FREEDOM: VOICES FROM THE WILDERNESS

BY

JOSEPH L. SAX*

The untrammeled landscape has always evoked powerful impressions of freedom. There is a widespread, if vague, feeling abroad that something indispensable to our sense of ourselves as free people would be snuffed out if the commitment to preserve natural landscapes were to disappear. While advocates for parks and wilderness have never been a major force in American politics, they have achieved some extraordinary successes. There is an ideal at work that is capable of eliciting intense responses from many people.

What is the ideal, and what are its implications for public policy? No one can speak with confidence for there has never been a systematic effort to articulate a theory. The most popular and influential writers—men like Thoreau, John Muir, Aldo Leopold and John Burroughs—never tried to elaborate anything deserving the name of a theory, or even a program for public action. Even the intellectual Emerson must be found wanting for those seeking out a systematic foundation for a land policy.

It is a pity that the figure intellectually and temperamentally best suited to have given us guidance was prevented by the limitation of his own vision of the future from seeing the issues that we face. Thomas Jefferson believed that public land policy was a central determinant in the growth and maintenance of a nation of free people. But Jefferson—in what was surely one of his least far-sighted views—saw America as a nation of permanent farmers, family enterprisers drawing sustenance and wholeness as human beings from small agricultural proprietorships upon an abundant landscape. As a result of this wildly erroneous vision, there is (so far as I have been able to determine) nowhere in Jefferson's writings any word to suggest that there ought even to be a permanent stock of public lands; and, of course, no hint of what he would have thought of the relation between public land management and the destiny of a free people.

* Professor of Law, University of Michigan Law School.

Copyright © 1977 by Joseph L. Sax
It is not only that we lack a theoretician of public land policy; there is, to make things more complicated, a strange history associated with the tradition of pastoralism upon which American writers presumably have relied. To put the matter most simply, the tradition has been more an imaginative artifice than a foundation for public policy. The pastoral tradition, of course, is a familiar feature of both the ancient and medieval worlds:

From the days of antiquity a promise had been held out of an earthly felicity to be found in rural life. Here true peace seemed attainable without strife, simply by flight. Here was a sure refuge from envy and hatred, from the vanity of honours, from oppressive luxury and cruel war. 2

In short, the pastoral ideal is the illusion of a return to nature and its innocent charms. To call the pastoral ideal an illusion is simply to say that it is a symbol of aspiration, rather than a program of political action. It sets out an ideal of simplicity, dignity, courtesy and self-reliance; and it does so in the context of the illusion of escape from the complexity of human society to a world in which less ambiguity and more clarity is to be found, the hope of simple harmony with nature idealized.

It is precisely these antecedents which have produced uneasiness and skepticism on the part of many to the American movement for park and wilderness preservation. After all, what does one say of a movement whose intellectual parentage is escapism—the image of flight from the unbearable complexity of social intercourse to the simplifying and simplistic model of the placid shepherd? It is not unreasonable to ask how much attention the modern world should pay to what seem to be claims for the indulgence of romantic primitivism.

It is not only classic pastoralism that has produced this skepticism. The American experience itself is strangely unsatisfying. In his excellent book Virgin Land, 3 Henry Nash Smith has chronicled a sort of mass delusion that shaped our conception of the untamed western lands. We believed in the frontier as a wellspring of virtue, and in the frontiersman as a model of the new, uncorrupt man. But the frontier was destroyed as fast as the pioneer reached it; the child of nature was only an advance man for new agricultural settlements. And our romantic desire to see the farmer as a sturdy,

---

3. (1950).
self-reliant yeoman was also doomed. The farmer turned out to be a figure more pathetic than heroic; engaged in back-breaking and tedious work, isolated and lonely, a pawn of bankers and speculators, he ended in submission to the very interests of urban culture for which he was to be a model and an antidote.

As Smith acutely observed, the frontier myth was both a literary and a political failure. It encouraged us to promote the family homestead in arid climates wholly unsuitable for such pursuits; it gave currency to such ominously misguided slogans as "rain follows the plow"; it elicited theories of human felicity based upon the existence of a frontier that no longer existed; and it denied the city and industry, intellectually and morally, just as it was becoming clear that America was to be the greatest center anywhere of the urban, industrial revolution. It is no wonder that a fantasy as far removed from reality as this produced the dime novel and the stock western film as the embodiment of its intellectual capital. Nor is it surprising that where literary success came, it was with Huckleberry Finn, which ends with a vision of escape into a wilderness that has ceased to exist; and with Moby Dick, a pastoral turned to cataclysm.

It was necessary to rehearse this history briefly to set the stage for asking the following question: Does the contemporary interest in park and wilderness maintenance speak to any important contemporary concern deserving of serious attention, or is it simply a newer version of the traditional, slightly decadent cult of wildness with its mood of refined hostility to progress?

I think it speaks to something important, to something importantly related to the theme of individual freedom in the United States. I think there is an American adaptation of the classic pastoral tradition quite distinct from escapist primitivism, and distinct too from the more modern, if equally mythic, symbol of a hardy American yeoman living at large in the vast American West.4

There is a new theory peculiarly responsive to an industrial age; it speaks to a central feature of the modern industrial world—to the experience of mass society and the sense one has of being swept up in organized, managed, programmed events; the sense of losing touch with anything distinctive or individualized;

a loss of intensity and depth of experience. The new American nature movement promises to members of an irrevocably industrialized world an opportunity for some wholly unmanaged, distinctive, personal, open-ended experiences.

The American nature writers are not community builders. They propose neither utopias in the mountains, nor escape paths from the modern world. Indeed, one of the striking things about writers like Muir and Burroughs is how accepting they are of the world in which they live. When Muir, in one of his best known phrases, said “[g]oing to the woods is going home” he was not recruiting hermits for the population of the Sierra. He was proposing a device for periodic respite to the denizen of an urban society. The same was true of the enormously popular nature writer, John Burroughs (who numbered Henry Ford and Thomas Edison among his closest friends). “The mass of men don’t like the country solitude,” Burroughs remarked. “They are drawn by the greater variety of the city.” These writers were addressing themselves to city people who would remain city people. When Muir spoke, as he often did, of throwing off what he called the “galling harness of civilization,” he was urging a respite, rather than a lifestyle. All his writings make this clear. He urged people to go to the wilderness periodically to indulge the yearning that city life suppressed; and he spoke, revealingly, of “a little pure wilderness” as wanting in the lives of most men.

All of this is to suggest that these influential and extremely popular nature writers—for all the dreamy quality of their prose style, its glorification of glaciers and too precious hymn-singing to squirrels—were fundamentally urging an agenda for the leisure time of industrial-age citizens. I emphasize the idea of leisure, the rudiments of a program for leisure on the public lands; and not simply idle pastoralism or an interest in recreation in the sense of finding a way to occupy empty hours.

The successful nature writer’s essays reveal something impor-
tant about the author. They show an individual who has retained the capacity for an intense response to experience. There is an independence, a self-reliance that shines through the essays of Muir and Burroughs—a quality of just the sort that runs through every version of the ideal American character. These authors are people who—in whatever sort of an epoch they live—have retained the capacity to savor the full vitality of life. They are cogs in no one's machine. They can find joy in the smallest piece of earth, and reward in the starkest natural event. They are whole people who have transcended the perils of anomie.

Unfortunately, American nature writers were not very deep thinkers, and one can only vaguely sense the serious themes implicit in their writings. There is, however, a philosophical tradition which I think explains what they and their modern followers deeply felt but were never able to express about the meaning of leisure in making us free. I am using the word freedom here not in the narrow sense of the absence of externally imposed constraints, but in the broader sense of the freedom of individual development. I draw upon what Professor Rawls in his book, *A Theory of Justice*, calls the Aristotelian Principle, and which he describes this way:

> [O]ther things equal, human beings enjoy the exercise of their realized capacities (their innate or trained abilities), and this enjoyment increases the more the capacity is realized, or the greater its complexity. The intuitive idea here is that human beings take more pleasure in doing something as they become more proficient at it, and of two activities they do equally well they prefer the one calling on a larger repertoire of more intricate and subtle discriminations. For example, someone who can do both generally prefers playing chess to playing checkers. Presumably complex activities are more enjoyable because they satisfy the desire for variety and novelty of experience, and leave room for feats of ingenuity and invention. They also evoke the pleasures of anticipation and surprise, and often the overall form of the activity, its structural development, is fascinating and beautiful. Moreover, simpler activities exclude the possibility of individual style and personal expression which complex activities permit or even require, for how could everyone do them in the same way?*

Everyone who has ever pitted himself against the wilderness for a substantial time, or climbed a challenging mountain, or committed himself to the intricacies of trout fishing or hunting in the

classical manner will recognize a description of the powerful satisfaction of the experience in this philosophical statement. He will also recognize in it the beginnings of a theoretically coherent explanation for the seemingly subjective and highly personal unease he feels at the elaborate development of urban style campgrounds in our parks and forests, for proposals to build tramways to mountain-tops, for the casual replacement of trout streams with annually stocked reservoirs behind dams, and for the execrable safari-land hunting enterprises which have proliferated around the country in recent years.

Those who have experienced the inherent complexity of natural environments will also perceive in Rawls' statement the foundation for justifying governmental promotion of activities like the enjoyment of wilderness as an important order of public affairs. Rawls' analysis suggests a role for what philosophers call a supererogatory governmental function; that is, a task which is taken on over and above one's basic duties in order to advance an idea of the good life, as contrasted with simply the maintenance of the essentials of life.

Note that Rawls says one who knows how to do several things equally will choose the more complex and challenging. To make such a choice, of course, one must have knowledge, and knowledge can only arise from the existence of an opportunity. In light of the conventional view (frequently expressed by public land management agencies) that it is incumbent upon them, as officials of a democratic society, simply to respond to consumer demand and not to evaluate it, here is a striking alternative approach quite consistent with the ideals of a democratic society: a role for government in providing opportunity to know different kinds of experience so that the citizen will have the opportunity to choose among them.

Nothing in this approach implies that other 'simpler' (in Rawls' terms) activities will be unavailable to people. They will be, and of course they are, abundantly provided by the private market. To some extent they will be provided on public lands too. But it is important to note that, by their nature, complex activities tend to rely more on the internal resources of the individual than upon externally provided goods and services, and thus tend to be less profitable for private entrepreneurs. It is therefore not surprising that entrepreneurs find it more remunerative to build Disneylands and Mineral King resorts than to sell wilderness experiences; and when they do begin to "sell" wilderness experiences commercially
VOICES FROM THE WILDERNESS

(as in the now popular "wild river" boat trips) there is a powerful tendency to pre-package the experience, taking a significant element of the risk, adventure and self-reliance out of it in favor of professional services, predictable days and a full set of all the food, clothing and shelter needed by the customer.

Having thus briefly set my theory before you, let me turn to its application to recreational activity.

The essence of mass recreation is the simplification of experience. As an example, I propose the much-abused but entirely germane model of Disney World, treating it as an archetype or culmination of the mass recreation phenomenon. It is a brilliant exposition of the idea of a totally managed environment, designed to provide the ultimate in passive entertainment. It is a managerial triumph in the sense that the visitor is managed. Nothing is left to chance, and nothing remains for the imagination of the guest; all the imagination has been provided by the management.

How is the complex experience to be contrasted with this? I shall rely principally upon a single example drawn from one of the most interesting books written about the theory of leisure activity, José Ortega y Gasset's Meditations Upon Hunting.¹⁰ Ortega's work was begun as a preface to another writer's conventional book about hunting, but it expanded into a full volume as Ortega puzzled over the question, why do men hunt? He was struck, as we all must be, by the fact that from the beginning of history people have hunted, and that the essence of the activity has not changed. Indeed, the central premise of the book is that rather than using every technological advantage available to him, the hunter has self-consciously neutralized his technological advantage in favor of the opportunity to develop his technical ability. Ortega puts it this way:

For hunting is not simply casting blows right and left in order to kill animals or to catch them. The hunt is a series of technical operations, and for an activity to become technical it has to matter that it works in one particular way and not in another. Technique presupposes that success in reaching a certain goal is difficult and improbable; to compensate for its difficulty and improbability one must exert one's self to invent a specific procedure of sufficient effectiveness.*** A good hunter's way of hunting is a hard job which demands much from man; he must keep himself fit, face extreme fatigues, accept danger. It involves a complete set of ethics of the most distinguished design.*** Doubtless in all happiness there is

¹⁰. (1972).
pleasure, but pleasure is the least of happiness. Pleasure is a passive occurrence, and it is appropriate to return to Aristotle, for whom happiness always clearly consisted in an act, in an energetic effort. ***"The truth is that the important and appealing aspect of hunting is neither pleasure nor annoyance, but rather the very activity that comprises hunting."11

One need not be attracted to hunting to appreciate how appropriately Ortega's proposition speaks to familiar controversies over the development of public lands for recreation. We live in a world in which it is assumed that to make things easier is to make them better. This, of course, is the philosophy of technology. Thus the National Park Service recently proposed the building of a mechanical tramway to take visitors to the Summit of Guadalupe peak in Guadalupe Mountains National Park. The reason, it said, was that "all visitors should be offered the opportunity to reach such a strategic point, and by a mode of access convenient to*** the majority."12 This is the very apogee of technological thinking. And it is the genius of Ortega that he understands the human difference between technique and technology. Like his fellow Spaniard, Cervantes, who summed it up in a sentence—"The road is always better then the Inn"—Ortega appreciated that simplification of experience is not the essence of human aspiration. The whole purpose of the mountain climb is not to be at the top, but to get to the top.13

The beauty of hunting, Ortega repeatedly observes, is the fact that it is always problematic. And exactly this may be said of all true recreation. In one of the deservedly famous books that hardly anyone reads today, Izaak Walton's The Compleat Angler, the narrator Piscator says

[A]ngling may be said to be so like the mathematics that it can never be fully learned*** it is an art not easily attained to*** an art worthy the knowledge and practice of a wise man.*** A good angler must not only bring an inquiring, searching, observing wit, but he must bring a large measure of hope and patience.14

When one of his companions says, "I see now it is a harder matter to catch a Trout than a Chub: for I have put on patience, and followed you these two hours, and not seen a fish stir," Piscator

11. Id. at 75, 35.
14. (J. Major ed. 1866) at 55.
replies, "Well, scholar, you must endure worse luck some time or you will never make a good Angler." 15

What Walton explains with good natured humor is precisely what Ortega means when he speaks of true hunting as always problematic and says that its essential quality is a combination of high technical ability and ethical sophistication. The idea of ethical sophistication is what distinguishes leisure as a serious matter from mere diversion and what gives it a claim to attention in a discussion of aspiration toward freedom.

Leisure, says Josef Pieper, in his book Leisure, the Basis of Culture, "is not a Sunday afternoon idyll, but the preserve of freedom, of education and culture.*** Only in genuine leisure does a 'gate to freedom' open***." 16 A similar point is made in Johan Huizinga's brilliant study of man at play, Homo Ludens.*** Huizinga speaks of true play as being "culture-creating", by which he means forms of activity that are not merely diversionary, but which are an enactment of human aspirations that imply social and ethical values—aspirations toward honor, nobility, integrity and courage. And this, of course, is precisely what Ortega is describing when he speaks of the hunt as having ethical sophistication. The technique of which Ortega speaks, like the idea of complexity set out by Professor Rawls, is not mere intricacy for its own sake, but technique or complexity in the service of values. The idea is that values make us free as they make us whole.

It is ironic that in seeking to respond to a popularly held idea that freedom is to be thought about as the absence of constraints on individuals, we have yielded much to demands for the simplification of experience in the name of individual sovereignty. And then we wonder why that 'freedom' does not seem to satisfy. Speaking of our experience with mass leisure, George A. Pettitt, in Prisoners of Culture, observes that:

[U]nfortunately many of those who have won more leisure*** give little evidence that they are approaching salvation. Depressing jobs *** tend to promote a depressing use of leisure, a search for forgetfulness through alcohol or other drugs, outbursts of savage self-assertion, brutal amusements, conspicuous consumption and a predilection for the wild hopes of gambling. 18

15. Id. at 92.
16. (1965) at 47.
The explanation, I suggest, is not that leisure is a false hope, but that we have put our hopes on a false leisure based on a dubious instinct about freedom. No serious thinker, of course, believes that leisure or the wilderness will somehow magically lighten the burden of the human condition. Life, like hunting, as Ortega observed, is ultimately problematic. It is not an end of ambiguity that is to be sought, but a beginning of understanding, which cannot be approached by raising distraction, passivity and the simplification of experience to the level of a fundamental right. It is in this respect that those who have fought for wilderness and allied causes are ultimately elitist. But it is not elitism in the cheap and unworthy sense of excluding any social or economic group, but in its refusal to accede to those who demand simplification, who refuse to allow their skills, knowledge and understanding to grow, who avert their faces from the culture-creating power of the use of leisure, and from the profounder possibilities of freedom.
Environmental Law is published by the students of The Lewis and Clark Law School in Fall, Winter and Spring. The views expressed herein do not necessarily reflect those of the editorial board or the law school. *Environmental Law* seeks responsible comment from all sides of any environmental, legal issue.

Address subscription orders to Environmental Law, 10015 S.W. Terwilliger Blvd., Portland, Oregon 97219. Rates are $8.00 per year, $3.00 per issue; foreign rates are $12.00 per year, $6.00 per issue. Subscriptions are deemed renewed annually unless instructions are received to the contrary. Change of address notifications should include old address and new address, with zip code. Please notify this office one month in advance of effective date to insure delivery. All back issues should be ordered from Fred B. Rothman & Co., 57 Leuning St., South Hackensack, New Jersey 07606. Back issue rates are $15.00 per year, $5.00 per issue; early volumes of two issues are $15.00, $7.50 per issue.

The cover is a scene along the northern Oregon coast, looking south from Indian Beach toward Cannon Beach and Haystack Rock.

*Environmental Law* is printed on recycled paper.