

# MOUNTAINS WITHOUT HANDRAILS . . . WILDERNESS WITHOUT CELLPHONES

*Sarah Krakoff\**

## I. INTRODUCTION

Why should we care about nature? The question seems irrelevant; we just do. Today, more people than ever flock to the mountains, rivers, and deserts for an authentic outdoor experience. Undeterred by flash floods, bear attacks, hypo- and hyper-thermia, and other inherent dangers of the wilds, eco-travelers are donning their packs and heading down the trail. For those with the resources to travel abroad, international “ecotourism” has become the trend. Further, the greatest increases in outdoor recreation are occurring in the seemingly nature-friendly activities of birding, hiking, and backpacking.<sup>1</sup> Trees may not have standing, but they have constituents.<sup>2</sup> They, along with the rest of nature, have laws designed at least in part to protect them.<sup>3</sup>

Why should we care about nature? The question seems passé. Yet on closer inspection, it appears that nature—the idea, the place, the community of life—is being displaced and even threatened by something more akin to Nature™, or Nature®, the product. Socialites and mail carriers alike

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\* Associate Professor, University of Colorado School of Law. I am grateful to Paul Campos, John Carlson, James Corbridge, David Getches, Melissa Hart, Hiroshi Motomura, Scott Peppet, Carolyn Ramsey, Joseph Sax, Amy Schmitz, Pierre Schlag, Christopher Stone, and Ahmed White for their careful readings of earlier drafts. Thanks in addition to all participants in the University of Colorado School of Law Summer Article Workshop. Katie Corr, Brittany Kauffman, and Elizabeth Purcell provided excellent and spirited research assistance as well as delightful company throughout this project. Finally, I would like to thank Chris Giovinazzo and the staff of the Harvard Environmental Law Review, who did a great editing job in the final stretches when the Article needed it most.

<sup>1</sup> See H. KEN CORDELL ET AL., *OUTDOOR RECREATION IN AMERICAN LIFE: A NATIONAL ASSESSMENT OF DEMAND AND SUPPLY TRENDS* 239 (H. Ken Cordell, ed., 1999) [hereinafter *OUTDOOR RECREATION*] (containing results from the 1994–95 National Survey on Recreation and the Environment, USDA Forest Service). According to the survey, bird watching is the most rapidly growing form of outdoor recreation, and participation in hiking, backpacking, and camping is also showing phenomenal growth. *Id.* The only activities classified by the survey as “land-resource-based activities” that declined in participation were horseback riding and hunting. *Id.*

<sup>2</sup> See generally Christopher Stone, *Should Trees Have Standing? Towards Legal Rights of Natural Objects*, 45 S. CAL. L. REV. 450 (1972) (arguing that natural objects have value unto themselves and not solely based on their value to humans, and therefore should have independently cognizable legal rights).

<sup>3</sup> See, e.g., National Wilderness Preservation System Act, 16 U.S.C. §§ 1131–1136 (2000); Endangered Species Act, 16 U.S.C. §§ 1531–1544 (2000); National Forest Management Act, 16 U.S.C. §§ 1600–1614 (2000); Federal Lands Policy Management Act, 43 U.S.C. §§ 1701–1785 (2000).

pay \$65,000 to climb Mount Everest.<sup>4</sup> Corporate seminars in backcountry terrain purport to improve business acumen. Urbanites set off in their sport utility vehicles (“SUVs”) for mountain escapes armed with cell-phones, espresso makers, and global positioning systems. Travelers from developed countries swarm the globe in search of pristine rain forests and encounters with endangered tigers. The vast increase in outdoor recreation has coincided with the commodification of nature and wilderness experiences herein termed the “consumption of wilderness.”

This trend may appear disconnected from refined discussions within the academy concerning whether and how to include nature in the moral community. But an understanding of the consumption of wilderness sheds significant light on the perceived dichotomy between two common views of the ethical value of nature. The anthropocentric view holds that nature’s ethical value derives solely from nature’s value to humans, whether spiritual, aesthetic, economic, or otherwise. The non-anthropocentric view maintains that nature has inherent value, apart from any value to humans.<sup>5</sup> The ensuing analysis of the consumption of wilderness reveals that whatever their philosophical merit, positions advanced from within both camps misdescribe the complex ways in which humans interact with, understand, and affect the natural world. We lack an adequate answer to the question of why we should care about nature unless we understand the distinctly social phenomena associated with the consumption of wilderness. Others have written eloquently and convincingly about the collapse of the distinction between the anthropocentric and the inherent value camps.<sup>6</sup> The notion that we need more holistic understandings of our ethical relationship to nature is not original to this Article. What is new, and necessary, is an exploration of these holistic ideas in the context of the

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<sup>4</sup> See JONATHAN KRAKAUER, *INTO THIN AIR* 7, 30, 44–45, 47, 149–52 (1997) (describing private clients Doug Hansen, a postal worker who worked two jobs to save enough to attempt Everest for a second time, and Sandy Hill Pittman, a New York millionaire and socialite).

<sup>5</sup> This debate mirrors aspects of the subject/object question, a long-standing problem in philosophy. Ever since Descartes’ elevation of the subject (i.e., the conscious human mind) over the object (i.e., all non-human elements of the natural world), see Rene Descartes, *The Meditations Concerning First Philosophy*, in *PHILOSOPHICAL ESSAYS* 81–91, 126–43 (Laurence J. Lafleur trans., Bobbs-Merrill Educ. Publ’g 1978) (1641) (exploring the primacy of mind and the separation between mind and body), the question of whether to conceive of humans as a part of or separate from nature has been a confounding one.

<sup>6</sup> See Mark Sagoff, *Settling America or the Concept of Place in Environmental Ethics*, 12 J. ENERGY NAT. RESOURCES & ENVTL. L. 349, 402–09 (1992) (describing necessary rapprochement between preservationist/inherent value camp and conservationist/anthropocentric camp, and suggesting an attitude of engagement with place as the appropriate ethical paradigm); see also CHRISTOPHER D. STONE, *EARTH AND OTHER ETHICS: THE CASE FOR MORAL PLURALISM* 242–46 (1987) (arguing that no universal postulate can fit the range of situations that call for moral decision-making, and therefore urging instead for different moral planes, the choices between which depend on intuition and imagination rather than purely rational argumentation from first principles).

very activities that many assume to be inherently capable of generating those understandings.

This Article begins by considering Professor Joseph Sax's exploration of many of these same wilderness-oriented activities. In his book *Mountains Without Handrails*,<sup>7</sup> Sax articulates an argument from within the anthropocentric camp in support of nature preservation. Why, Sax asks, should large swathes of public lands be free from development and motorized recreation? He concludes that the justification lies in the kinds of activities in which such places allow us to participate. Wild places provide us with the ideal conditions for "contemplative" or "reflective" recreation. Such recreational activities, including backpacking, rock climbing, fly-fishing, and mountaineering, require us to be creative, self-directed, and engaged in ways that other activities do not. Sax urges us to heed the "secular prophets" of preservation, who preach the gospel of these types of recreation, because they, like those who promote public television and other eat-your-vegetables types of public goods, know from their own nature experiences something about what is good for us all.<sup>8</sup> Sax's argument is an important step in pushing anthropocentric justifications toward a more expansive definition of nature's value. As discussed below, however, Sax's justification ultimately requires reformulation in light of the ways more and more people are actually experiencing nature—i.e., the consumption of wilderness.

Next, this Article updates and expands on Sax's review of outdoor activities. When Sax wrote his book, outdoor recreation was already popular enough for preservationists to wonder whether we were "loving our national parks to death."<sup>9</sup> Since then, however, the changes are even more dramatic, and are qualitative as well as quantitative. Wilderness is being consumed in several senses. In the world of natural resource law and policy, "consumption" typically means extractive activities such as mining, timber harvesting, hunting, and grazing. Non-mechanized recreational activities, by contrast, are usually considered "non-consumptive." Even in this conventional sense, the scale and pace of many non-mechanized activities are now consumptive; they result in drastic physical alteration of the land. In other contexts, consumption means monetary exchange—the purchase and sale of services and commodities. In this sense as well, wilderness is being consumed. Its transformation into a commodity affects our relationship to it, in that the acquisition of wilderness experiences has psychic and social meaning quite apart from the meaning of the experiences themselves.

Coming to terms with these aspects of the consumption of wilderness demands that the ethics of wilderness and nature preservation incor-

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<sup>7</sup> JOSEPH SAX, *MOUNTAINS WITHOUT HANDRAILS* (1980).

<sup>8</sup> *Id.* at 15 ("[The preservationist] is, in fact, a prophet for a kind of secular religion.").

<sup>9</sup> *Id.* at 1.

porate the understanding that wilderness is not a realm cordoned off from the rest of society. What people watch on television, read in magazines, see in the cinema, experience at the workplace, and consume in the marketplace influences how they interact with all places, including wild places. And what we seek in wild places may be increasingly hard to find unless we understand the connections between an economic system based on extremely high levels of production and consumption and its impacts on us as well as the environment.<sup>10</sup>

The questions raised with respect to how we engage in wilderness activities thus pertain to a nuanced inquiry into the underpinnings of a moral relationship to nature. These questions include the following: How has wilderness travel changed? What are people seeking when they engage in highly commodified wilderness experiences? What do they find? What impact does this behavior have on society and wilderness, and to what extent are society and wilderness separable? The preliminary analysis undertaken herein reveals that at least some of the underlying motivations for even the most commercialized and extravagant escapades in the wilderness seem to be the very same motivations that Sax identified with contemplative recreation. People, even encased in name-brand, state-of-the-art, nature-proofed suits and toting Dean & DeLuca coffee, are seeking

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<sup>10</sup> Many scholars and environmental advocates have made the general connection between habits of consumption and environmental degradation. *See, e.g.*, Bradley A. Harsch, *Consumerism and Environmental Policy: Moving Past Consumer Culture*, 26 *ECOLOGY L. Q.* 543 (1999) (contending that consumerism lies at the heart of environmental problems and that the cultural roots of our environmentally destructive practices must be addressed with as much vigor as technical solutions); Arnold W. Reitze, Jr., *Populations, Consumption and Environmental Law*, 12 *NAT. RESOURCES & ENVTL.* 89, 142 (1997) (“Environmental degradation is due to our population, consumption and the pollution we generate.”). The first prominent American environmentalist to make the connection between consumption and global environmental health was Barry Commoner in his groundbreaking book. BARRY COMMONER, *THE CLOSING CIRCLE* (1971). Dr. Commoner’s work was part of a growing recognition that activities with respect to the environment are more likely than not to have long-term effects on ecosystems. Rachel Carson and Stewart Udall also contributed significantly to the public’s comprehension of the society/environment connection. *See generally* RACHEL CARSON, *SILENT SPRING* (Houghton Mifflin 1994) (1962); STEWART UDALL, *THE QUIET CRISIS* (1963). Many, including Sax, have likewise noted and applauded the shift in environmental protection from issue- and place- specific regulation to bioregional and ecosystem-based approaches. *See, e.g.*, Joseph L. Sax, *Nature and Habitat Conservation in the United States*, 20 *ECOLOGY L. Q.* 47 (1993) (describing and advocating a shift from an “enclave-based” approach to nature protection—focused mainly on preserving beautiful and pristine places—to a more holistic approach of “ecological management”); *see also* Richard J. Ansson, *Ecosystem Management and Our National Parks: Will Ecosystem Management Become the Guiding Theory for Our National Parks in the 21st Century?*, 7 *U. BALT. J. ENVTL. L.* 87 (2000); John Freemuth, *Ecosystem Management and its Place in the National Parks*, 74 *DENV. U. L. REV.* 697 (1997); Oliver A. Houck, *On the Law of Biodiversity and Ecosystem Management*, 81 *MINN. L. REV.* 869 (1997); Bradley C. Karkkainen, *Biodiversity and Land*, 83 *CORNELL L. REV.* 1 (1997). Exploring highly consumptive behavior in the very activities that were once identified as the most solicitous and generative of nature protection may have the beneficial effect of bolstering justifications for both of these projects, as well as strengthening the connections between them. *See* Sagoff, *supra* note 6, at 416–17.

something akin to an unmediated experience, or even something like moral improvement, at least some of the time. In some respects, the channeling of our seemingly inconsistent desires for status, individuality, and community into leisure-time pursuits is perhaps a timely answer to the problem of over-consumption of material goods. Yet there is also evidence to conclude that we are consuming nature faster than it is consuming our leisure time. In some cases, despite their stated goals and motivations, nature travelers limit themselves to a sanitized, convenient, and trophy-home version of wilderness. In others, the quest for increasingly wild experiences severs intimate connections to the natural world, and contributes, albeit unwittingly, to the physical destruction of wild places. Both kinds of pursuits threaten not only the idea of contemplative recreation, but also the quite material conditions in which it takes place. This Article suggests, therefore, that our quest for a relationship to nature must be reconsidered. The sense, affirmed by Sax's argument, that we can go "out there" into nature and come back the better for it, lacks two crucial recognitions.

The material objects of nature matter—the anthropocentric value of nature cannot exist unless nature has intrinsic value. Sax himself puts "harm to nature" arguments to one side in formulating his argument in support of preservation.<sup>11</sup> But we experience, or long to experience, the subjective benefits of intimacy with nature because of its physical qualities and conditions. We value those conditions—dew-moistened mornings in aspen groves, the trill of a canyon wren on a still desert eve, the spine-tingling howl of a wolf—precisely because, paradoxically, they enable an experience of the infinite, the incalculable, of something not captured by our subjective valuations. Sax's anthropocentric justification must marry with aspects of the "inherent value of nature" side of the debate.

Yet self and nature are never just separate—neither socially nor conceptually. This communion is precisely why we experience such intense gratification from wilderness experiences and confirms the sense of the inherent value adherents that there *is* a "there" to nature; there is, in philosophical terms, an "object." This holistic understanding illuminates how our social practices can, even in the name of appreciating nature, mutate it. Herein lies the second recognition. If we are to understand why the material, non-human objects of nature matter, we must appreciate and understand our own inescapably social relationship with nature. Only in this way can we hope to appreciate how our own valuations of nature can, themselves, paradoxically destroy what we seek to preserve. And only through this appreciation will we be able to articulate the need for mountains without handrails and wilderness without cellphones.

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<sup>11</sup> See SAX, *supra* note 7, at 11–13 (asserting that the preservationist's objection to certain activities and improvements is not always, or even centrally, about negative effects on the environment).

Part II of this Article describes Joseph Sax's anthropocentric view of the value of nature. Part III explores both the continuing validity and the limitations in Sax's thesis, by surveying the quantitative and qualitative changes in outdoor recreation that have occurred over the last several decades. Part IV describes the intellectual roots and present manifestations of the position that nature has intrinsic value, and describes both the appeal of this approach as well as its shortcomings in light of the consumption of wilderness. Finally, Part IV suggests a reconciliation of the intrinsic value and Saxian views, but one that depends upon recognition of the inevitably social lens through which we relate to nature, notwithstanding the fact that we sense and long for connections that extend beyond those mediated by society.

## II. THE "CONTEMPLATIVE FACULTY" JUSTIFICATION FOR WILDERNESS PRESERVATION

Professor Sax distilled the ideal qualities for recreation in national parks and other public lands from an 1865 report by Frederick Law Olmsted entitled, "The Yosemite Valley and the Mariposa Big Trees."<sup>12</sup> In this report, Olmsted, the designer of New York's Central Park and one of this country's premier landscape architects, made the case for the redemptive qualities of national parks.<sup>13</sup> Olmsted was concerned with "why government should take upon itself the burden of scenic preservation."<sup>14</sup> Ultimately, he rested the justification on an environmental strain of republican idealism. Olmsted argued that magnificent scenery of the kind available in nature stimulates the inherently human capacity to contemplate and reflect.<sup>15</sup> As Sax summarizes, "it is precisely to give the ordinary citizen an opportunity to exercise and educate the contemplative faculty that establishment of nature parks as public places is 'justified and enforced as a political duty.'"<sup>16</sup> Nature parks allow for the free roaming of the human spirit and intelligence. The setting is a precondition for activities that cultivate human independence, curiosity, and self-directed thought.

It is also clear from Olmsted's writings, and Sax's revival of them, that Olmsted prefigures many of the anti-modernist sentiments of the moun-

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<sup>12</sup> See *id.* at 18 (citing Frederick Law Olmsted, *The Yosemite Valley and the Mariposa Big Trees: A Preliminary Report* (1865), reprinted in 44:1 LANDSCAPE ARCHITECTURE 12 (1953)).

<sup>13</sup> Olmsted was writing at the very beginning of the era in which public lands were set aside for purposes other than homesteading, mineral extraction, or other commercial purposes. While he, and Sax, use the term "park," the arguments apply to any area of land set aside and protected in its natural state. See *id.* at 115 n.2 (explaining that he is using the term "national parks" as shorthand for all of the categories of public land that are or ought to be protected as "high quality natural areas").

<sup>14</sup> See *id.* at 19.

<sup>15</sup> *Id.* at 20.

<sup>16</sup> SAX, *supra* note 7. at 21 (quoting Olmsted, *supra* note 12, at 21).

taineering and rock climbing cultures of subsequent decades. The “common man” needs to reawaken his contemplative and reflective faculties because they are otherwise hopelessly dulled by his participation in modern society, its labor force, and its industrialized leisure activities:

In most of our activities we are busy accomplishing things to satisfy the demands and expectations of other people, and dealing with petty details that are uninteresting in themselves and only engage our attention because they are a means to some other goal we are trying to reach.<sup>17</sup>

Nature, according to Olmsted and Sax, serves as an antidote to modern working life because it frees us from the goal-oriented, other-directed, often mundane tasks that characterize most people’s everyday activities.<sup>18</sup> Natural settings free us because they inspire us to dwell thoughtfully and intentionally in the moment.<sup>19</sup> Olmsted’s argument resonates with the same kinds of eastern-inspired arguments found in counter-cultural classics such as *Zen and the Art of Motorcycle Maintenance*.<sup>20</sup> The message is that humans thrive in environments that require them to transcend their external goals and pay heed to the present in an active, engaged way. Therefore, we as a society have an obligation to ensure that such environments exist. Naturally scenic areas constitute such environments, and the government thus has a duty to protect and preserve them for the public.

To provide support for Olmsted’s “contemplative faculty” justification, Professor Sax elaborates on the kinds of activities that most lend themselves to contemplation and reflection.<sup>21</sup> Sax interprets the meaning of

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<sup>17</sup> *Id.* at 20.

<sup>18</sup> See Olmsted, *supra* note 12, at 20.

The severe and excessive exercise of the mind which leads to the greatest fatigue and is the most wearing upon the whole constitution is almost entirely caused by application to the removal of something to be apprehended in the future . . . , to the laying up of wealth . . . , to accomplishing something in the mind of another, and especially to small and petty details which are uninteresting in themselves and which engage the attention at all only because of the bearing they have on some general end of more importance which is seen ahead.

*Id.*

<sup>19</sup> See *id.* at 20–21 (contending that “natural scenery” is unique in its ability to engage completely in the present, without concern for some future or external goal).

<sup>20</sup> ROBERT M. PIRSIG, *ZEN AND THE ART OF MOTORCYCLE MAINTENANCE* (1974). This cult classic explores metaphysical questions through the narrative of a father and son’s relationship to each other, the natural world, and a motorcycle. Engagement, whether through fixing the motorcycle or bushwhacking up a mountain, is one of the recurrent redemptive themes. While Sax does not mention this work, he does refer to EUGEN HERRIGEL, *ZEN AND THE ART OF ARCHERY* (1971) by way of recognizing that the kinds of contemplative activities associated with natural settings are not necessarily dependent upon those settings. See SAX, *supra* note 7, at 46.

<sup>21</sup> See SAX, *supra* note 7, at 27–46.

these activities by analyzing the texts of their participants. These texts—the chronicles of fly-fishing, hunting, and mountain climbing—have traditionally been consumed as popular entertainment. But Sax urges us to take them more seriously.<sup>22</sup> Within them, he explains, are the kernels of an ethical argument for nature preservation. These narratives inform us that such activities, which by definition take place in natural settings, give us the opportunity to confront our most visceral and arguably troubling tendencies, and then to transcend them. According to Sax, this is particularly true of mountain climbing. Whereas fly-fishing may appear to have an inherently reflective aspect to it—the only goal one has to abandon is the goal of actually catching fish—mountaineers seem to have many of the macho, goal-oriented traits that one associates with mechanized recreation.<sup>23</sup> Yet the mountain climbing narratives stress the need to transcend these tendencies. Sax relies on one particular mountaineering text to make this point.<sup>24</sup> According to Galen Rowell's *In the Throne Room of the Mountain Gods*:

The climbing experience at its best—“enjoyed purely for itself,” as Rowell puts it, adopting almost the identical words Olmsted used in the Yosemite report—requires a detachment from the pressure of conventional expectations that is extremely difficult to achieve. The interest of climbing is not simply that it tends to attract those who feel these external pressures sharply, but that it induces the participant to confront this inner conflict rather than conceal it.<sup>25</sup>

Sax surveys other kinds of texts that support the contemplative or reflective recreation justification. Henry David Thoreau, John Muir, and even Faulkner and Hemingway, lend support for the idea that certain outdoor activities stimulate and engage us in ways that elevate our senses and capabilities.<sup>26</sup> Whether rambling through the underbrush of Walden Pond, ascending a craggy rock face, or standing thigh deep in clear mountain streams, the recurring message is that natural places allow us opportunities for this engagement. “The fundamental claim for what may be called reflective or contemplative recreation, then, is as an experimental test of an ethical proposition. Such recreation tests the will to dominate and the inclination to submissiveness, and repays their transcendence with profound gratification.”<sup>27</sup>

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<sup>22</sup> See *id.* at 27.

<sup>23</sup> See *id.* at 37–38.

<sup>24</sup> See *id.* at 36–39 (discussing GALEN ROWELL, *IN THE THRONE ROOM OF THE MOUNTAIN GODS* (1977)).

<sup>25</sup> *Id.* at 39 (quoting ROWELL, *supra* note 24, at 110).

<sup>26</sup> See SAX, *supra* note 7, at 40–44.

<sup>27</sup> *Id.* at 45.

The balance of Sax's book shores up the reflective recreation justification by, in large part, recognizing its limits. It may well be, Sax acknowledges, that many are either incapable of or uninterested in the benefits of reflective recreation.<sup>28</sup> The benign form of paternalism that preservationists advocate, however, is similar to such generally accepted forms as funding for public television, art museums, and public universities. We all *ought* to want such things, and therefore ought to support their existence, even if the majority does not actually recognize their value or take advantage of them.<sup>29</sup> We should defer to the preservationists and their special knowledge in this regard just as we defer to art historians and museum curators in their fields of expertise. Sax's ethical argument is thus neo-Kantian, rather than utilitarian. It describes preservationists as the formulators of a categorical imperative for outdoor recreation: their subjective experience of reflective recreation becomes the basis of a universal principle about how we should interact with nature. This approach avoids a problem presented by a pure utilitarian argument, which would be vulnerable to contentions about what the majority actually prefers.<sup>30</sup> Moreover, the sphere in which the preservationist is asking for deference—the activities that take place on certain designated public lands—is limited. Allowing preservationists authority in such narrow circumstances is not so threatening that it must be justified absolutely.<sup>31</sup>

The “secular prophets”—those backpackers, climbers, fly-fishers, and wanderers who have chronicled their experiences—have insights and expertise that we should heed, concludes Sax. They are telling us how we might lead a better life by, for at least some of our time, leaving behind all that is quick, easy, conventional, and externally driven. The belief that we can become better people is central to Sax's argument, as is the dualistic view of people and nature: leave nature alone, and people who enter there will improve. Sax does hint that there are signs that the secular prophets' world might be threatened by increasing commercialization.<sup>32</sup> But,

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<sup>28</sup> See *id.* at 47–48 (recognizing that one's choices concerning how to recreate may be limited by the alienated, drudge-like conditions of one's working life); see also *id.* at 50–51 (acknowledging that the preservationists are arguing for policies reflecting what they think we ought to want, not necessarily what the majority actually chooses).

<sup>29</sup> See *id.* at 52–54.

<sup>30</sup> SAX, *supra* note 7, at 54–55. But see Charles Wilkinson, *Mountains Without Handrails: Reflections on the National Parks* by Joseph L. Sax, 12 ENVTL. L. 523, 524 (1982) (book review) (characterizing Sax's argument as “ultimately utilitarian,” because it focuses on the value of public lands to the user). I think that Sax's argument is more properly characterized as neo-Kantian, because it is grounded in what all recreators *ought* to want, not what they may actually want.

<sup>31</sup> See SAX, *supra* note 7, at 55.

<sup>32</sup> See *id.* at 40 (noting that a commercial climbing venture at Mt. Rainier promised to get clients to the top, even if it meant dragging them), 47–48 (discussing the possibility that efforts to reform our interactions with nature may be limited by the ways in which our lives are constructed by our “alienated” and “drudge-like” work lives).

overall, Sax's argument depends on the proposition that their message is intact and relevant.

### III. CONSUMING WILDERNESS

It is striking to update Sax's reading list today by reviewing modern wilderness travel literature. Veteran mountaineers and climbers complain that the qualities, distilled by Sax as pivotal to inducing reflection and contemplation, such as self-reliance, complex problem solving, and inner-directedness, are no longer an inherent part of their sport. In *Dark Shadows Falling*, mountain climber and author Joe Simpson explores the current moral climate of high altitude mountaineering and trekking, and finds marked increases in callousness, disregard for others, and general abdication of the mountaineer's distinct ethics.<sup>33</sup> He wonders whether "something was happening that had little to do with the mountaineering I had been brought up to understand and love. Were we irrecoverably losing the essence of why we went to the mountains; indeed had we already lost it forever?"<sup>34</sup> Those who chronicle other wilderness activities echo these sentiments. Yet the current literature also reveals that the desire for unmediated, intense, self-directed experiences is what, at some level, drives the consumerist frenzy in the great outdoors.

The phenomena described herein therefore present two related problems. First, the commodification of wilderness experiences erodes the moral-improvement argument articulated by Sax, in that there is widespread support for the proposition that the essential "contemplative" or "reflective" aspects of wilderness activities have been undermined. Even when people seek transcendence and higher states of awareness through nature experiences, they do not achieve them. Second, commodification often results in actual environmental harm, thereby destroying the very qualities that draw us to wild places. Tragically, wilderness travelers destroy the means of their deliverance even while they fail to be delivered.

#### A. *Buying Your Way to the Top of the World*

In terms of updating the mountaineering literature, a good place to start is the highest peak, both literally and metaphorically. Mount Everest, whose summit is the highest point on the planet, is also an exemplar of the consumption of wilderness. What was once among the greatest challenges for mountaineers has become, according to some, a high altitude amusement park, albeit one with risks far greater than those inherent in the Flopper.<sup>35</sup> The commercialization of Everest lures many climbers—

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<sup>33</sup> JOE SIMPSON, *DARK SHADOWS FALLING* (1997).

<sup>34</sup> *Id.* at 28.

<sup>35</sup> See *Murphy v. Steeple Chase Amusement Co.*, 166 N.E. 173 (N.Y. 1929) (announc-

often people who are seeking the kind of nature experience Sax would applaud. Yet commercialization of Everest simultaneously ensures that any summit these climbers achieve is unlikely to be a moral one.

The Everest phenomenon has been documented in many accounts.<sup>36</sup> The best known of these is probably Jonathon Krakauer's *Into Thin Air*, which spent more than two years on the New York Times Best Seller list.<sup>37</sup> Writers describe a circus of groups, many of them led by companies that have charged their clients significant sums of money, descending upon the mountain during the peak climbing seasons.<sup>38</sup> Standing in stark contrast to the minimalist, ascetic vision of the mountaineer espoused by Sax, the denizens of Everest base camp are supplied with Coke, pizza, bagels, and, incredibly, sushi.<sup>39</sup> The clients, many of whom would not otherwise be capable of such an arduous endeavor, are then led toward the summit. Those clients who lack the skills and fitness to undertake high altitude mountaineering unguided often have been led to believe, inchoately or directly, that their credit card receipts guarantee them access to the top.<sup>40</sup>

Some clients embody the problematic aspects of guided climbing more than others. Krakauer himself is an expert mountaineer who has honed his skills on many lonely, unknown peaks.<sup>41</sup> Sandy Pittman, a client on a rival expedition, most strikingly embodies the other end of the spectrum. A rich socialite who had the goal of being the first American

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ing the affirmative tort defense of "assumption of the risk"). Perhaps it is unfortunate that Justice Cardozo is not around today to warn the "timorous" away from Everest.

<sup>36</sup> See, e.g., KRAKAUER, *supra* note 4; ANATOLI BOUKREEV & G. WESTON DEWALT, *THE CLIMB: TRAGIC AMBITIONS ON EVEREST* (1997); DAVID BREASHEARS, *HIGH EXPOSURE: AN ENDURING PASSION FOR EVEREST AND UNFORGIVING PLACES* (1999); BROUGHTON COBURN, *EVEREST: MOUNTAIN WITHOUT MERCY* (1997); MATT DICKINSON, *THE OTHER SIDE OF EVEREST: CLIMBING THE NORTH FACE THROUGH THE KILLER STORM* (1999); LENE GAMMELGAARD, *CLIMBING HIGH: A WOMAN'S ACCOUNT OF SURVIVING THE EVEREST TRAGEDY* (1999); GÖRAN KROPP, *ULTIMATE HIGH: MY SOLO ASCENT OF EVEREST* (1999); JAMLING TENZING NORGAY, *TOUCHING MY FATHER'S SOUL: A SHERPA'S JOURNEY TO THE TOP OF EVEREST* (2001); JIM WITTAKER, *A LIFE ON THE EDGE: MEMOIRS OF EVEREST AND BEYOND* (1999).

<sup>37</sup> See *Paperback Best Sellers: April 1, 2001*, N.Y. TIMES, Apr. 1, 2001, § 7, at 20 (noting that INTO THIN AIR had been on the paperback bestseller list for 107 weeks); *Best Sellers: January 30, 2000*, N.Y. TIMES, Jan. 16, 2000, § 7, at 24 (noting that INTO THIN AIR had been on the hardback bestseller list for 91 weeks).

<sup>38</sup> See KRAKAUER, *supra* note 4, at 27–29, 42–45; see also SIMPSON, *supra* note 33, at 29–53 (describing the climbing scene on Everest, focusing on the 1996 storms and their death toll). "On the Tibetan side it was an equally busy season, with more than 200 climbers and their Sherpa staff—in all fifteen expeditions—camped on the site of the Rongbuk glacier base camp." SIMPSON, *supra* note 33, at 43.

<sup>39</sup> See Rod Nordland, *The Gods Must be Angry*, NEWSWEEK, May 26, 1997, at 44 ("The camp itself was cushier than ever, supplied by daily chopper flights, with video movies and propane heaters in some tents. The Malaysians even had Coca-Cola packed in by Sherpas, while camp caterers cranked out bagels, pizza and sushi.").

<sup>40</sup> See SIMPSON, *supra* note 33, at 111 (noting the ironic consequence of the warranty mentality). "[T]here is a tendency to assume that success is guaranteed because it has been paid for, and the consequent pressure to provide it can result in perilous situations." *Id.*

<sup>41</sup> See JONATHAN KRAKAUER, *EIGER DREAMS: VENTURES AMONG MEN AND MOUNTAINS* (1990).

woman to climb the Seven Summits (the highest peak on each continent), Ms. Pittman arrived at base camp equipped with two laptop computers, a video camera, three 35mm cameras, a digital camera, two tape recorders, a CD player, solar panels, an espresso maker, an “ample supply” of Dean & DeLuca’s Near East blend, and four wrapped chocolate Easter eggs.<sup>42</sup> When not adventuring at high altitudes, Ms. Pittman resides in an “opulent Connecticut manor” and an “art-filled apartment on Central Park West staffed with uniformed servants.”<sup>43</sup> In the Himalayas, Ms. Pittman did not depart from the style to which she had become accustomed, requiring a young Sherpa to roll up her sleeping bag and pack her backpack for her each morning.<sup>44</sup> Such details might be considered merely amusing updates of the genteel style associated with some of the earliest mountaineering ventures.<sup>45</sup> Unlike earlier mountaineers, however, Ms. Pittman’s requirements literally extended to being dragged up the mountain. For a fairly long stretch, Ms. Pittman was “short-rope” up by a Sherpa, meaning that he attached Pittman to himself by a rope and pulled her along behind.<sup>46</sup>

Sax’s contemplative recreation ideal depends upon the assumption that mountaineering and wilderness sports like it offer us the settings in which to overcome our goal-obsessed orientation. The extreme forms of guiding endemic on Everest thus challenge Sax’s ideal. Guides drag clients up the icy pitches to meet their goals, for which the clients have paid dearly. Not all the dragging is as literal as in Sandy Pittman’s case. Doug Hansen, one of the clients on Krakauer’s trip, had been lured back by expert guide Rob Hall to attempt the summit a second time, having failed to reach it on a previous trip. Hall essentially promised Hansen the top. Tragically, Hall delivered his promise at the cost of Hansen’s life.<sup>47</sup> Guiding thus has the potential to make the goal more precious than anything—even life itself.

In terms of motivation, the clients cannot take all the blame for this. We must assume that all of them, even easy targets like Pittman, had complicated reasons for wanting to be successful mountaineers. In part, their desires may be to distinguish themselves from peers in their class and social groups.<sup>48</sup> In part they may be engaging in individualized, and highly

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<sup>42</sup> KRAKAUER, *supra* note 4, at 152.

<sup>43</sup> *Id.* at 150.

<sup>44</sup> *Id.* at 152.

<sup>45</sup> See SHERRY B. ORTNER, *LIFE AND DEATH ON MT. EVEREST: SHERPAS AND HIMALAYAN MOUNTAINEERING* 33–35 (1999). Ortner notes that early British mountaineers came predominately from the well-to-do upper-middle class, with high levels of education, and engaged in such leisure time activities as chess and poetry reading. Ortner does clarify that very few climbers were from the *highest* social class, and the ones who were “were generally held in deep suspicion unless they could prove themselves to be unsnobbish and socially egalitarian.” *Id.* at 34.

<sup>46</sup> KRAKAUER, *supra* note 4, at 221.

<sup>47</sup> See KRAKAUER, *supra* note 4, at 47, 264–66, 299–301.

<sup>48</sup> Upper class adventure travel, and middle-class imitations of it, might in part be the latest iteration of Thorstein Veblen’s thesis that consumption is a form of communication

romanticized, hedonism.<sup>49</sup> Yet, in large part, they must also be seeking to transcend both of those motivations. Engaging in something as painful, arduous, and intense as high-altitude mountaineering simply cannot be explained solely by these theories.

So what drives people to spend so much money to climb Everest? It cannot be the same thing that drives people to go to resorts, where one pays to have the inconveniences of daily life removed. Club Med, for example, has so perfected the “escape” version of tourism that it has even eliminated that pesky problem of confronting anything resembling local culture.<sup>50</sup> You can be anywhere—Mexico, the Caribbean, South America—and still be in the nowhere, liminal space of perpetual fun and relaxation. Decades ago, Daniel Boorstin lamented the route that Americans were on with respect to their desire to distance themselves from “reality.”<sup>51</sup> The Club Med resort vacation might be Boorstin’s apotheosis of “the lost art of travel.”<sup>52</sup>

Yet climbing Mount Everest is not fun—not even with expert guides, Sherpas, and Starbucks coffee at base camp. As Krakauer details, climbing at high altitudes is not pleasurable in any ordinary sense.<sup>53</sup> After describing the agonizingly tedious process of ascending a steep icy slope by jumaring up a fixed rope,<sup>54</sup> Krakauer editorializes that:

[T]he notion that climbers are merely adrenaline junkies chasing a righteous fix is a fallacy, at least in the case of Everest . . . . Above the comforts of Base Camp, the expedition in fact became an almost Calvinistic undertaking. The ratio of misery to pleasure was greater by an order of magnitude than any other mountain I’d been on; I quickly came to understand that climbing Everest was primarily about enduring pain. And in subjecting ourselves to week after week of toil, tedium, and suffering,

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that signals wealth and social status. *See generally* THORSTEIN VEBLÉN, *THE THEORY OF THE LEISURE CLASS: AN ECONOMIC STUDY OF INSTITUTIONS* (Dover Publications 3d ed. 1994) (1899).

<sup>49</sup> *See* Colin Campbell, *Consuming Goods and the Good of Consuming*, in *ETHICS OF CONSUMPTION: THE GOOD LIFE, JUSTICE, AND GLOBAL STEWARDSHIP* 139, 151 (David A. Crocker & Toby Linden eds., 1998) (arguing that consumption, including tourism, is a way of expressing individualized longing for self-expression and inherently insatiable desire to realize romantic longings).

<sup>50</sup> *See* Club Med, *FAQ*, at <http://www.clubmed.com/cgi-bin/clubmed55/Statique/Faq/index.jsp?> (last visited Feb. 21, 2003) (on file with the Harvard Environmental Law Review).

<sup>51</sup> DANIEL J. BOORSTIN, *THE IMAGE: A GUIDE TO PSEUDOEVENTS IN AMERICA* (Vintage Books 1992) (1961).

<sup>52</sup> *Id.* at 77 (“From Traveler to Tourist: The Lost Art of Travel”).

<sup>53</sup> *See* KRAKAUER, *supra* note 4, at 175–77.

<sup>54</sup> Ascending a rope with jumars involves moving up the rope with gadgets that tighten as they slide down. One hoists the jumar attached to a foot, then stops, hoists the jumar attached to the waist harness, then stops, and so on.

it struck me that most of us were probably seeking, above all, something like a state of grace.<sup>55</sup>

Professor Sax does not use these words exactly, but a “state of grace” is akin to the goal of contemplative recreation. Sax suggests that non-mechanized recreation in the wilds requires independent and often difficult decision-making in the face of real risk. One must struggle, feel pain, and overcome fears. One must make choices about how to react to unexpected events, such as icefalls and storms.<sup>56</sup> This is one type of “reality” that Boorstin exhorted us to return to as well. He excoriated the modern forms of tourism, which strive to eliminate all discomfort and risk, and which moreover aim to make one feel as if one is on an “adventure” nonetheless.<sup>57</sup>

It is simply impossible to remove all of the risk, pain, and tedium from high altitude mountaineering. Those who choose to spend their holidays in near-hypoxic states, expending enormous amounts of energy even while their bodies and minds waste away, must thus be after that state of grace and transcendence of one’s own competitive instincts that Krakauer, Sax, and their predecessors describe.<sup>58</sup> Climbers on Everest, even those who pay for guides, are, in part, “contemporary pilgrims,” seeking to be transformed and renewed by the sacred world of the journey.<sup>59</sup>

However, they are doing so in a manner that defeats their quest. While Everest is not and can never be “Club Med, Nepal/Tibet,” the guided climbs up Everest map disturbingly well onto Boorstin’s description of “mass tourism.” Boorstin accuses modern travelers of expecting so much that we demand “illusions with which to deceive ourselves.”<sup>60</sup> Among our unrealistic expectations is the belief that we can “have a lifetime of adventure in two weeks *and all the thrills of risking . . . life without any real risk at all.*”<sup>61</sup> Clients of guided climbs on Everest are likely guilty of just such expectations. They seek to confront “reality” in its most extreme, and least forgiving, form. But at the same time they have not prepared themselves, either spiritually or physically, for such a confrontation. Krakauer documents this lack of foresight on his guided trip. Many of the clients wore brand new mountaineering boots, evidently not having

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<sup>55</sup> KRAKAUER, *supra* note 4, at 175–77.

<sup>56</sup> See SAX, *supra* note 7, at 28–59.

<sup>57</sup> See BOORSTIN, *supra* note 51, at 77–117.

<sup>58</sup> The leading conservationists, Muir and Leopold, as well as their intellectual predecessor, Thoreau, all describe similar states of engagement as means of transcending the ordinary, while simultaneously becoming extremely grounded in the details of the natural world. See *infra* text accompanying notes 200–215.

<sup>59</sup> See Nelson H. H. Graburn, *Tourism: The Sacred Journey*, in HOSTS AND GUESTS: THE ANTHROPOLOGY OF TOURISM 17–31 (Valene L. Smith ed., 1989); see also DEAN MACCANNELL, *THE TOURIST: A NEW THEORY OF THE LEISURE CLASS* (1976).

<sup>60</sup> BOORSTIN, *supra* note 51, at 5.

<sup>61</sup> *Id.* at 79–80 (emphasis added).

trained enough even to break them in. One client realized that his crampons, the metal-toothed contraptions that attach to one's boots and allow one to grip on ice and packed snow, were not the proper size.<sup>62</sup> Even more worrisome, it became apparent to Krakauer that very few of his fellow clients had done any training on actual mountains. Like most people with day jobs, they were confined to Stairmasters and treadmills. He commented that, "[t]his gave me pause. Physical conditioning is a crucial component of mountaineering, but there are many equally important elements, none of which can be practiced in a gym."<sup>63</sup> Many of the paying clients rely on the consumer transaction of paying the guiding company to insulate them from the risks that their lack of preparation would otherwise invite.<sup>64</sup>

The difficulties of inadequate preparation are compounded as the circumstances become more precarious. Guides spend inordinate amounts of time with the least competent climbers, making them less available to the rest of the group and less able to assess circumstances overall.<sup>65</sup> Just as important as the effects of physical deficits, over-reliance on others in extreme wilderness circumstances causes one to abdicate one's critical faculties. As Sax observed, an inextricable aspect of mountaineering is the responsibility one must take for his or her own life.<sup>66</sup> A mountaineer makes decisions that determine, quite literally, whether she will live or die. Some of the decisions are based on various forms of knowledge and experience; others are more like hunches, though these too are the product of accumulated experience. As Krakauer puts it, "[c]rusty old alpinists who've survived a lifetime of close scrapes like to counsel the young proteges that staying alive hinges on listening carefully to one's 'inner voice.'"<sup>67</sup> One's inner voice may be muffled if the voice of a guide, whom one has paid dearly, supersedes it. In fact, many guided mountaineering trips involve little to no independent decision making about when and how to advance up the peak.<sup>68</sup> Extreme forms of commercialized guiding undermine the Sax ideal by replacing individual reliance on skill and decisionmaking with goal orientation and the illusion of society.

In addition to undermining the contemplative recreation ideal, the excesses on Everest raise a second problem: the risk of environmental

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<sup>62</sup> KRAKAUER, *supra* note 4, at 97.

<sup>63</sup> *Id.* at 97.

<sup>64</sup> *See id.*; *see also* BREASHEARS, *supra* note 36, at 27 (commenting that Rob Hall's clients "had come for a climb, not to take serious risks. Rob's expertise was supposed to be their warranty against danger and Rob had let them down.").

<sup>65</sup> *See* KRAKAUER, *supra* note 4, at 107 (noting that a junior guide on Krakauer's trip, Andy Harris, spent one entire morning coaching one of the least prepared climbers through one of the most treacherous parts of the climb, the Khumbu icefall).

<sup>66</sup> *See* SAX, *supra* note 7, at 39 (describing the elaborate rules that mountaineers develop to ensure that technology does not rob them of this self-reliance).

<sup>67</sup> KRAKAUER, *supra* note 4, at 102.

<sup>68</sup> *See generally id.* *See also* Interview with Peter Nichols in Boulder, Colo. (June 4, 1999) (notes on file with author).

harm. The commercialization of Everest has turned one of the most remote, pristine places in the world into a veritable garbage dump. The various ascent routes are plagued with the detritus of previous climbs, including dead bodies, empty oxygen bottles, cooking gas cylinders, batteries, tents, frayed ropes, rusted sardine tins, metal cans, plastic bags, aluminum, glass, clothes, cameras, binoculars, toilet paper, and remains of a five-ton helicopter that crashed there in 1973.<sup>69</sup> Alpinists have dubbed the South Col, Everest's most popular climbing route, the "world's highest junk yard."<sup>70</sup> In response, environmental groups have organized clean-up expeditions, but even these well-intentioned efforts have barely scratched the surface as far as eliminating the trash.<sup>71</sup> In terms of broader impacts on the surrounding Himalayan region, increased tourism may create incentives to preserve and protect the unique environment that outsiders pay to see, but there are also risks that increased travel and consumption will harm more than help. Large numbers of tourists change local patterns of consumption, resulting, for example, in increased use of fuel wood, changed grazing patterns, and vast increases in garbage throughout the region.<sup>72</sup>

The lessons from Everest, from the preservationist point of view, are therefore profoundly mixed, if not paradoxical. On the one hand, it seems as if many are heeding Sax's secular prophets' message to spend leisure time in such a way as to engage, interact, and awaken one's self in the inherently challenging and awe-inspiring context of nature. In Boorstin's vocabulary, people are seeking to transcend the "pseudo-event" and engage in something "real." Many who seek to arrive at the top of the world are modern pilgrims, in hopes of a glimpse of the sacred. Yet the means by which people are seeking this, in the context of Everest, replicate the worst aspects of passive recreation. The goal supersedes the process. Self-reliance is evaded. The unique, organic ethics that others describe as integral to climbing and mountaineering are abandoned. Mountaineers themselves mourn these changes. Joe Simpson's entire book is devoted to describing his perceptions of the degradation of the sport.<sup>73</sup> He laments the expectation of assistance:

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<sup>69</sup> Jan Sharma, *Too Many Tourists Build a Mountain of Problems*, THE WORLD PAPER, Sept. 9, 1997 (noting that Everest "has accumulated at least 50 tons of rubbish since it was first conquered by Edmund Hillary and Tenzing Norgay Sherpa").

<sup>70</sup> *Id.*

<sup>71</sup> See Bob Klose, *Mt. Everest Mission: Trash Local Journalist Joins Cleanup of Famed Peak*, PRESS DEMOCRAT (Santa Rosa, Cal.), May 18, 2000, at A1.

<sup>72</sup> See Stanley F. Stevens, *Tourism, Change, and Continuity in the Mount Everest Region, Nepal*, 83 GEOGRAPHICAL REV. 410 (1993). The author concludes that some environmental effects of tourism in the region have been greatly overstated, but also notes the adverse consequences of increased use of fuel wood, changes in grazing patterns, and vast volumes of garbage. *Id.* at 422-24.

<sup>73</sup> See SIMPSON, *supra* note 33, at 11-23, 48, 118 (discussing particular instances of what Simpson believes to be unethical behavior in the high country, such as callousness toward others' suffering and death, and the general ebb of inherent mountaineer morality).

Self reliance, independence, a sense of freedom in a clean and beautiful environment—these are what keep alive a love for the mountains. At one time rescue was seen almost as something shameful. Difficulties had to be overcome by one's own efforts. Too often nowadays it seems that if you get a little tired, or sustain a minor but discomfiting injury, all you need to do is get out your mobile phone and call up the rescue teams.<sup>74</sup>

Further, Simpson believes that this physical and mental laziness destroys the kinship and intimacy that used to develop across individuals and cultures in the context of striving together against “death and distress.” Nietzsche purportedly observed that “a few hours of mountain climbing turn a villain and a saint into two rather equal creatures. Exhaustion is the shortest way to equality and fraternity—and liberty is added eventually by sleep.”<sup>75</sup>

Simpson's narrations from the mountaineering front indicate that commercialization has eroded the equalizing function of the sport:

These clients of trekking companies are not mountaineers; they have served no apprenticeship in the hills, have learned nothing of the ethos of behaviour that governs any true mountain lover. Many of them show no respect for the mountains, nor for the people who struggle to live among them. For some the mountain arena has become no more than a glorified theme park from which they can buy their exit whenever they wish . . . .<sup>76</sup>

Or, to put Simpson's observations in the vocabulary of the tourism anthropologists, rather than reconnecting with pre-modern “structures of wholeness,” the mountaineer consumers are importing their fractured, atomistic culture with them, thereby re-creating everything they seek to escape wherever they go. Moreover, in the absence of rigorous protective policies and regulations, these eco-pilgrims put environmentally sensitive regions at risk by virtue of their numbers and their consumptive modes of travel.

One might respond that Everest and its environs—the trekking and mountaineering frenzy in the Himalayas—are too hyperbolic to represent a general change in the culture of backpacking, climbing, and mountaineering. Perhaps one should read the texts of the participants, such as Simpson, Krakauer, and Breashears, with at least a grain of skepticism. Are they just like every aging veteran, romanticizing the past and warn-

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<sup>74</sup> *Id.* at 89.

<sup>75</sup> DAVID A. FENNELL, *ECOTOURISM: AN INTRODUCTION* 48 (1999) (attributing the quotation to Nietzsche).

<sup>76</sup> SIMPSON, *supra* note 33, at 114–15.

ing the youngsters that it will never be for them what it was in the halcyon days? Perhaps there is a bit of this, but while the Everest phenomenon is extreme, it is not unrepresentative. Nor are old-school mountaineers the only ones commenting on the changes.

*B. Beyond Everest: Recreation as Conquest and Exploitation*

According to a wide variety of recent studies, outdoor recreation is on the rise in American society.<sup>77</sup> Hiking is the most common “outdoor adventure activity,” with the most number of participants per year.<sup>78</sup> The other forms of potentially reflective recreation have also gained in popularity. Technical rock climbing has burgeoned.<sup>79</sup> The number of people engaging in “primitive area camping” grew by almost sixty percent from 1982-83 to 1994-95.<sup>80</sup> Of particular relevance to the idea of outdoor recreation as a means of cultivating the self, participation in “wilderness experience programs” has also grown.<sup>81</sup> These programs, the best known of which are Outward Bound and the National Outdoor Leadership School (“NOLS”), have varying approaches and philosophies.<sup>82</sup> Some emphasize personal growth in the face of adversity.<sup>83</sup> Some stress the connection to nature and attempt to foster affinity for wilderness preservation.<sup>84</sup> Their overall success can be fairly credited, however, to the idea of wilderness as a “restorative environment.”<sup>85</sup>

Yet in all of these contexts, the reflective recreation justification faces challenges. The challenges come in different forms. One form is the transference of goal-oriented, competitive, un-zen like behavior into set-

<sup>77</sup> See generally OUTDOOR RECREATION, *supra* note 1 (containing various case studies documenting trends in outdoor recreation).

<sup>78</sup> H. Ken Cordell et al., *Outdoor Recreation Participation Trends*, in OUTDOOR RECREATION, *supra* note 1, at 239 (noting that during 1994–95, about 48 million people 16 years or older went hiking; 15 million of these backpacked).

<sup>79</sup> See Sally Moser & Sam Davidson, *Technical Rock Climbing Trends in the U.S.*, in OUTDOOR RECREATION, *supra* note 1, at 312–13 (noting that as of 1996, there were 300,000–400,000 “active” climbers, a three- to fourfold increase over the figure a decade ago).

<sup>80</sup> Cordell, *supra* note 78, at 239.

<sup>81</sup> Gregory T. Friese et al., *History and Status of Use of Wilderness for Personal Growth*, in OUTDOOR RECREATION, *supra* note 1, at 380 (stating that participation is increasing at the rate of fifteen percent per year).

<sup>82</sup> See *id.* at 380–83 (discussing the range of approaches and proposing a continuum of methods from “Wilderness is Teacher” to “Wilderness is Classroom”).

<sup>83</sup> See *id.*; see also *About Outward Bound*, at <http://www.outwardbound.com/aboutob.html> (last visited Feb. 21, 2003) (on file with the Harvard Environmental Law Review). Outward Bound promotes personal growth through outdoor experiences. The school emphasizes that individuals can develop tenacity, teamwork, skills, self-reliance, and leadership through its outdoor programs.

<sup>84</sup> See Friese et al., *supra* note 81, at 380–83; see also *National Outdoor Leadership School*, at <http://www.nols.edu> (last visited Apr. 18, 2003). Like Outward Bound, NOLS emphasizes leadership training and personal growth, but also stresses that it is educating students to be wilderness advocates.

<sup>85</sup> See Friese et al., *supra* note 81, at 381.

tings that Sax described as ideal for overcoming such tendencies. Another is that commercial ventures and advances in recreation technology have the potential to substitute passivity, and even mindlessness, for reflection. A third form is the intentional co-opting of the psychological benefits of reflective recreation for competitive advantage in the business world.

*1. If It's Tuesday, This Must Be the Appalachian Trail*

The first form of challenge to the Sax ideal—transforming reflective recreation into goal-driven activity—is evident in the Everest context. Of course, the possibility that nature activities will mutate from reflective to goal-driven has always existed. Sax does not claim that climbing, hiking, and backpacking inevitably generate reflection and contemplation, merely that they have all of the crucial ingredients to do so.<sup>86</sup> As Everest indicates, however, it is becoming more commonplace for those ingredients to yield a different stew. Less extravagant activities have likewise been transformed into seemingly conventional, goal-driven quests, at a pace and on a scale not in existence two decades ago.

For example, “speed records” appear to be the latest craze in the benign sport of backpacking. In the fall of 2001, Brian Robinson “scampered” up Mount Katahdin in Maine to complete “the longest, fastest walk in American history.”<sup>87</sup> Mr. Robinson succeeded in being the first person to hike America’s three national scenic trails, the Appalachian, the Pacific Crest, and the Continental Divide, in less than a year.<sup>88</sup> The description of his trip hardly stirs or elevates the soul. The notion of hiking-as-contemplative is turned on its head by the motivation ascribed to Mr. Robinson in his final miles: “The climb did not interest him. It certainly did not challenge him. The top was all he cared about.”<sup>89</sup> As opposed to achieving a Zen-like state of awareness, Mr. Robinson became estranged from many normal emotions and sensations: “Hiking is a very social experience. . . . This time around I am missing it. I’m moving too fast.”<sup>90</sup> Even eating—one of the singular pleasures of backpacking—became mechanistic: “I eat food . . . I don’t taste it.”<sup>91</sup>

Mr. Robinson is not alone in striving to be the fastest hiker. In the fall of 1999, Andrew Hamilton set a speed record for climbing all fifty-four of Colorado’s peaks more than 14,000 feet high.<sup>92</sup> Hamilton completed his feat in 13 days, 22 hours, 48 minutes. His comments, like

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<sup>86</sup> See SAX, *supra* note 7, at 27–46.

<sup>87</sup> Blaine Harden, *For a Speed Hiker, Three Trails End in Maine and a Record*, N.Y. TIMES, Oct. 29, 2001, at A8.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> Nadia White, *Boulderite Climbed 54 Peaks in 13 Days*, BOULDER DAILY CAMERA, Sept. 12, 1999, at B1.

those of Mr. Robinson, fail to inspire a sense of intimacy with nature. ““I think I’ve been looking forward to being done since the day I started,”” he is quoted as saying.<sup>93</sup> Certainly, Hamilton pushed himself to the limits of physical capacity. He climbed down many mountains backwards due to a sore knee. He made roughly a quarter of his ascents in the dark. He got lost, slept very little, and spent one wet, cold night wrapped in a space blanket at 13,000 feet.<sup>94</sup> Yet achieving a goal, not transcending it, was the sole focus of this masochistic endeavor.

Even such remote environs as Antarctica have become proving grounds for those with uncontainable competitive urges. On January 22, 2002, five runners gathered at a starting line 26.2 miles from the South Pole for a race.<sup>95</sup> The South Pole Marathon, sponsored by Adventura Network International, a Florida-based company, took place in conditions so difficult that the initial start was delayed by two days.<sup>96</sup> Two of the five runners decided to downgrade their effort to a half-marathon.<sup>97</sup> The other three persisted in going the entire distance, despite daily high temperatures of only thirteen degrees below zero and visibility hampered by thick fog.<sup>98</sup> The frigid and exhausting race failed to generate a contemplative mood among the three who went the marathon distance; two of the competitors are in a bitter fight over whether one or the other of them abandoned an agreement to run together. The post-race fighting became so acrimonious that each has launched legal threats against the other and one implied that the other was an international terrorist.<sup>99</sup>

One might be tempted to dismiss such stories as unrepresentative anecdotes, but long-time participants in mountaineering, hiking, rock climbing, and other similar activities report widespread levels of non-reflective competitiveness.<sup>100</sup> Rock climbing, which once was the province of slightly offbeat, counter-cultural loners, now claims more than 7 million participants.<sup>101</sup> Climbing gyms available in urban areas fuel the sport’s popularity.<sup>102</sup> One veteran climber believes that learning to climb in a gym has a

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<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at B4.

<sup>95</sup> Austin Murphy, *South Pole Marathon*, SI ADVENTURE, Apr. 29, 2002, available at [http://sportsillustrated.cnn.com/features/siadventure/14/south\\_pole/index.html](http://sportsillustrated.cnn.com/features/siadventure/14/south_pole/index.html) (last visited Apr. 16, 2003) (on file with the Harvard Environmental Law Review).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> See generally SIMPSON, *supra* note 33.

<sup>101</sup> KPMG Peat Marwick LLP, *State of the Industry Report, 1997: Rock Climbing Highlights*, at [http://www.outdoorindustry.org/market-research-articles/97soi/rock\\_data.html](http://www.outdoorindustry.org/market-research-articles/97soi/rock_data.html) (last visited Mar. 16, 2002) (on file with the Harvard Environmental Law Review).

<sup>102</sup> One climbing gym site reports that “sport climbing and indoor climbing have become a pursuit unto themselves.” *Types of Climbing*, at <http://www.verticallyinclined.com/TypesOfClimbing.html> (last visited May 16, 2002) (on file with the Harvard Environmental Law Review). The same Web site states that while there were no climbing gyms in North America in the early 1980s, there are now over 350 to 400. *Id.* The Outdoor Industry Asso-

distinct effect on the ethics of those who are now flooding the sport.<sup>103</sup> They do not approach it as if it were an outdoor activity. Rather, it is a means of exercise and fitness that they happen to be doing outdoors. For many gym-trained climbers, their interest in climbing has nothing to do with a desire to be in nature.<sup>104</sup> Therefore, when conflicts arise between their desired use of an outdoor resource and some other interest, they do not necessarily gravitate toward an environmentally sensitive solution.<sup>105</sup>

## 2. Commercializing Reflection: A Contradiction in Terms

Rock climbing's popularity, like that of mountaineering, has also been reinforced and fed upon by commercial climbing outfitters. The commercialization of climbing has contributed to the second challenge to the Sax ideal described above—the transformation from a reflective activity to a mindless one.<sup>106</sup> Many of the guided tours enable rock climbers with minimal skills to ascend difficult and obscure routes. As with the gym-trained climbers, many (though not all) of these paying customers have not undergone the initiation that old school climbers have.<sup>107</sup> Moreover, the commercial outfits themselves alter the incentives of the sport. They are in it to make a living, and therefore may be unwilling to bend in the face of detriment to environmental or cultural concerns.

One such commercial outfitter challenged the National Park Service's implementation of a voluntary, one-month ban on climbing Devil's Tower in Wyoming, arguing that this mild accommodation to American

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ciation similarly claims that "indoor climbing has taken off as more and more specialized facilities are being built around the country." KPMG Peat Marwick LLP, *State of the Industry Report, 1997: Markets to Watch*, at <http://www.outdoorindustry.org/market-research-articles/97soi/markets.html> (last visited Mar. 16, 2003). They also report that an industry-sponsored Climbing Gym Association grew from 89 gyms in 1994 to over 200 in 1997. *Id.*; see also Keith Goetzman, *The Late, Great Outdoors*, *UTNE READER*, Sept. 2001, at 16 (describing boom in artificial environments for outdoor sports, including climbing, kayaking, snow-boarding and surfing).

<sup>103</sup> Interview with Adam Massey in Boulder, Colo. (Oct. 31, 2001) (notes on file with the Harvard Environmental Law Review). Massey, a Boulder resident, was once nationally recognized as one of the best climbers in the sub-set of the sport known as "bouldering," which involves free soloing (climbing without protection) difficult rock problems without gaining much altitude.

<sup>104</sup> See Goetzman, *supra* note 102, at 16.

<sup>105</sup> Interview with Adam Massey, *supra* note 103. Massey described conflicts among climbers at popular bouldering and top-roping sites in Boulder concerning trash clean up and environmental sensitivity of the location. *Id.*; see also Chris Barge, *Plan May Crimp Climbers: Officials Say Days of Rampant Trail Use Are Coming to a Close*, *BOULDER DAILY CAMERA*, Apr. 7, 2002, at A1 (discussing conflicts between environmental management for habitat and species protection and informal trail use by rock climbers).

<sup>106</sup> This is distinguishable from threats posed by transforming a reflective activity into a goal-oriented one. In this case, even if the commercialized nature activities are not explicitly about achieving a literal or figurative summit, commercialization nonetheless robs them of the reflective qualities that Sax describes.

<sup>107</sup> See Interview with Peter Nichols, *supra* note 68.

Indian religious practices violated the Establishment Clause.<sup>108</sup> The American Indian tribes desiring this accommodation, which would have allowed them to engage in annual ceremonies on a site that they hold sacred, practice religions that center around nature. In these religions, all natural entities—animals, plants, trees—are material manifestations of a spirituality that permeates the earth.<sup>109</sup> Native religions such as these are the direct and indirect inspiration for many recent efforts to articulate an ethic of environmental protection.<sup>110</sup> Therefore, it is ironic that a faction of the new outdoor enthusiasts would align themselves directly against a minimal adaptation to these religious practices.

According to Sax's ideal, rock climbing and mountaineering allow us to pass through the Rubicon of wilderness to emerge as better people. Yet the commercialization of these activities has meant that for many, their fundamental meaning has little to do either with connections to nature or with moral improvement. This observation, like those concerning the transformations wrought by commercial mountaineering on Everest, do not necessarily impugn the motives of many who turn to climbing gyms, guides, and commercial trips. Indeed, many may well be looking, at some level, for something beyond what most such experiences can offer.

A subset of this second challenge to the Sax ideal is the unabashed marketing of products based on their ability to convey the sense of "getting away from it all," even while the products themselves undermine aspects of environmental goals. The SUV is a prime example. A Ford Explorer magazine advertisement reads:

Tom and Sally worked hard to get where they are. But now that they've "arrived," all they want to do is get the heck out. So, last weekend, they traded business talk for a babbling brook and

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<sup>108</sup> See *Bear Lodge Multiple Use Ass'n v. Babbitt*, 2 F. Supp. 2d 1448 (D. Wyo. 1998) (rejecting climbers' Establishment Clause challenge), *aff'd on other grounds*, 175 F.3d 814 (10th Cir. 1999) (finding that the climbers lacked standing to challenge the voluntary ban because they had not been injured by its implementation).

<sup>109</sup> See Rebecca Tsosie, *Tribal Environmental Policy in an Era of Self-Determination: The Role of Ethics, Economics, and Traditional Ecological Knowledge*, 21 VT. L. REV. 225, 272–87 (1996) (describing central tenets of Native American religions). See generally VINE DELORIA, JR., *GOD IS RED: A NATIVE VIEW OF RELIGION* (2d ed. 1992) (summarizing Native American religious outlooks and contrasting them with those of the Judeo-Christian tradition). Providing an apt summary of the structure of Native religions, Professor Deloria states that "[a]t the deepest philosophical level our universe must have as a structure a set of relationships in which all entities participate. Within the physical world this universal structure can best be understood as a recognition of the sacredness of places." *Id.* at 1–2.

<sup>110</sup> See, e.g., Annie L. Booth & Harvey M. Jacobs, *Ties that Bind: Native American Beliefs as Foundation for Environmental Consciousness*, in ENVIRONMENTAL ETHICS: DIVERGENCE AND CONVERGENCE 256 (Richard G. Botzler & Susan J. Armstrong eds., 2d ed. 1998) (noting that many mainstream and radical environmental groups draw inspiration from Native American views, but that many of these groups also lack a sophisticated understanding of Native cultures and belief systems).

conference calls for conifer pines. They aimed their new Ford Explorer Sport toward the country, took turns driving, and sang out loud whenever they felt the urge: “Bye-bye blacktop.”<sup>111</sup>

An ad for a Chevy Tahoe with OnStar security asks: “How far would you wander if you knew someone was always there if you needed help?”<sup>112</sup> The Suzuki Grand Vitara promises: “Outside: 155 horses running wild. Inside: The only sound is the padded steering wheel sliding through your fingertips.”<sup>113</sup> And Isuzu advertisement presents a collage of photos including its Trooper perched on red sandstone bluffs, a rock climber ascending a crack, and a spire in Monument Valley, and announces: “Life is too big for cars.”<sup>114</sup> This list could go on for thousands of pages. Just take a look at almost any SUV ad—the Big Nature backdrop, and the subtle or overt promise to turn you into a weekend version of Sir Edmund Hilary.

Of course, the automotive industry is not shooting in the dark here. Chrysler “hired a team of anthropologists to define the appeal of the Jeep for a marketing campaign.”<sup>115</sup> The anthropologists concluded that people buy SUVs to associate themselves with nature and to create images of themselves as adventurers.<sup>116</sup> The SUV manufacturers signal to the buyer that an extremely large automobile will strengthen her connection to the wilderness.<sup>117</sup> To the extent one can attribute sales increases to marketing, the strategy has been wildly successful; while sales of passenger cars have decreased slightly since 1980, the number of light trucks sold has more than tripled.<sup>118</sup> SUV sales account for most of this change, rising from 200,000 in 1975 to nearly three million in 1999.<sup>119</sup> At the same time, the auto industry has lobbied heavily to ensure that gas-hungry SUVs evade the stricter emissions and efficiency standards that apply to cars.<sup>120</sup>

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<sup>111</sup> OUTSIDE MAGAZINE, Dec. 1998, at 124 (on file with the Harvard Environmental Law Review).

<sup>112</sup> *Id.* at 125 (on file with the Harvard Environmental Law Review).

<sup>113</sup> SKI, Dec. 1998 (on file with the Harvard Environmental Law Review).

<sup>114</sup> *Id.*

<sup>115</sup> LESLEY HAZLETON, DRIVING TO DETROIT 70–71 (1998).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> Brent D. Yacobucci, Congressional Research Service (CRS), Code No. RS20298, *Sport Utility Vehicles, Mini-Vans and Light Trucks: An Overview of Fuel Economy and Emissions Standards* (Jan. 16, 2001), available at <http://cnie.org/NLE/CRSreports/Air/air-32.cfm> (on file with the Harvard Environmental Law Review).

<sup>119</sup> See Kyler Smart, *Losing Ground: How SUVs Are Making the United States Less Fuel-Efficient and Options for Reversing the Downward Trend*, 7 ENVTL. LAW. 159, 160 (2000) (citing Office of Mobile Sources (OMS), EPA, No. 420-S-99-003, *Light-Duty Automotive Technology and Fuel Economy Trends Through 1999*, at 3).

<sup>120</sup> See Laura Cohn, *Congress Is Giving Carmakers a Free Ride*, BUSINESSWEEK ONLINE (Mar. 15, 2002), at [http://www.businessweek.com/bwdaily/dnflash/mar2002/nf20020315\\_7764.htm](http://www.businessweek.com/bwdaily/dnflash/mar2002/nf20020315_7764.htm) (last visited Mar. 16, 2003) (on file with the Harvard Environmental Law Review) (describing auto industry’s long history of lobbying Congress not to enact fuel efficiency standards, and most recently the “intense lobbying effort” to persuade senators not to pass increased efficiency standards but rather to defer to the industry-

The corporate average fuel efficiency standard, or “CAFE standard,” for SUVs is 20.7 miles per gallon (“mpg”), whereas the standard for cars is 27.5.<sup>121</sup> If all SUVs were compelled to meet even the relatively undemanding standard of 27.5 mpg, roughly one million barrels of oil could be conserved daily.<sup>122</sup> Given the myriad battles at present concerning oil and gas drilling on our public lands, the irony of using our hunger for nature to sell us these nature-consuming vehicles cannot be understated. Furthermore, it turns out that Tom and Sally rarely leave the blacktop behind. One poll showed that only thirteen percent of the owners of a Ford-model SUV ever leave the pavement.<sup>123</sup> Tom and Sally buy the SUV but never actually fulfill their anthropologically documented dreams of connecting with nature. And oil consumption rises, threatening many of the very places used as picturesque backdrops to market SUVs.<sup>124</sup>

### 3. *The Wilderness School of Business Administration*

The wilderness has also been seized upon as a terrific place to sharpen one’s business acumen. A new breed of outdoor adventure schools has arisen using nature as the classroom in which to develop skills for the boardroom. The third challenge to the reflective recreation justification is the co-opting of the psychological benefits of outdoor recreation for competitive business advantage. This is a perverse tribute to the notion that engagement with the natural world enhances one’s senses and makes one live more fully. Instead of taking nature’s lessons out into the world in a way that benefits nature, these schools use nature and wilderness as an instrumental backdrop to advance entirely unrelated (and potentially contradictory) agendas.

One such entity is the John Ridgeway School of Adventure, where executives and other managerial-level employees attend camps aimed at promoting courage, strength, self-confidence, and team playing.<sup>125</sup> The Ridgeway activities take place in distinctly harsh, cold, and unpleasant

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friendly Department of Transportation).

<sup>121</sup> See Yacobucci, *supra* note 118 (citing 49 C.F.R. § 533 (2001)).

<sup>122</sup> See Robert Bamberger, Congressional Research Service (CRS), Code No. IB90122, *Automobile and Light Truck Fuel Economy: Is CAFE Up to Standards?* (Aug. 3, 2001), available at <http://cnie.org/NLE/CRSreports/Air/air-10.cfm> (on file with the Harvard Environmental Law Review).

<sup>123</sup> See Yacobucci, *supra* note 118 (citing Ford Motor Company, as cited in *Harper’s Index*, HARPER’S MAGAZINE, May 1998, at 15).

<sup>124</sup> Many SUV ads are filmed in and around the northern Arizona and southern Utah canyon country. Some of the most intense recent battles over drilling for oil and gas on public lands have taken place in these regions. See, e.g., *Enviros Seek to Halt Utah Gas, Oil Drilling*, GAS DAILY, July 12, 2002, at 3 (describing environmental challenges to the Bureau of Land Management’s decision to lease seventeen parcels of land for oil and gas drilling in southeastern Utah), available at 2002 WL 17768458.

<sup>125</sup> Manfred F. R. Kets de Vries, *John Ridgeway’s School of Adventure*, in FRONTIERS OF LEADERSHIP 462, 462 (Michel Syrett & Clare Hogg eds., 1992).

outdoor conditions. In Ridgeway's so-called "IBM Course," for example, "[c]ourse participants are put through a series of disorienting and isolating activities while at the same time being given punishing outdoor assignments to complete. Sleep and food are in short supply and instructors are deliberately noncommunicative or obstructive, setting unexpected 'surprise' targets."<sup>126</sup> Despite the anxieties it inspires in corporate executives, the Ridgeway program has been viewed as a success, and Ridgeway has run courses for companies including IBM, British Telecom, SEC, Plessey, and Bass.<sup>127</sup>

Outdoor Travel Adventures ("OTA"), a similar program, begs people to "let [OTA] organize your next training session or executive incentive."<sup>128</sup> OTA offers programs that include climbing, whitewater rafting, wilderness first aid, sea kayaking, orienteering, and backpacking, and that "require you to work as a team and take your level of interaction and support to a higher place."<sup>129</sup> OTA further boasts that "if your corporate objective is to develop strong team players and risk takers then our programs are for you."<sup>130</sup>

The Wharton School of the University of Pennsylvania has also bought into the idea that "[m]ountaineering provides a natural metaphor for business . . . ."<sup>131</sup> The venerable business school arranged a two-week "Leadership Trek to Mount Everest" for recent graduates of the School's executive master of business administration degree program.<sup>132</sup> As one of the participants described it, "the mission . . . was to confront the idea of summits: why and how—and if—we want to take ourselves and others to the top."<sup>133</sup> Their reading list along the way included many mountaineering classics, including Krakauer's *Into Thin Air*.<sup>134</sup> The course participants mapped trendy management-speak onto their experiences in the Himalayas: their Sherpa guide was excellent at "managing divergent interests;" the class members had to determine how to "allow everyone to achieve their own personal goal[s]."<sup>135</sup> The jagged peaks and rocky paths proved to be ideal training ground for these future business leaders. As an executive with Deutsche Bank concluded, "Next time I face a difficulty, in

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<sup>126</sup> *Id.* at 462–63.

<sup>127</sup> *Id.* at 463.

<sup>128</sup> Outdoor Travel Adventures, *Team Building: Experience the Ultimate in a Team Building Program*, at <http://www.otadventures.com/asp/teambuilding.asp> (last visited Feb. 19, 2003) (on file with the Harvard Environmental Law Review).

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> See Andrea Useem & Michael Useem, *Himalayan Diary: A Trek from M.B.A. to Mountaintop: Lessons in Leadership Improve One's View*, CHRON. HIGHER EDUC., Dec. 11, 1998, at B10.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

my office or anywhere, I will remember this and say ‘I made it up there, I can do it again.’”<sup>136</sup>

These Dale-Carnegie-cum-John-Muir courses exemplify an intriguing aspect of the consuming wilderness phenomenon. Sax and his secular prophets were perhaps too correct in their assessment of natural settings as ideal learning environments. Inherent in Sax’s view is that the reflective activities should be valued for their own sake, and we should take away lessons about ourselves, but also about our relationship to the land, and our consequent duty to protect it. Indeed, the last several chapters of Sax’s book provide explicit policy advice to government officials concerning how to manage our public lands.<sup>137</sup> The how-to-succeed-in-business wilderness schools, however, merely use wilderness as a backdrop for achieving another set of objectives. It does not take much imagination to conjure up some perverse scenarios. For example, a group of oil company executives hones business skills in the very settings they hope to open up for leasing, or a cohort of managers employed by a corporate hog farm relies on back-country sharpened tactics to fight local regulators about water quality.

### C. *In Search of Extremes in an Age of Explornography*

Many wilderness experiences appear to have been “tamed” as a result of the phenomena discussed in the preceding Parts. To achieve distance from the pressures of conventional life, it may appear to be necessary to go farther and farther afield. But if there are already corporate-sponsored marathons in Antarctica, where can one go? One response is to concoct increasingly extreme experiences. Another is to question the approach of seeking engagement through means that entail escalation of extremity.

#### 1. *The Search for Suffering and the Gear To Do It in Style*

A recent arrival on the adventure travel scene is the “recreate the miserable experiences of an explorer” guided trip. These tours lead urbanites down the trails of well known historical expeditions, often failed ones. Journalist John Tierney, a self-described “New Yorker who hate[s] camping” has dubbed this phenomenon “explornography.”<sup>138</sup> With superior technology, ordinary folk can retrace the icy steps of Ernest Shackleton, Robert Peary, and other ill-fated explorers without any of the original risk.<sup>139</sup> On Tierney’s trip, a group of mostly forty- and fifty-something

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<sup>136</sup> Useem & Useem, *supra* note 131.

<sup>137</sup> See SAX, *supra* note 7, at 79–101.

<sup>138</sup> John Tierney, *Going Where A Lot of Dudes With Really Great Equipment Have Gone Before*, N.Y. TIMES MAG., July 26, 1998, at 18, 20.

<sup>139</sup> *Id.* at 20.

“desk jockeys” set out to ski and sled their way across Ellesmere, Canada’s northernmost island. Their destination was the coast where Peary and others “experienced what was probably the highest misery-per-visitor ratio of any place on earth.”<sup>140</sup> While all of the modern-day travelers felt some discomfort, none even approached the gruesome experiences of Peary and the other nineteenth-century explorers who ended up at “starvation camp.” Tierney begins his article by quoting a passage from the memoirs of one of Peary’s crewmembers, who describes pulling off one of Peary’s boots, only to find several of Peary’s toes stuck to the undershoes.<sup>141</sup>

Tierney’s piece is largely a humorous travelogue, but he spends a fair amount of space pondering the explornography boom and its meanings. He speculates about motivations, and at one point confesses:

Even I, who dreaded the prospect of an Arctic trek, loved shopping for it . . . . I happily spent hours in . . . gearhead bazaars fondling smooth layers of Capilene and Polartec, agonizing between Gore-Tex and Supplex, picking out gloves and gauntlets, glacier sunglasses and a chronometer with a built in thermometer, barometer and altimeter that I absolutely had to have. As I walked across Central Park in April to train on a cross-country ski machine at my gym, I exulted in my monstrous new leather-and-rubber LaCrosse pack boots guaranteed to 100 degrees below zero. How manly! Take that, Nature! Just to be safe, I also bought a pair of Steger Mukluks for \$135.<sup>142</sup>

To state the obvious, at one level Tierney’s motivation is all about the gear, or at least the shopping for it. In this he is not alone. Outdoor recreation equipment is a fast-growing sector of the retail market.<sup>143</sup> REI, once a cooperative outdoor gear store that drew 1970s-era cut-off corduroy clad hikers and backpackers from Berkeley and Seattle, now has a nationwide presence, with 63 stores in 24 states.<sup>144</sup> The stores range in size from 10,000 to 95,000 square feet, and have features such as climbing pinnacles, bike test trails, and camp stove demonstration tables.<sup>145</sup> Many who would like to heed the advice of Sax’s secular prophets make it at least as far as the retail gear stores, whether or not they make it any

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<sup>140</sup> *Id.* at 18, 21.

<sup>141</sup> *Id.* at 18.

<sup>142</sup> *Id.* at 22.

<sup>143</sup> See KPMG Peat Marwick LLP, *State of the Industry Report, 1997: Executive Summary*, at [http://www.outdoorindustry.org/market-research-articles/97soi/exec\\_summary.html](http://www.outdoorindustry.org/market-research-articles/97soi/exec_summary.html) (last visited Apr. 22, 2003) (on file with the Harvard Environmental Law Review) (“A current snapshot of the outdoor industry reveals increasing sales, new activities, and growth in participation . . .”).

<sup>144</sup> See REI, *About REI*, at [http://www.rei.com/aboutrei/about\\_rei.html?stat=side\\_30](http://www.rei.com/aboutrei/about_rei.html?stat=side_30) (last visited Feb. 19, 2003) (on file with the Harvard Environmental Law Review).

<sup>145</sup> See *id.*

further.<sup>146</sup> One thirty-one-year-old climber and real estate agent in Manhattan, who has spent about \$10,000 on equipment, reports that gear is “about fifty percent of your climb.”<sup>147</sup> As with paid guides, there are legitimate concerns that gear makes it possible for those without experience to get just far enough to land in considerable trouble in the wilds.<sup>148</sup>

A true believer in the free market would respond that the gear stores are simply responding to consumer demand. So the question remains—what is it about the activities in which this gear allows us to engage, whether prepared to do so or not, that is so compelling? Even Tierney starts to sound like John Muir, albeit a bemused and ironic Muir, on this topic. It is about the incomparable feeling of breaking trail on pristine ground, having earned the right to do so with sprained thumbs and black toenails.<sup>149</sup> Tierney recounts the following conversation with one of his travel-mates: “‘You know why I do this? At this moment I feel *alive!*’ Part of me thought he looked ridiculous—he was an even worse skier than I—and part of me knew exactly how he felt.”<sup>150</sup> Even explorography addicts yearn for the benefits of reflective recreation, whether they want to admit it or not. The extremity and absurdity of adventures such as Tierney’s, however, simultaneously threaten a certain aspect of the Sax ideal. As noted above, Sax’s identification of activities and locales that have the potential to offer us reflective recreation was grounded in a particular domestic agenda concerning uses of our public lands.<sup>151</sup> In the days of Sax’s intellectual forbears like Thoreau, Emerson, and Muir,<sup>152</sup> the wilds of the United States offered more such places and opportunities than one needed in a lifetime. Today, through a combination of overcrowding, over-mapping, and overly limited imaginations, adventure travelers such as Tierney have the perception that there are no mysteries left on the globe.<sup>153</sup> Therefore although they would like to follow the secular prophets, they do not think they will find what they seek if those prophets are struggling down anything other than the most extreme, most far away, most forbidding trails. In this way, the quest for engagement grows closer

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<sup>146</sup> See KPMG Peat Marwick LLP, *supra* note 143 (noting that 1996 retail sales were estimated at \$4.7 billion, up \$400 million from 1995, and that hiking footwear and outerwear were the major growth areas for retailers).

<sup>147</sup> Ian Fisher, *Gear: A Costly Affliction With No Known Cure*, N.Y. TIMES, Mar. 11, 1998, at G3.

<sup>148</sup> *Id.* (noting that many outdoor devotees voice the concern that “gear has improved so much that it can, paradoxically, make some sports more dangerous. For all the advancements in ropes—stretch, harnesses, and anchors—some mountain climbers say that beginners often think the risk in a climb is erased by the quality of their equipment.”).

<sup>149</sup> See Tierney, *supra* note 138, at 37.

<sup>150</sup> *Id.*

<sup>151</sup> See SAX, *supra* note 7, at 61–101, 111–13 (making suggestions concerning management of national parks and offering “[a] Policy Statement: The Meaning of National Parks Today”).

<sup>152</sup> See *infra* Part IV.A.

<sup>153</sup> Tierney, *supra* note 138, at 20.

to the kind of thrill seeking that motorized recreation offers.<sup>154</sup> Of course, the Everest phenomenon demonstrates this tendency as well. Moreover, the consumption, in terms of the market for gear, the fuel for travel, and the transformation of remote places into tourist destinations, becomes an end in itself and has serious potential for adverse environmental impacts.<sup>155</sup>

## 2. *Getting Away from It All: The Trouble with the Explorer Metaphor*

Two final non-commercialized outdoor adventure tales further highlight the problem of the perceived need to up the ante in terms of extremity in an age of commodified experiences. More importantly, these stories illuminate a problem that lies at the core of the reflective recreation justification itself. Both stories involve young men who sought to experience life outside the boundaries of ordinary societal constraints. Both young men therefore ventured to places they deemed to be wild, in that they contained unsurpassed beauty as well as vast territory in which to roam. Each shed many of the comforts and conveniences of the day in order to chart a path requiring engagement, choice, and self-reliance. Both seem, therefore, to be prototypes of the Sax ideal.

Yet their differences reveal the dramatic ways in which technology and development have changed our relationship to the wild, even within the last several decades. The changes compel some to seek greater distance from human society and culture, whether through increasingly extravagant commodified adventures, as discussed above, or through hyperbolic solo jaunts, as discussed below. Another response, however, is to question the premise that we have to, or even can, escape human culture and society, in order to seek communion with non-human nature. The escapist model at the heart of Sax's justification creates a threshold distinction between humans and nature that leads to the sorts of quests that, tragically, both defeat the Saxian contemplative ideal and reinforce anti-ecological behavior.

Everett Ruess was a young artist and romantic from northern California who traveled by himself throughout the canyon country of northern Arizona and southern Utah in the early 1930s.<sup>156</sup> When he was only twenty, Ruess disappeared, leaving few clues as to his fate. His two burros were found in Davis Gulch, a side canyon to the Escalante River, but no one has ever confirmed whether he died there or elsewhere. Some

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<sup>154</sup> See SAX, *supra* note 7, at 34–35 (describing dirt-biking and snowmobiling while commenting that “[t]he picture here is all exhilaration and excitement—speed, danger, and domination.”).

<sup>155</sup> See *supra* notes 69–72 and accompanying text (describing environmental impacts on Everest); see also *infra* Part III.D (discussing environmental impacts of unrestrained “ecotourism”).

<sup>156</sup> See generally W. L. RUSHO, EVERETT RUESS: A VAGABOND FOR BEAUTY (1983) (providing biographical details of Ruess's life, as well as a compilation of Ruess's letters to family and friends from his travels).

speculate that he fled to lead a free and anonymous life as a perpetual drifter—a life that would require of him neither allegiance nor obligation to anyone.<sup>157</sup> Another theory is that he had a Navajo sweetheart, and he disappeared to live quietly among his adopted people.<sup>158</sup> Still others deem it more likely that he was murdered.<sup>159</sup> The most sober assessment of his disappearance is that he was swept downriver while attempting to cross the Colorado.

Ruess chronicled his wanderings in his letters home to friends and family, as well as in journal entries and poetry. His writings speak viscerally to anyone who has felt similarly consumed by the harsh, delicate beauty of the desert:

You could not guess in what a fantastic place I am. I sit in the shade of an ancient, dying Juniper tree, cushioned on my Navajo saddle blankets. On all sides, the burning sun beats down on silent, empty desert. To right and left, long walls of sandstone mesas reach away into the distance, the shadows in their fluted clefts the color of claret. Before me, the desert drops sheer away into a vast valley, in which strangely eroded buttes of all delicate and intense shadings of vermilion, orange and purple, tower into a cloudless turquoise sky.<sup>160</sup>

Sometimes, his prose borders on self-important or maudlin: “Once more I am roaring drunk with the lust of life and adventure and unbearable beauty . . . Always I’ll be able to scorn the worlds I’ve known like half-burnt candles when the sun is rising, and sally forth to others now unknown.”<sup>161</sup> Yet it is somehow all the more captivating for its high-volume sincerity. His rapt descriptions of his surroundings, as well as the mystery of his death, have made Ruess into somewhat of a folk hero, or at least a revered spirit, among desert wilderness activists. The Southern Utah Wilderness Alliance, a grassroots group dedicated to preserving Utah’s unique desert environments, has an image of Ruess and his two burros as its logo.<sup>162</sup>

Like Ruess before him, Christopher McCandless sought to free himself of the constraints of conventional society by taking up a life of vagabond adventure travel. Upon graduating from college in May of 1990,

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<sup>157</sup> See *id.* at 199–206 (recounting efforts by the Ruess family to determine Everett’s whereabouts, including tracking down reports that he was spotted in places as distant as Mexico).

<sup>158</sup> See *id.* at 208–09, 212.

<sup>159</sup> *Id.* at 205–06 (reporting stories of an alleged confession of Ruess’s murder by a Navajo man jailed on other charges).

<sup>160</sup> *Id.* at 156–57.

<sup>161</sup> RUSHO, *supra* note 156, at 145.

<sup>162</sup> See Southern Utah Wilderness Alliance, *Everett Ruess*, at <http://suwa.org/everett.html> (last visited Feb. 19, 2003) (on file with the Harvard Environmental Law Review).

McCandless divested himself of all of his material possessions, gave his savings to OXFAM America, and disappeared into the recesses of the road.<sup>163</sup> Like Ruess, McCandless was in his early twenties and appeared to have a similar idealism bordering on dogmatism concerning how to live life to its fullest. And, like Ruess, McCandless died in the midst of his travels, leaving his relatives and the rest of us to ponder the meaning of his short life and its abrupt end. Unlike Ruess, however, McCandless is neither lionized nor romanticized. McCandless quotations do not adorn the Web sites of wilderness preservation groups. Indeed, his death—of starvation in the Alaskan outback—was ridiculed by many who viewed him as a naïve, silly youth who lacked the skills necessary to survive in the last great American wilderness.<sup>164</sup>

Why the differing views of these two men, who appear to have so much in common? Jon Krakauer explores this question in *Into the Wild*, his compelling narrative of McCandless's life.<sup>165</sup> One easy answer is that time softens the meanness with which we view eccentricity—lunatics from the present always appear crazier than do lunatics from the past. Another is that the two young men differ enough in their details to justify the different views. Ruess was a wanderer, but he wrote to his family and appeared to be impressively resourceful, self-sufficient, and wily concerning how to survive in his chosen wild milieus.<sup>166</sup> McCandless, on the other hand, terminated all communication with his family in an apparently cruel and hurtful way.<sup>167</sup> Further, the details of his death, until plumbed convincingly by Krakauer, appeared to support the thesis that McCandless was an unskilled, foolish wilderness traveler. Hunters found McCandless's emaciated corpse inside a rusted out bus that was not too far from an easy way out of the wilderness.<sup>168</sup> McCandless failed to find the exit, which consisted of a cable crossing over a seasonal river, because he did not have a topographical map.<sup>169</sup>

Krakauer, however, makes the case that McCandless was a Ruess for the 1990s. It is much harder to escape from the mainstream than it was sixty years ago. Ruess was traveling extensively throughout the Navajo reservation and its surroundings, which white men barely knew. Recall, for instance, that vast stretches of Arizona and Utah were literally unmapped by white people until 1869, when John Wesley Powell took his famous harrowing trip down the Colorado River through the Grand Can-

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<sup>163</sup> See JON KRAKAUER, *INTO THE WILD* 20 (1996).

<sup>164</sup> See *id.* at 177–78 (referring to letters lambasting McCandless as “stupid,” “incompetent,” and “pathetic”).

<sup>165</sup> *Id.*

<sup>166</sup> See RUSHO, *supra* note 156, at 9–181 (reproducing Ruess's letters to family and friends from throughout his travels).

<sup>167</sup> See KRAKAUER, *supra* note 163, at 103–04, 125–26.

<sup>168</sup> *Id.* at 12–13.

<sup>169</sup> *Id.* at 173–74.

yon.<sup>170</sup> When Ruess journeyed through Navajoland with his burros and scruffy dog, he was likely one of the first non-Indians whom many Navajo had ever seen. No cellphones, Burger Kings, or satellite dishes could connect Ruess comfortably to life in Los Angeles. Thus, when Ruess wandered in the labyrinths of red sandstone within this stronghold of Native American life, he was not just in a desert wilderness, but one within a foreign land.

By the time McCandless set out on his vision quest, seventy years of consumer capitalism and technological advancement had shrunk the distance between the most remote slot canyon in Utah and New York City to the width of a fiber optic cable. An unshaven hippie backpacker would hardly be a novelty to a Navajo teen today, linked up as they are by MTV, Fox, HBO, and so on. Krakauer's sympathetic version of McCandless's story indicates that if our hyper-consumptive, hyper-developed society had not made it so hard for a youth to, in a sense, initiate himself, McCandless would not have had to go to such manic extremes. He would look a lot more like a harmless romantic than a laughable nut-case.

Yet, like those who seek to "bag" the peak of the highest mountain in the world, *both* McCandless and Ruess are as much products of our culture as they are rejections of it. The extremity with which they attempt to seek "real" experiences speaks of and to a strain of hyperbole that is endemic to American life. The activities toward which Sax points us in some sense are an antidote to this. If we could learn to engage quietly, hiking along a babbling creek, we could gain all of the benefits embodied in the notion of contemplative recreation, could we not? Yet is this inevitable drift toward extremity also embodied in the Sax ideal? The depiction of nature as a place to go to seek improvement, a place guarded closely in national parks and other designated public lands, creates a conceptual gap between nature and humans that obscures the essence of what we seek to experience in nature—a dissolution of the self. At the same time, the conceptual gap leads us to the notion that we need to go further and further "over there," and "into the wild," away from all of the social forces that appear to constrain us, in order to get at something like our true selves. Yet if our sense of ourselves "out there in nature" is unconnected ethically to the rest of society, then nature has no defense to the changing—and increasingly extreme—needs of that society. Rather than being a laboratory in which we practice the kinds of ideals that we would like to export, as Sax argues it should be, it will become an increasingly unreflective playground and proving ground subject to myriad forms of exploitation.

Thus, despite their apparent differences, Ruess and McCandless both sought to escape the social connections that are necessary to engage in

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<sup>170</sup> See generally WALLACE STEGNER, *BEYOND THE HUNDREDTH MERIDIAN* (Viking Penguin 1992) (1954).

the kinds of practices that will preserve the environment. On the one hand, McCandless was not as bad as he appeared to be, but on the other Ruess was not as good. The “lone explorer” ideal fosters the sense that we ought to sever all social ties to one another in order to forge intimate connections with nature.<sup>171</sup> Yet this perpetuates a false dichotomy: *people*, or *nature*. As environmental writer Val Plumwood has put it, “It is not the absence of humans that we seek in our wilderness quest . . . . It is the experience of the *presence of nature*, the company of vast, multiple and prior presences . . . . We may or may not choose to travel alone, but a quest for human absence is an entirely different quest from the quest for the company of nature at large which is at the heart of the ‘wilderness experience.’”<sup>172</sup> The dichotomy is particularly ironic in the case of Ruess, who was traveling in a “wilderness” of the Navajo people’s making.<sup>173</sup> The dichotomy also distracts us from facing up to phenomena like the consumption of wilderness. If we view wilderness as some separate, inviolable entity, we will remain oblivious to the ways in which our own actions change both our notions and expectations of wilderness, and therefore also alter the physical environments contained therein.

Francis Fukuyama declared that the demise of the Soviet Union portended the end of history.<sup>174</sup> A century earlier, Frederick Jackson Turner propounded the thesis of the end of the American frontier.<sup>175</sup> Likewise, one might conclude that the Age of Explornography indicates the end of Wilderness, at least as a context for reflective engagement. If the perception is that one needs to go to such concocted extremes to “feel alive,” then perhaps the ideal of the secular prophets is no longer relevant. But many have critiqued “The End of . . . .” paradigm itself. History, even the history of clashing ideologies, has not ended. The frontier myth, as well as its prematurely announced demise, has been roundly and aptly criticized.<sup>176</sup> Likewise, it is too soon to announce that the consumption of wilderness portends its demise as a place of redemption. Indeed, one of the confusing messages from the consumption of wilderness is that some

<sup>171</sup> See Val Plumwood, *Wilderness Skepticism and Wilderness Dualism*, in *THE GREAT NEW WILDERNESS DEBATE* 652, 682 (J. Baird Callicott & Michael P. Nelson eds., 1998) (noting that in places we deem to be wild, it is the presence and company of nature that make the experiences uniquely satisfying, not the absence of humans).

<sup>172</sup> *Id.*; see also Sagoff, *supra* note 6, at 410 (“[T]he challenge to environmentalism today—to our cultural response to environmental problems—is to describe the natural world and to evaluate our actions toward it in ways that presuppose not opposition but community between nature and mankind.”).

<sup>173</sup> See Plumwood, *supra* note 171, at 652, 663–66 (noting that the dichotomy tends, as a general matter, to erase the presence of indigenous people who have lived within and shaped wilderness areas).

<sup>174</sup> See FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* (1992).

<sup>175</sup> FREDERICK JACKSON TURNER, *THE FRONTIER IN AMERICAN HISTORY* (Dover Publications 1996) (1920).

<sup>176</sup> See generally PATRICIA LIMERICK, *THE LEGACY OF CONQUEST* (1987) (arguing that the history of the West is about more than just the frontier).

version of Sax's ideal does indeed live on quite forcefully in the minds of many, and needs to be made increasingly available and relevant. At the same time, the ideal needs to be contextualized and reformulated to meet and calm the rapacious demands of a society that clambers ignorantly for what it believes nature and wilderness offer. The metaphor for how to engage should be neither McCandless/Ruess nor Tierney, the former viewing it necessary to exclude family and community, and the latter needing to simulate extremity in order to stimulate engagement. An appropriate metaphor must somehow account for and value the social web in which we are all entangled as well as the larger biological and ecological web without which we could not, or at least would not want to, survive.

#### D. *The Ecotourism Alternative*

Alongside the plethora of adventure travel opportunities, the last two decades have witnessed the growth of a more environmentally and socially conscious method of travel dubbed "ecotourism." Ecotourism is defined as low impact nature tourism that aims to preserve species as well as local cultures.<sup>177</sup> Ecotourism proponents and experts assert that it satisfies multiple conservation and development objectives, including: generation of financial support for the protection and management of natural areas; economic benefits for local residents; support for conservation among local residents; and, for the eco-tourists, immersion in and appreciation of local nature and culture.<sup>178</sup> Ecotourism aspires to further the norms embodied in Sax's contemplative recreation ideal, but also incorporates recognition of the social context in which such recreation occurs. The consumption of wilderness indicates that wilderness exposure alone does not necessarily change people's behaviors and values. Thus it is not surprising that a value-laden approach to nature travel would arise, attempting to incorporate environmental and social objectives.

The term "ecotourism" has been used as a marketing label for many enterprises that do not adhere to some or any of the above-described objectives. Increasing numbers of tourists are seeking travel experiences in developing or under-developed countries, often in order to view wildlife

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<sup>177</sup> The precise semantics differ, but various texts on and studies of ecotourism converge on substantially similar wording. See, e.g., FENNELL, *supra* note 75, at 35-36; ELIZABETH BOO, ECOTOURISM: THE POTENTIALS AND PITFALLS 2-3 (1990); ECOTOURISM: A SUSTAINABLE OPTION? 1 (Erlet Cater & Gwen Lowman eds., 1994) ("[Ecotourism] should mean travel to enjoy the world's amazing diversity of natural life and human culture without causing damage to either").

<sup>178</sup> See Kreg Lindberg et al., *Ecotourism Questioned: Case Studies from Belize*, 23 ANNALS TOURISM RES. 542, 543 (1996) (listing first three objectives); BOO, *supra* note 177, at 3 ("The main point is that the person who practices ecotourism has the opportunity of immersing himself/herself in nature in a manner generally not available in the urban environment.").

and unique natural areas.<sup>179</sup> Capitalizing on this increased interest in nature-oriented travel, private tour companies use the label “eco-travel” or “ecotourism” without implementing any of the policies that are necessary to ensure local involvement or cultural and environmental sensitivity.<sup>180</sup>

Regions in developing or underdeveloped countries that have exceptional natural areas and wildlife are particularly susceptible to exploitation of the term.<sup>181</sup> They face a potential onslaught of interested tourists, bringing with them the lure of economic advantage. These same locales often lack the infrastructure or governmental organization necessary to implement effective policies for ensuring that ecotourism objectives are met.<sup>182</sup> At the same time, the potential ecotourist may lack the ability or willingness to discern among various travel packages, all of which use the appealing “eco” label.<sup>183</sup> Indeed, many travel companies seize upon the pseudo-event version of the present-day traveler’s environmental commitments when these companies purport to offer environmental sensitivity, cultural awareness, and “unparalleled luxury,” all at once.<sup>184</sup> One travel company that provides fancy accommodations in several African countries quite explicitly promises that there are no losers in its brand of eco-tourism. “Commercial viability, ecological sustainability and the sharing of economic benefits with local communities underscore CC Africa’s projects. CC Africa offers an Africa of vast wild spaces and unparalleled luxury, embraced by a commitment to care—of the land, the wildlife and the people.”<sup>185</sup>

This sounds good; is it too good to be true? Can one truly have “unparalleled” luxury in some of the poorest nations in the world without adverse environmental and cultural effects? Or is this just another version

<sup>179</sup> See BOO, *supra* note 177, at 2–3 (confirming growth in nature-inspired tourism); Robert Prosser, *Societal Change and the Growth in Alternative Tourism*, in ECOTOURISM: A SUSTAINABLE OPTION, *supra* note 177, at 19 (noting that the highest rates of tourism growth are in newly industrialized and less developed countries).

<sup>180</sup> See FENNEL, *supra* note 75, at xvii–xviii (discussing inconsistency between the philosophical basis of ecotourism and its practical implementation).

<sup>181</sup> See Lisa Mastny, *The Caves of Belize: Explorations on the Edge of Ecotourism*, WORLD WATCH, Sept./Oct. 2001, at 32 (interviewing Ian Anderson, proprietor of the Caves Branch Adventure Co. and Jungle Lodge in Belize).

<sup>182</sup> See generally BOO, *supra* note 177 (studying ecotourism in developing countries and finding that lack of oversight can undermine ecotourist goals).

<sup>183</sup> See FENNEL, *supra* note 75, at 278–79 (suggesting, among other things, that there be more truth in labeling in the context of green tourism); see also DEBORAH McLAREN, RETHINKING TOURISM AND ECOTRAVEL: THE PAVING OF PARADISE AND WHAT YOU CAN DO TO STOP IT (1998) (providing a critique of most forms of tourism, highlighting the environmental harms carried out under the justification of catering to foreign tourists, and suggesting instead a politically engaged approach to foreign travel).

<sup>184</sup> See CC Africa, *A Company Overview*, at <http://www.ccafrica.com/aboutus/company.asp> (last visited Mar. 19, 2003). CC Africa, short for Conservation Corporation of Africa, boasts that it was “established against the background of the rising international demand for ecotourism and wilderness experiences and in the belief that business could reap viable financial returns through the long term investment in commercial conservation.” *Id.*

<sup>185</sup> *Id.*

of a promise that one can climb Everest risk-free? One has reason to be skeptical, and in reality most such claims are sorely under-evaluated.<sup>186</sup> There are, however, some spectacularly documented failures. In Thailand, sea-kayaking into limestone caves has gone from eco-friendly to eco-threatening. An American, John Gray, started a commercial venture with all of the motivations of the best eco-businessman: “Blend local people, uncompromising standards and sound management, and you’ll not only have a business that’s sustainable for nature, but for making money as well.”<sup>187</sup> Today, he characterizes his expectations as “fantasy land.”<sup>188</sup> When Gray started his business, he limited the daily visitors he took to the spectacular interior lagoons to fifty, hired an all-local staff, provided excellent training and compensation, and lectured the paying clients on proper cave etiquette.<sup>189</sup> Then, the competition got in on it. Nineteen additional sea-kayaking tours now cater to eager foreigners. The result is that as many as 1,000 kayakers enter the delicate caves daily, and their behavior cannot be controlled. They break off stalactites, and their noise level scares away local wildlife.<sup>190</sup> Gray concludes: “Eco-tourism rolls off the tongue quite easily. But quite honestly, there’s very little around . . . . Looking back on it, I don’t know if we did the right thing by commercializing caves.”<sup>191</sup> Despite ecotourism’s promise, Gray’s experience indicates that the buying and selling of nature can rarely avoid the material consequences of consumption; in other words, there is no non-consumptive consumption.

Nonetheless, ecotourism’s promise lies in the explicit link between the cultural conditions necessary for the preservation of the environment and the traveler’s subjective experience of nature and culture. The idea entails educating travelers about their impacts, environmental and cultural, as well as educating them about a foreign place.

Simultaneously, it entails educating locals, within the parameters of their society and culture, about the benefits they can achieve by preserving their environments. The studies evaluating various projects demonstrate that achieving the multiple objectives of ecotourism requires hard

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<sup>186</sup> See generally Boo, *supra* note 177 (studying status and effects of ecotourism in Latin America and the Caribbean, and noting the relative dearth of such evaluative studies in other regions); see also ECOTOURISM: A SUSTAINABLE OPTION?, *supra* note 177 (including case studies evaluating ecotourism relative to the goals of environmental and cultural sustainability, several of which note the high level of tourist-sensitivity and local management necessary for true “ecotourist” outcomes); McLAREN, *supra* note 183, at 97–114 (suggesting that ecotourism is an oxymoron and that only broad policies supportive of local communities and their environments can meet the objectives of environmental and cultural sustainability).

<sup>187</sup> Denis D. Gray, *Eco-tours Take Turn for Worse: Kayakers Spoiling Thai Sea Caves*, DENV. POST, July 11, 1999, at 1A.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.* at 24A.

<sup>190</sup> *Id.* at 1A.

<sup>191</sup> *Id.* at 24A.

work by all involved.<sup>192</sup> Ironically, the overly bureaucratic ways in which ecotourism is discussed and evaluated may undermine some of the motivations of the best-intentioned eco-travelers. Like Everett Ruess and Chris McCandless, in part they seek freedom and transformation.<sup>193</sup> Some seek “interludes where the conventions and common transactions of life are lifted.”<sup>194</sup> The scale at which the relatively privileged among us seek the restorative and transporting benefits of nature travel may mean, however, that becoming Everett Ruess in this sense might be yet another “illusion with which we deceive ourselves.”<sup>195</sup> The lessons from ecotourism include the possible need to let go of some of our personal demands for freedom and self-expression in order to preserve the places that offer us glimpses of those same ideals.

#### IV. TOWARD AN ETHICAL BASIS FOR ALL INTERACTIONS WITH NATURE, FROM WILD TO MILD

Professor Sax frames the argument for untrammelled nature in ethical terms, yet avoids the philosophical problem of ascribing moral value to non-human species and inanimate objects. His argument, like Olmsted’s before him, is anthropocentric. Humans are capable of moral improvement, and therefore we ought to take policy steps to provide room—literally—for that to occur. Yet the consumption of wilderness has the potential to undermine, on an empirical level, the Saxian ideal. Despite exposure to congenial conditions for moral improvement, and even despite the apparent motivation to engage in endeavors that will challenge and enliven, many people fail to transform themselves. And in the process, those conditions—areas of wild and relatively untrammelled beauty—are degraded. While non-motorized recreation is not nearly as damaging to delicate ecosystems as motorized recreation or extractive industry, neither is it without any deleterious impacts. The consumption of wilderness calls into question one of the premises of Sax’s ethical argument for preservation—that we can take our tired, exhausted bodies into the wilderness and the wilderness will improve us. It also points us toward a more interactive argument based upon the qualities that inhere in wild places, such as their intact ecosystems and resident flora and fauna, and their capacity

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<sup>192</sup> See, e.g., Chandra P. Gurung & Maureen De Coursey, *The Annapurna Conservation Area Project: A Pioneering Example of Sustainable Tourism?*, in ECOTOURISM: A SUSTAINABLE OPTION?, *supra* note 177, at 177–93 (concluding that tourism must be managed at “both macro and micro levels” in order to achieve sustainability); see also Lindberg et al., *supra* note 178 (evaluating ecotourism objectives at case study sites in Belize).

<sup>193</sup> See FENNELL, *supra* note 75, at 49.

<sup>194</sup> DAVID ZURICK, *ERRANT JOURNEYS: ADVENTURE TRAVEL IN A MODERN AGE* 13 (1995) (noting distinctions between “adventure travelers” and “ecotourists” and attributing the above-quoted motivation to adventure travelers. It is safe to assume, however, that there is a great deal of overlap in the two groups.).

<sup>195</sup> See BOORSTIN, *supra* note 51, at 5.

to awaken in us a sense of engagement, wonder, and belonging. In other words, the consumption of wilderness highlights the importance of arriving at a recognition of nature's inherent value, while simultaneously acknowledging the inescapably social roots of that recognition.

Because the process of recognizing inherent value is inevitably social, we should take more direct account of all social and cultural conditions that construct the terms of our interaction with wild places. One of the lessons from the consumerist wilderness frenzy is that despite commercialization, many people do feel some visceral tug toward nature and the intensity it offers. Even John Tierney, the cynical Manhattanite, became wistful when recalling how "alive" he felt breaking new trail under dazzling skies. Chrysler is knowingly capitalizing on that same feeling when it creates advertisements to sell us super-sized SUVs. At a very powerful level, Sax and his secular prophets are right—we all (or at least many of us) long for nature and what it offers us. Yet if we ground our longings solely in the subjective argument that nature has the capacity to improve us, we are at a loss to explain how and why it fails to do so in the face of its increasing commodification. In addition, we are unable to explain why we should care that our well-intended exploits harm nature. After all, if nature's value is purely instrumental to humanity, why should it matter that we are commodifying natural experiences?

In order to rescue the ethics of preservation from this subjectivity problem, we need to incorporate the recognition that natural objects have value in their own right, and that in fact this is precisely why we, as a subjective matter, experience so much fulfillment in nature.<sup>196</sup> We derive a sense of nature's value based upon our subjective experiences of nature as redemptive and life-affirming. Yet if we fail to translate that into a sense that natural places, including the flora and fauna that inhabit them, have value of their own, we risk destroying the very connections we seek. Before going further, we should explore the historical evolution, and some of the intellectual tensions, within this notion of nature having inherent value.

#### A. *Historical Roots of the European-American Recognition of Nature's Value*

Today we take for granted that there are various sophisticated arguments in support of moral consideration for nature or its constituent parts.<sup>197</sup> Environmental ethicists catalogue the positions, using increas-

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<sup>196</sup> For a parallel discussion concerning the limitations of the subject-object dichotomy, see generally Theodor Adorno, *Subject and Object*, in THE ESSENTIAL FRANKFURT SCHOOL READER (Andrea Arato & Eike Gebhart eds., Oxford 1978) (1969).

<sup>197</sup> See RODERICK FRAZIER NASH, THE RIGHTS OF NATURE 121–60 (1989) (describing the burgeoning and diversification of green philosophy in the latter half of the twentieth century).

ingly specific taxonomies to identify a range of anthropocentric justifications, and to attempt to distinguish these from inherent value positions.<sup>198</sup> The intellectual forebears of the American preservation movement did not write with these taxonomies in mind. As minority thinkers in their time, they stand out because they had anything positive to say about nature and wilderness at all. Yet the sense emerges from their writings that nature's value cannot be reduced to a mere subset of human preferences.

In the first half of the nineteenth century, Ralph Waldo Emerson described his relationship with nature in terms that became known as "transcendentalist": "Standing on the bare ground,—my head bathed by the blithe air and uplifted into infinite space,—all mean egotism vanishes. I become a transparent eyeball; I am nothing; I see all; the currents of the Universal Being circulate through me."<sup>199</sup> Departing from the dominant Anglo-European view of nature—that it was something to be conquered for the benefit of man<sup>200</sup>—Emerson articulated a minority view that would eventually come to be accepted by many. In nature, we glimpse a transcendent power, and through nature become a part of that universal and benevolent spirit. While this may sound similar to Sax's secular moral improvement argument, transcendentalism accords more weight to the objects of transcendence—here the objects of nature.

Also in the transcendentalist camp, Henry David Thoreau popularized the notion of living intimately with nature when he wrote of his experiences living in a cabin at Walden Pond. It is quite evident from Thoreau's description of his motivations that he was seeking something very similar to what Ruess, McCandless, and even many who climb Everest seek—intensity of experience, and an awakening of the soul:

I went to the woods because I wished to live deliberately, to front only the essential facts of life, and see if I could not learn what it had to teach, and not, when I came to die, discover that I had not lived . . . I wanted to live deep and suck out all the marrow of life, to live so sturdily and Spartan-like as to put to rout all that was not life, to cut a broad swath and shave close, to drive life into a corner, and reduce it to its lowest terms, and, if it proved to be mean, why then to get the whole and genuine meanness of it, and publish its meanness to the world; or if it

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<sup>198</sup> See, e.g., Michael P. Nelson, *An Amalgamation of Wilderness Preservation Arguments*, in *THE GREAT NEW WILDERNESS DEBATE* 154–98 (J. Baird Callicott & Michael P. Nelson eds., 1998) (providing refined distinctions among justifications).

<sup>199</sup> RALPH WALDO EMERSON, *Nature*, in *SELECTED ESSAYS* 39 (Larzer Ziff ed., 1982) (1836).

<sup>200</sup> See RODERICK NASH, *WILDERNESS AND THE AMERICAN MIND* (3d ed. 1982) (providing historical account of the evolution of American attitudes toward wilderness and arguing that early European and American views took nature and wilderness as hostile places to be subdued and conquered).

were sublime, to know it by experience, and be able to give a true account of it in my next excursion.<sup>201</sup>

Yet Thoreau was describing a venture that, today, would be laughably domestic. He went to the edge of Concord and lived in a cabin that was accessible to regular visitors.<sup>202</sup> Thoreau's method of "living deeply" involved becoming intimately familiar with these lovely, yet humble, surroundings, and tracking the cycles of nature in which he was participating. He knew, for example, every type of fish, frog, and turtle found in Walden and the surrounding ponds, and appeared to take great delight in them despite their lack of exoticness or grandeur.<sup>203</sup> Thoreau referred to such creatures, and even to inanimate objects such as stars, as his fellows and neighbors. And in a clear refutation of the human-resource based view of nature predominant in his time, Thoreau objected to agricultural clearing of trees and underbrush.<sup>204</sup> As Roderick Nash observes, "Thoreau seemed to imply that nature should have legal rights like other oppressed minorities."<sup>205</sup>

John Muir, founder of the Sierra Club (and also arguably the founder of modern American environmental activism),<sup>206</sup> also voiced sentiments about the ego-dissolving qualities of immersion in nature: "You cannot feel yourself out of doors . . . . You bathe in these spirit-beams, turning round and round, as if warming at a camp-fire. Presently you lose consciousness of your own separate existence: you blend with the landscape, and become part and parcel of nature."<sup>207</sup> Emerson, Thoreau, and Muir describe their own personal experiences of a sense of the universal—that nature allows us to dissolve into something larger than ourselves, thereby making us all the more aware of the value of our own individual lives.<sup>208</sup> For all three, but particularly for Thoreau and Muir, their subjective experiences of joy and pleasure translate into a recognition of nature's intrinsic value. Muir made this explicit: "I have never yet happened upon a

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<sup>201</sup> HENRY DAVID THOREAU, *Walden, in WALDEN AND OTHER WRITINGS BY HENRY DAVID THOREAU* 105, 172–73 (Joseph Wood Krutch ed., 1981) (1854).

<sup>202</sup> *See id.* at 196, 208.

<sup>203</sup> *See id.* at 187.

<sup>204</sup> *See* NASH, *supra* note 197, at 37.

<sup>205</sup> *Id.*

<sup>206</sup> Muir published many wilderness essays, but he also worked avidly on campaigns to protect public lands from development and encroachment. His most famous political battle was one he lost—the fight to prevent the Hetch Hetchy Valley of Yosemite from being flooded to create a reservoir for San Francisco's water needs. *See* NASH, *supra* note 200, at 161–81; *see also* Oliver Houck, *Unfinished Stories*, 73 U. COLO. L. REV. 867, 911–12 (2002) (describing Muir's role as founder of the Sierra Club).

<sup>207</sup> John Muir, *Twenty Hill Hollow, in WILDERNESS ESSAYS* 88 (Peregrine Smith 1980) (1872).

<sup>208</sup> Other influential forebears of the inherent-value-of-nature position include Albert Schweitzer, Henry S. Salt, and, of course, Charles Darwin. *See* RODERICK FRAZIER NASH, *THE RIGHTS OF NATURE* 19–32 (1989) (discussing intellectual predecessors to current environmental ethics debates).

trace of evidence that seemed to show that any one animal was ever made for another as much as it was made for itself.”<sup>209</sup>

Despite the powerful influence Emerson, Thoreau, and Muir had on the evolution of environmental thought, none consciously articulated an ethic of wilderness preservation. Aldo Leopold took these early transcendentalist/universalist views a step further with his outline of a “land ethic,” published posthumously in 1949.<sup>210</sup> Like Muir, Leopold was a writer-activist who pressed for the preservation of public lands. Leopold’s experiences in the desert Southwest as a Forest Service assistant from roughly 1916 to 1918, as well as the time he spent tending to and restoring the indigenous flora and fauna on his Wisconsin farm, transformed him from a conventional resource-based thinker to a proponent of the idea that humans are on an ethical continuum with all animals and plants.<sup>211</sup>

Leopold’s “Land Ethic” first recognizes that humans are members of a community larger than that of their own species. He argues, though not precisely in these terms, that there is nothing *a priori* about limiting one’s relevant community to humans. In fact, ecological history informs us otherwise:

That man is, in fact, only a member of a biotic team is shown by an ecological interpretation of history. Many historical events, hitherto explained solely in terms of human enterprise, were actually biotic interactions between people and land. The characteristics of the land determined the facts quite as potently as the characteristics of the men who lived on it.<sup>212</sup>

Leopold also relies upon the unique human capacity to recognize and mourn the loss of other species as a basis for his argument that we have an ethical obligation to prevent such loss, where possible.<sup>213</sup> Further, even more explicitly than Emerson, Thoreau, and Muir before him, Leopold articulated that there was something elemental, and elementally good, about intimate contact with nature:

[T]here is value in any experience that reminds us of our dependency on the soil-plant-animal-man food chain, and of the fundamental organization of the biota. Civilization has so clut-

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<sup>209</sup> See Nash, *supra* note 197, at 40 (quoting John Muir, *Wild Wool*, OVERLAND MONTHLY, Apr. 1875, at 20).

<sup>210</sup> See ALDO LEOPOLD, A SAND COUNTY ALMANAC 237–64 (Ballantine Books 1991) (1949).

<sup>211</sup> See generally *id.* (chronicling Leopold’s experiences with nature and culminating in his articulation of the Land Ethic).

<sup>212</sup> See *id.* at 241. More recently, Jared Diamond has advanced this hypothesis. See JARED DIAMOND, GUNS, GERMS AND STEEL (1997).

<sup>213</sup> See LEOPOLD, *supra* note 210, at 116–19.

tered this elemental man-earth relation with gadgets and middlemen that awareness of it is growing dim.<sup>214</sup>

Leopold puts all of these assertions together to conclude that we are ethically responsible to ensure the overall health of the biotic community.

Until Leopold made this morally based defense of policies and practices that protect nature for its own sake, no one in the mainstream, European-American tradition had done so. Leopold's bold effort was to attach the familiar moral terms "right" and "wrong" to our interactions with nature; the Land Ethic is simply this: "A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise."<sup>215</sup> What Leopold hoped for was an internalization of the Land Ethic by every American, such that debates about land use would be informed by *it* rather than purely by economic value.<sup>216</sup> The question we are left with is one Leopold recognized: how to get from the articulation of the Land Ethic to its internalization.

### B. Ecocentric Philosophy

More recently, and largely since Sax published *Mountains without Handrails*, the pro-nature sentiments of Muir, Emerson, and Thoreau, and the proto-ethics of Leopold, have been reexamined, systematized, and incorporated into myriad philosophical and ethical arguments in support of nature.<sup>217</sup> Indeed, Sax was near the leading edge of this now-burgeoning field when he published *Mountains* in 1980. As discussed above, Sax avoids the thorny philosophical difficulty of ascribing moral value to non-human entities by justifying preservation policies based upon our subjective experiences concerning the goods associated with non-motorized recreation. Like Sax, some environmental ethicists hew closely to anthropocentric justifications.<sup>218</sup> Other approaches make an explicit case for a non-anthropocentric account of nature's value.<sup>219</sup>

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<sup>214</sup> *Id.* at 212 (noting that the consuming wilderness phenomenon has cluttered even our recreational relationship to nature with "gadgets and middlemen").

<sup>215</sup> *Id.* at 262.

<sup>216</sup> *See id.* at 250–51 (commenting on the futility of relying solely on the government to protect natural resources and articulating the need for private land-owners to internalize values of preservation).

<sup>217</sup> *See* NASH, *supra* note 208, at 122 (discussing the emergence of environmental ethics as a legitimate field).

<sup>218</sup> *See, e.g.,* Bryan G. Norton, *Environmental Ethics and Weak Anthropocentrism*, in ENVIRONMENTAL ETHICS: DIVERGENCE AND CONVERGENCE, *supra* note 110, at 313–15 (arguing that weak anthropocentrism provides all the justification needed for strong ecological policies).

<sup>219</sup> *See* John Rodman, *Four Forms of Ecological Consciousness Reconsidered*, in DEEP ECOLOGY FOR THE TWENTY-FIRST CENTURY 121 (George Sessions ed., 1995). Rodman summarizes the various schools of environmental ethics, and describes Deep Ecology and its predecessors, like Leopold's Land Ethic, as the emergence of the "ecological sensibility." *Id.* at 125–29.

### 1. Asserting Nature's Intrinsic Value

Environmental philosophies that assert an intrinsic value to nature draw upon a patchwork of philosophic traditions, including mainstream neo-Kantian arguments, the continental philosophies of Heidegger and Spinoza, and an amalgam of eastern and Native American religions and philosophies.<sup>220</sup> The unifying concept is a moral view that places humans in a larger midst of morally relevant entities—a view that has become known as “ecocentric,” to contrast with anthropocentric.

Like Leopold, ecocentrists rely in part on the biological connections between and among species to support a corresponding moral web. Ecocentric theorists are aware, however, of the difficulty involved in justifying the moral agency of non-human, and particularly inanimate, entities.<sup>221</sup> Some ecocentrists address the problem by asserting as a first principle that other natural objects have intrinsic value. They recognize the futility of making reasoned arguments to arrive at the initial non-anthropocentric moral view. They hold that as a descriptive matter, we come to care about nature through a process of identification that is theoretically universally possible for every human.<sup>222</sup> Thus for many of the ecocentric theorists, relating to nature is the keystone to moral thought and action.<sup>223</sup>

Ecocentrists recognize that their views about nature's value are not held by many people. Rather hopefully, some ascribe to the possibility of a paradigm shift in order for all of society to achieve the ethical orientation to which ecocentrists subscribe.<sup>224</sup> But it is one thing to refuse to follow philosophical justification over the precipice; it is quite another to hope for a cultural paradigm shift without attending to the question of how it might happen.

<sup>220</sup> See BILL DEVAL & GEORGE SESSIONS, *DEEP ECOLOGY* 79–108 (1985) (summarizing sources for the Deep Ecology perspective).

<sup>221</sup> See, e.g., J. Baird Callicot, *The Conceptual Foundations of the Land Ethic*, in *ENVIRONMENTAL ETHICS: DIVERGENCE AND CONVERGENCE*, *supra* note 110, at 425, 434–35 (addressing this difficulty in the context of an in-depth analysis and defense of the philosophical richness of Leopold's Land Ethic).

<sup>222</sup> See MICHAEL E. ZIMMERMAN, *CONTESTING EARTH'S FUTURE: RADICAL ECOLOGY AND POSTMODERNITY* 47–48 (1994).

<sup>223</sup> See *id.* at 38–39. Zimmerman notes that several deep ecologists have turned to Spinoza for a philosophical account of inter-relatedness. Spinoza maintained that all things are inter-related manifestations of God and Nature (one and the same in his account). Contrary to the Hobbesian account of life being a constant battle of all against all, life for Spinoza was a joyful process of self-realization. The struggle for preservation was, or should be, a simultaneous reckoning with all other forms of life. Spinoza's non-dualist concepts laid the groundwork for inter-relatedness as a basis of moral theory.

<sup>224</sup> *DEEP ECOLOGY FOR THE TWENTY-FIRST CENTURY*, *supra* note 219, at ix.

## 2. *Hoping for a Paradigm Shift*

Whatever the philosophical merits of ecocentric positions, advocates for the intrinsic value of nature face a real world problem: most people in the developed world do not share their views. It is essential, from this practical perspective, to assess the likelihood of the hoped-for paradigm shift. At this point, it might be helpful to categorize several different strands of ecocentrism.<sup>225</sup>

The first, “moral-progress ecocentrism,” addresses the problem of the paradigm shift by assuming a progressive evolution of human morality. Drawing initially on Heideggerian ideas about the type of shift necessary to turn away from anthropocentrism—a drastic reorientation of values that prioritizes connection to nature—these theorists then depart from Heidegger’s anti-modernism by adopting a notion of moral progress.<sup>226</sup> Heidegger held that only an unpredictable, non-linear turn could cause the shift. Moral-progress ecocentrists suggest, alternatively, that humanity may be gradually maturing toward ecocentrism.<sup>227</sup> While some ecocentrists deny that there is any moral-progress thread to their philosophy, Michael Zimmerman argues that there must be “at least a critical version of historical maturation or evolution, [or there is] no apparent basis for expecting a paradigm shift that will move Western culture towards ecocentrism.”<sup>228</sup>

The type of moral progress envisioned by Zimmerman and others is essentially personal. Zimmerman suggests that the move toward a Heideggerian transcendentalism is a prerequisite to overcoming Western anxieties about mortality and isolation. These anxieties, he argues, form the basis of our consumerist, authoritarian, dominance-based culture. Zimmerman acknowledges that this emphasis on personal transformation is criticized by some, “who say that such ideas neglect capitalism’s role in shaping individual consciousness and in destroying ecosystems.”<sup>229</sup> However, he responds that such critics have “never dealt effectively with the possibility that death denial has helped to encourage capital accumulation, authoritarianism, and hierarchy. Arguably, so long as people require immortality symbols, wealth, status, and violence will continue to be popular.”<sup>230</sup>

A second strand, “hard wired ecocentrism,” posits that we can achieve the cultural shift by way of our genetic code. By living in industrialized societies, we have strayed from our genetic roots as hunters and gatherers

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<sup>225</sup> The following is not intended to be an exhaustive account of the various positions within the ecocentric camp, which has grown diverse and garrulous.

<sup>226</sup> See ZIMMERMAN, *supra* note 222, at 119–20.

<sup>227</sup> *See id.*

<sup>228</sup> *Id.* at 107.

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

under Pleistocene conditions.<sup>231</sup> We must therefore reintroduce the wild, both in culture and nature, in order to survive. Paul Shepard, the primary proponent of this position, states that:

Wildness is a genetic state. Wilderness is a place we have dedicated to the wildness, both in our selves and in other species. The home of wildness is both etymologically and biologically wilderness. Although we define ourselves in terms of nationality, race, profession, and so on, it is evident that the context of our being in the past is wilderness—to which, one might say, our genes look expectantly for those circumstances that are their optimal ambience, a genetic expectation of our genome that is unfulfilled in the world we have created.<sup>232</sup>

While Shepard includes suggestions concerning how to reconstruct our social institutions to allow for this return to the wild, the general thrust is that we will be led there by our genes.

Arne Naess, a leading figure among ecocentrists, and in particular among those who self-identify as “deep ecologists,” does not subscribe to the hard-wired view. Rather, Naess theorizes a third strand, herein called “pluralist ecocentrism.”<sup>233</sup> Naess attempts to offer a non-linear, culturally contingent account of the ecocentric shift. He rejects the notion that a single moral paradigm can account for how we ascribe value, yet he is (admittedly irrationally) optimistic that “the increasingly influential, pluralistic ecology movement will let humanity muddle through its current problems.”<sup>234</sup>

Naess explains his own ecological orientation by describing a process of ever-expanding identification with, and therefore empathy for, non-human entities. He calls this process one of “interdependent self-realization,” meaning that the self can only become fully realized once it identifies with all other plants, animals, etc. While this sounds like the sort of universalist assumption that is open to attack, Naess fends this off by stating that he does not offer this as a matter of ontology. He is not out to define what the self *is* in some absolute, provable sense. He is merely offering an intuition, from which springs an “assemblage of statements . . . provisional and tentative,”<sup>235</sup> that attempts to provide a description of how one might come to an ecocentric position. Further, Naess appears to realize

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<sup>231</sup> See generally PAUL SHEPARD, *COMING HOME TO THE PLEISTOCENE* (1998).

<sup>232</sup> *Id.* at 131.

<sup>233</sup> See Arne Naess, *Ecosophy and Gestalt Ontology*, in *DEEP ECOLOGY FOR THE TWENTY-FIRST CENTURY*, *supra* note 219, at 240–48; Arne Naess, *The Place of Joy in a World of Fact*, in *DEEP ECOLOGY FOR THE TWENTY-FIRST CENTURY*, *supra* note 219, at 249–58; see also ZIMMERMAN, *supra* note 222, at 339.

<sup>234</sup> ZIMMERMAN, *supra* note 222, at 339.

<sup>235</sup> *Id.* at 37.

that there is and will be an ongoing contest over moralities, including the morality of various environmental positions. He describes one route toward an ecocentric value orientation, and clearly hopes that this and other routes will predominate.<sup>236</sup>

### 3. *Consumption of Wilderness and Ecocentrism*

Ecocentrism provides us with the vocabulary and value orientation necessary to critique the destruction of wilderness. If non-human species and entire ecosystems exist not merely as elements in an anthropocentric utilitarian calculus or as extensions of human moral characteristics, but as entities with moral value in their own right, then we should refrain from taking actions that treat them solely as means to our own self-fulfillment. A difficulty emerges, however, if one takes the consumption of wilderness into account. If identification with nature, whether as a product of moral progress, hard-wiring, or self-realization, is an essential explanation of the move toward an ecocentric worldview, how can one respond to the observation that many wilderness consumers identify solely through the medium of their SUV? Or, even more challengingly, how is ecocentrism consistent with experiences where consumers identify with nature only *à la* exploratory photography, or after spending relatively large sums of money on travel, equipment, and guides, and then still fail to reorient their values?

The consumption of wilderness challenges the “moral progress” theory of the move toward ecocentrism, in that while some segments of Western society may be progressing toward an ecocentric, anti-consumptionist, death-accepting worldview, others are simultaneously moving toward heightened forms of anthropocentric, death-denying, rapaciously consumptive worldviews. As we have seen, technology and wealth have enabled us to deny death even in places where death is the most logical and predictable state for humans to occupy. Places, such as Antarctica, where once people dared only to go in the most auspicious conditions, and with the wildest ambition of mere survival, today become racecourses for bored urbanite marathoners.<sup>237</sup> As Zimmerman acknowledges, a growing awareness of inter-connectedness does not lead inexorably to an ecological sensibility:

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<sup>236</sup> See Arne Naess, *Self Realization: An Ecological Approach to Being in the World*, in DEEP ECOLOGY FOR THE TWENTY-FIRST CENTURY, *supra* note 219, at 239:

The richness of reality is becoming even richer through our specific human endowments; we are the first kind of living beings we know of which have the potentialities of living in a community with all other living beings. It is our *hope* that all these potentialities will be realized—if not in the immediate future, then at least in the somewhat near future.

*Id.* (emphasis added).

<sup>237</sup> See *supra* notes 95–99 and accompanying text.

Today, people are becoming more aware of humanity's interdependence with life on earth. But far from leading to an ecological sensibility that might help to trigger a social 'phase shift,' such growing ecological awareness could be factored into market decision making and government planning in a way that simply reinforces anthropocentric . . . consciousness.<sup>238</sup>

Yet Zimmerman's response to this problem is circular. He states that without a directional (and progressive) view of history (and implicitly morality), we can provide no explanation of why people might move toward ecocentrism.<sup>239</sup> Indeed.

The "hard-wired" position—that we are betraying a genetic code by abandoning a life dictated by nature's rhythms—resonates with some of the observations by Sax and affirmed herein. The indescribable satisfaction expressed by those who engage directly with the difficulties inherent in nature has a recurring ring. The anti-modernist sentiments of the early mountaineers and climbers, as well as the latter-day Everest trudgers, lend themselves to an account of these emotions as being hard-wired. Yet the consumption of wilderness, like many trends of recent times, also undermines any biological account of our aesthetic and emotional sympathies. We seek the extravagance of nature for many reasons, including the promotion of our own social status. Moreover, we seek it today in forms that serve largely to perpetuate an economy that will continue to destroy most natural resources in the absence of rigorous protective policies.<sup>240</sup> Thus as tempting as it might be to label these yearnings as somehow biological, it is also very naïve to do so. It assumes an inevitability about how such desires will manifest themselves, an inevitability that the consumption of wilderness seriously contradicts.

The consumption of wilderness informs the pluralist account of an ecocentric morality by highlighting that more than mere hope is required. The very intuitions that lead some, like Naess, to experience the larger connections with nature lead others only so far as their credit cards. The desire for connection with the wild, when it occurs in a society which has successfully blurred action with consumption, easily mutates into expression of extremist behavior that does not serve to bring one closer to intimacy with the ecosystem. Thus while Naess expresses a moral worldview that may be a necessary complement to Sax's subjectivist justifications for preservation, the problem remains of bridging the gap between that worldview and the social conditions that would make it possible.

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<sup>238</sup> ZIMMERMAN, *supra* note 222, at 338.

<sup>239</sup> *Id.* at 373. Aware of this problem, Zimmerman carefully clarifies that his notion of moral progress is tied tightly to political action and moreover is not inevitable. *See id.* at 373–77.

<sup>240</sup> *See* Harsch, *supra* note 10, at 548–50 (summarizing the literature on the connections between industrial economies and environmental problems).

*C. Putting Ecological Values in Social Context*

At one extreme, Sax avoids any valuation of nature other than as an ideal backdrop for human engagement and consequent moral improvement. At the other, the ecocentrists discussed above assert the intrinsic value of nature without credible accounts of how to achieve widespread acceptance of that assertion. Both Sax and the ecocentrists insufficiently heed the ways in which culture constructs our conceptions of nature. Sax's argument depends upon culture being relatively static, such that the Saxian ideal of how to interact with nature has enduring application. Ecocentric positions optimistically assume that culture will somehow catch up to their assertion of nature's intrinsic value. Yet, as discussed above, both Sax and the ecocentrists also say important and intuitively correct things about the appeal of nature, as well as its value.

To bridge the gap between the Saxian argument and the ecocentric assertion, and to achieve greater comprehension of the consumption of wilderness, we should look more closely at how society and culture mediate our concept of nature. Andrew Ross, in his book *The Chicago Gangster Theory of Life*,<sup>241</sup> makes the point that society both creates and destroys nature, and not the other way around.<sup>242</sup> He criticizes many environmentalists for being "oblivious in presuming that the biological ethics governing their ideas and prescriptions are governed by (higher) natural, not social laws."<sup>243</sup> Ross summarizes the thesis of his book as follows: "ideas that draw upon the authority of nature nearly always have their origins in ideas about society."<sup>244</sup>

Ross's book provides several insightful cautionary tales of how environmental rhetoric can be deployed to further hierarchical, exploitative social regimes. Throughout his analysis, Ross challenges western dichotomies that characterize much of our thinking about the environment. In a chapter on Polynesia, Ross describes the complicated ways in which the residents grapple with the legacies of colonialism and the attendant myths of a primitive, pre-industrial eco-paradise. By mapping "natural" onto so-called primitive societies, we misperceive the way in which social hierarchy can result in exhaustion of natural resources even in cultures that have a "nature philosophy" at their core.<sup>245</sup> Thus we both romanticize indigenous people and pave the way for non-indigenous groups to tout their interest in preservation as a means to impose more "modern" forms of economic and social exploitation.<sup>246</sup>

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<sup>241</sup> ANDREW ROSS, *THE CHICAGO GANGSTER THEORY OF LIFE* (1994).

<sup>242</sup> *Id.* at 15.

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> *See id.* at 21–98.

<sup>246</sup> *See* Ross, *supra* note 241, at 27–98.

Ross's approach is very useful in critiquing the consumption of wilderness. The social circumstances that produced a society that enables a relatively small percentage of people to pursue extreme experiences in the wilderness include, ironically, the estrangement of people who used to live quite intimately in those same environments. "The American model [for nature parks] had its origin in John Muir's Yosemite, created by excluding the Miwok Indians, followed by the eviction of the Ute and Navajo Indians from Bryce and Zion."<sup>247</sup>

In fact, most National Parks of the wilderness variety have histories involving either exclusion of Native Americans, deprivation of traditional tribal use rights, or both.<sup>248</sup> As Ross and others point out, similar conflicts between the demands of international nature travel and local communities are occurring globally. In Uganda's Kidepo National Park, the Ik are alienated from their traditional hunting grounds.<sup>249</sup> In Kenya, conflicts have arisen between tribal members and the government concerning subsistence hunting in game parks.<sup>250</sup> In order to create an appropriately "natural" playground, we commit the decidedly social and political act of evicting local inhabitants. Reflective recreation is more problematic as a justification for land use policy when one considers this history.

The historian William Cronon has made a similar point concerning our conceptions of land as empty, wild, and unused.<sup>251</sup> In documenting the history of ecology and land use patterns in colonial New England, Cronon describes the different conceptions of land held by Native Americans versus the European newcomers. Cronon's investigations led him to conclude that Native American peoples did alter their natural environments, but they did so in a way that adapted to the levels of abundance and scarcity that were dictated by seasonal and local conditions.<sup>252</sup> Similarly, Native conceptions of property rights shifted depending upon ecological use.<sup>253</sup> The colonists' view—that the Native peoples simply had no concept of property rights and that they "wasted" resources—was incorrect, but conveniently so for them. It enabled their justifications for seizing Native lands.<sup>254</sup> The perception of ecosystems (though obviously not labeled as such) differed drastically between the two groups. Native

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<sup>247</sup> *Id.* at 92; see also ROBERT H. KELLER & MICHAEL F. TUREK, AMERICAN INDIANS & NATIONAL PARKS 20 (1998) (recounting the history of how the Miwok/Ahwahneechee were killed or expelled from the Yosemite Valley twelve years before the creation of the Park in 1864).

<sup>248</sup> See generally ROSS, *supra* note 241.

<sup>249</sup> *Id.* at 92.

<sup>250</sup> See Stephen Cook, *Environment: Game Plan, Relations Between Kenya's Wildlife Parks and Neighboring Tribes Are Not All They Should Be*, GUARDIAN, Apr. 28, 1999, at Society Page 4.

<sup>251</sup> See WILLIAM CRONON, CHANGES IN THE LAND: INDIANS, COLONISTS AND THE ECOLOGY OF NEW ENGLAND (1983).

<sup>252</sup> *Id.* at 37.

<sup>253</sup> *Id.* at 66–68.

<sup>254</sup> *Id.* at 55–57.

Americans saw abundance as a reason to adapt their needs and practices to perpetuate such conditions, whereas the colonists perceived abundance as a justification for mass exploitation and extraction of resources as individual commodities.<sup>255</sup> The absence of human management is not the key feature distinguishing lands that appear “natural” versus those that do not. Rather, human views of the land determine whether their influence will lead to one set of conditions or the other.<sup>256</sup>

The point that “nature” is a human artifact does not undermine the position, however, that there are ethical grounds for constraining our destruction of natural resources. In arguing that we derive and create the meaning of nature as a social rather than a scientific matter, one can go too far in denying the reality of certain natural limits. For example, Ross argues that the concept of scarcity, which has been used in economics to justify various hierarchical social arrangements, is equally anathema to any non-hierarchical solution to environmental problems.<sup>257</sup> But scarcity means something much more concrete and powerful in the environmental context. For example, according to Harvard biologist Edward O. Wilson, we are in the midst of one of the greatest extinction spasms of geological history, and it is human-caused.<sup>258</sup> Giant pandas, Asian and Siberian tigers, Asian rhinoceri, and other so-called “charismatic mega-fauna” are on the verge of disappearance.<sup>259</sup> Other less charismatic creatures that play crucial roles in maintaining environmental health are also vanishing, or in many cases have already disappeared.<sup>260</sup> Forests, ancient and otherwise, are being destroyed at the rate of one percent every year.<sup>261</sup> The devastation of forests has downstream effects, such as loss of habitat for other species and destruction of watersheds because of erosion.<sup>262</sup> The list of facts, provided to us by science, goes on.<sup>263</sup>

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<sup>255</sup> *Id.* at 166, 168–69.

<sup>256</sup> See Charles C. Mann, *1491*, ATLANTIC MONTHLY, Mar. 2002, at 41 (canvassing recent anthropological and historical positions in support of the conclusion that “[b]efore it became the New World, the Western Hemisphere was vastly more populous and sophisticated than has been thought—and an altogether more salubrious place to live at the time than, say, Europe.”).

<sup>257</sup> See Ross, *supra* note 241, at 271–73.

<sup>258</sup> See EDWARD O. WILSON, *THE DIVERSITY OF LIFE* 272–80 (1992).

<sup>259</sup> DEEP ECOLOGY FOR THE TWENTY-FIRST CENTURY, *supra* note 219, at xv.

<sup>260</sup> See WILSON, *supra* note 258, at 283 (“The ecosystems for their part, containing thousands of less-conspicuous species, are assigned equivalent value . . . . The humble and ignored are in fact often the real star species.”).

<sup>261</sup> Bruce Ledewitz & Robert D. Taylor, *Law and the Coming Environmental Catastrophe*, 21 WM & MARY ENVTL. L. & POL’Y REV. 599, 601 (1997).

<sup>262</sup> *Id.* at 601–02.

<sup>263</sup> In light of scientific consensus on global loss of biodiversity and global climate change, the United Nations has sought to address these problems. See *Global Status of Biological Diversity: Report of the Secretary-General*, U.N. ESCOR, Org. Sess., U.N. Doc. E/CN.17/2001/PC/18 (2001); *Protection of the Atmosphere: Report of the Secretary-General*, U.N. ESCOR, Org. Sess., U.N. Doc. E/CN.17/2001/PC/12 (2001); both available at <http://www.johannesburgsummit.org/html/documents/prepcom1.html>.

While Ross acknowledges in general terms that concern for the environment should be on our list of political priorities, he shies away from any details. Perhaps he does so because the details indicate that some things are indeed becoming very scarce. When the giant panda disappears, it truly will be gone. While we should interpret the social forces that contribute to the near extinction of the panda, and should also accept that its extinction has no pre-determined meaning absent that interpretation, there is not much room for interpretation concerning the very fact of its demise. These natural limits put us in the position of deciding what to do, and while unfortunately there is no single response that is inevitable, there is one that circles back to the very same prevalent, yet ultimately subjective, yearnings that Sax so eloquently describes.

The insight that we construct nature is powerful, and powerfully demonstrated by the consumption of wilderness. Yet the insight that we value nature (as problematic as that term may be) precisely because it makes us feel connected to the universal is equally forceful, and equally evident in the consumption of wilderness. The feelings of connection stem from those very physical and very real aspects of nature, such as mint-green lichens, day-glo salamanders, and big fuzzy giant pandas. The leap that the ecocentrists make in asserting nature's intrinsic value is defensible because it resonates so strongly with this longing for connection. And the leap is all the more appealing because of the imminent disappearance of many of the objects of our longing, in the absence of a strong moral commitment to saving them. The unavoidably difficult work lies in connecting our subjective intuitions about what we long for to the larger social world that simultaneously makes possible and threatens our experiences with nature.<sup>264</sup>

This sort of prescription is admittedly a difficult one to translate into law and policy. But there are certain directions in which it points. To ensure that the natural world can continue to offer us opportunities for engagement and connection, we should support some limits on the terms of our engagement. As the ecotourism experiences indicate, bureaucracy and regulation may be required to achieve ecological and cultural goals. Freedom to roam, *à la* Ruess and McCandless, may in some circumstances have to yield to local culture and ecology. At the same time, home-spun adventure, in some sense modeled after the initiative exhibited by these two characters, should be encouraged over extravagant guided escapades. Freedom to be creative should substitute for freedom to go wherever we please and can pay for. Otherwise, we risk consuming the very places that, in the secular/spiritual sense captured by Sax's prophets, consume us.

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<sup>264</sup> Many have written eloquently on the importance of making these connections. See, e.g., Gary Paul Nabhan, *Cultural Parallax in Viewing North American Habitats*, in THE GREAT NEW WILDERNESS DEBATE, *supra* note 171, at 628–39; Gary Snyder, *The Rediscovery of Turtle Island*, in THE GREAT NEW WILDERNESS DEBATE, *supra* note 171, at 642–51.

## V. CONCLUSION

A winter Sunday in Boulder, and I am running on one of the many dirt trails that lace through town. This particular trail winds its way across pastures and through wetlands. The remains of Boulder County's rural roots predominate here. Cows amble along, chewing the tough grasses relentlessly. The trail is on a slight rise east of Boulder, so the bustling city that lies between the plains and the mountains is barely visible. One gets a sense of what this place looked like to the first homesteaders—vast skies, rolling prairies, and then those preternatural mountains thrusting out of the flatlands, appearing to mark the end of the world. My imagination drifts back to those times whenever I run this trail. Sometimes, my thoughts recede even further back, to what this valley looked like to the Arapahoe, Cheyenne, and Ute Indians who made it home before they were driven out.

Today, I am not the only one being pulled toward the past. As I run past a group of cows, I notice two calves stumbling clumsily toward each other, heads half way down. As they approach one another, they give a sorry imitation of a head butt, and then one of them trips and nearly falls down. It looks comical, as if these two calves had seen a video of wild elk sparring, and realized that, despite their undeniable domestication, they should try their best to follow suit. I snort derisively and think, those poor things . . . responding to some vestige of wilder genetic codes. Then I imagine them looking at me, running all alone, lycra and polypropylene from head to toe, feet protected in cushioned, technologically perfected running shoes. What am I but the human equivalent of the stumbling calves dreaming of letting loose their inner elk? All three of us are trying to tap into some ancient rhythm of the wild. All three of us nothing but what we are, products of thousands of years of humans intertwining with nature.

The explorations of this Article reveal that the calves and I share much in common with most of us. In this, I believe Professor Sax was right. The secular prophets are on to something. They long to show us how to tap into the wild, knowing that at some level this is a widespread, if not universal, desire. The problem, however, is that in our culture the wild is an ever-moving target. We must be far more vigilant than we thought, and go to further extremes, to achieve the connections with nature that we so deeply desire. The extremes are not necessarily those of physical prowess, however. Indeed, the Everest example shows that the most extreme physical endeavor can nonetheless become a pseudo-event. Nor are the extremes those that force us to shun family and community, notwithstanding the almost-admirable, mostly pitiable escapades of those like Chris McCandless. Rather they are extremes of insight. We must recognize that the connections we seek to make in wild places must expand beyond the wholly personal. They extend widely in two seemingly opposite directions. On one side, the connections extend to the very real im-

pacts that we have on other species and on the health of ecosystems. On the other, they extend to the human social and political contexts that construct our interactions with all places, including wild ones.

Why should we care about nature? Because we are a part of it, and because it is nonetheless separate and distinct enough from us in the objective facts of its existence (again, think about vanishing giant pandas, devastated forests, decreasing complexity in ecosystems . . .) that if we are not able care-takers, much of what we seek to find *in ourselves*, even in the most commercialized forms of wilderness travel, will be lost. Then we will be left only with remnants of what we once considered to be nature, and therefore, if the intuitions of the secular prophets and all of the latter-day-followers are correct, remnants even of ourselves.