived from fossil fuels gets the full benefit of that power while evenly dividing the atmospheric harm with somewhat more than 6.6 billion others. That is a ratio of benefit to harm all but certain to induce overindulgence.

What about the standard solution to negative externalities, a political fix to change incentives bearing on individual choices by internalizing some of the harms?²²⁹ The difficulty is that both the spatial and the temporal scales of political choice replicate the basic externalities problem of individual choice. In addressing a global problem, a national public must absorb the full cost of any measure it adopts, but will receive only a fraction of the globally distributed benefit. Climate policy distributes costs and benefits in the pattern of a foreign-aid project – distributing, even in the case of even an American action, 95 percent of its benefits to foreigners.²³⁰

Making a bad situation worse, the distribution of harms from climate change is both uncertain and likely to be highly uneven. On some prominent estimates, the United States would have been a massive net loser from adopting the Kyoto Protocol, even assuming perfect global compliance, because the country is projected to feel relatively light effects from a warming world in the next few decades.²³¹ Some countries, notably Russia, might benefit from climate change in the medium terms, even without

²²⁸ See Pinchot, *supra* n. 88 (arguing for the necessity of a broadened moral vision of personal obligation to the nation to uphold conservation policies).

²²⁹ This is the basic strategy of many proposals to address climate change, notably the cap-and-trade mechanisms of most climate legislation introduced last year in Congress, as well as deliberately simpler devices such as the partial Pigouvian tax that Thomas Merrill and David Schizer have devised to avoid some of the public-choice hazards of the more complex instruments. See Thomas Merrill and David Schizer, *Energy Policy for an Economic Downturn: A Proposed Petroleum Fuel Price Stabilization Plan* (unpublished paper, on file with author).

²³⁰ This ratio is purely demographic; it would be lower if it assumed that residents of wealthy countries have “more to lose” from climate change; but of course, that is not at all clear, as vulnerable populations in poor countries may live close to survival or very basic quality-of-life thresholds vulnerable to climatic disruption, such as exposure to malaria.

²³¹ See Cass R. Sunstein, *Worse-Case Scenarios* 71-117 (2007).

considering the costs of hypothetical mitigation measures.²³² One might think it should be possible in principle to redistribute the benefits of coordinated mitigation by payments to otherwise reluctant participants, but that approach presents serious difficulties: strategic misrepresentation of anticipated effects as countries jockey to be bought off; pure holdout problems; disputes about acceptable distributions of benefits and burdens, including politicized arguments about international distributive justice;²³³ and, closely linked to the last, domestic political reluctance to subsidize the mitigation efforts of foreigners.²³⁴

The problem of temporal scale is even more basic than the various issues of spatial externalities and coordination. Each year's greenhouse gas emissions commit the global atmosphere to decades of resulting change, and the sum of atmospheric changes, arising from interacting natural and anthropogenic influences, may emerge over an even longer time.²³⁵ This means that the benefits of mitigating climate change will accrue to future generations while the living bear the costs. Domestic political decisions, particularly in democracies, are tied to electoral cycles not generally longer than seven years, and frequently shorter. Within any political cycle, it is highly likely that the costs of a serious mitigation effort will outweigh the benefits, even setting aside the inevitably speculative character of benefits measured in non-events. The political case, then, is for present sacrifice in favor of the uncertain advantage of the strangers who compose future generations.²³⁶

In sum, then, the spatial and temporal scale of climate change impedes mitigating decisions at all levels, from individual throughout the levels of political jurisdiction. On its face, climate change does appear unique in its capacity to outstrip the self-correcting resources of human choice. A question, then, is how far those resources include the power to change the grounds of our choices.

C. The Politics of Anomaly

²³² See Jonathan B. Wiener, *Designing Global Climate Regulation*, in *Climate Change Policy: A Survey* 151, 160 (Stephen Schneider, Armin Rosencranz & John O. Niles, eds., Island Press 2002).

²³³ See Posner & Sunstein, *Should Greenhouse Gas*, supra n. 6 (discussing the political barriers to redistributing wealth through a global climate regime).

²³⁴ See Sunstein, *A Tale of Two Protocols*, supra n. 6 (discussing American reluctance to pay for climate mitigation with benefits abroad). These worries are not hypothetical: one has only to consider the projections of national costs and arguments about fairness that powered the Senate's 1997 discussion of the Byrd-Hagel resolution denouncing Kyoto for its release of poor countries from emissions-reduction obligations, and compare this idea of a fair distribution of climate burdens (each country must do its part) to that developing in the public conversation of countries such as India (each human being should benefit from an equal share of the atmosphere's absorptive capacity). See 143 Cong. Rec. 15785 (1997) (statement of Sen. Byrd) ("I do not believe the Senate should support a treaty that requires only half the world – in other words, the developed countries – to endure the economic costs of reducing emissions while developing countries are left free to pollute the atmosphere and, in doing so, to siphon off American industries."). For an account of developing-country perspectives on the question, see Lavanya Rajamani, *Differential Treatment in International Environmental Law* 216-36 (describing coalescence of opinion around an equal per-capita allocation of atmospheric among the world's persons) (2006).

²³⁵ See IPCC Summary, supra n. 1.

²³⁶ This entire point supposes a conventional discount rate and relative indifference to the fate of future generations. I don't mean to endorse this approach as the right view of climate change, and the whole drift of my argument is that we should not regard these constraints as fixed.

Amidst the cacophony of climate politics, one effort is striking in that it stands dramatically athwart the analysis just set out. This is the organizing project that, at the time of writing, has led 910 city governments, representing nearly 82 million Americans, to adopt the goals of the Kyoto Protocol (a seven percent reduction in greenhouse-gas emissions from 1990 levels by 2012) through an instrument called the Mayors Climate Protection Agreement.²³⁷ Originally an initiative of the Seattle mayor's office, the Agreement is now managed through an office in the United States Conference of Mayors and overlaps substantially with the Sierra Club's "Cool Cities" campaign.²³⁸ A 2007 survey (with serious selection-bias problems) of 134 then-participating cities found nearly 90% requiring, or moving to require, energy efficiency in new city buildings; almost three-quarters using alternative fuels or hybrid-electric vehicles in city fleets; over 80% either including or moving to include renewable energy sources in their electricity portfolios; more than three-quarters "undertaking efforts to encourage" energy efficiency in private construction; and nearly all switching to energy-efficient lighting.²³⁹ Seattle claims to have reduced the greenhouse gas emissions of city operations by 60% since 2005.²⁴⁰ While most efforts are similarly concentrated in city-government actions, Austin Energy, in Texas's capital city, has set a goal of securing 20% renewable energy sources and 15% of net supply from efficiency efforts by 2020, and cities from Fort Collins, CO, to Burlington, VT, have been investing in wind energy and other renewables.²⁴¹ Residents of Marin County, CA, are seeking state permission to give utility customers the option of paying a higher rate to tap into a purely renewable and local set of energy sources, and 41% of San Francisco voters in November supported a ballot initiative requiring that all city energy come from renewable sources by 2040.²⁴²

Is this behavior merely trivial or silly?²⁴³ To be sure, it is fair to describe some of the efforts just sketched as low-hanging fruit and, in cases, cheap talk. But since the costs are not zero, and the benefits, in theory, are almost exactly that (if one says the benefits are to the politicians, then one must restate the problem for the voters, whose taxes and utility bills represent some of their costs), the question of motivation is still fairly sharply presented. No one, of course, really doubts that those involved are acting from some combination of moral motive and self-interest as they understand it.²⁴⁴ The

²³⁷ Data from <http://www.usmayors.org/climateprotection/list.asp> (last visited January 21, 2009).

²³⁸ See <http://www.coolcities.us/> (last visited February 27, 2009).

²³⁹ See Survey on Mayoral Leadership on Climate Protection 4 (United States Conference of Mayors, 2007).

²⁴⁰ Cool Cities 2 (Sierra Club, 2006). I do not know how Seattle generated its reduction figure, but I cannot help suspecting that creative accounting was involved. [I have a call in on this.]

²⁴¹ On Fort Collins, see Cool Cities at 12 (the city has imposed a 2% surcharge on power bills to finance its renewable-energy effort); on Burlington, see Elizabeth Kolbert, Fields Notes from a Catastrophe 171-80 (2006).

²⁴² See Kate Galbraith, A Clean Energy Uprising in California, Green, Inc. (N.Y. Times blog), Oct. 29, 2008, available at <http://greeninc.blogs.nytimes.com/2008/10/29/a-clean-energy-uprising-in-california/#more-399>; Heather Knight, In S.F., Voters Defeat Proposition for City Utility, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/11/05/BATD13RC1Q.DTL>. Defeat of the San Francisco measure involved a long-standing conflict between Pacific Gas and Electric and proponents of publicly owned power, which brought out mayor Gavin Newsom and senator Diane Feinstein against the proposition.

²⁴³ See Engel and Orbach, *supra* n. 6 (expressing puzzlement).

²⁴⁴ See, e.g., Engel & Orbach, *supra* n. 6 (describing moral motives as a residual category); Sunstein, *The World*, *supra* n. 6 (briefly noting a hodgepodge of moral motive and empirical confusion).

aim here is to make their action more intelligible by treating it as part of the same kind of public debate treated throughout this paper.

In private interviews and public statements, city officials and activists explain their efforts in several ways. They are quick to cite the advantage certain regions, such as California, hope to enjoy from early adoption and manufacture of technologies that may later become standard (a calculation that predicts effective political action on climate in the future, meaning that it is not really consistent with a larger pessimistic view of the problem).²⁴⁵ They embrace a simple public-choice motive: city governments hope to benefit from green-development block-grants and, in the longer term, density-friendly economic development, and early efforts may position them to do both.²⁴⁶ They also note that they are engaged in a symbolic politics made possible by the country's adoption of environmental commitments in the 1970s and earlier.²⁴⁷ Their actions invoke those commitments at a time when the national government has been seen as neglecting them. They sought to announce that the commitments remained vital, and, in so doing, contribute to the truth of the assertion. These symbolic actions reflect the existence of environmental commitments as national values; thus by adopting nominal emission limits, cities make a public argument that the federal government should do the same.

Those involved also regard themselves as involved in political persuasion that will induce others to take similar action.²⁴⁸ Whether this is plausible is partly endogenous to the politics itself. This politics seeks to affect the reasons people understand themselves to have for joining collective undertakings. Rather than a specimen of an independently established logic of collective action, it is an engagement with that logic itself.

What is the nature of the persuasion? In addressing this question, I am mainly concerned with how the leaders I spoke with understood their own participation and that of the people they recruited. They were face to face with the arguments that local climate action must be futile, and developed a concrete sense of how to engage them. In elaborating on their explanations, I sometimes invoke social science and legal scholarship. In doing so, I do not mean to assess their efforts by these canons or to predict their success or failure, but to add a systematic account of the intuitions about politics and persuasion that they seem to me to be expressing.

First, local initiatives are attempts to take advantage of the role of reciprocity in collective action. The motivational force of reciprocity stands athwart the narrow account of rational action underlying the argument that climate change presents a unique collective-action problem.²⁴⁹ Ultimately, local initiatives aim to make low-carbon

²⁴⁵ See telephone interviews with Kevin McCarty, director, United States Conference of Mayors Climate Protection Center (Nov. 2008); Jeanie Boawn, sustainability director, Seattle Mayors Office (current chiefly responsible for Seattle's continuing role in the Mayors Climate Protection Agreement) (Dec. 2008); Steven Nicholas, former sustainability director, Seattle Mayors Office (lead strategist and organizer at the time the Mayors Climate Protection Agreement was being propagated) (Dec. 2008) (notes from all interviews on file with author).

²⁴⁶ See McCarty interview, Nicholas interview, *supra* n. 258.

²⁴⁷ See interviews collected in n. 258, *supra*.

²⁴⁸ See *id.*

²⁴⁹ See Dan M. Kahan, *The Logic of Reciprocity: Trust, Collective Action, and the Law*, 102 *Mich. L. Rev.* 71 (2003) (setting out the motivational relevance of reciprocity and non-reciprocity for sustaining collective action). For accounts of neuroscience studies suggesting confirmation of the distinct motivational character of reciprocity, see James K. Rilling, et al., *A Neural Basis for Social Cooperation*, 35 *Neuron* (2) (2002);

conduct a social convention to which people adhere as a default, so that such conduct is understood as part of a practice of membership and mutual respect.²⁵⁰ Recognizing the difficulty of recruiting individuals to minority practices, which are not yet social conventions, the initiatives take advantage of smaller and denser networks, in which the threshold of normative conduct is relatively accessible.²⁵¹ Mayors, city officials, and environmental activists constitute such networks, and strategists behind the Mayors Agreement describe it as aiming at making participation a norm among mayors themselves.²⁵² By achieving high concentrations of participating cities in particular regions – including, for instance, much of California and North Carolina – they also hope to create such a norm among the sorts of active and networked citizens who are likely to be both effective in pressing municipal government to act.²⁵³ This is a long way from establishing a general norm, of course, but it is nonetheless an attempt to create a reciprocal practice among members of a limited public, rather as the Sierra Club once created a limited public in which Romantic experience of nature was widely shared and explored as a public language. In substance, moreover, it is close to the moral conception of political community behind Progressive utilitarian management: the idea that a polity must manage resources for the intergenerational benefit of all, rather than selective benefits in the present. Finally, in deliberately declining to treat local or even national self-interest as authoritative, it is an attempt to create a constituency for global conservation, much as Progressives used spillover effects and public-lands management to argue for an expanded idea of the tasks of national government.

Second, these initiatives are intended as existence-proofs that coordinated action can succeed in reducing greenhouse gas emissions, at least within a locality (ignoring for the moment the prospect of emitting activities fleeing to other jurisdictions).²⁵⁴ A successful experiment is a powerful form of persuasion, establishing a concrete option for others with salience that a merely hypothetical alternative is unlikely to command.²⁵⁵

Third, local climate initiatives are attempts to reframe the cultural valence of climate change: from an identity-marking cultural and ideological flashpoint to a rallying-point of pragmatic effort. Studies of public opinion on climate change show that

Kevin McCabe, et al., A Functional Imaging Study of Cooperation in Two-Person Reciprocal Exchange, 98 PNAS (20) (Sept. 25, 2001). For a fascinating historical argument that the social cooperation was long regarded as normatively rational and that by this canon individuals are correct to imagine their acts as directly efficacious when they contribute to a social practice, see Richard Tuck, *Free Riding* 30-115 (2008).

²⁵⁰ See Nicholas interview, *supra* n. 258.

²⁵¹ See Nicholas & McCarty interviews, *supra* n. 258.

²⁵² See *id.*

²⁵³ See interviews gathered in n. 258, *supra*.

²⁵⁴ See Nicholas interview, *supra* n. 258.

²⁵⁵ See Heather Gerken, *Uncooperative Federalism* (unpublished paper, on file with author) (arguing for the importance in public-policy innovation of small-scale existence proofs of the viability of alternative models). Perhaps the most impressive American example of this strategy at the municipal level is Burlington, which has a well-established program of encouraging conservation and has seen its energy use since 1990 has dropped by one percent, while statewide use has risen by 15 percent. See Elizabeth Kolbert, *Field Notes from a Catastrophe* 175 (2006). California, which has pursued an aggressive and successful energy-conservation policy over the last three decades, presents a similar example at a larger scale. California has held its per capita energy use essentially even since 1974, while nationwide per capita consumption has increased by fifty percent. California has also reduced its per capita carbon dioxide emissions by thirty percent since 1975, while national per capita emissions have changed little. See Steven Mufson, *In Energy Conservation, California Sees Light*, *Wash. Post.* at A1 (Feb. 17, 2007).

views of both the severity of the problem and the human power to address it effectively conform to the hypothesis that people assess facts based on whether the truth or falsehood of those facts would confirm or undercut the bases of their social status and moral vision of the world.²⁵⁶ Those who regard the problem as serious and profess to believe that people can do something about it are also pro-regulatory economic and political egalitarians.²⁵⁷ Those who profess to think that the threat is negligible and beyond human influence in any case (two views that would not seem inherently aligned, but for their affinity in the cultural-meaning register) fall on the other side of those larger markers of worldview. Strategists for local initiatives emphasize practical local vulnerability to climate change. The paradigm case is Seattle's dependence on the Cascade snowpack for water and hydroelectric power, which figured importantly in the local argument for leading the Mayors Agreement initiative.²⁵⁸ This argument is available across the snowpack-dependent West, as is the danger of drought for already water-stressed regions in the Southwest and, in some recent droughts, the Southeast.²⁵⁹

The persuasive aim is to give a broader class of people reasons to believe climate change is both real and susceptible to action by presenting it as a body of practical problems and solutions rather than a left-liberal answer to the End of Days. Note that this strategy seeks not to remove the cultural valence of climate change, but instead to diversify it. It takes advantage of the diverse motives that, in practice, provide people with reasons to join in collective action. In this respect it aims, self-consciously or not, at reproducing some of the convergence of motives that marked the environmentalism of roughly 1968-73, when a set of left-liberal and generally elite cultural affinities fell into mutual support with a broader perception of a practical public-health crisis and both helped to make conservation, in some minds, a national mission. Moreover, by engaging the sources of dignity in the identities of other citizens, it returns to the theme of civic dignity that has figured in the American relation to the natural world all along. This theme began with the laissez-faire ideal of productive use as an emblem of equal social membership, proceeded through utilitarian management as an emblem of equal concern for the interests of all, and in the twentieth century has included the state's willingness to promote the aesthetic and spiritual aspirations of some of its conservationist citizens. The issue of civic dignity has been ubiquitous and always contested in the politics of nature.

In all of these respects, then, local climate initiatives engage the questions of (1) what reasons exist to address climate change; (2) who has those reasons; and (3) what reasons would be sufficient to spur collective action. On the last point, it is worth noting that, at least for their activist core of proponents, local initiatives are acts of defiance against the idea that politics is futile – against the pessimistic account of climate change

²⁵⁶ See Dan M. Kahan, et al., *Fear of Democracy: A Cultural Evaluation of Sunstein on Risk*, 119 *Harv. L. Rev.* 1071 (arguing for the appropriateness of considering cultural meaning of risks in setting and justifying public policy) (2006); Dan M. Kahan & Donald Braman, *Cultural Cognition and Public Policy*, 24 *Yale L. & Pol'y Rev.* 149 (2006) (setting out theory of cultural cognition and evidence for its validity).

²⁵⁷ Anthony Leiserowitz, Edward Maibach, & Connie Roser-Renouf, *Global Warming's "Six Americas": An Audience Segmentation*, Yale Project on Climate Change (available at <http://research.yale.edu/environment/climate/>, last visited February 27, 2009).

²⁵⁸ See interviews gathered in n. 258, *supra*.

²⁵⁹ See Jon Gertner, *The Future is Drying Up*, *N.Y. Times Magazine*, Oct. 21, 2007 (describing increasingly dire forecasts for regional water shortages under current climate change models).

and collective action sketched earlier.²⁶⁰ If they were merely defiant, they would count only as expressive, in just the vein of a chanted slogan. The burden of the argument here is that local climate initiatives are intended rather as efforts at persuasive politics, bearing on the reasons for action that operate in the political community and its sub-communities. Those who work for local climate initiatives do not fail to understand the argument that their action is necessarily futile. Proving otherwise is a project motivated precisely by an understanding of the argument and a wish to change the terms on which its case rests.

V. Conclusion

Ideas about the value of the natural world are and have always been integral to the repertoire of arguments by which Americans try to persuade one another of the character and implications of common commitments. How we understand nature is part of our civic identity. It has developed through interaction with changes in the other, better-trodden themes of American public language: national purpose, civic dignity, and the role and appropriate scale of government, to name those that have figured most prominently in this paper. This understanding of the natural world is anything but monolithic: it is one of the common terms that Americans interpret variously in setting out and battling over their disagreements.²⁶¹ The natural world has stood at various times, and for various constituencies, for the idea of infinite material progress, the possibility of rational resource management in the public interest, and the need to redefine human flourishing beyond material mastery of nature toward a heightened aesthetic awareness and spiritual response to it. The last idea has often served synecdoche for awareness of the circumstances of one's own life. The politics of nature has contributed to the civic dignity of the free labor idea, in which the public domain was the acreage open to settlement and exploitation; to that of progressive reformers, in which the citizen should do her part in maintaining a social order that managed its complex and interdependent systems for health and mutual benefit; and the Romantic whose loyalty to the political community is paradoxically conditioned on its enabling him to leave its constraints from time to time, escaping into solitude, reflection, and perhaps mystical ecstasy. More than a century of development in these themes contributed to the rise of modern environmentalism, sometimes inaptly described as an event without a history. These themes contributed mightily to the specific shape that environmentalism gave to the anxieties of its time, the 1960s and early 1970s, and that environmentalism in turn gave the idea of nature's intrinsic value and moral instructiveness a new reach in American language. Understanding that era as one in which legislators joined movements and commentators in adopting this new account of the natural world casts some light on the peculiarities and limits of their landmark legislation. In turn, understanding today's politics as a continuation of the politics of nature casts light on the signal anomaly of climate politics, the proliferation of local initiatives to control greenhouse-gas emissions.

All these developments have been acts of democratic self-interpretation. Social movements, political leaders, and public commentators have adapted ideas of the natural world to the needs of their times, and recast those needs in light of how they understand the meaning and value of nature. The philosophical and literary canon of American

²⁶⁰ This idea has become familiar among at least some political progressives in the last decade or so, and is crystallized in the slogan of the World Social Forum: "Another world is possible."

²⁶¹ See Post & Siegel, *supra* n. 5.

conservationism – Thoreau, Muir, Leopold – is badly miscast when taken as a line of prophets or an intergenerational seminar in environmental ethics. These touchstone expositors were, rather, parts of their respective worlds and times, and their intelligibility to us is partly a product of the politics of nature between then and now. Thoreau and Muir were sources of material for the self-interpretation of individuals and movements, Thoreau perhaps diffidently, Muir deliberately, as he turned his role as publicist of Romantic aesthetics into that of social-movement impresario. Leopold, for his part, was a product of the intensely practical, public-oriented argument-making of a movement culture, and his work was a response to the challenges of justifying wilderness in the terms available in the 1920s through the 1940s. None of this makes their conviction less real or reduces their literary or theoretical interest. But it does set their meaning for environmental law and politics just where it belongs: in relation to the self-interpreting democratic community that they addressed and to which they belonged – along with millions of mostly forgotten people who gave their ideas form and life, from the weekend sojourners of the Sierra Club and the uncharismatic Wilderness Society editor, Howard Zahniser to the federal legislators of the 1960s and mayors in the new millennium. That larger community and the limited publics within it are the ultimate actors in this story.

They – we – will choose which strands of the inheritance set out here will remain a living tradition in the environmental politics of our time. Climate change comes draped in claims of apocalypse, national mission, and market-friendly technological optimism – a culturally overdetermined phenomenon if ever we have faced one. Which accounts will prevail is partly a political choice, made of old materials in new circumstances. The choice will be the work of the next generation of the cultural innovation, political argument, and social movements that have produced American environmental public language so far.