

# Requiem for American Nature Philosophy

## INTRODUCTION

The idea of nature as a stable and predictable counterpoint to the disruptive energy and change of human societies is at the heart of one of the most enduring environmental writing traditions, the pastoral.<sup>1</sup> Moreover, a related rhetorical convention, the pastoral elegy, distinguishes the nature writing and environmental philosophy of postcolonial settler societies “marked by the death and/or dispossession of their original inhabitants.”<sup>2</sup> In his fifth book, *After Nature: A Politics for the Anthropocene*,<sup>3</sup> Duke Law Professor Jedediah Purdy invokes the pastoral mode as he meditates on the uneasy inheritance of early American approaches to nature and politics.

As a pastoral elegy inquiring into environmental change and loss, Purdy’s book incorporates facets of different types of critical environmental analysis. However, it is not an environmental activist’s handbook,<sup>4</sup> a treatise on environmental justice and the politics of environmental racism in the United States,<sup>5</sup> a casebook of American environmental law and policy,<sup>6</sup> or a complex philosophical study of how the “objective” use of nature most often leads to oppressive social and gender divisions.<sup>7</sup> Rather, Purdy traces the historical lineage of our present moment in the ultimate expression of human disruption, the Anthropocene, through a historical classification of American attitudes towards nature.<sup>8</sup> The Anthropocene is a recent, albeit contested, designation that marks the indelible human imprint on the world.<sup>9</sup> In Part I, this Review briefly discusses Purdy’s categorization of the founding principles of early

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1. *See generally* GREG GARRARD, *ECOCRITICISM* 56 (2004).
2. GRAHAM HUGGAN & HELEN TIFFIN, *POSTCOLONIAL ECOCRITICISM: LITERATURE, ANIMALS, ENVIRONMENT* 89 (2010).
3. JEDEDIAH PURDY, *AFTER NATURE: A POLITICS FOR THE ANTHROPOCENE* (2015).
4. *See generally* JACQUELINE VAUGHN, *ENVIRONMENTAL ACTIVISM: A REFERENCE HANDBOOK* (2003).
5. *See generally* JONI ADAMSON, *THE ENVIRONMENTAL JUSTICE READER: POLITICS, POETICS, AND PEDAGOGY* (2002).
6. *See generally* HOLLY DOREMUS ET AL., *ENVIRONMENTAL POLICY LAW* (6th ed. 2012).
7. *See generally* KATE SOPER, *WHAT IS NATURE? CULTURE, POLITICS AND THE NON-HUMAN* (1995).
8. PURDY, *supra* note 3, at 1.
9. *Id.* at 2.

American relationships to nature. Part II then explores Purdy's ideas in action through an analysis of *Native Village of Kivalina v. ExxonMobil Corporation* and a discussion of the broader contexts and repercussions of Purdy's addition to environmental literature.

## I. BACKGROUND

### A. *A Natural Taxonomy*

Purdy begins his study with early colonial adversarial relationships with nature and traces changing ideas about and attitudes towards nature to our modern era of wilderness ideals and activism.<sup>10</sup> Through his lineal analysis of American approaches to the environment, Purdy finds an inextricable link between environmental imagination and political expression.<sup>11</sup> He then classifies the evolution of American attitudes towards nature into four categories, each also representing a distinct political era: a providential vision, a romantic vision, a utilitarian picture, and an ecological worldview.<sup>12</sup> While he distinguishes each epoch by ideology and practice, he also emphasizes that the different attitudes can exist simultaneously.<sup>13</sup> Our current approach towards nature, he argues, is marked by all four attitudes.<sup>14</sup>

The United States' natural and political history commences with the colonization of the Atlantic seaboard and the settlers who imported their ideas about nature and the role of humans within it.<sup>15</sup> The settlers' alien political structures and philosophical and religious worldviews shaped the colonial relationship to land, animals, and Native Americans.<sup>16</sup> Purdy's modern disorientation and dislocation arises out of the United States' own current distress from a "threefold crisis" of ecology, economics, and politics.<sup>17</sup> These "three great modes," he emphasizes, are the way in which humans make a home: Ecology and economy come from the Greek word for household, *oikos*, and politics from *polis*, or city.<sup>18</sup> The colonial attitude was marked by hostility towards those already "at home" in the landscape and an insatiability for the development of the new world's abundant resources.<sup>19</sup> This early American "providential vision" continues to influence modern politics directed at conquering and controlling nature.<sup>20</sup>

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10. *Id.* at 52.

11. *See id.* at 6–7.

12. *Id.* at 8.

13. *Id.*

14. *Id.*

15. *See id.* at 52.

16. *See id.* at 52–53.

17. *See id.* at 17.

18. *Id.*

19. *See id.* at 68.

20. *See id.* at 217.

*B. Nature or Nature?*

In discussing the legacy of our environmental and political forefathers, Purdy highlights how each generation's political ideology informed legal action for the use or protection of nature.<sup>21</sup> The American understanding of nature is based, he argues, on nature's political and economic utility—a powerful combination found in, for example, westward expansion and development with its attendant resource extraction and enrichment.<sup>22</sup> This nature-as-utility ideology can also be found in the making of nature into a tourist playground for the wealthy, a staging ground for manhood in between foreign wars, and an increasingly scarce resource that needs to be used wisely instead of “waste[d].”<sup>23</sup>

Purdy's great-great-great-grandfather was deeded a piece of land for, as Purdy coyly discloses, his service in “a revolution.”<sup>24</sup> Through the lens of his lineage as a fifth-generation Pennsylvania farmer, Purdy draws out the complexity of this “revolution that was one part democratic insurgency, one part an elite land-grab.”<sup>25</sup> His project is an attempt to reconcile a history of violent dominion over nature and systemic eradication of America's original inhabitants.<sup>26</sup> Purdy's environmental ideals, and the beloved natural places that have given him a sense of *oikos*, are also threatened in the face of rapidly accelerating environmental destruction.<sup>27</sup> In looking to the past, Purdy hopes to show how we have arrived at our current Anthropocene crisis.<sup>28</sup> He believes the historical archive holds the key for confronting the end of nature while envisioning a democratic future in the Anthropocene.<sup>29</sup>

## II. ANALYSIS

*A. Our Anthropocene Future?*

Purdy argues that an exclusive politics is not an intrinsic feature of an “environmental imagination,” although dominant philosophies of nature have historically led to inequality.<sup>30</sup> For Purdy, democracy means that “everyone must have a voice in shaping the world.”<sup>31</sup> Yet, he often fails to address the possibilities of extreme environmental disparity depending on whose voices are

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21. *See id.* at 30.

22. *See id.* at 31, 35.

23. *See id.* at 39, 41, 76, 159.

24. *Id.* at 27–28. Although unstated in the text, a discerning reader will understand that Purdy is referring to the American War of Independence.

25. *Id.*

26. *See id.* at 27.

27. *See id.* at 26.

28. *See id.* at 30.

29. *See id.* at 50.

30. *Id.* at 282.

31. *Id.*

heard when policies are proposed and enacted. The Anthropocene, for example, is not simply a neutral record of man's destructiveness indelibly marked into the geologic record as Purdy believes.<sup>32</sup> Rather, it is the result of systemic disparity and the explanation for drastically uneven ecologic impacts that give some lives more value than others.<sup>33</sup>

Purdy suggests that the term "Anthropocene" is more than a simple description of verifiable material effects such as climate change; instead, it is "a way of organizing facts to highlight a certain importance that they carry."<sup>34</sup> Purdy's use of the Anthropocene as an organizing principle to interrogate the concept of "nature" in American political history neglects the most relevant fact about our modern ecological crisis: "Blaming all of humanity for climate change lets capitalism off the hook."<sup>35</sup>

Moreover, Purdy suggests that we can learn from our environmental forefathers and their orientations to nature to learn to live democratically in the Anthropocene.<sup>36</sup> He writes that a modern reading of the beloved nineteenth century nature writer, Henry David Thoreau, shows "just how long and actively Americans have been dealing with, interpreting, and learning from a transformed world."<sup>37</sup> For Purdy, despite the crimes European and American accounts of nature abetted, the canon of nature philosophy and literature "remains useful, even illuminating and exciting."<sup>38</sup> For Purdy, like the father of American environmental Romanticism John Muir before him, one can choose what one wants to inherit, such as the charismatic practices rather than the violences and exclusions.<sup>39</sup> As a tool to combat our Anthropocene future, Purdy argues for legacy.<sup>40</sup>

### B. *Geographical and Legal Displacement: The Case of Kivalina*

Purdy prescriptively argues that the law acts as a "circuit between imagination and the material world."<sup>41</sup> The predominantly Inupiat community

32. See *id.* at 1.

33. See Andreas Malm, *The Anthropocene Myth*, JACOBIN MAGAZINE, <https://www.jacobinmag.com/2015/03/anthropocene-capitalism-climate-change/> (last visited Apr. 26, 2017).

34. See PURDY, *supra* note 3, at 2.

35. See MALM, *supra* note 33. See also NAOMI KLEIN, *THIS CHANGES EVERYTHING: CAPITALISM VS. THE CLIMATE* (2014) (arguing that capitalism and the free market are the root causes of climate change rather than the solution); ELIZABETH A. POVINELLI, *GEONTOLOGIES: A REQUIEM TO LATE LIBERALISM* (2016) (examining theories of governance to argue against regimes of settler liberalism that ignore hierarchies of power); DONNA J. HARAWAY, *STAYING WITH THE TROUBLE: MAKING KIN IN THE CHTHULUCENE* (2016) (characterizing our epoch as learning how to live and die together on a damaged earth while displacing the centrality of Anthropocene paralysis with active engagement for building more livable futures).

36. See PURDY, *supra* note 3, at 125.

37. *Id.*

38. *Id.* at 27, 125.

39. See *id.* at 117.

40. See *id.* at 27.

41. *Id.* at 22.

of Kivalina tried to activate this legal circuit to protect their homeland in Northwest Alaska.<sup>42</sup> Currently, severe winter storms exacerbated by climate change are accelerating the erosion of the barrier reef upon which the community has lived since time immemorial.<sup>43</sup>

Kivalina sued “multiple oil, energy, and utility companies” for public nuisance due to a “substantial and unreasonable interference with . . . rights to use and enjoy public and private property.”<sup>44</sup> Damages awarded from the lawsuit would have helped relocate the community to higher ground.<sup>45</sup> The Ninth Circuit, however, held that Kivalina’s lawsuit was displaced by previous Supreme Court jurisprudence relating to Congress’s preemptive legislation on the “issue of domestic greenhouse gas emissions.”<sup>46</sup> These prior holdings “occupied the field to the exclusion” of Kivalina’s lawsuit.<sup>47</sup> The Ninth Circuit conceded their opinion did not help Kivalina, “which itself is being displaced by the rising sea.”<sup>48</sup> The court insisted that the solution “must rest in the hands of the legislative and executive branches of our government,” rather than the judicial.<sup>49</sup>

Kivalina’s displacement actually began over sixty years ago when the legislative and executive branches of the federal government required the State of Alaska to settle all pending land claims before constructing the 800-mile oil pipeline bisecting the state.<sup>50</sup> In what appeared to be a creative solution at the time, instead of giving each Alaska Native person or tribe fee simple in their resource rich home territories, the Alaska Native Claims Settlement Act of 1972 (ANCSA) organized tribes into corporations for the management of lands selected during the settlement process.<sup>51</sup> Development of these lands pay dividends to each enrolled tribal member, who is now an individual corporate shareholder.<sup>52</sup> While Congress’s and tribal leaders’ reasoning for the corporate structure was to help Alaska Native people become self-reliant, it has also made Alaska Native people deeply reliant on economic and political systems

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42. See *Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 853 (9th Cir. 2012).

43. *Id.* For a more detailed history of Kivalina see *Kivalina*, NANA, <http://nana.com/regional/about-us/overview-of-region/kivalina/> (last visited Apr. 25, 2017). The ancestors of modern community members used the barrier reef as a seasonal subsistence camp for thousands of years. The reef was also beneficially located for trade with Russian, American, and English whalers and explorers. It was not until 1905 when the Bureau of Indian Affairs built a school on the tip of the reef that people from surrounding areas were compelled to permanently settle. *Id.*

44. *Kivalina*, 696 F.3d at 849, 854.

45. See *id.* at 853.

46. *Id.* at 856.

47. *Id.*

48. *Id.* at 858.

49. *Id.*

50. ALEXANDRA J. MCCLANAHAN & HALLIE L. BISSETT, NA’EDA, OUR FRIENDS 11 (2004).

51. *Id.* at 13, 19–20.

52. *Id.* at 20. See THOMAS R. BERGER, VILLAGE JOURNEY: THE REPORT OF THE ALASKA NATIVE REVIEW COMMISSION 9 (1985) (“The village corporations are legally constituted to make profits, to pursue economic purposes.”).

that facilitate “boundless economic growth.”<sup>53</sup> The realization of this project has been mixed; Kivalina’s native corporation provides jobs and dividends from oil and mining operations, yet these same practices emit greenhouse gases which lead to the destruction of their home.<sup>54</sup>

### C. *An Economy of Desire*

Purdy argues the “only way to build a shared living place deliberately is through politics.”<sup>55</sup> Furthermore, democracy means “making the world together.”<sup>56</sup> But the political and legal structures that continue to produce Kivalina’s displacement are the result of deliberate American landscape architecture coupled with democratic and economic systems that rely on continued production. *Johnson v. M’Intosh*, a foundational judicial decision for the young United States, affirmed the country’s right to occupy and exploit all claimed territory in North America.<sup>57</sup> ANCSA, passed by Congress 150 years after Chief Justice John Marshall’s decision, demonstrates the enduring imaginative and structural power of the American legal system to occupy a field, or most of a continent. Purdy suggests *Johnson*’s decision came from the same providential vision that concluded that “[u]nless American law favored settlers and cultivators, the continent would remain a wilderness,” and “[n]ature was meant to serve human ends.”<sup>58</sup> For Purdy, our ecological present was made from this providential vision—a combination of power and imagination revealed in the historical record.<sup>59</sup>

In a sharp retort to *Johnson*’s self-serving idealism, Canadian justice and legal scholar Thomas R. Berger points out that “[t]he imposition of a settlement of land claims that is based on corporate structures . . . affected everything: family relations, traditional patterns of leadership and decision making, customs of sharing, subsistence activities, the entire Native way of life.”<sup>60</sup> *Johnson* promoted development and the expenditure of capital and labor in the service of settlers as opposed to Native Americans’ “mere subsistence economy.”<sup>61</sup> *Johnson*’s legacy is a continued “attempt to re-create Main Street

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53. BERGER, *supra* note 50, at 45; PURDY, *supra* note 3, at 284.

54. See *Natural Resources*, NANA, <http://nana.com/regional/resources/> (last visited Apr. 25, 2017).

55. PURDY, *supra* note 3, at 19.

56. *Id.* at 287.

57. *Johnson v. M’Intosh*, 21 U.S. 543, 603 (1823).

58. See PURDY, *supra* note 3, at 84.

59. See *id.* at 30.

60. BERGER, *supra* note 50, at 45.

61. *Id.*; MARSHALL DAVID SAHLINS, *CULTURE IN PRACTICE: SELECTED ESSAYS* 514 (2000). For a thorough discussion by the influential anthropologist who has written extensively on humans, nature, and culture about the clash between a worldview based in endless production as opposed to one based on a conservation of energy, see *id.* at 96 (“[T]here are two possible courses to affluence. Wants may be ‘easily satisfied’ either by producing much or desiring little.”).

on the tundra.”<sup>62</sup> The “displaced” community of Kivalina is the outcome of the United States’ expansionist and utilitarian attitude towards nature that refuses to “make the world together.”<sup>63</sup>

*D. The Personal is Not Always Political*

Purdy’s reliance on his individual experience, personal history, and particular intellectual and cultural knowledge as an entry point for a larger discussion about historical and political structures has roots in second-wave feminists’ rallying cry that the personal is political.<sup>64</sup> Feminists used the slogan to show how personal issues women face—such as reproductive choice and the division of household labor—are actually vitally and urgently important political questions in need of answers.<sup>65</sup> Purdy, however, inverts the paradigm and erases his personal stakes in his discussion of political and legal history. In contrast, he meditates on the imminent loss of the political and ecological worlds in which he feels at home in an attempt to turn his personal loss and disorientation into a political practice.

For Purdy, the law is the institution that allows both connection to the world and transformation within it. He suggests that “legal strictures channel our lives, providing the implicit blueprints of the landscape architecture that we impose on the world.”<sup>66</sup> His mostly elided feminist progenitors would add that laws also shape and restrict relationships and access: between and among the sexes, the rich and the poor, older and younger generations, and amongst those who are recognized as part of the *polis* and those who will always remain outside it. To architect the landscape is to decide who has access to electricity grids and highways, to economic stability, to education, mobility, and choice. Purdy suggests our attachment to certain places that are threatened by irrevocable change can lead us to engage in politics.<sup>67</sup> However, Purdy’s *oikos* is comfortably rooted in American expansionist ideals that continue to exclude a simultaneous politics of the personal (including histories of difference and lived experience) and the electoral (unrestricted access to participation and engagement in democratic institutions).

Purdy recognizes the political and legal history of the United States is one of eliminating difference, not by assimilation and incorporation, but by excluding “Native Americans, enslaved people, and women” from the *polis*.<sup>68</sup> Democracy could be defined by an ethic of equality among citizens only if there was a hard line that “marked off those it excluded [from the *polis*] as

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62. See BERGER, *supra* note 50, at 46.

63. *Kivalina*, 696 F.3d at 858; PURDY, *supra* note 3, at 287.

64. Carol Hanisch, *The Personal is Political*, in NOTES FROM THE SECOND YEAR: WOMEN’S LIBERATION 76 (1970).

65. See *id.*

66. PURDY, *supra* note 3, at 22.

67. See *id.* at 7.

68. See *id.* at 79.

natural subordinates.”<sup>69</sup> However, Purdy wants to rehabilitate the legacy of American environmental and political imagination.<sup>70</sup> Audre Lorde addressed the problem of inheritance when she famously retorted to a women’s movement that continued to leave some without *oikos*: “For the master’s tools will never dismantle the master’s house.”<sup>71</sup> Lorde identified the missing voices, Purdy’s “natural subordinates,” in the ongoing work of recognizing the personal and the political from an exclusive *polis*.<sup>72</sup> She argues that it is in the interdependence of mutual difference that one finds the power to envision and enact the future.<sup>73</sup> The voices of difference will dismantle Purdy’s assumption that the house built for someone else, with another’s tools, will ever be an inviting and sustaining home for those never considered as having a right to live in it.

### CONCLUSION

To combat our Anthropocene future, Purdy argues we need a “democracy open to the . . . intuitions of ethical affinity with other species, of the moral importance of landscapes and climates, of the permeable line between humans and the rest of the living world.”<sup>74</sup> The inheritors of Muir and Thoreau, however, know less about the moral importance of landscapes and climates than the Water Protectors of Standing Rock, the Community Water Center of the San Joaquin Valley, or the Inupiat inhabitants of Kivalina. A democracy of ethical affinity enables those outside the home to envision changes themselves in consultation with each other; these are the voices that will build an alternative to an Anthropocene future, and the tools they will use to dismantle, displace, and create are already bringing that future into being.

*Allison K. Athens*

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69. *Id.*

70. *Id.* at 125.

71. Audre Lorde, *The Master’s Tools Will Never Dismantle the Master’s House*, in *SISTER OUTSIDER: ESSAYS AND SPEECHES BY AUDRE LORDE* 112 (1984) (emphasis omitted).

72. *See id.* at 111-113; PURDY, *supra* note 3, at 79.

73. *See LORDE*, *supra* note 70, at 112.

74. *See PURDY*, *supra* note 3, at 282.

**We welcome responses to this Book Review. If you are interested in submitting a response for our online journal, *Ecology Law Currents*, please contact [cse.elq@law.berkeley.edu](mailto:cse.elq@law.berkeley.edu). Responses to articles may be viewed at our website, <http://www.ecologylawquarterly.org>.**