The Alchemy of the Public Interest

Alyse Bertenthal*

What does it mean to be in the public interest? Who has authority to define that interest? And how might such definitions emerge or be imposed? This Article offers a novel perspective on those questions, drawing from an ethnographic and historical study of the infamous California “water wars” to elucidate the discourses, logics, and practices through which people lay claim to the public interest. Such claims undergird the operation of environmental governance and inform the legal concepts that drive and authorize its implementation. As we continue to evaluate and reform ways of regulating natural resources, we must recognize the cultural norms and modes that construct the public interest and allow certain ways of governing to persist, even when they perpetuate inequality.

This Article focuses on those processes and explains their implications. It provides building blocks—both theoretical and methodological—necessary to further a more generalizable account of the public interest as concept and practice.

INTRODUCTION.........................................................................................2
I. “THERE IT IS: TAKE IT”: PUTTING THE OWENS VALLEY IN CONTEXT .5
II. ETHNOGRAPHY OF THE PUBLIC INTEREST .............................................7
III. ADVANCING MUNICIPAL POWER THROUGH APPEALS TO THE PUBLIC INTEREST .........................................................................................................................9
   A. Public Utilities and Public Power..........................................................10
   B. Publics in Place: Los Angeles and the Rise of the Municipal Utility

* Assistant Professor of Law, Wake Forest University School of Law. This article is based on research supported by the National Science Foundation (BCS-1459789), by the John Randolph Haynes and Dora Haynes Foundation, and by a Mellon/ACLS Dissertation Completion Fellowship from the American Council of Learned Societies. I owe many thanks to Emily Brooks, Susan Coutin, Elsa Devienne, Mona Lynch, Chandra Middleton, Keith Murphy, Rachel O’Toole, Emily Prifogle, Sayd Randle, and Sid Shapiro for comments on earlier drafts. Versions of this article were presented at the Princeton University Program in American Studies Graduate Student Conference in March 2016, at the Rural Legal Scholars Workshop in October 2020, and at the AALS Annual Meeting in January 2021. I am especially grateful to everyone in the Owens Valley and Los Angeles who permitted and participated in this research. I thank the YJLH editors, and especially Paul Meosky, for excellent editorial work.
INTRODUCTION

In 1905, the people of Los Angeles approved a bond measure to inaugurate construction of the Los Angeles Aqueduct, which would pull water from the Owens Valley across more than 250 miles of mountains, valleys, and deserts to supply the city with billions of gallons of water and electricity generated by hydropower. Urging the passage of that measure, William Mulholland, Chief Engineer for the Bureau of Los Angeles Aqueduct— the municipal utility that would build and manage the Aqueduct—assured the city’s voters that the project was necessary to meet the water needs of the city’s growing population.

In other words, reallocation of water satisfied the public interest.1

---

1. The Bureau of Los Angeles Aqueduct was a section of the city’s municipal utility, the Los Angeles Water Department. The utility went through several reorganizations and name changes, eventually becoming Los Angeles Department of Water and Power, by which it’s known today. See DWP—Name Change Chronology, WATER AND POWER ASSOCIATES, https://waterandpower.org/museum/Name_Change_Chronology_of_DWP.html.

To maintain consistency and minimize potential for confusion, this Article refers to the Los Angeles municipal utility as the “Water Department” regardless of the historical period in which it was operating.


3. Satisfying the public interest was a necessary justification for actions undertaken by public entities such as the Water Department. See Miller & Lux Inc. v. Enter. Canal & Land Co., 169 Cal. 415, 428 (1915) (declaring “public welfare as the highest law” and reviewing applications of “the great
Slippery and abstract, the public interest has never been an easy concept to pin down. But for Mulholland, the one-time ditch-tender with an engineer’s affinity for structure, justification for the aqueduct—and the larger project of redistributing water from the Owens Valley to the City of Los Angeles—could be described with resort to a simple formula: “water plus land equals people.” Understood in its broader historical context, we can read that formula as a blueprint for managing people and things in the name of the public interest: given enough land and water, the people will flourish. Belying the seeming simplicity of that equation, though, is a difficult question articulated within the Water Department itself: “How does one even define the ‘public’—which public, what good?”

The distillation of something as consequential as the public interest into a formula is striking given how often we use the concept and how little has been done to define it. Although disputes over who represented the public and what constituted their interests were the focus of early legal cases, today we rarely talk about who or what comprises the public interest. Some
scholarship discusses the public interest as a justification for government regulation and as a guiding principle for corporate decision making. There also exist valuable reflections on the discursive production of the public interest. However, there is little that elaborates the meaning of the public interest or that shows how it has been constructed. The concept is regularly presumed self-evident, spurring theoretical categories such as capture theory and public choice theory without theoretical reflection on the concept itself. Too often, the public interest is merely posited as an explanation rather than the thing that needs explaining.

The Los Angeles-Owens Valley story presents a particularly important and apt case for studying the construction of the public interest. As I describe in Part I, the Owens Valley has emerged as one of the most symbolically and substantively important examples of environmental conflict in the American West. The valley’s opposition to the Los Angeles Aqueduct spawned a series of events referred to as California’s “little civil war.” Scholars such as Gary Liebcap, John Walton, and Karen Piper have argued that the battles waged in that war generated social conflict that endures today, and that the outcomes of such battles serve as a caution to other rural communities faced with diminishing resources and thirsty urban neighbors.

To appreciate the consequences of those battles, we need to understand how competing publics and interests come to be defined: to identify not only what distinguishes one public or interest from others but also the means through which such distinctions were created in the first place. In doing so, I do not aim to instantiate a static formula of the public interest but rather

9. See Patricia Aufderheide, *Competition and Commons: The Public Interest in and After the AOL-Time Warner Merger*, 46 J. BROAD. & ELEC. MEDIA, 515, 515-31 (2002) (challenging the naturalness of property arrangements in communications policy and arguing against deregulatory ideology); Cass R. Sunstein, *Television and the Public Interest*, 88 CAL. L. REV. 499, 499-519 (2000) (stating that regulation best takes the form of “(1) disclosure requirements, (2) economic incentives (‘pay or play’), and (3) voluntary self-regulation through a privately administered code.”); see also Einer Elhauge, *Sacrificing Corporate Profits in the Public Interest*, 80 N.Y.U. L. REV. 733, 733-869 (2005) (arguing that pure profit-maximization is not a socially efficient goal because “even optimal legal sanctions are necessarily imperfect and require supplementation by social and moral sanctions to fully optimize conduct.”). See generally Michael E. Levine & Jennifer L. Forrence, *Regulatory Capture, Public Interest, and the Public Agenda: Toward a Synthesis*, 6 J.L. ECON. OR., 167, 167-98, (1990) (stating that regulation can be seen as “the necessary exercise of collective power through government in order to cure ‘market failures,’ to protect the public from such evils as monopoly behavior, ‘destructive’ competition, the abuse of economic power, or the effects of externalities.”). See infra Section II.C.


to unravel the myriad ways one formula was reformulated in Los Angeles’s efforts to manage the people and resources of the Owens Valley. The focus of this Article is therefore not so much on the land/water/people formula as on its iterations and elaborations, which provide insight into the often-hidden variables in assumptions and applications of the public interest.

My analysis of those formulations draws from more than two years of ethnographic research—including archival research, participant observation, and interviews—in Los Angeles and the Owens Valley. As explained in Part II, ethnography is a useful methodology for examining a construct such as the public interest precisely because it focuses on the overlooked discourses, practices, and processes that construct taken-for-granted meanings. The ethnographic vantage point allows us to see how law gets made and also what it means to participate (or not) in that creation.

Part III offers an ethnographic account of the Los Angeles-Owens Valley story, tracking Mulholland’s memorable formula through various iterations and elaborations as it reflected—and refracted—broader cultural practices. Part IV consolidates the lessons of the Los Angeles-Owens Valley story and suggests more general substantive and methodological implications of this case study.

I. “THERE IT IS: TAKE IT”: PUTTING THE OWENS VALLEY IN CONTEXT

Although the processes I examine are not unique to Los Angeles and the Owens Valley, that relationship provides an especially rich context for understanding the dynamism and complexity of the public interest. To understand that relationship requires contextualizing the two places. Los Angeles is the largest city in California, boasting nearly four million people. The Owens Valley lies about 250 miles northeast of the city. It is located in Inyo County, which is the second-largest county in California in terms of land mass and the second-smallest county in terms of total population. Wedged between the Sierra Nevada Mountains to the west and the White and Inyo Mountains to the east, the valley extends more than 100 miles north to south. Most of Inyo County’s population lives in the valley, clustered in small towns and cities or on one of five federal Indian reservations. There are Native Americans and descendants of white


settlers, but there also new arrivals, including full- or part-time retirees and vacation homeowners; migrants from Mexico; a revolving cast of engineers, scientists, and surveyors working on various projects; federal employees who staff visitor centers and patrol federal lands; and thousands of tourists streaming through to hike, climb, ski, bike, drive, shop, and eat.

It is difficult to describe the valley’s landscape—the miles of desert sagebrush beneath snow-capped peaks, the gurgling brooks lined with cottonwood trees, the palette of desert colors reflected under a shifting sun—without lapsing into overwrought descriptions or cliché. “Bold,” “awesome,” and “majestic” are the adjectives most frequently used to describe this picturesque part of the County. It is a place that captivates residents and visitors alike, casting—as one local author put it—“a spell of the land over all the men who had in any degree given themselves to it.”

The Owens Valley is known for much more than its landscape, though. The construction of the Los Angeles Aqueduct—and the subsequent diversion of water to Los Angeles—is the subject of popular fiction, Hollywood movies, and historical studies. The Owens Valley is often referenced as a potent symbol for both advocates and opponents of resource development in the United States, and it is held up time and again as exemplary of the politics of resource reallocation and the difficulties faced by resource markets in America. Indeed, the Owens Valley has been torn asunder by territorial conflicts with Los Angeles—“raped,” as some narrators have put it, by governments and corporations whose attitude toward the resource-rich region was famously captured in a 1913 speech by William Mulholland: “There it is, take it.”

That narrative of taking has several parts, all of which involve fundamental shifts in publics and their interests. Alan Bacock, the former Water Program Coordinator for the Big Pine Paiute Tribe, offered a pithy description of those momentous shifts:

There was a vast water resource in the Sierra Nevada mountains; the runoff came down and my people were able to use that water for their benefit. Then in the 1860s settlers from other areas started coming in and saw the potential in the valley for ranching and other things. They built fences and owned the land; that really changed the valley, at least...
from my ancestors’ perspective, who had no ownership of land or water. As people came into the valley, they didn’t see fences or ownership so they didn’t think land was being used to its full potential. The canals my ancestors built began to be used for delivering water for ranching purposes. That was the start of water being stolen.22

Later, the City of Los Angeles came, and, as Bacock suggested, “saw the same thing the ranchers saw: an abundance of water they could use.”23 They figured out who owned water rights in the valley and, in 1905, began purchasing land, posing as ranchers, farmers, and, in some cases, federal government officials.24 Los Angeles soon owned much of the water in the valley, and once construction of the aqueduct was completed, engineers began sending billions of gallons of water to the city.

Resource disputes in the Owens Valley did not begin and end with the aqueduct. Nonetheless, that story has exerted an outsized influence on all that came after it. I do not dwell on how Los Angeles secured the rights to water in the Owens Valley, for there exist already many excellent studies of the subject and its continued influence on California and national water policy.25 Rather, what I discuss here is the overlap between that history and the development of the public interest. The events and ideologies that gave rise to the aqueduct shaped a particular orientation toward publics and interests, for they defined the struggle between Los Angeles and the Owens Valley as to who controlled water and how best to use it. The legacy of that story is significant, too, because in tracing justifications for the aqueduct, we uncover efforts to define and apply the public interest. In what follows, I examine those justifications and the visions of public interest that emerged from them. I begin by explaining why and how the ethnographic method contributes to that analysis.

II. ETHNOGRAPHY OF THE PUBLIC INTEREST

Probing the public interest ethnographically offers a critique of fundamental principles in American environmental governance, uncovering cultural formulae to explain enduring inequalities in resource allocation. Ethnography is an established practice in a wide variety of disciplines and, in the most general sense, relies upon direct and sustained contact with agents to record, in their own terms, the complex ways in which taken-for-granted rules, decision-making, and institutions are embedded in larger

23. Id.
25. See generally, WILLIE ARTHUR CHALFANT, THE STORY OF INYO (1922); HOFFMAN, supra note 24; KAHL, supra note 20; MULHOLLAND, supra note 2; REMI NADEAU, THE WATER SEEKERS (1950); VINCENT OSTROM, WATER & POLITICS: A STUDY OF WATER POLICIES AND ADMINISTRATION IN THE DEVELOPMENT OF LOS ANGELES (1953); PIPER, supra note 13; WALTON, supra note 13.
social processes. By undertaking this analysis and explanation in relation to legal actors, institutions, and processes, ethnography reveals the negative space of law. It enables us to not only see that space as a subject in its own right but also to see how that space is created. As legal anthropologist Mark Goodale explains, ethnography allows the researcher to unpeel the layers of law from the inside out; to unfold law’s charts on the table of ethnographic scrutiny and examine its topographies and distortions; and to study law as a moral register that is not, as Aristotle claimed, free from passion, but instead infused with will, desire, madness, and the indelible traces of human suffering.

Resisting generalization to focus instead on specific people in specific positions situated in specific places, ethnography privileges self-representations and manifests the struggles over signification that form the foundation of law. Understood in this way, the legal meanings that emerge are “less a matter of consensus than argument” as culture’s “web of significance” untangles through careful exploration of who is pulled in and who is pushed out when definitions of the public and its interests take hold.

Close attention to these arguments is especially necessary for a concept as seemingly self-evident as the public interest. We are accustomed to thinking about the public interest as a numbers game: the inevitable summation of the “greatest good” for the “greatest number.” But to think too often of quantity risks obscuring those who do not make up the majority, of those people and things that have been erased. By focusing on the processes constructing concepts such as the public interest, ethnography calls attention to those people and things that are otherwise obscured by the final tally.

The equation of land, water, and people is appealing precisely because it

27. My use of “negative space” derives from its use in the artistic sense, as that space in and around an image that both forms its own image and emphasizes another image. For a popular example, see the Rubin vase/profile image.
moves us beyond quantitative analysis. However casually it was meant at the time, that formula suggests that the public interest is comprised of more than numbers; it includes consideration of water, land, and people, and the summation of all those things. In what follows, I subject this formula to ethnographic scrutiny as a means of not only defining these variables but also of examining the different ways in which they’ve been put together.

In probing the meanings and uses of each variable, I ask what insights that formula, and the tropes that produced it, hold for cultural understandings of the public interest as both a tool and as a standard for resource management. To do so, I examine a number of key texts and events, which, taken together, offer insight into the calculations that undergird the water/land/people formula and the public interest as a cultural and legal concept more broadly. I also draw from a multi-year research project that examined the intersections between law and environmental governance, using observations gleaned during that project to scaffold the texts discussed in this Article. I use these methods together to reorient explanations of the formula in particular and of the public interest more generally and to consider a more pragmatic, pluralistic notion of the public interest than common legal definitions and applications of the concept would otherwise suggest. Understood ethnographically, the public interest emerges as multidimensional, indeterminate, and stabilized more by its formulation than by any preconceived forms.

III. ADVANCING MUNICIPAL POWER THROUGH APPEALS TO THE PUBLIC

33. Most of the sources in this article are textual rather than human, but a study of those sources can also be described as “ethnographic.” See Sally Engle Merry, *Ethnography in the Archives*, in PRACTICING ETHNOGRAPHY IN LAW 128-142 (June Starr et al. eds., 2002). Whether and how historical ethnography differs from historical research has been the subject of debate, but one distinctive feature is its interdisciplinary character, which, as anthropologist Sally Merry suggests, combines an attention to meaning-making in stories, images, films, and other media with a concern with the historical conditions in which such texts are produced. See Sally Engle Merry, *Kapi‘olani at the Brink: Dilemmas of Historical Ethnography in 19th-century Hawai‘i*, 30 AM. ETHNOLOGIST 44, 56 (2003). See also JOHN COMAROFF AND JEAN COMAROFF, ETHNOGRAPHY AND THE HISTORICAL IMAGINATION 31-44 (1992) (describing the (inter)disciplinary boundaries of historical ethnography); Nicholas B. Dirks, *Is Vice Versa? Historical Anthropologies and Anthropological Histories*, in THE HISTORIC TURN IN HUMAN SCIENCES 17, 17-19 (Terrence J. McDonald, ed., 1996); Bernard Cohn, *History and Anthropology: The State of Play*, 22 COMP. STUDIES IN SOC’Y & HISTORY 198, 198 (1980) (comparing and contrasting “Anthropologyland” and “Historyland” as two models of knowledge-making); Kunal Parker, *Thinking Inside the Box: A Historian Among the Anthropologists*, 38 LAW & SOC’Y REV. 851, 852 (2004) (suggesting that the perceived divide between anthropologists and historians doing historical research is based on a false understanding of the potential and actual limits of archival sources).

34. By “tropes,” I mean a recurring motif used to give meaning to text. The study of tropes “allows us to see the wide margin of indeterminacy and interpretive leeway in communication” and can reveal how people “turn fact into fiction and fiction into fact.” Ivo A. Strecker & Stephen A. Tyler, *Introduction to CULTURE AND RHETORIC* 5 (Ivo A. Strecker & Stephen A. Tyler eds., 2009). The method I employ here may be understood as “tropology”: an ethnographic and analytic method attuned to the presence and use of rhetorical instruments in “turning” social action. James W. Fernandez, *Tropical Foundations and Foundational Tropes of Culture*, in CULTURE AND RHETORIC 166, 166-81 (Ivo Strecker & Stephen Tyler eds., 2009). Put more plainly, uncovering tropes is a way to uncover cultural meaning, for such conventions “turn out to be currency already in circulation.” MARILYN STRATHERN, *PROPERTY, SUBSTANCE, AND EFFECT: ANTHROPOLOGICAL ESSAYS ON PERSONS AND THINGS* 130 (1999).
Throughout the twentieth century, the pendulum of national environmental policy swung between preservation and conservation, powered by predominant social and political presumptions about publics and their interests. Preservationists linked their appeals to protect nature with the formation of a cohesive body politic, one united by a shared national interest and presumed to benefit equally from a well-preserved natural environment. In contrast, conservationists promoted a utilitarian view of nature, one that urged humans to protect resources in a way that promoted good for the “greater number.” However, focusing solely on the preservationist-versus-conservationist debate can obscure other oppositions that affected the management of natural resources: those between public and private entities, majority and minority populations, and rural and urban interests. In this section, I reframe the familiar environmentalism narrative to focus on these other contests. Although capturing only a snapshot of a particular moment in a particular locality, similar debates were happening across the country. The local narrative that unfolds here thus serves to illustrate more generalizable observations about the conceptual deployment of the public interest. At the same time, it introduces and emplaces the municipal utility, setting the stage for this Article’s subsequent discussion of the public interest formula propagated and instantiated by the Los Angeles Water Department in its dealings with the Owens Valley.

A. Public Utilities and Public Power

Today we are used to the idea of public utilities—more than sixty percent of gas, water, and electricity services in the United States are publicly owned. But this was not always the case. At the turn of the twentieth century, American cities were struggling to meet demand for such services, which municipal governments promoted as essential to ambitious urban development plans. The key question for cities across the nation was whether such services should be given over to private industry—to flourish or fail with the market—or whether utilities’ unique character as a common-pool resource meant that they should be managed by the people and their duly elected representatives. Proponents of private ownership pointed to the efficiency and economic gains resulting from private ownership. Opponents argued against concentrating yet more wealth in the hands of a few and contended that, because utilities were essential to the public, they should be managed by the public itself.

Concern for accountability was not the only factor driving proponents of public ownership. The demand for local control was indicative of a larger movement to establish cities’ independence from the state. In some states, including California, cities successfully established themselves as home-rule jurisdictions, giving them the power to exercise authority delegated by
In theory, these provisions “were enacted on the principle that the municipality itself knew better what it needed and wanted than the state at large” and thus should have the “privilege and right” to enact legislation to carry out these wants and needs. Although resolving some conflicts, home-rule provisions opened up entirely new fronts as cities and states struggled to define what “wants and needs” could—and should—be confined to a single city.

The subject of municipal utilities was a lightning rod in such debates. Those in favor of state regulation argued that utilities received charters from the state and therefore should be subject to state control. In response, supporters of municipal regulation of utilities argued that control should fall to the government most directly responsive to those who consumed the utility services. An essay penned by Dr. Delos F. Wilcox, a nationally recognized expert on public utilities, illuminates these rationales. Writing on behalf of all but one dissenting member of the National Municipal League Committee on Franchises, Dr. Wilcox argued that state regulation of utilities deprived localities of essential decision-making power and was tantamount to giving control over to private corporations. According to Wilcox, municipal ownership was not only essential for practical reasons but also democratic ones. As long as people of the city “have responsibility for working out their own municipal salvation,” he argued, they should not accept transferring control of the utilities “to a distant authority not politically responsible to the people of the city, and not thoroughly acquainted, by residence in the city, with local conditions and local needs.” Yet even Dr. Wilcox’s vision of “local” accountability extended only so far as the city’s borders. He suggested that he would not support extending control over utilities to rural communities, for “it is clear in the country and in small towns, the public authorities are wholly lacking in equipment for the regulation and control of public utility corporations.”

36. See Fragley v. Phelan, 58 P. 923, 925 (Cal. 1899) (defining California’s constitutional provisions, specifically Article XI section 6 as it was written in the late nineteenth century, with regards to the scope of legal authority for the state and municipal governing bodies).
39. See e.g., J. Allen Smith, Effect of State Regulation, 53 Annals Am. Acad. 85, 88 (1914). Arguing against state regulation of utilities, Smith argued:
[A] well established principle of political science that to ensure an efficient exercise of a given power, it should be lodged in some governmental agency directly responsible to a constituency that would be benefited by having it enforced. It is for this reason that exclusive state control of local utilities fails to meet the requirements of democracy. In so far as it substitutes an irresponsible for a responsible control, it strikes at the foundation of that essential of democracy local self-government.
41. Id. at 16.
42. Id.
As evident in Dr. Wilcox’s writing, and in that of others supporting municipal ownership of utilities, the resolution of ownership in favor of cities was both an indicator and a gateway for municipal power.\textsuperscript{43} Even today, municipalities are increasingly determined to take back control over utilities,\textsuperscript{44} believing it necessary to do so to reshape environmental protection and mitigate climate change.\textsuperscript{45} In summary, the assertion of municipal control over utilities was about protecting democracy—in the sense of providing power to the entity most directly accountable to the people affected by that power. But it was also about providing necessary power to promote a particular democratic vision: one that tied local control to environmental sustainability.

\textbf{B. Publics in Place: Los Angeles and the Rise of the Municipal Utility}

In California, municipal authority over the provisions of utilities such as electricity and water was uncertain until 1911, when the Legislature enacted a bill providing broad plenary power to cities to “establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication.”\textsuperscript{46} In Los Angeles, municipal authority over water was achieved even earlier, when the City Charter was amended in 1902 to provide for public ownership of water through the creation of the Los Angeles Water Department. The question of who would control electricity remained unresolved for nearly a decade.\textsuperscript{47} During that time, the city and Southern California Edison—the city’s privately owned electrical-service provider—were in and out of court, battling for control of the city’s electrical grid.

The battles between the city and the Edison Company focused squarely on the streets of Los Angeles. Seemingly trivial details, such as where to erect a telephone pole or how far to space power lines, kept planners and engineers focused on the minutiae of the urban landscape. Officials of the municipal Water Department, however, looked towards different horizons: to the Owens Valley, where they saw an abundant source of water that could slake the thirst of the growing metropolis.\textsuperscript{48} Drawing water from the Owens Valley, wrote historian Jack Heyser in 1934, became inevitable as “the little city of Los Angeles began to build up so fast with waves of Tourists and Settlers.” This, he explained,

\textsuperscript{43} \textit{See}, e.g., Vincent Ostrom, \textit{State Administration of Natural Resources in the West}, 47 AM. POL. SCI. REV. 478, 482 (1953).


\textsuperscript{45} \textit{See id.}

\textsuperscript{46} CAL. CONST. art. XI, § 9; \textit{see California Apartment Ass’n v. City of Stockton}, 95 Cal. Rptr. 2d 605, 610 (Cal. Ct. App. 2000).

\textsuperscript{47} Clarence Meily, \textit{The Referendum Movement and Socialist Movement in America}, 4 INT’L SOCIALIST REV. 204, 205 (1903).

\textsuperscript{48} KAHL, supra note 20, at 239.
led to the idea to go away up into the Owens Valley, in the distant County of Inyo. Here there was an abundance of clear melted snow water going to waste in that vast Soda Sink called Owens Lake. Here this sweet water was left to evaporate in this Hell-Hole doing nobody any good. Los Angeles was just about 250 Miles more or less.\textsuperscript{49}

Heyser’s account is typical of the utilitarian calculations used to justify the eventual usurpation of land and water from the Owens Valley. Contrasting the value of the resource with the poverty of the Owens Valley and its inhabitants, Los Angeles could claim to serve the greatest good for the greatest number of people.\textsuperscript{50} That perceived benefit extended beyond water allocation. City officials noted with obvious satisfaction that the massive exportation of water from the valley could generate cheap power along the way. Profits from the sale of this cheap power and electricity would net the city two million dollars annually—more than enough to pay for the aqueduct that would bring it water from the Owens Valley.\textsuperscript{51}

If such statistics generated enthusiasm in the city’s political circles, they also created anxiety for the private power companies. Whether these companies would have any role in developing the new power supply remained an open question.\textsuperscript{52} They sought to cast doubt on the project altogether. The \textit{Los Angeles Times} reported that F.C. Finkle, a respected engineer retained by the Edison Company, was “telling friends and business acquaintances that the Owens River Project is a ‘scheme of graft,’ an engineering absurdity, a financial chimera and an utterly impracticable proposition.”\textsuperscript{53} The General Manager of the Pacific Light Company, Allan C. Balch, reputedly echoed these comments to friends and acquaintances.\textsuperscript{54} In a more public forum, the Los Angeles newspapers ran dozens of editorials and advertisements urging defeat of the city’s aqueduct project and proposed bond measures.\textsuperscript{55}

Fred Eaton, Superintendent of the company that would become the Water Department,\textsuperscript{56} proposed that the aqueduct be a joint public-private venture.

\textsuperscript{49} Jack Heyser, \textit{The Los Angeles City Fathers Go Water Hunting} (Jul. 20, 1939) (unpublished manuscript) (on file with LADWP Records).

\textsuperscript{50} See Oravec, supra note 10, at 44 (tracking the views of “public interest” in California’s Hetch-Hetchy controversy as indicia of broader societal transition from conservationist to preservationist ideology).


\textsuperscript{52} See id.

\textsuperscript{53} Id. at 395.

\textsuperscript{54} See id.

\textsuperscript{55} Opposition to the project could not be attributed solely to economics. Reflecting on attempts to provide water to Los Angeles from the vantage of a contemporary water crisis in California, \textit{N.Y. Times} columnist Peter Passell suggested the entire premise was absurd, writing: “California’s water system might have been invented by a Soviet bureaucrat on an LSD trip.” Peter Passell, \textit{Economic Scene: Greening California}, \textit{N.Y. TIMES}, Feb. 27, 1991, at D2.

\textsuperscript{56} The \textit{Los Angeles City Water Company} managed the municipal water supply in Los Angeles until 1902, when the City Council created the Water Department.
This did not mean that private corporations would share in the profits, however. By “private,” Eaton apparently meant himself. He offered to secure all land and water rights for the city in return for “the right to develop all the water power incident to construction.” He claimed such capital would be “out of the pale of political influences . . . which always arise when any municipality undertakes some project on a gigantic scale.”

While Eaton and public officials fought the private electric utility companies in courtrooms and backrooms, the Water Department’s Division of Public Affairs engaged in a different kind of battle for public opinion. It published newsletters and print ads, stickers and bill inserts, and even articles and semi-fictionalized stories in local magazines and newspapers. Although produced by a municipal agency, those public relations materials did not center on Los Angeles. Instead, they focused on the Owens Valley, emphasizing the resources, topography, and character of that region. Through its campaigns, the Water Department did not adopt utilitarian logic so much as try to reconceptualize the Owens Valley as a source of land and water. It urged urban residents to locate nature outside the city’s boundaries and to make use of the valley for their recreation and pleasure.

By “de-localizing” nature in this manner, the Water Department generated popular support for resource extraction and development in the Owens Valley and created a lasting legacy of local urban identity in contrast to a naturalized rural Other. Promoting visions of an urban public interest through utopian visions of the Owens Valley, the Water Department’s campaigns reflected fundamental ideologies of the Owens Valley to promote the use of the natural world for municipal ends while also shaping a vision of people grounded in urban life. This definition of the public was created against—not by—the valley’s residents, and it continues to influence environmental governance in the valley even more than a century later.

IV. WATER + LAND = PEOPLE

Although generated even before the completion of the aqueduct, the equation of water, land, and people proved to be a prescient framework for the Water Department’s public relations campaigns. In this Part, I show how water and land were mobilized and defined by the Water Department.

58. Quoted in Van Valen, supra note 51, at 91.
59. Although these contemporary conflicts are not the focus of this Article, the connections between history and current social and legal struggles are inescapable: “The Owens Valley today is one area where the past is a vital part of the present.” KAHRL, supra note 20, at x. For more on current conflicts in the Owens Valley, see Alyse Bertenthal, Scaling the Baseline: Technicalities and Environmental Regulation in Owens Valley, California, 43 LAW & POLICY 30 (2021).
60. From the outset, the construction of the Aqueduct generated controversy for the Water Department as people throughout the nation debated whether the Department’s machinations constituted “vision or villainy.” HOFFMAN, supra note 24, at 91-135.
to garner support for its projects. The public relations campaigns spanned decades, but in order to provide substantive analysis, I focus here on just a few representative examples. My analysis does not assume that the publications represent an accurate portrayal of reality or even of municipal policy. Rather, I look at them as indicia of attitudes towards the valley. The crux of my argument is that municipal visions of the valley should not be regarded as mere representations of the rural or of nature but rather as socially constructed interpretations that served specific—and specifically urban—ends.\(^{61}\)

The history recounted in Part III suggests that power, as well as water, proved crucial to the development of the Los Angeles municipal utility. Water from the Owens Valley would be used not only to slake urban thirst but also to supply the growing metropolis with electricity needed for growth. Power, of course, has multiple meanings. This was not lost on residents of the Owens Valley, who often joked with me that the modern successor to the Water Department—the Los Angeles Department of Water and Power—was called “Water and Power” for a reason, emphasizing the last part to point out the dynamics of power and subjugation they saw in the interactions between the city and the valley. Thus, in exploring iterations of Mulholland’s formula, I also consider the unverbalized assertion of power and how it factored into various formulations of the public interest.

A. (\(\text{Land} + \text{Water}\)) * (\(\text{Power}\)) = \(\text{People}\)

By the 1920s, the aqueduct was complete and the Water Department no longer needed to raise money for construction. However, maintenance of the aqueduct and power stations still required capital investment and the city sporadically proposed new bond measures to publicly support aqueduct projects during this period. At the same time, the city was dealing with significant—and sometimes violent—unrest in the valley as the remaining residents became increasingly incensed over what they saw as the city’s theft of their water.\(^{62}\) This generated negative press coverage in both Owens Valley and Los Angeles as officials in both locales challenged the Water Department to show that it was indeed working in the public interest and that public financing for the aqueduct was justified.

If calculated strictly by the numbers, this would have been an easy task. After all, between 1880 and the turn of the century, the population of Los Angeles increased tenfold from 11,000 to 100,000.\(^{63}\) By 1905, the population was approaching 200,000.\(^{64}\) So-called “boosters” working with

---


63. Van Valen, supra note 51, at 85.

64. Id. See also MIKE DAVIS, CITY OF QUARTZ 25 (1990) (“For more than a quarter century, an
chambers of commerce in Los Angeles fueled this exponential growth, widely promoting the city’s advantages and urging additional settlement there.\textsuperscript{65} The boosters embraced municipal efforts to develop a stable water supply and ensure ample electricity as essential to sustaining domestic livelihoods, public transportation, and industry.\textsuperscript{66}

Yet such utilitarian calculations also created arguments about who should benefit from the aqueduct and at what cost.\textsuperscript{67} For example, debates erupted over whether the water should be distributed only in the City of Los Angeles or throughout the greater area of Los Angeles County.\textsuperscript{68} Arguments also arose over how to maximize profitability and pay back the costs of constructing the aqueduct.\textsuperscript{69} So, too, there existed many critics for whom numbers were beside the point, for whom the “greater good” argument was little more than a weak justification for exploiting “an unwitting rural people” by an “arrogant city.”\textsuperscript{70}

Spurred by the need to counterbalance these forces, the Water Department’s Public Affairs Division transitioned to new forms of publicity, including brochures and films. Rather than traditional print ads and bill inserts, they began to produce standalone publications, which mirrored in both form and function popular travel guides. In the next section, I describe exemplars of these genres and the ways in which they influenced alternative formulations of the public and its interests.

\textbf{B. (Land + Water) / People = Power}

\textbf{1. Water and Power Land}

Perhaps the most iconic of the Water Department’s public relations publications was a series of consecutively numbered pamphlets entitled “Little Journeys into Water and Power Land.” Running five or six pages and neatly folded in book form, each of these pamphlets featured unprecedented mass migration of retired farmers, small-town dentists, wealthy spinsters, tubercular schoolteachers, petty stock speculators, Iowa lawyers, and devotees of the Chautauqua circuit transferred their savings and small fortunes into Southern California real estate.”


\textsuperscript{66} Municipal utility companies played a key role in promoting the development of these resources and their benefits to urban development. The LADWP files are replete with advertisements of this sort. Exemplars are displayed online at the \textit{Early DWP & SCE Marketing, Water & Power Associates}, https://waterandpower.org/museum/Marketing.html (last accessed Apr. 14, 2021).

\textsuperscript{67} \textit{See Kahl}, supra note 20, at 180-94.

\textsuperscript{68} \textit{See id.}

\textsuperscript{69} \textit{See id.} at 182 (describing “efficiency-minded Progressives” as likening Los Angeles to “‘a huge corporation . . . [whose] citizens are stockholders and [whose] purpose is not to produce dividends but to promote the well-being of the community and to conserve the interests of the people as a whole.’”) (quoting Reynold E. Blight, \textit{Municipal Government 50 Years from Now, CAL. OUTLOOK}, Oct. 21, 1911).

\textsuperscript{70} \textit{Liebcap}, supra note 13, at 19-22 (summarizing popular critiques of the aqueduct, including charges of “theft” and “hydrocolonialism.”)
photographs of the valley’s majestic scenery along with text extolling the beauty, purity, and abundance of its natural resources. The effect of these brochures was a blurring of lines between advertising and travelogue that merged enthusiastic sales pitch with encyclopedic detail about an unknown place.

A page from “Trip No. 1” offers an example of this publicity genre. Featuring a cloudy sky cut by a jagged peak, the photo foregrounds a large alpine lake. The lake is so clear that it functions as a mirror for the low-lying hills and trees surrounding it.\(^71\) The text below the picture draws the reader along, as a guide would on a nature hike. “Proceeding northward a few miles beyond the Aqueduct intake, we enter Big Pine Canyon,” the text begins.\(^72\) The brochure then points out that there are no fewer than six lakes fed by a mountain glacier, which not only provides pure water but connects the depicted scene to “the remote Glacier Age.”\(^73\) The text concludes by observing that these lakes are “typical of the hundreds of others in the Sierra Nevada mountains which serve as a source of the water and hydro-electric power” brought to Los Angeles by the Water Department.\(^74\)

\[\text{Photo of Palisades Glacier}^75\]

The message embedded both visually and textually is twofold. First, the Water Department had found a veritable paradise, which would supply the

\(^{71}\) Little Journeys into Water and Power Land, Trip No. 1, at 1 [hereinafter Trip No. 1] (on file with LADWP Records).
\(^{72}\) Id.
\(^{73}\) Id.
\(^{74}\) Id. at 2.
\(^{75}\) Id.
city with the purest water as a vital life source as well as an increasingly valuable energy source. Second, there were boundaries between the city and the source of its newfound wealth. By addressing its readers as tourists, the Water Department reminded them that this natural world existed elsewhere. It was a land to be visited and admired—accessible but nonetheless distant. Markers of the modern city—the massive steel and concrete aqueduct, the hydroelectric plants—offered a contrast to the natural scenery. One “proceed[ed] northward” from the aqueduct or departed from the power plants to find the mountains, lakes, and forests.76

Nature was not merely contrasted to the municipal infrastructure; it also directly challenged that infrastructure. In Trip No. 2, for example, the Department traces a sort of reverse pioneer adventure, showing the pipe snaking up a high mountain pass, away from the valley and back toward the metropolis.77

The text accompanying the photo emphasizes the technical achievement of laying pipe across so much wilderness: “In the course of its difficult journey to the city . . . [the pipe] is confronted with scores of mountain barriers . . . . At other points, deep canyons challenge the passage of the waterway.”79 Not until the Owens Valley “do we find the Aqueduct water

76. Id.
77. Little Journeys into Water and Power Land, Trip No. 2, at 1 [hereinafter Trip No. 2] (on file with LADWP Records).
78. Id.
79. Id. at 2.
flowing in an open conduit.” Here, too, the Department presents a stark contrast between the rigorously engineered municipal infrastructure, valiantly struggling through myriad natural challenges, and the open country in which one might enjoy unconstrained freedom.

Such comparisons are far from unusual. In fact, the romanticization of American rural spaces was a common strategy for dealing with the increasingly frenetic pace of municipal development and growth in the twentieth century. Pastoral images and poetic odes to open space reminded urbanites not only that it was possible to escape the unpleasant conditions of city life, but also that those conditions represented the victory of man’s industry and skill over even “mountain barriers” and “deep canyons.”

2. The Watering Hole

Not only did the Department portray the Owens Valley as a deserted place, it unmoored that place from any specific geographic location. Consider, for example, a promotional film, made in 1928 to urge yet another round of public financing for Water Department projects. The film begins with a long shot of a watering hole where a single burro stands, looking forlornly into the camera. It then pans to the City of Los Angeles, showing buildings and then crowds of people as a deep voice tells the viewer, “It is a far cry from the 49’er and his meager water needs to those of the great metropolis of this Pacific Coast. Los Angeles, with its ever-increasing demands for water, to preserve the life of its people and to power its complex industrial empire.”

The city, the narrator explains, went in search of water in the Owens Valley. The film then reveals a photo of a mountain range, which dissolves into a close-up of snow gently falling on a mountain peak before picking up speed and swirling in a blizzard. Then the scene fades to a peaceful scene of snow-capped peaks. Here, the narrator continues, Los Angeles sought water “and found it in tiny snowflakes falling on a mountaintop.” As the film shows more images of the Owens Valley—wildflowers, creeks pouring into the Owens River and then to the Owens Gorge where power lines would soon be erected—the narrator proclaims, “The harvest is on; water for millions is on its way!”

The film then transitions from the seemingly barren landscape to images of abundant fish swimming in fish hatcheries. The “pure, fresh” water

80. Id.
81. See Robert Goldman & David R. Dickens, The Selling of Rural America, 48 RURAL SOC. 585, 585 (1983) (stating that the “depiction of rurality . . . is actually utilized to justify the pattern of privatized consumption that it ostensibly opposes”).
82. Trip No. 2, supra note 77, at 2.
83. LADWP Promotional Film (1928) (on file with LADWP records).
84. Id.
85. Id.
86. Id.
pumped into the aqueduct, the narrator notes, also sustains the “essential” operations of these hatcheries, which produce millions of eggs and breeding stock that are then flown to lakes and rivers on distant mountain trails, where they await the hordes of sport fishermen who arrive from the city at the first sign of spring.\(^87\) And then the camera pans to a deep gorge, and the narrator reminds us that water is not merely for the mountains and fish and people but also for “the task of generating electric power for the City of Los Angeles.”\(^88\)

Pausing for a moment on the discharge from the plants, the film then takes its viewer to a busy laboratory where men in white lab coats bustle about ensuring, as the narrator puts it, the purity of this “liquid life.”\(^89\) The film closes with a series of city shots—of a fountain gushing water, of a fireman’s hose putting out a building blaze, of a child turning a tap, of a housewife turning on her electric oven—as the narrator suggests that “it is in the homes of Los Angeles that the water for millions reaches its greatest human value.”\(^90\)

The message of this film is neither hidden nor subtle. The Owens Valley exists not so much as a place as an origin—of water, scenery, sport, and even food. Industry, science, and home are all located in Los Angeles, to be nourished and enhanced by the water extracted from the valley. In the film, there is no question of where the public resides. To determine who should benefit from the Water Department’s extraction of water, one need only look to the city—indeed, only there is one likely to even find people in the first place. Indeed, the film portrays people in the Owens Valley only a handful of times: when a delegation from Los Angeles visits the valley, scouting for water; when workers arrive to begin construction of the aqueduct; and when people tumble out of cars with skis in hand or arrive at lakes with fishing rods at the ready. These images create the impression that people come from the city to enjoy the pristine, natural, and unpopulated valley for one of two purposes: either recreation or the “serious business” of finding water.\(^91\)

The narratives embodied in this production work by locating the public in particular places—notably urban landscapes and suburban homes—and especially by portraying people of one kind separate and distinct from people of another kind. The paucity of peoples scenes in the film was indicative of the Water Department’s publicity in general. Dozens of images of mountains, forests, lakes, and streams appeared in the Water Department’s advertising campaigns, but people were far scarcer. The Water Department’s campaign presented the valley as a *terra nullis*, to be

\(^{87}\) *Id.*  
\(^{88}\) *Id.*  
\(^{89}\) *Id.*  
\(^{90}\) *Id.*  
\(^{91}\) *Id.*
explored, enjoyed, and appreciated. Its formidable natural challenges were to be conquered, but never taken, because there was no one to take them from. Land and resources were there to serve an unseen human force, to nourish and sustain not just any man, but a specifically urbanized man in need of water, power, and escape to a purer, simpler world.

C. \((\text{Land} + \text{Water} + \text{Power}) - (\text{Others}) = \text{People}\)

As it turns out, Los Angeles was acutely aware of the presence of people in the so-called “Water and Power Land.”

Even as the Department of Public Affairs was churning out brochures and films such as the ones described above, agents in the Water Department’s Right of Way and Land Agency were strategizing ways to acquire “100 percent” of the valley’s lands.

Much historiography of this period focuses on the transformation of the valley into a “ghost town” as farmers were pushed out by the city’s purchase of land and appurtenant water rights.

Yet those odes to loss do not fully account for the erasure of people in the Owens Valley.

In this section, I focus on the municipal utility’s efforts to remove the indigenous Paiute and Shoshone peoples from the Owens Valley. In doing so, I draw attention to the hidden math that facilitated the seemingly easy equation of land, water, power, and people. As will become

---

92. Trip No. 1, supra note 71.
93. HARVEY VAN NORMAN, REPORT AND ACCOUNTS OF THE WATER SYSTEM I (1931).
94. Any benefits derived from increased interest in tourism did not offset the loss of land, which supported a primarily agrarian economy. See Walton, supra note 13, at 87.
96. In recent years, the Owens Valley Indian Water Commission has made an effort to illuminate details of this history, see A History of Water Rights and Land Struggles, OWENS VALLEY INDIAN WATER COMMISSION, http://www.oviwc.org/water-crusade, but surprisingly little of this story appears in the existing historiography of the Owens Valley. Historians of the valley have dedicated thousands of pages to describing, debating, and determining the role of LADWP in California’s “water wars,” but they are virtually silent as to the parts played by Native Americans in those wars or the effects of such wars on Indians in the Owens Valley. Their descriptions of the Land Exchange – when they mention it at all – are brief and conclusory. William Kahrl begins with the observation that “The history of California in the twentieth century is the story of a state inventing itself with water.” KAHRL, supra note 20, at 359-61 (1982). Following a brief sketch of the development of riparian rights doctrine in the mid-1850s, Kahrl then leaps forward to the arrival of LADWP in the Owens Valley at the turn of the century. The remainder of the history concentrates on “separating what happened from what did not,” focusing especially on “what happened” to the townspeople and ranchers to the exclusion of the Paiute and Shoshone Indians who also lived there. Id. at x. Kahrl concluded that, unlike LADWP’s takings elsewhere in the valley, the Land Exchange was ultimately beneficial. Id. at 359. He observed, without any apparent irony, that the “generosity” of the Land Exchange was on par with that shown toward “another displaced part of Creation,” the Tule Elk, which LADWP had transplanted to the valley after learning of their near extinction in other regions. Id. at 359.
John Walton’s Western Times and Water Wars is only slightly more comprehensive. Walton offers an overview of the Indian Wars in the Valley and documents Paiute and Shoshone labor on local ranches in the early 1900s, but he devotes little attention to the subsequent interactions between the Owens Valley Indians and LADWP. Like Kahrl, Walton concludes that the Land Exchange turned out to be “a boon for Indians formerly deprived of a decent home.” WALTON, supra note 13, at 283.
evident, the cultural expressions of public interest depended not only on creating imaginaries of bountiful land and water through propaganda but also through the efforts of city officials actively trying to erase any people who would inevitably unbalance the equation. In understanding the public interest as a cultural construction, we must acknowledge erasure as an inevitable part of that construction—one that renders illusory the equilibrium of remaining variables.

1. “A Sad Picture”: Indian Welfare in the Owens Valley

By the turn of the century, ranching and farming had become the primary source of employment for the Paiute and Shoshone men and women, and as water and then ranchlands diminished, so did their wages.97 With fewer job opportunities and more restrictions on hunting and fishing on lands purchased by Los Angeles, many families became dependent on aid from the federal government.98 Even this aid, however, was extremely limited. According to Ray Parrett, Superintendent of the Walker River Indian Agency with jurisdiction over the Owens Valley, such rations included only four cups of flour, two cups of rice, three pounds of sugar, a couple of hands of macaroni, two small cans of baking powder, and a piece of bacon “the size of your hand.”99

Scarce food and the persistence of unusually harsh winters put intense pressure on indigenous people throughout the valley. Between 1920 and 1930, the Walker River Indian Agency documented an almost fivefold increase in cases of diphtheria among the Owens Valley Indians;100 cases of influenza and smallpox also multiplied.101 At the time, Indians lived on scattered homesites throughout the valley or took up temporary residence on Los Angeles’s recently acquired lands.102 Many of them built shelters near the streams and rivers that fed the aqueduct, and as the Indians’ health worsened, the city’s concerns grew.103

By April 1930, perceptions of Indians “living under deplorable conditions, some being on the verge of starvation” prompted the Water Department’s governing board to order a report on the situation.104 Chief Engineer and General Manager Harvey A. Van Norman assigned the task to his Right of Way and Land Division—the division responsible for handling the Water Department’s real-estate portfolio. A.J. Ford, the Right

97. WALTON, supra note 13, at 27-31.
99. A Dire Situation for Owens Valley Indians, INYO INDEP., Apr. 4, 1925, at 3.
100. Much of the history recounted in this section, focuses on the early twentieth century. I use the word “Indian” to preserve the historical language in both direct quotes and in my discussion of historical events. See Gregory Ablavsky, With the Indian Tribe, 70 STAN. L. REV. 1025, 1028 n.1 (2018).
101. DEC. 1929 WALKER RIVER INDIAN AGENCY MONTHLY REP. 1.
102. See A.J. FORD, OWENS RIVER VALLEY INDIAN PROBLEM 19 (1930) (on file with LADWP Records).
103. See id. at 18, A Dire Situation for Owens Valley Indians, supra note 99, at 3.
of Way and Land agent stationed in the Owens Valley directed the investigation.\textsuperscript{105} He completed a final report in June 1930.

Despite the alacrity with which it was written, Ford assured his readers that the report was “founded upon concrete facts, as found in the field.”\textsuperscript{106} In a brief “acknowledgements” section, he elaborated on the nature of this fieldwork: two Right of Way and Land agents, assisted by L.L. Goen, the Indian Service’s Farmer in Charge and former Superintendent of the Owens Valley Indian School, canvassed the valley and created a rudimentary census of the Indians they encountered.\textsuperscript{107} The Water Department’s Irrigation Engineer identified through unspecified means potential new lands for the Indians.\textsuperscript{108} In addition, Indian Agent Ray Parrett, the missionary Richard Price, and a prominent local businessman offered suggestions and “constructive criticism of the past and present situation.”\textsuperscript{109}

Based on the “facts” compiled through these means, Ford produced a twenty-six-page report describing the extent and causes of what he termed the “Indian problem,” followed by a proposal for three new homesites away from the city’s water sources along with hundreds of pages of exhibits, including pictures of existing housing, floor plans for proposed housing, maps of proposed homesites, estimated costs, and census details.\textsuperscript{110} The proposed solution, Ford asserted, would be successful as long as they did not “fall into the hands of theorists who believe every Indian should be a ‘Hiawatha’ or ‘Minnehaha.’”\textsuperscript{111}

Hiawatha, a Native American leader credited with unifying five tribes into the Iroquois Confederacy in the eighteenth century, and Minnehaha, his fictionalized lover, were popular symbols of Native American strength, humanity, and capacity to transcend cultural divides.\textsuperscript{112} These were not the qualities Ford highlighted among the Indians of the Owens Valley. Instead, he described a “semi-Nomadic” people long in conflict with the white settlers.\textsuperscript{113} The Indians Ford observed were the “victim[s] of an unfortunate situation,” “largely being dependent on leadership” and “helpless without such guidance,” who “have prospered best when on a steady payroll” although “[n]one of them can be termed as skilled laborers.”\textsuperscript{114} As a result of an “almost exhausted market” for their labors, Ford presented what he called a “sad picture” of the Indians in the valley: “A picture not only of being in a state of poverty, but also for the greater part, living under adverse

\textsuperscript{105} FORD, supra note 102, at 1.
\textsuperscript{106} Id. at 2.
\textsuperscript{107} Id. at 2-3.
\textsuperscript{108} Id. at 3.
\textsuperscript{109} Id.
\textsuperscript{110} See id. at 12-352.
\textsuperscript{111} Id. at 2.
\textsuperscript{113} FORD, supra note 102, at 4.
\textsuperscript{114} Id. at 6.
conditions.”

By painting this picture, Ford masterfully crafted a problem statement that led directly to the Water Department’s desired solution. In Ford’s portrayal, the Owens Valley Indians were “victims” who could hardly be expected to fend for themselves: unsuccessful farmers with little claim to the land, who were by then dependent on employment on quickly disappearing farms and ranches.

Notably absent from Ford’s summary was the role of the federal government—whose failures and missteps have been well documented by historians and even by its own agents—and the obvious (if not always explicit) exclusionary social mores and practices that made it difficult for Indians to thrive in the settler community. Also absent from Ford’s description were the myriad and creative ways that Owens Valley Indians had developed to support themselves throughout the centuries, including trade with other tribes, seasonal adaptations, and an elaborate irrigation system. Instead, the static and one-dimensional problem statement Ford presented led him to find “conclusive evidence of responsibility” on the part of the Water Department and lent him the moral authority to propose a solution.

Thus, under Ford’s formulation, the Water Department was duty-bound to solve the “Indian problem . . . in order that the present living conditions of the Indian may be bettered and their future stabilized, so that they will have something to look forward to.” At the heart of Ford’s proposal was a plan for the federal government to abandon existing homesite tracts, to develop tracts on land owned by Los Angeles, and to move all Indians to those new sites.

2. Competition and Collaboration: Allocating Responsibility

The solution proposed by Ford would, with various modifications, guide the Water Department in future negotiations, and, ultimately, would serve as the basis for a land exchange between the United States and Los Angeles. The plan required coordination between the Indian Service, which would have to abandon its current lands and buy the city’s land, and the city, which would have to sell its lands and, in some cases, lease other lands to Indians. It also would require the approximately sixty-five Indians who owned their land to sell it to Los Angeles. To make matters more

115. Id. at 13.
116. See id.
117. HOFFMAN, supra note 24, at 65-75.
118. Anthropologists and others also have documented these aspects of Native culture. See Harry W. Lawton, Philip J. Wilke, Mary DeDecker, and William M. Mason, Agriculture Among the Paiute of Owens Valley, THE JOURNAL OF CALIFORNIA ANTHROPOLOGY 13, 13-14 (1976).
119. FORD, supra note 102, at 11.
120. Id.
121. Files of A.J. Ford (on file with NARA Records, Carson City Indian Agency).
122. See id.
complex, they needed water for the new sites, and the federal government lacked definitive water rights beyond those allocated to the existing homesites.123

It would be better to move the Indians out of the valley altogether, advised A.L. Walthen, Superintendent of the Indian Irrigation Service in Los Angeles, “as their chances for getting work [are] lessening as the city is purchasing all the land of the Valley.”124 William Kennett, the Indian agent in a jurisdiction adjacent to the valley, did not propose an alternative but instead advocated further planning and action.125 He suggested that Ford’s report was founded upon erroneous facts and recommended that the city undertake another, more comprehensive, census in conjunction with his office.126 Even Ray Parrett, the Indian agent in the valley who had proclaimed “the plan which the city has established for assistance of the Indians is a wonderful one,” expressed concern about potential conflict between his agency and the city. Parrett suggested dividing responsibilities such that the city took “care of the Unrestricted class and the Government employees look after care of the Restricted.”127

The reactions of the local Indian agents to Ford’s report pointed to at least two significant miscalculations on the part of the Water Department. First, in taking responsibility for the “Indian problem,” the Water Department ignored the institutional reality of its most important ally, the Indian Service whose mission it was to care and provide for Indians.128 If the Water Department took over that care, it would undermine the Indian Service agents’ reason for being in the valley. Second, in proposing construction of new reservations, the Water Department had disregarded the prevalent political mood against “so-called ‘Indian colonies.’”129 Moreover, the Senate Indian Committee had supported a parallel plan that involved neither Los Angeles nor the Indian Service but rather had tasked the Red Cross with assisting Indians in the Owens Valley.

123. Right of Way and Land Department Meeting Minutes (June 17, 1930) (on file with LADWP Records); Letter from Ray Parrett to A.J. Ford (Aug. 18, 1930) (on file with NARA, Walker River Agency).
125. Letter from WM. Kennett to Water Department (Nov. 23, 1930) (on file with LADWP Records).
126. See id.
127. Letter from Ray Parrett to A.J. Ford 3-4 (Nov. 28, 1931) (on file with NARA Records, Walker River Indian Agency). Parrett explained the distinctions between the three classes of Indians at that time: unrestricted (“one who does not reside on Government reservations or lands, has no land holdings or other income, and is retained under the jurisdiction of the Federal Government as to his general welfare”); restricted (under the jurisdiction of the Federal Government but is on a Government homesite or allotment); and Independent Indian (“one who has secured either land or funds through his efforts and falls exactly in the same category as any other American Citizen.”). Letter from Ray Parrett to A.J. Ford (Jan. 13, 1932) (on file with LADWP Records).
129. Letter from John Collier to John Haynes (Nov. 24, 1931) (on file with LADWP Records).
Faced with these hurdles to removing the Indians and realizing its plan to acquire “100 percent” of the valley’s land and water, the Water Department modified its approach.\textsuperscript{130} In a follow-up report submitted to the governing board on September 4, 1931, Deputy Right of Way and Land Agent E.A. Porter stressed that the general conditions observed in Ford’s 1930 report had not changed, and he anticipated that they would become worse throughout the winter.\textsuperscript{131} Porter reiterated that the situation likely was due to unemployment, a condition that was proximately caused by the Water Department.\textsuperscript{132} Unlike Ford, however, Porter did not suggest that Los Angeles take the controversial step of providing land and housing for the Indians. Instead, he advised only that it “take initiative” and then plan for a more collaborative approach, through which “City, Federal, County, and State Governments, American Red Cross, etc.” would work together to relocate the approximately 800 Indians currently living on lands that Los Angeles wished to acquire.\textsuperscript{133}

Porter was not proposing to cede authority to these other entities. In pressing his case for letting the Water Department proceed before securing the cooperation of other agencies, Porter argued that “the most efficient results can be secured if only one agency can be permitted to execute the proposed plan.”\textsuperscript{134} In conclusion, Porter recommended that the Water Department appropriate funds to further fact-finding and relief efforts as well as find ways to employ Indians on infrastructure development in the valley.\textsuperscript{135} His plan underscored, yet again, how the Water Department sought to centralize control over management of resources—and the people who used them—even when other institutions and publics had an interest in those affairs.

Such arguments won over the Water Department’s Board, which agreed to provide $30,000 to continue its work among Indians in the valley.\textsuperscript{136} No doubt efficiency was a significant concern, but Porter’s cautious approach likely had other motives. Above all, the city could anticipate that such efforts would help it secure the cooperation of the federal government, which might shoulder at least half of the cost for developing new homesites and supplying them with water. By promoting itself as the source of humanitarian aid in various forms, Los Angeles could demonstrate its good faith and suggest that it could be useful in managing matters that were traditionally under the purview of the United States.

Such strategy would only work, however, if the government needed Los

\textsuperscript{130} VAN NORMAN, supra note 93.

\textsuperscript{131} E.A. Porter, INDIAN PROBLEM 1-2 (September 4, 1931) (on file with LADWP Records).

\textsuperscript{132} See id.

\textsuperscript{133} Id. at 2.

\textsuperscript{134} Id. at 3.

\textsuperscript{135} Id. at 2-3.

\textsuperscript{136} Letter from E.A. Porter to H.B. Cornwall and J.E. Clifton (Dec. 27, 1931) (on file with LADWP Records).
Angeles and, at this stage, it was far from clear that it did. Persistent rumors throughout the summer of 1931 suggested that the Red Cross was preparing to invest money and resources in the Owens Valley. The Water Department’s General Manager Van Norman tried repeatedly to confirm such rumors. The answer did not come until late winter, when a telegram to the President of the Board of Water Commissioners confirmed that the Red Cross would not be undertaking work in the valley.

3. Preventing “Contamination”

That telegram marked a turning point in the federal-municipal partnership in the Owens Valley. With all other avenues of aid apparently foreclosed and the Owens Valley Indian agencies under-resourced, officials at the Department of the Interior began to consider the city’s proposals in earnest. In June 1932, Porter and the Water Department’s Appraiser C.D. Carll co-authored another report on the condition of the Owens Valley Indians. Despite more than a year of research, Porter and Carll had very little new information. They concluded that the Indians’ condition was still very poor and that Los Angeles was still proximately responsible for their situation.

What their report did contribute, however, was a much more detailed proposal for resolving the situation—and a much clearer justification for doing so.

Porter and Carll urged that it would be insufficient to merely provide money and services, as the Red Cross had allegedly promised to do. Nor would it be practical to move the Indians out of the valley altogether, as the federal government planned to do. The real concern, and the only means to provide lasting relief, was to develop new homesites with “proper housing.” According to Porter and Carll, Indians were living in what the agents saw as “shacks, tents, wickiups, and hovels” that were “too small . . . unsanitary . . . [and] in violation of housing laws.” Such conditions posed threats not only to the health and welfare of the Indians but also to the water supply.

Transformed from a matter of welfare to a matter of public health, the “Indian problem” was no longer solely of national concern. Contaminated water could easily leak beyond the borders of Indian settlements, infecting the population of the Owens Valley and the end-users in Los Angeles. Now

138. Id.
139. See Telegram from C.J. Rhodes to John Haynes (Dec. 5, 1931) (on file with Los Angeles City Archives, DWP Records). The Board of Water Commissioners had oversight over the Water Department.
141. See id.
142. Id.
that the water system was “under threat,” Porter and Carll called for immediate action to move the Indians and isolate them from the city’s water supply. The reasons for doing so were no longer the health and welfare of the Indians but the health and welfare of the city.

Porter and Carll’s report, and the new framing they erected around the issue of the Owens Valley Indians, mobilized the Board of Water Commissioners, who urged the Secretary of the Interior to work with Los Angeles to reach a solution. In October 1932, the Secretary appointed Roy Nash, then Superintendent at the Sacramento Indian Agency, to investigate the situation in the Owens Valley and advise further action. This led to several more years of investigation and reports with few milestones achieved.

Despite appearances, however, significant changes distinguished this period from the prior few years. The Department of the Interior and the City of Los Angeles were by then working in tandem, holding regular meetings, and seeking legislation to exchange the lands. The question was no longer whether the government would agree to plans to exchange lands but only how such an exchange would be accomplished. An implicit division of responsibilities left Los Angeles with autonomy in selecting new reservation sites, appraising the land values, and even designing the homes that would be built on those sites. Thus, the Water Department had almost complete control over the material and spatial form of the planned reservations, with little apparent input from the Indians who would live there or the government agency whose responsibility it was to ensure their welfare.

Just as significantly, the outcome meant that the desired formula—with land and water on one side and people on the other—would be preserved, without the potentially unbalancing force of other people the city didn’t want to account for. The people in the equation were thus more clearly defined than ever: they were Angelenos. Any other people were to be defined as extraneous “others” and subtracted out. As detailed in the next section, that formulation did not go unchallenged, and the Owens Valley Indians struggled to ensure that their people would not be so easily deleted from the equation.

4. The “Self-Styled Indian Committee”: Claiming Representation

On December 1, 1931, three Indians met with E.A. Porter. Writing to his
direct supervisor over a month later, Porter recounted the visit from what he termed “a self-styled Indian committee.”

According to him, the committee had argued against the city’s employ of two white residents to disburse aid to the Indians, claiming such work for “educated Indians” instead. Porter reported that he “was able to convince them that they, nor anyone else in Owens Valley, had any right to dictate to this city how money should be spent.”

As for claims that Los Angeles had taken away the Indians’ livelihood—a claim the Water Department had asserted on its own behalf when trying to take leadership over the “Indian problem”—Porter was unusually defensive. He opined that welfare work in the valley was “better organized than in any other section in the West,” and informed the committee that they were more fortunate than Indians living outside the valley.

Having reported the substance of their conversations, Porter switched modes, attacking the characters of the committee members. One, he wrote, “drinks a great deal, gambles and bootlegs among the Indians,” another ran away from the Sherman Institute at Riverside and “is termed more or less a wanderer,” and the third was a landowner whose acquisition of property was through means “very shady to say the least.”

The subtext of Porter’s remarks was plain: these were not men who could be trusted and, what’s more, were men who likely held little sway even within their own communities. He advised “at no time should the Indians, or the self-styled ‘leaders’ be recognized” and cautioned that if they were admitted into the ongoing negotiations, “neither the Government nor the city will be able to go very far in the final solution of the problem.”

Because other written records are absent, we cannot know what the Indians said in the meeting or how they presented their case, apart from Porter’s report of what happened. But we might glean some of the arguments they raised—as well as the spirit in which they raised them—from a letter some members of the committee wrote to Mayor Porter in Los Angeles soon after their meeting with Porter. In that letter, they explained that they had been elected by the Indian leaders in the Owens Valley “for the purpose of learning such facts from such sources of information as they are able to get, of the $30,000 appropriated by the Water Board of the City of Los Angeles and the character and scope of a plan recommended by a certain committee just a few years ago.”

They protested that the Indians had not been consulted about any plans

---

149. Id.
150. Id.
151. Id.
152. Id.
153. Id.
for their welfare and, moreover, that they disagreed with the plans that had been set in motion without their input. They objected to the proposed distribution of money, which would be limited to Indians north of Lone Pine and exclude the primarily Shoshone Indians who lived in the southern end of the valley. They also objected to the allocation of the $30,000, which they saw as “charity,” when they would prefer a means to earn money.

Just as Porter had attacked the committee’s motives in his letter to Ford, members of that committee questioned the city’s intentions in the valley. They suggested that “the city wants the water” and would do whatever it needed to get it until “there is nothing left for the Indians to do but turn back to the old primitive ways.” These were trenchant critiques, but the committee leaders concluded on a conciliatory note, explaining that they could “agree to a reasonable plan acceptable to all in this Valley,” and wished the Mayor “A Merry Christmas and Happy New Year.”

By addressing their letter to the Mayor of the City of Los Angeles, rather than to Porter or anyone else at the Water Department, we can surmise that the Indians had reached an impasse with the Department and were instead appealing to the city that ostensibly regulated it. But the Mayor rarely involved himself in the Water Department’s affairs, and this case presented no exception. He referred the matter to the Board of Water Commissioners, which in turn requested an appraisal of the matter from General Manager Van Norman, who then deferred to A.J. Ford. Referring to Porter’s memo, Ford reiterated that the “so-called ‘Committee’” was misrepresenting facts and ought to be ignored. And so, Porter’s memo having come full circle, the Owens Valley Indians were completely marginalized as the city refused to even recognize their representatives.

V. \((\text{LAND} + \text{WATER/PEOPLE}) \times \text{POWER} - \text{OTHERS} = \text{THE PUBLIC INTEREST}\)

A. The Rural Non-Place

Los Angeles was not deciding the future of an existing water and power system. Rather, it was building one from the ground up. Its residents and officials wrestled with those challenges during one of the most intense periods of city-building, and they did so by distinguishing the urban center from its rural periphery, reconstituting the city’s relationship to the natural world. The rural identity as defined by the Water Department served as a secure foundation for both the ideological and political interests of the City.

155. Id.
156. Id.
157. Id.
158. Id.
159. Id.
of Los Angeles. That foundation derives stability and force from the natural(ized) associations between the rural Owens Valley and an untouched, unclaimed utopia, which in turn relied on the literal and figurative erasure of other people’s claims to the water and land. In the context of the public-private battle for municipal utilities, Mulholland’s formula, initially proffered to justify the construction of the aqueduct and repeatedly reformulated to keep water flowing to the city, highlights the importance of cultural discourses. Those discourses were conveyed through brochures and official reports alike, shaping what might otherwise be predominantly legal and political concerns. The seemingly simplistic formula captured a plethora of equations between land, water, people, and, of course, power. Subject to such formulated beliefs, residents of Los Angeles acquired not only water and electricity, but also a sense of who they were (not).

In the process, Los Angeles made a unique—and uniquely urban—contribution to twentieth-century discussions about the meaning of nature and the importance of rural America in sustaining urban growth. The rural Owens Valley was formulated not so much as another place, but as a “non-place,” linked to and interdependent with the emerging urban power rather than a discrete space. By linking rurality with an unpeopled natural world, the portrayal of the rural non-place—devoid of culture but full of nature—simultaneously erased the possibility of an organic society that could stand on its own while also supporting a public presence and interest firmly located in the urban center. That positioning of the rural non-place complicates efforts to achieve equitable distribution through legal means. To define the valley as a non-place is to erase its boundaries and borders, making it difficult to mark it juridically or to determine which government would serve it and which resources it would be entitled to


162. See MELVIN M. WEBBER, EXPLORATIONS INTO URBAN STRUCTURE 79 (1964) (introducing the notion of the “nonplace urban realm” as a means of understanding the changing spatial and nonspatial dynamics of the American metropolis). Anthropologist Marc Augé explained the concept of non-place by distinguishing it from place. The latter is “relational, historical, and concerned with identity” and is formed by collective identities “through complcities of language, local references and the unformulated rules of living know how.” MARC AUGÉ, PLACES AND NON-PLACES 101 (1995). The non-place, on the other hand, “interpolates no-one in particular but speaks in a generalized text where ‘it deals only with individuals as customers, passengers, users, listeners, but they are identified only by name, occupation, place of birth, and address only upon entering and leaving.’” Sarah Sharma, Baring Life and Lifestyle in the Non-Place, 23 CULTURAL STUD. 129, 131 (2009)

What do these past struggles over land, water, and people teach in the present? The formula described here is not unique. Rather, it reflects a broader historical pattern. As American municipal authority expanded in the twentieth century, city officials worked at multiple levels—social and legal, regional and national—to ensure that local control inured to urban centers. As the engine of urban growth, municipal utilities drove this expansion, forging a path for the urban public and directly contributing to a deepening disparity in access to resources between urban and rural communities.

Understanding the role that municipal utilities played in creating and justifying definitions of the public and its interests helps explain why those patterns have been so difficult to undo. One reason is clear: cities, operating by and through their utilities, helped to shape a legally salient conception of the public interest in ways that skewed urban. Municipal utilities began their existence with structures that led them to defer to the municipal governments and municipal interests, while ignoring the well-being of rural people and resources. As recounted above, the Los Angeles Water Department constructed a narrative of place, non-place, peoples and non-peoples, assembling them into a self-serving formula to produce a public that it both needed and could control. The concept of public interest thus was wielded to justify expansion of the municipal utility and to protect local control against centralizing forces. But as this Article shows, the power of the public interest was not universal. Instead, it was harnessed by cities through formulation of an equation that allowed urban populations to centralize their power over the water, land, and unrecognized peoples around them.

B. Reformulation

Part of my aim in charting the deployment of cultural images and practices in fostering the public interest has been to show both how publics are made and how they can be unmade. The practices that undergird those outcomes can be tied to attempts to separate people and things: the recreation and maintenance of distinct ontological zones of human culture and

---

164. See Mariana Valverde, Jurisdiction and Scale: Legal ‘Technicalities’ as Resources for Theory, 18 SOC. & LEGAL STUD. 139, 139 (2009) (theorizing jurisdiction as a “legal mechanism”). See also, Jessica Cooper, Unruly Affects: Attempts at Control and All that Escapes from an American Mental Health Court, 33 CULT. ANTHROPOLOGY 85, 89-90 (2018) (arguing that the process of affixing jurisdiction is a means of asserting control over people and places).

165. See Daniel R. Grant, Trends in Urban Government and Administration, 30 L. & CONTEMP. PROBS. 38, 47-50 (1965) (offering examples of efforts by American municipal political bodies to affirm and consolidate governance within metropolitan areas).

non-human nature. The more adept we become at envisioning a transcendent society and a transcendent nature, the harder it becomes to assert protection for the hybrid reality where publics and natural resources intermingle, their fates rising and falling as one. Instead, we maintain a distinct separation between the two, dividing the prevailing governance framework into two categories: one to regulate society, the other to regulate nature for the benefit of society. The formula for the public interest defines and maintains that separation through a construct as simple as sorting variables into two sides of an equation.

A more pluralistic understanding of the public interest such as that outlined in this Article should push us to reformulate not only the concept of the public interest but also to reconsider how we investigate the development of law and legal processes more generally. By definition, law reconfigures relations between state and non-state actors, making public participation essential to policymaking and ensuring that public mores have even greater influence over outcomes and actions. Examination of these values and their ramifications, though, rarely drives legal studies of environmental regulation and governance. Instead, that scholarship focuses on developing the rule of law—particularly its capacity to define and enforce property rights and allocate resources—and aligning law with market forces to drive environmental decision-making toward preferred outcomes.

Political and social science literature produced under the rubric of “environmental governance” or “political economy” has broadened the ways in which we understand private and civil society actors to shape the nature and direction of the environmental domain in, beneath, around, and alongside those legal frameworks. Yet those scholars, too, have emphasized national institutions, largely ignoring the multiple and dynamic ways in which local authorities construct and challenge environmental governance regimes, in large part through the generation of localized legal

167. **Bruno Latour, We Have Never Been Modern** 41 (1991) (positing that modern thought divides the world between the social and the natural, but such efforts are ultimately untenable).


169. For one perspective that focuses on law’s authorizing power, see H.L.A. Hart, **The Concept of Law** (1961). For detailed studies of public participation as a lever in policymaking, see MARIAN BARNES, JANET NEWMAN & HELEN SULLIVAN, **Power, Participation, and Political Renewal** (2007).


norms and meanings.\textsuperscript{172}

To think of environmental governance more dynamically requires asking about cultural power, appropriation, and negotiation between groups, especially as they wrangle over legally significant concepts such as the public interest.\textsuperscript{173} A “thoroughly localized ethnography” of the sort presented here makes it possible to track those alignments and disjunctures, revealing systems of power and inequality, while also opening opportunities to intervene in them.\textsuperscript{174} The emphasis on particulars revealed through ethnography presents an opportunity for reformulation, one directed at rescaling governmental decisions about resource allocation and management. In examining environmental policy and law, scholars have tended to focus on explanations for environmental problems and governmental responses at national, and increasingly international, responses.\textsuperscript{175} This work has led to numerous insights about the current state of environmental regulation and its economic and human impacts, yet it largely ignores the local contexts that give rise to differences in interpretation and implementation of those generally applicable laws.\textsuperscript{176}

In recognizing the local contributions to resource allocation and to environmental governance, a small but growing number of scholars have urged greater attention to the role of cities as environmental regulators. Among other things, they argue that such leadership returns cities to their historical role in protecting the health and safety of residents;\textsuperscript{177} that cities

\textsuperscript{172} See ARUN AGRAWAL, TECHNOLOGIES OF GOVERNMENT AND THE MAKING OF SUBJECTS (2006); Sayd Randle, Ecosystem Duties, Green Infrastructure, and Environmental (In)Justice in Los Angeles, AM. ANTHROPOLOGIST (forthcoming).

\textsuperscript{173} See Alyse Bertenthal, Speaking of Justice: Encounters in a Legal Self-Help Clinic, 39 POlAR 261 (2016) (describing how conceptions of justice are shaped through discursive interactions); Bernard Weissbourd & Elizabeth Mertz, Rule Centrism versus Legal Creativity: The Skewing of Legal Ideology through Language, 19 LAW & SOC’y REV. 623 (1985) (legal ideologies are reflected by the language used to convey them).

\textsuperscript{174} Bertenthal, supra note 59, at 45-46. Cultural readings not only situate law as part of culture and culture as part of law, but also create opportunities “to unearth and then reflect upon truths they may contain, regarding the nature of the law that is its subject.” See Robin West, Literature, Culture and Law – at Duke University, in TEACHING LAW AND LITERATURE 98, 98-115 (Austin Sarat, Catherine Frank & Matthew Anderson eds., 2008).

\textsuperscript{175} See Maureen G. Reed & Shannon Bruyneel, Rescaling Environmental Governance, Rethinking the State: A Three-Dimensional Review, 34 PROGRESS IN GEOGRAPHY 646, 648 (2010).


\textsuperscript{177} Katrina M. Wyman & Danielle Spiegel-Feld, The Urban Environmental Renaissance, 108
fill a significant void when political shifts leave the federal government unsupportive—or even hostile—to environmental protection;178 and that cities have growing resources and incentives to focus on environmental protection.179 The overall thrust of this work is that environmental governance must be understood on multiple levels, ranging from the local to the global.

These are powerful arguments, but they also are too narrow, translating “local” as “municipal” to the exclusion of rural communities. That definitional constraint limits the understanding and influence of regulators by restricting the entities involved to those within urban centers.180 The case of Los Angeles-Owens Valley demonstrates why we cannot equate “local” with “municipal” governance when evaluating environmental policy. Doing so exacerbates resource disparities by confining the debate to the terms set by the cities in the first place. It also risks exacerbating disparities in resources between urban and rural communities by shifting even more power to cities that are incentivized to allocate and manage natural resources in favor of their own residents.

While this Article joins the call to rescale theories and investigations of environmental governance to encompass local regimes, it also sounds a cautionary note about the ways in which local regulatory power has been imagined thus far. A more robust theory of local environmental governance must account for not only relations between local and federal governments, but also differences within the local level itself—all while recognizing “local” expands well beyond a city’s borders.181

CONCLUSION

Legal analysis generally begins from a descriptive platform, detailing what is going on while also probing why things exist as they do.182 Logic and rationale then drive proposals for reform as scholars deconstruct and critique answers to those questions.183 This orientation results in a law-first,
Yet problems and resolutions—indeed law itself—do not emerge in a cultural void, and understanding the cultural norms that scaffold what’s in place is key to dismantling and rebuilding in a structurally meaningful way. Seeing the practices, techniques, and strategies that enable law to emerge and function as it does is key to recognizing that cultural scaffold. Cultural narratives and strategies of the sort examined in this Article offer this perspective because they reveal the constructions through which the value of people and places is generated and fixed. Once that happens, such valuation becomes naturalized, obscuring other possible values, as well as other ways of valuing those people and things.

I have worked here to uncover such processes and to make evident their most (un)natural qualities. I have followed the “formula” for the public interest as a technique for making visible the forces at work in enacting and justifying particular visions of publics and their interests. In developing this account, I offer a perspective that contributes to the conversation about environmental governance and the legal concepts that drive and authorize its implementation. As we examine such governance structures, it is imperative that we come to recognize not only what they are, what they do, and why they came to be, but also how they operate—the cultural norms and modes that allow certain ways of governing to persist, even when such ways perpetuate clearly identifiable inequalities. Transformation of environmental governance will require more than tinkering with current modes of regulating land and resources. We must also acknowledge the distributions of power that make such systems sustainable and ask how we might rewrite cultural narratives to make room for other publics and other interests.

The formula examined here is not one that can be made universally applicable. Indeed, ethnographic scrutiny of that formula shows that such generalization may not be possible—and, indeed, that such generalization is beside the point. Instead, what we need are more localized examinations of public interest formulations. Understanding the processes that give rise to such formulas can explain not only a particular event or particular

U. CHI. L. REV. 153, 153-54 (2002) (suggesting that “[l]egal scholars often are just playing a different game than empiricists play”).

184. Deepa Das Acevedo, Temple, Courts, and Dynamic Equilibrium in the Indian Constitution, 64 AM. J. COMP. L. 555, 560 (2016) (“Because law is the problem in these accounts, law is also the solution.”).


187. See Nicholas Blomley, Disentangling Law: The Practice of Bracketing, 10 ANN. REV. L. & SOC. SCI. 133, 145 (2014) (arguing that “‘technicalities’ of law must be ‘recognized and taken seriously if we are to understand what law does and how it works’”).

188. See Patricia Ewick & Susan S. Silbey, Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative, 29 L. & SOC’Y REV. 197, 203 (1995) (“Relying on narrative as a method of research is underwritten by an assumption that narratives provide a lens or window through which we can best study social life.”).
decision. It also opens the possibility of looking at different processes, different variables, and different configurations of those variables. Only after assembling these particular observations can we begin to build a more sweeping account of what the public interest entails, why it’s come to be that way, what variables must be accounted for, and what new calculations will be necessary to construct a more balanced equation between land, water, and people.