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ENVIRONMENTAL ESSAY

PURITAN, INDIAN, AND AGRARIAN: A CRITICAL ESSAY ON THE HISTORY OF LAW, ENVIRONMENTAL VALUES, AND RHETORICAL STRATEGY

RENNARD STRICKLAND*

PURITANISM AND THE WILDERNESS: THE INTELLECTUAL SIGNIFICANCE OF THE NEW ENGLAND FRONTIER, 1629-1700. By Peter N. Carroll. New York: Columbia University Press, 1969. Pp. xii, 238. \$7.50.

The destruction of animal resources, the pollution of the environment, and the possibility of overpopulation are distinct public trends that can be reversed only by rethinking our basic values. —RICHARD L. MEANS, *THE ETHICAL IMPERATIVE: CRISIS IN OUR AMERICAN VALUES* (1969)

The reviewer is by training and inclination a rhetorician and historian often found wandering like Lewis Carroll's little Alice in the Wonderland of statute and case law. As Richard Weaver has observed, ours is an age with a deep distrust of *both* history and rhetoric.¹ Calvin Woodard has already commented on the reticence of the historian to participate in discussions of the forward trends of the law.² Surely it takes a special brand of arrogance to suggest that an old fashioned study of history and rhetoric can have value for such a now and seemingly scientific area of the law as the environment.

And yet, the purpose of this review is to suggest just that. In truth, there is nothing so really startling or original about this suggestion. In fact, Professor Woodard has argued that "by interpreting Legal History broadly, and by emphasizing semi-modern as well as medieval topics and issues, . . . law students can come to understand better the legal system of which they are a part."³

Our book under specific consideration is an excellent piece of intel-

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¹ R. WEAVER, *LANGUAGE IS SERMONIC* (R. Johannesen, R. Strickland & R. Eubanks eds. 1970).

² Woodard, *The Limits of Legal Realism—An Historical Perspective*, 54 VA. L. REV. 689 (1968).

³ Woodard, *History, Legal History, & Legal Education*, 53 VA. L. REV. 120 (1967).

lectual history—PURITANISM AND THE WILDERNESS. But Peter N. Carroll's study of "the intellectual significance of the New England frontier" is intended only as a starting point, a central pole from which to begin our analysis of the relationship of law, environmental values, and social change. The reviewer proposes to present pictures of two very divergent historical attitudes toward man's relationship with nature. The two cultures are the New England Puritan and the American Indian.

The essay poses four historical questions and suggests a rhetorical strategy. The questions are: (1) Are there identifiable cultural distinctions in attitudes toward man's relationship with nature? (2) Are these distinctions evidenced in the legal system? (3) Are changes in these attitudes reflected in the legal system? (4) May the legal system itself be used as an instrument to promote changes in cultural attitudes? The strategy requires that policymakers seek an adequate value analysis of modern man's cultural attitudes toward the environment and that this become the rhetorical basis for generating environmental action.

In PURITANISM AND THE WILDERNESS, Professor Carroll of the Department of History at the University of Minnesota, examines in a most exact manner "the importance of the New World in reconstructing and redefining Puritan ideas."⁴ Carroll bases his analysis upon primary evidence and in so doing focuses upon the Biblical imperative to subdue the earth. Therefore, this history becomes important background for an understanding of the contemporary environmental crisis.

Do not be misled. PURITANISM AND THE WILDERNESS is not a part of the flood of polemical material on "the ecocrisis." As a sound intellectual history which helps us understand why we face the environmental crisis, this study is worth whole shelves of scare material and pot-boilers which themselves constitute, in the opinion of the reviewer, a major source of pollution. PURITANISM AND THE WILDERNESS should be required reading for the lawyer, the legislator, and the environmentalist who would seek to direct others or simply to understand for himself.

CULTURAL CONCEPTS OF MAN AND HIS ENVIRONMENT: MYTH, REALITY, AND THE SOUTHERN AGRARIAN

As anthropologist John Beattie has explained "if in one sense all men everywhere inhabit the same world, in another and important sense they inhabit very different ones [for] members of different cultures may see the world they live in very differently."⁵ One must remember as philosopher Jose Ortega y Gasset observed:

⁴ P. CARROLL, PURITANISM AND THE WILDERNESS: THE INTELLECTUAL SIGNIFICANCE OF THE NEW ENGLAND FRONTIER 1629-1700 (1969) [hereinafter cited as CARROLL, PURITANISM AND THE WILDERNESS].

⁵ J. BEATTIE, OTHER CULTURES: AIMS, METHODS, AND ACHIEVEMENTS IN SOCIAL ANTHROPOLOGY 75 (1964).

Two men may look, from different viewpoints, at the same landscape. Yet they do not see the same thing. Their different situations make the landscape assume two distinct types of organic structures in their eyes.⁶

Before examining the Puritan and Indian viewpoint, we might note more recent examples which illustrate the historical relationship of man, cultural values, and myth as seen in attitudes toward the environment. The young members of the so-called "counter-culture" are a case in point. The phenomena of man-earth attitude in the "hippie" cults was noted by two such opposite political personalities as William F. Buckley, Jr. and Theodore Rozak.⁷

Serious observers of the "youth revolution" tell us that the costumes speak of a nostalgia, of a desire to return to simpler, and slower, and easier time. "The Indian headbands, Edwardian capes, gold-rimmed glasses mimic various eras of the past," according to Alvin Toffler, self-appointed chronicler of the dangers of "future shock." "The Rousseauian cult of the noble savage flourishes anew," he notes, in a movement which is reversionism masquerading as revolution.⁸

Reversionism is not an unusual avenue for the disenchanting, especially among the young who are bright enough to sense the growing complexities of civilization. Just forty years ago a group of twelve young Southern intellectuals, disturbed by the inhumanity of industrial society, published *I'LL TAKE MY STAND: THE SOUTH AND THE AGRARIAN TRADITION*. In this "manifesto" the Fugitive Poets who had looked to nature as their muse sought to recapture the virtues of an earlier era when man was intimately connected with the soil.⁹

There is no doubt that the South has taken a stand—not with the Agrarian but with the industrialist.¹⁰ The Chamber of Commerce has carried the day with reasoning not unlike that of Gerald W. Johnson who in 1931 wrote what has been called the epitaph of the Agrarians. Johnson argued:

The appalling stench that have come out of the cottonmill towns of Dixie within the last year, distressing as they are to thoughtful natives of the region, may serve, in the end, a more useful purpose than all the essences of magnolia and cape jasmine that all the professional Southerners have scattered over things Southern since the Civil War. For these are frank, undisguised, forthright stinks, not, like many odors which have emanated from the South in the

⁶ J. ORTEGA Y GASSET, *THE MODERN THEME* 89 (1961).

⁷ T. ROSZAK, *THE MAKING OF A COUNTER CULTURE* (1969), W. Buckley, Jr., *On the Right*, [Syndicated Column], Nov. 9, 1967.

⁸ Toffler, *Future Shock*, 12 *HORIZON* 82, 88 (1970).

⁹ *I'LL TAKE MY STAND: THE SOUTH AND THE AMERICAN TRADITION* BY TWELVE SOUTHERNERS (L. Rubin, Jr. ed. 1962) [hereinafter cited as *I'LL TAKE MY STAND*].

¹⁰ For an interesting account of the "new industrial South" see Prowledge, *Going Home to Raleigh*, 240 *HARPERS MAG.* 54-66 (1970).

past, compounded of the breath of the honeysuckle, with just a faint suspicion of putrescence.¹¹

In a recent analysis of Southern culture, Professor Paul M. Gaston examined "Southern Mythmaking" and noted the attempt of these Vanderbilt Agrarians "to project their hostility to modern industrial America into a generalized picture of the Southern past."¹² In the Winter 1969 issue of *The Georgia Review* Professor Marion Montgomery argues that the Southern Agrarian movement has remarkable relevancy to our current social ills most notably the protests of the "yippies" and the mounting concern over environmental quality.

There were sentiments [Montgomery notes] expressed by some of those caught up in the Chicago embranglement of the summer of 1968 that seemed to me at the time to indicate an affinity with Agrarian arguments of forty years ago . . . Compare, for instance, Morris Knight's words explaining why he showed up for the happening. He had sold his seven hotels to take up a new life, arguing at Chicago that the machinery of industrialism must be made "to work for man, not against him. Let them make it possible for man to return to the soil. Make them clean the air, rather than foul it." Shades of I'LL TAKE MY STAND. And if only someone could have handed out copies of Donald Davidson's ATTACK ON LEVIATHAN.¹³

The reviewer does not intend to argue the merits of the Southern Agrarian philosophy. The Vanderbilt manifesto has been resoundingly rejected. The banjo hangs on the wall while the "yeoman farmer" stands on the assembly line listening to Johnny Cash lament the passing of the old life while affirming the glories of the new.¹⁴ The Agrarian arguments are important, not because there is likely to be a "new Agrarian manifesto" emerging from some "yippie" camp, but because their arguments illustrate so clearly the relationship of man and his environment as a cultural phenomenon.

To focus on the Agrarian movement let us go back to November 14, 1930 when a crowd of more than 3,500 gathered in Richmond, Virginia, to hear a public debate on the topic: "Shall the South be Industrialized?"¹⁵ This debate, probably the high point of the Agrarian controversy, has been seen as one of the earliest "anti-Communist con-

¹¹ Johnson, *No More Excuses: A Southerner to Southerners*, 162 HARPERS MAG. 331 (1931).

¹² P. GASTON, *THE NEW CREED: A STUDY IN SOUTHERN MYTHMAKING* 10 (1970).

¹³ Montgomery, *Richard N. Weaver Against the Establishment*, 23 THE GEORGIA REV. 433, 437 (1969).

¹⁴ Compare Lytle's fear of "canned music" in *The Hind Tit*, I'LL TAKE MY STAND 229-234 (1930) with P. HEMPHILL, *THE NASHVILLE SOUND: BRIGHT LIGHTS AND COUNTRY MUSIC* (1970).

¹⁵ D. DAVIDSON, *SOUTHERN WRITERS IN THE MODERN WORLD* 48-50 (1958) [hereinafter cited as DAVIDSON, *SOUTHERN WRITERS*].

frontations in this country,"¹⁶ as a "prelude to the New Deal,"¹⁷ and as a "controversy over economic reform."¹⁸ In truth, the reviewer believes this Virginia debate was about what Louis Rubin has called the central question of Agrarianism—nature and man's relationship with nature.¹⁹

The immediate impetus for the debate had been the publication of *I'LL TAKE MY STAND*.²⁰ The "Agrarian debater" was Vanderbilt's John Crowe Ransom, already a noted poet and author of *GOD WITHOUT THUNDER: THE UNORTHODOX DEFENSE OF ORTHODOXY*.²¹ The "industrial debater" was the University of Virginia's Stringfellow Barr, editor of *THE VIRGINIA QUARTERLY*, later described by Justice William O. Douglas as a man "not orthodox about his thinking."²² The primary issue of the debate may have been accurately denominated by moderator Sherwood Anderson when he jokingly described himself as "a worm in the apple of progress."²³ The concept of progress was, no doubt, central to the exchange.

The Agrarians argued that the intimate relationship between the Southerner and the soil was destroyed by worship at the font of progress. The question was it possible to retain traditional Southern values in an industrialized society was addressed by both speakers. Ransom argued that separation from the soil meant the death of the humanistic life.²⁴ Barr rejected this notion and opted for a "regulated Southern industrial life."²⁵ At the very core of their argument was the relationship of "man and mother earth" as shown by the following inquiry: Was it possible to be Southern, in the traditional sense, without being directly associated with nature, the seasons, and the land?

The Agrarians argued no. There was, in their view, a clearly ascertainable Southern cultural attitude toward nature. Nature was, they

¹⁶ A. KARANIKAS, *TILLERS OF A MYTH: SOUTHERN AGRARIANS AS SOCIAL AND LITERARY CRITICS* (1966).

¹⁷ DAVIDSON, *SOUTHERN WRITERS* 49.

¹⁸ See generally Irish, *Proposed Roads to the New South: Chapel Hill Planners versus Nashville Agrarians*, 49 *SEWANEE REV.* 1-27 (1941).

¹⁹ Rubin, *The Concept of Nature in Modern Southern Poetry*, 9 *AM. Q.* 63-65 (1957). For a similar but hostile view consider Glicksbert, *Allen Tate and Mother Earth*, 45 *SEWANEE REV.* 284-295 (1937).

²⁰ Response of Donald Davidson to Mr. Virginia Dabney of the Richmond Times Dispatch (undated, unpublished manuscript, Virginia Pamphlets, on file at the Alderman Library, U. of Virginia, Charlottesville).

²¹ J. RANSOM, *GOD WITHOUT THUNDER: AN UNORTHODOX DEFENSE OF ORTHODOXY* (1930).

²² Douglas, *Preface* to S. BARR, *CITIZENS OF THE WORLD* 9 (1952).

²³ DAVIDSON, *SOUTHERN WRITERS* 49. S. ANDERSON, *SHERWOOD ANDERSON'S MEMOIRS* 458, 459 (1942).

²⁴ Extract from Address by John Crowe Ransom, Barr-Ransom Debate on Industrialism vs. Agrarianism at Richmond, Virginia, Nov. 14, 1930 (undated, unpublished manuscript, Virginia Pamphlets, on file at the Alderman Library, U. of Virginia, Charlottesville).

²⁵ Statement and Interpretation of the Affirmative, Barr-Ransom Debate on Industrialism vs. Agrarianism at Richmond, Virginia, Nov. 14, 1930 (undated, unpublished manuscript, Virginia Pamphlets, on file at the Alderman Library, U. of Virginia, Charlottesville).

argued, the central metaphor of Southern culture. As Ransom explained there was a "Southern idea" which contrasted with an "American idea." The essence of the American idea was a "Gospel of Progress." The idea of this "concept of Progress is . . . man's increasing command, and eventually perfect command, over the forces of nature." The South, by contrast, "never conceded that the whole duty of man was to increase material production, or that the index to the degree of his culture was the volume of his material production." In Ransom's view, it should be clear "to any intelligent Southerner that [the American principle] was a principle of boundless aggression against nature, which could hardly offer much to a society devoted to the arts of peace."²⁶ In essence his argument was:

Nature industrialized, transformed into cities and artificial habitation, manufactured into commodities, is no longer nature. . . . We receive the illusion of having power over nature, and lose the sense of nature as something mysterious and contingent.²⁷

The gravest error in the rhetorical strategy of the Agrarians was the failure to see the battle as more than Southern—as a universal clash. A provincial viewpoint, Richard M. Weaver argues, blinded the Agrarian to the realization that "the North was already looking at the results of industrialization . . . and beginning to see the limits of industrialism."²⁸ The Nashville Agrarian entertained hope that the South might resist the temptations of industrialism because of inevitable fusion of man, nature, and culture in Southern society. There was, the Agrarian felt, "the chance that the South could hope to preserve its regional culture as Scotland had succeeded in doing, by tenacious resistance against being absorbed into an alien way of life."²⁹

But Stringfellow Barr was right. The tide of industrialism could not be turned back. Today we may ask if the Agrarian is cast as Cassandra? Are the polluted rivers of the Southland an eloquent "I told you so?" Do we have a new Southern "bloody shirt" to wave in the face of the Rotary Club and at the Chamber of Commerce? I think not. Viewed in the light of our current ecological crisis, the challenge is not sectional. The South, long ago, chose the path of industrialization. The central question may be the survival of civilization.

The Agrarian pinpointed the significance of attitude toward nature

²⁶ Ransom, *I'LL TAKE MY STAND* 3-17 (1930).

²⁷ *Id.* at xxiv.

²⁸ Weaver, *Agrarianism in Exile*, 58 *SEWANEE REV.* 586, 595 (1950). For a discussion of strategy see DAVIDSON, *SOUTHERN WRITERS* 50-62. Among the most interesting considerations of this point are the statements of the Agrarians in *FUGITIVES REUNION: CONVERSATIONS AT VANDERBILT* 177-218 (1959), and *A Symposium: The Agrarians Today*, 3 *SHENANDOAH* 14-33 (1952).

²⁹ Weaver, *The Southern Phoenix*, 17 *THE GEORGIA REV.* 6, 10 (1963).

as a cultural question. We ignore his teaching at our peril. For these young intellectuals focused our attention upon the relationship of man and his environment within the context of modern industrialization. This relationship, as the Agrarians illustrated, may become the controlling societal myth. As Agrarian Robert Penn Warren recently observed "myth [in these circumstances] defines the myth-makers world, his position in it, his destiny, and his appropriate attitude."³⁰

ENVIRONMENTAL ATTITUDES OF THE AMERICAN INDIAN

If ecology has become *the* science of the seventies, the Indian has become the minority of the decade. 1970 has been called "the year of the Indian."³¹ D. H. Lawrence is reported to have said that the Indian will again rule America—or rather, his ghost will.³² More and more the Indian is becoming a source of inspiration for those seeking a new philosophy, a new ethic of the earth.³³ As William Brandon, editor of the AMERICAN HERITAGE BOOK OF INDIANS, prophesied: "the business of the Indian . . . may turn out to be the illumination of the dark side of the soul."³⁴

Stewart Udall, former Secretary of the Interior, affirms the Indian relationship of man and earth as the model for twentieth century man.³⁵ The Sierra Club argues that "the non-Indian can learn from the Navajo tradition of continuity with nature."³⁶ Theodore B. Hetzel, a Professor of Engineering at Haverford College, has demanded that "we, like the Indian, seek to atune our lives to harmony with the universe."³⁷ The reviewer has suggested that "our guiding vision may come, not from the sophisticated scientist, but from the primitive, from the Indian."³⁸

Unfortunately most of these suggestions are well-meaning but short-

³⁰ Carter, *The "Little Myth" of Robert Penn Warren*, 6 MODERN FICTION STUDIES 3 (1960). In this context consider Ward, *Myth: Further Vanderbilt Agrarian Views*, 25 U. KANSAS CITY REV. 53-56, 272-276 (1958), and Amacher, *Myths and Consequences: Calhoun and Some Nashville Agrarians*, 59 S. ATLANTIC Q. 251-264 (1960).

³¹ Gregory & Strickland, *Nixon's Indian Policy—Is it Back to Buffalo Bill*, XCII COMMONWEAL 432 (1970).

³² For a development of this argument see Brandon, *American Indians: The Real American Revolution*, 34 THE PROGRESSIVE 26-30 (1970) [hereinafter cited as Brandon, *American Indians*].

³³ Manifestations of this may be seen at both the activist and the scholarly level. The Indian costume or the pseudo headband is almost standard "revolutionary" fashion. There is something ironic about the recent student strikes in which self-styled anarchists wear their black bands Geronimo style. In the academic vein see L. EISELEY, *THE UNEXPECTED UNIVERSE* (1969), and R. DUBOS, *SO HUMAN AN ANIMAL* (1968).

³⁴ Brandon, *American Indians*, 30.

³⁵ S. UDALL, *THE QUIET CRISIS* (1963) (especially chapter one).

³⁶ NAVAJO WILDLANDS 148, 149 (K. Brower ed. 1969).

³⁷ Hetzel, *We Can Learn From American Indians*, 4 J. AM. INDIAN ED. 23-26 (1965); Malan, *The Value System of the Dakota Indians: Harmony with Nature, Kinship, and Animism*, 3 J. AM. INDIAN ED. 21-25 (1963); Minton, *On Values*, 2 J. AM. INDIAN ED. 19-24 (1963).

³⁸ Strickland, *The Idea of Environment and the Ideal of the Indian*, 10 J. AM. INDIAN ED. 8, 9 (1970).

sighted. In truth, the analysis by which such conclusions have been drawn is generally simplistic. A fact or two, an event or attitude, is pulled from the context of Indian culture and offered as an example for us to emulate. Modern ecologists have warned us that attitudes toward nature cannot be separated from the entire value system of a culture.³⁹

The reviewer has attempted to examine the cultural attitudes toward nature as demonstrated by the Cherokee Indians within the broader context of Cherokee lifeways. For Cherokee attitude toward nature was at the very center of their religious, economic, and social values.⁴⁰ To the Cherokee there was no "attitude toward nature" but only a concept of the reality of the world in which nature's metaphor was central. The myths of the culture made the workings of nature supreme.

The Cherokees were an agricultural people who must be contrasted with the plains Indian hunter whose horse and buffalo culture of post-white contact is so familiar to movie-goers.⁴¹ Anthropologists have come to group the Cherokees in a Southern Indian culture.⁴² At the time of white arrival, the Cherokees are believed to have been embracing "a temple mound culture."⁴³

In order to clearly outline the basic cultural attitudes toward nature which the Cherokees possess, the reviewer is following the methods outlined by Professor E. Adamson Hoebel in his classic *THE LAW OF PRIMITIVE MAN: A STUDY OF COMPARATIVE LEGAL DYNAMICS*.⁴⁴ As Hoebel explains "in the study of a social system and its law by the specialist it is his job to abstract the postulates from the behavior he sees." These postulates are "the broadly generalized propositions held by the members of a society as to the nature of things . . ."⁴⁵

Based upon an extensive examination of the traditional behavior of the Cherokee Indians, the author has formulated several postulates. Data evaluated includes primary documentary accounts by traders,⁴⁶

³⁹ Boulding, *Ecology and Environment*, 7 *TRANS-ACTIONS* 38, 39, 40 (1970). Required reading on this point is P. SHEPARD, *MAN IN THE LANDSCAPE: A HISTORIC VIEW OF THE ESTHETICS OF NATURE* (1967).

⁴⁰ R. STRICKLAND, *CHEROKEE LAW WAYS: FROM CLAN TO COURT* (In Press). See also Reid, *The Cherokee Thought: An Apparatus of Primitive Law*, 46 *N.Y.U.L. REV.* 281 (1971); and J. REID, *A LAW OF BLOOD* (1970).

⁴¹ For a Platonic "cure of souls" see V. DELORIA, JR., *CUSTER DIED FOR YOUR SINS: AN INDIAN MANIFESTO* (1969) with reference to chapter one, "Indians Today, the Real and Unreal," and chapter seven, "Indian Humor."

⁴² See generally Swanton, *The Indians of the Southeastern United States*, Bulletin 137, BUREAU OF AMERICAN ETHNOLOGY (1946).

⁴³ This is important for our discussion both as an explanation of shift in legal systems at a later period and for insight into nature concepts. The discussion which follows is intended to allow the reader to see the life patterns of the Cherokees.

⁴⁴ E. HOEBEL, *THE LAW OF PRIMITIVE MAN: A STUDY OF COMPARATIVE LEGAL DYNAMICS* 3-63 (1954).

⁴⁵ *Id.* at 13-17.

⁴⁶ J. ADAIR, *THE HISTORY OF THE AMERICAN INDIAN* (1775); *EARLY TRAVELS IN THE TENNESSEE COUNTRY, 1540-1800* (S. Williams ed. 1928).

travelers,⁴⁷ and officials⁴⁸ as well as the general body of secondary and anthropological accounts of the Cherokees.⁴⁹ These papers constitute an important and generally untapped source of primary materials on Cherokee behavior and attitudes.⁵⁰

Postulates of Cherokee Society

(Man and Nature Relationships)

- I. Spirit Beings created the entire world.
- II. The Spirit Beings control the destiny of the world.
- III. The relationship between man, nature, and the spirit world is unchanging. Fire is an agent.
- IV. Every object in nature has a divine spirit which is part of its substance. This Spirit is distinguishable from the Spirit Being.
- V. All spirits—man, animal, plant, place—are equal and mutually dependent.
- VI. Non-human spirits may help man but also possess an elaborate system of punishments to protect themselves against abuse by man.
- VII. The Spirit Beings may use the spirits of any earthly object.
- VIII. Communication between all spirits is possible.
- IX. Spirit Beings provide all creatures with material goods of this world.
- X. Goods are to be shared because accumulation of property reflects a lack of faith in the Spirit Beings.
- XI. Man's conduct is patterned after the system of the Spirit Beings and is mirrored in common conduct reflected by all animal, plant, and place spirits.
- XII. The Spirit Beings have given priests the secrets which will guard the welfare of the tribe.
- XIII. Violation of "spirit order" may result in punishment of the tribe.
- XIV. There is a supernatural world to which the ghosts (not exactly same as spirits) of all men wish to go. Passage to this "nightland" may be prevented by action of a fellow tribesman. Each Chero-

⁴⁷ W. BARTRAM, *TRAVELS THROUGH NORTH AND SOUTH CAROLINA . . .* (1958); T. NUTTALL, *A JOURNAL OF TRAVELS . . .* (1905).

⁴⁸ *INDIANS OF THE SOUTHERN COLONIAL FRONTIER, THE EDMOND ATKINS REPORT AND PLANS OF 1755* (W. Jacobs ed. 1954); H. TIMBERLAKE, *THE MEMOIRS OF LIEUT. HENRY TIMBERLAKE* (S. Williams ed. 1948).

⁴⁹ D. CORKRAN, *THE CHEROKEE FRONTIER* (1962); J. GREGORY & R. STRICKLAND, *SAM HOUSTON WITH THE CHEROKEES* (1967).

⁵⁰ John Howard Payne Papers, Ayer Collection, Newberry Library, Chicago: *Traditions of Cherokee Indians*, Microfilm No. 6985; *Notes on Cherokee History*, Microfilm No. 6986; *Original Letters*, Microfilm No. 6987; *Notes on Cherokee Customs and Antiquities*, Microfilm No. 6988.

kee is individually responsible for abuses of the Spirit Beings and the spirits of all things.

Having thus briefly examined Cherokee attitudes, let us turn more generally to North American Indian attitudes. Anthropologists agree that there is no single American Indian personality or viewpoint. Yet unity with nature is an attitude extending beyond the new world shores. Students of primitive man affirm that "elemental man does not have enough effect on the physical environment to give him the notion that he might control nature rather than being controlled by it."⁵¹ Separation from nature requires a more sophisticated conception of self than was possessed by even the more advanced hunters and gatherers among the North American Indian.

Distinctions among American Indians are widespread. The craftsmen of the Pacific Northwest and the pueblo dwellers of the desert are striking proof of cultural diversity. Still there are many common American Indian attitudes toward nature. The reviewer has identified three common elements. They are: (1) nature is a teacher; (2) life is impossible without a partnership with nature; and (3) nature is an unchanging force which man cannot significantly perfect or dominate.

PURITAN ATTITUDES OF THE AMERICAN INDIAN

So she thought and crushed the cutworm
upon the leaf
For it ate what it should not eat and it knew
not God
And so she would do to any who knew not God.
—And the whippings and the hangings were yet
to come,
Yet to come in New England. . . .
But she rejoiced in her ways, for her ways
were righteous,
And her son, Elias, would follow them, after her.
—Stephen Vincent Benet, *Western Star*

If the Puritan were only a little less self-righteous one could feel sympathy for him. The Puritan has been blamed for almost every fault of modern American society, everything from suppressed sexuality to offensive garbage dumps. And yet, there is a germ of truth in contentions such as Richard M. Weaver's that "progress as the metaphysical handmaiden of science" is a product of the Puritan mentality which

⁵¹ R. WATSON & P. WATSON, MAN AND NATURE: AN ANTHROPOLOGICAL ESSAY IN HUMAN ECOLOGY 83 (1969); R. LORD, THE CARE OF EARTH: THE HISTORY OF HUSBANDRY, *Preliterate America* 71-97 (1963).

cultivated, in Perry Miller's term, "deadness to the world."⁵² Weaver has argued:

We have tended to accept as inevitable an historical development that takes the form of a changing relationship between ourselves and nature, in which we pass increasingly into the role of master of nature. When I say that this seems inevitable to us, I mean that it seems something so close to what our more religious forebears considered the working of providence that we regard as impiety any disposition to challenge or even suspect it. By a transposition of terms, "progress" becomes the salvation man is placed on earth to work out. . . .⁵³

Just as the "noble savage" cult offers an oversimplified solution, the "damn the Puritan" concept offers a generalized and short-sighted cause. The reviewer is not seeking to build a case to establish that the present ecological crisis was fathered by the Puritan mentality. Herein the reviewer seeks to explore the Puritan world-view in relation to cultural attitudes toward nature.

The postulate methodology is followed in outlining the Puritan concept of nature. While the "Puritan Postulates" are the work of the reviewer, the primary data is drawn from the book herein considered, Peter N. Carroll's *PURITANISM AND THE WILDERNESS*,⁵⁴ as well as Frederick Elder's *CRISIS IN EDEN*,⁵⁵ Roderick Nash's *WILDERNESS AND THE AMERICAN MIND*⁵⁶ and, of course, the works of Perry Miller.⁵⁷ The time period under consideration is 1629-1700. At the beginning of the eighteenth century there were significant shifts in Puritan attitudes. The reviewer wishes to compare relatively stable cultural attitudes.⁵⁸

Postulates of Puritan Society

(Man and Nature Relationships)

I. The earth was created by one God who made man the image of the God.

⁵² R. WEAVER, *IDEAS HAVE CONSEQUENCES* 51, 171, 173 (1948).

⁵³ R. WEAVER, *ULTIMATE TERMS IN CONTEMPORARY RHETORIC, THE ETHICS OF RHETORIC* 213 (1953).

⁵⁴ CARROLL, *PURITANISM AND THE WILDERNESS*. See also B. BAILYN, *THE NEW ENGLAND MERCHANTS IN THE SEVENTEENTH CENTURY* (1964); *PURITANISM IN EARLY AMERICA, PROBLEMS IN AMERICAN CIVILIZATION SERIES* (G. Waller ed. 1950), especially the *Suggestions for Additional Readings* at page 113.

⁵⁵ F. ELDER, *CRISIS IN EDEN: A RELIGIOUS STUDY OF MAN AND ENVIRONMENT* (1970).

⁵⁶ R. NASH, *WILDERNESS AND THE AMERICAN MIND* (1967).

⁵⁷ The most valuable for these studies were P. MILLER, *THE NEW ENGLAND MIND: FROM COLONY TO PROVINCE* (1953) and P. MILLER, *THE NEW ENGLAND MIND: THE SEVENTEENTH CENTURY* (1939).

⁵⁸ A clear picture of these changes is given in P. MILLER, *ERRAND INTO THE WILDERNESS* (1956).

- II. The earth exists for the benefit of man under the direction of God.
- III. Man, created in the image of the divinity, is superior to all other creatures because he alone possesses a soul and can know God. Other animals are evil and a source of great danger.
- IV. According to GENESIS, God has commanded man to subdue the earth.
- V. Man's progress and betterment is essential to the divine plan.
- VI. Man is in conflict with nature, especially the wilderness, which is an unnatural state—the antithesis of civilization—the place where the devil has taken the form of the natural elements.
- VII. Only by conquering the forces of evil concealed in the wilderness can the Puritan hope for salvation since man's highest goals are symbolized by the process of transforming virgin forests into habitable areas.
- VIII. This earth is only temporal. All conflict with nature was part of a divine plan to purge the Puritan of iniquities before salvation and entry into the promised land.
- IX. Political, social, and economic affairs on earth reflect the mind of God.
- X. New England, a place of sanctuary, was a manifestation of God's ecclesiastical plan.
- XI. Material possessions are not provided by nature but must be earned by "the sweat of the brow" in payment for man's state of sinfulness.
- XII. After trial and purge by the wilderness, the Puritan shall prosper and enjoy the fruits of conquest which may, or may not, be reflected in worldly goods and favors.
- XIII. Ownership and use of land depends upon ability to reclaim from the evils of the wilderness and willingness and ability to utilize productively.

Three factors dominated the Puritan outlook toward the relationship of man and nature. These were: (1) the Biblical imperative to subjugate the earth; (2) the myth of wilderness as the incarnation of the devil; and (3) the physical and emotional clash with the frontier. Each of these colored and shaped Puritan thinking.

To the Puritan the Biblical imperative was most significant. As historian Lynn White, Jr. has concluded "Christianity is the most anthropocentric religion the world has ever seen." For Christianity is in absolute contrast with ancient paganism and most Asian religions since "Christianity not only established a dualism of man and nature, but also insisted that it is God's will that man exploit nature."⁵⁹

⁵⁹ White, *The Historical Roots of Our Ecologic Crisis*, SCIENCE 1205 (1967). See also

The Puritan took seriously the creation narrative and the commands of GENESIS. Essential to Puritan theology was the notion that God's creation of all the various life forms culminated in the creation of man. According to this conception nothing in physical creation had any purpose but to serve man's purpose. In GENESIS 1:27-28 man is "given dominion" which enabled the Puritan to view the Universe from a position superior to all other living creatures.

The myth of wilderness was closely related to the Biblical imperative. Only by defeating the forces of evil concealed in the wilderness could the Puritan of New England hope for salvation among the "Elect." The wilderness experience was something of a morality play in which wilderness was the villain and the Puritan was the hero. Historically the Puritan interpreted wilderness as a state of and symbol for sin. Eventually the idea of wilderness as the antithesis of civilization—as an unnatural state—became the wilderness as devil or antiChrist.

The idea of a moral battle in the wilderness was highly significant in the face of the physical and emotional clash with the frontier. The Puritan faced hostile Indian tribes who were, in the New Englander's conception, linked with Satan to drive the Christian from the land and prevent the transmission of the gospel in America. The further difficulties of settlement and wrestling a living in such a hostile climate deepened the cultural attitudes toward nature.

VALUES AND STRATEGIES

A study of the key basic concepts of any culture, without which the living law is not understood, reveals that those key concepts not merely provide the ideas in terms of which the people . . . conceive the facts of their existence but also define their values.

—F.S.C. Northrop, *Jurisprudence*

The destruction of animal resources, the pollution of the environment, and the possibilities of overpopulation are distinct public trends that can be reversed only by rethinking our basic values. Our use and misuse of nature must be torn out of the context of simple economic discussion and placed in the province of social and ethical values. Man's relation to nature is in the last analysis a moral crisis because it involves man's history and culture and has its roots in our religious and ethical views of nature. . . .

—RICHARD L. MEANS, *THE ETHICAL IMPERATIVE: CRISIS IN OUR AMERICAN VALUES* (1969)

When Oliver Wendell Holmes, Jr. wrote that "it is perfectly proper to regard and study the law as a great anthropological document," he

G. VON RAD, *GENESIS: A COMMENTARY* 74, 75 (1961); C. MOULE, *MAN AND NATURE IN THE NEW TESTAMENT* (1967); G. WILLIAMS, *WILDERNESS AND PARADISE IN CHRISTIAN THOUGHT* (1962).

was arguing that law reveals "what have been the changes in dominant ideals from century to century."⁶⁰ Students of legal history are especially concerned with the question of "cultural lag" as the circumstances and ideals of the society move faster than the laws. The legal scholar as "social engineer" is equally concerned with the law as an instrument of social change for moving society toward a changing ideal.

The reviewer believes that the experience of the Cherokee Indians is illustrative of these questions. The discussion, cast in terms of cultural outlook toward the environment, shows how values shape and can be used to shape the legal system. In this same light, the Puritan reaction to the wilderness confirms the Cherokee analysis.

The Cherokees viewed the world in terms of the Spirit Beings. To the Cherokees, law was simply the earthly representation of the divine spirit order. In fact, the Cherokees did not think of law as a set of rules limiting or requiring action on their part. The ongoing social process could not be manipulated to achieve policy goals. Man was not able to create laws. To the Cherokees the norms of behavior were a sovereign command from the Spirit Beings. Man might apply the divinely ordained rules of conduct but no earthly authority was empowered to formulate norms of tribal conduct.

The postulates of Cherokee attitudes toward nature are clear in the rules by which society lived. Priests who had been given the secrets were the "lawyers" and the judges. There was little problem of theft or crimes involving material possessions. Inheritance was no problem. The concept of the unchanging nature of society insured the smooth operation of Cherokee laws.

The arrival of the white man changed all of this. This change is important in our discussion for a shift in outlook toward nature is intimately associated with the change in the legal system. In a highly oversimplified analysis, the key factor introduced by the white frontiersman at the beginning of the eighteenth century was the chance for economic improvement—opportunity for the sale of deerskins.

No longer were the basic postulates of man's relationship with nature so certain. The ancient priestly class might be able to communicate with the Spirit Beings but a newer class of Indian hunters communicated with Charles Town and the Carolina traders who supplied material goods. Indians who broke the Spirit ways and abused the spirits of other creatures seemed to prosper. And, in the final analysis, when smallpox epidemics came and the ancient priests charged that this punishment came from the Spirit World, the old order could not be saved because the priests could not cure the new disease.

⁶⁰ Holmes, *Law in Science and Science in Law*, 12 HARV. L. REV. 99 (1899).

A significant change in attitude toward nature struck a death blow to the traditional Cherokee legal system. New legal norms were slow to emerge and the tribe was plunged into chaos. Up to this point the Cherokee story is little different from the story of hundreds of other North American Indian tribes. There is, however, an important difference. The Cherokee tribe made a transformation to a "civilized state" by adopting a system of laws modeled after the Anglo-American common law.⁶¹

The reviewer contends that the Cherokees were able to make this transition because a group of mixed-breed leaders realized that if the tribe were to survive, a new legal system more ideally suited to the new economic and social conditions had to be adopted. In preparing for the adoption of a new system, these leaders built upon what survived of the Cherokee tradition of partnership with nature.⁶²

The most important single factor in the success of the Cherokees was the identification of the adoption and enforcement of the new legal system with the traditional values of respect for tribal spirits associated with the land. The advocates of the new laws did not consider these laws, as an abstract social goal, to be important because they were more "just" or more "civilized." Rather they presented the alternative as either adoption of a white-oriented legal system or removal from the lands of the ancient Cherokee spirits. Ironically, while the breakdown of the priestly class eliminated a source of opposition to change, the survival of the ancient values inculcated by the Spirit World provided the impetus to change.

Peter Carroll in *PURITANISM AND THE WILDERNESS* argues that when the Puritan social covenant concept proved ineffective in the face of demands for expansion of colonial settlements that the Puritan turned to the basic tenets of the man-nature relationship as justification for modification of his legal order.⁶³ The original Puritan concept did not admit the possibility of many settlements. Use of the biblical imperative allowed the Massachusetts authorities flexibility to modify legal concepts to the wilderness demands.

Dispersal continued to challenge the idea of a collective society. . . . Recognizing that geographic dispersal threatened the collective society, the authorities of the Bay colony urged the settlers to improve the nearby lands before engaging in frontier expansion. . . . Because of the commitment among Puritans to improve waste lands, New Englanders frequently appealed to the value of physically transforming the wilderness in support of inland expansion.

⁶¹ R. Strickland, *From Clan to Court: The Cherokee Legal System Emerges* (unpublished typescript in U. of Virginia Law School Library).

⁶² Strickland, *Cherokee Government*, 48 *THE CHRONICLES OF OKLAHOMA* 264 (1970).

⁶³ CARROLL, *PURITANISM AND THE WILDERNESS* 138-197.

. . . New Englanders often cited the desirability of subduing the wilderness to support expansionist endeavors beyond the traditional limits of their settlements. . . . In this manner, New Englanders rationalized the advantages of expansion along the frontier.⁶⁴

Thus it is that in two distinctly dissimilar cultures, the basic value premises toward nature proved to be highly significant factors in the process of forging the legal system into an instrument for social change. In the Cherokee example, the desired goal was revolutionary in that it introduced a white-based legal order. The Puritan change was the equally important territorial expansion of Puritan communities and the breakdown of the concept of the unified social community.

In both of these instances the new order would, no doubt, produce widespread changes in attitude. Evidence shows that it did. The Cherokees were especially hopeful that the newly adopted court system would create respect for private property and accumulation of wealth. In both Cherokee and Puritan cases, the change itself was justified on the basis of strengthening existing social values.

If a common theme has emerged from this discussion that theme must be that man's concept of his relationship with nature is a major cultural phenomenon—a question, as Professor Means has suggested, of "social and ethical values."⁶⁵ The implication for modern man should be obvious. As Means notes, our war against the environment "can be reversed only by rethinking our basic values."⁶⁶

The "noble savage" hippie-yippie is playing an appealing but impossible game when he suggests that we superimpose tribal values upon modern industrial society. This is reversionism—retreatism—at best. And yet Rene Dubos is right when he demands that we adopt a new "environmental ethic."⁶⁷ The current "ecological craze" is proof that the environment has become a "motherhood issue." And still the dimension of the value decisions which must be made are not generally realized by those who advocate, on an Earth Day, that we "clean up the environment." For almost everyone would endorse clean air, pure water and beauty of countryside.

The failure of the Agrarian, discussed earlier, was that he could not persuade his fellow Southerners to act upon his value concepts of nature. The value alternatives were clearly stated and the issues drawn but the Vanderbilt intellectual offered a conception of nature regarded as outmoded. The choice was made between the economic values of

⁶⁴ *Id.* at 185-187.

⁶⁵ R. MEANS, *THE ETHICAL IMPERATIVE: THE CRISIS IN AMERICAN VALUES* 135, 139 (1969).

⁶⁶ *Id.* at 135.

⁶⁷ Address by Rene Dubos, Smithsonian Institute Conference, 1969.

industrialism and the pastoral values of Agrarianism. Again everyone would endorse many of the Agrarian virtues but the value conflict required a choice.

The reviewer is here arguing that only by the recognition of the value implications of the environmental question will the issue be adequately considered. The student of environment who is also a student of the law is apparently faced with social values which have not adequately protected the environment. Professors McDougal and Lasswell have insisted that law be examined in "terms of value production and allocation."⁶⁸ The first task of the policymaker is to determine what laws will best serve the interests of society. In so doing, the lawyer must himself make a series of value judgments. What economic interests are to be encouraged? What aesthetic considerations? What recreational opportunities? The actual decisions and the process by which these decisions are reached is clearly beyond the scope of our present considerations.

A second and equally important task is securing adoption of laws and the ultimate support and enforcement of those laws. The success of both the Cherokee and Puritan illustrate an important strategy which the student of law and the environment cannot afford to ignore. The Cherokee and Puritan achievement stemmed from the use of an accepted value premise to urge a significant change in the legal system, a change which would itself produce new cultural values.

The utilization of basic cultural attitudes or viewpoints is an important step in gaining acceptance of policy alternatives. The significance of human values in promoting social change has been highlighted by Professors Baker and Eubanks who argue that values are "the ultimate ground of human action." In their *Toward An Axiology of Rhetoric* they suggest that "to make rhetoric a more potent power in generating 'right action' it must be related *directly* to important human values."⁶⁹

Writing in the same vein, Professor Albert Croft suggests that new policies "become acceptable only as they derive from values or as some attempt to modify or redirect values is made." The goal is "to secure acceptance of certain end-values, and then demonstrate that the actions being urged are more consistent with those values than are any other."⁷⁰

In conclusion, the author would suggest that policymakers should seek an adequate value analysis—a topology of cultural attitudes—toward man and man's environment in modern American civilization.⁷¹

⁶⁸ Moore, *Prolegomenon to the Jurisprudence of Myres McDougal and Harold Lasswell*, 54 VA. L. REV. 662, 671 (1968) and sources cited therein.

⁶⁹ EUBANKS & BAKER, *Toward an Axiology of Rhetoric* in *THE PROVINCE OF RHETORIC* 331 (J. Schwartz & J. Rycenga eds. 1965).

⁷⁰ Croft, *The Function of Rhetorical Criticism*, 42 Q.J. OF SPEECH 409 (1956).

⁷¹ An excellent example of this sort of analysis is found in Golding & Golding,

Policymakers should then know what are the desirable concepts within our cultural tradition and therefore be able to determine which of those values are consistent with a desirable "environmental ethic." Only then will the serious student of the environment know the magnitude of his task of reeducation. Without this knowledge, the conflicts of values will never be surfaced and resolution of the environmental crisis will be impossible.

Texas folklorist J. Frank Dobie is reported to have said:

[T]he greatest happiness possible to a man . . . is to become civilized, to know the pageant of the past, to love the beautiful, to have just ideas of values and proportion, and then, retaining his animal spirits and appetites, to live in a wilderness where nature is congenial.

Dobie admitted that in our shrinking world this had become impractical.

And yet, in a sense, this is what the modern policymaker is being asked to do. We are demanding that the values of an ecologically conscious society be merged with those of a growth oriented economy. Perhaps this essay has been able to suggest to the policymaker the potential significance of history, rhetoric, and values in generating "right-action" on environmental questions.

Lawyers with their noses in the statutes and case law have, as a rule, been reluctant to consider these dimensions of policymaking. Despite the fact that as early as 1943 value analysis was presented as a central legal component by Lasswell and McDougal, value technique in policymaking remains, according to John Norton Moore, "an area of jurisprudence which is barely embryonic."⁷² And yet, in the environmental area, as Richard Means has so wisely noted, historical trends "can be reversed only by rethinking our basic values."

Ethical and Value Issues in Population Limitation and Distribution in the United States, 24 VAND. L. REV. 495-523 (1971).

⁷² Moore, *Prolegomenon to the Jurisprudence of Myres McDougal and Harold Lasswell*, 54 VA. L. REV. 662, 678 (1968).