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BOOK REVIEW

MOUNTAINS WITHOUT HANDRAILS: REFLECTIONS ON THE NATIONAL PARKS

By JOSEPH L. SAX

ANN ARBOR: THE UNIVERSITY OF MICHIGAN PRESS, 1980

By

CHARLES F. WILKINSON*

*Mountains Without Handrails*¹ is Joseph Sax's statement on the uses to which preservationists believe national parks² should be put. The book is an intense, richly documented piece that can stand on its own as a comprehensive, imaginative thesis of re-

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1. J. SAX, *MOUNTAINS WITHOUT HANDRAILS* (1980) [hereinafter cited as *MOUNTAINS WITHOUT HANDRAILS*].

Professor Sax is one of our preeminent authorities on natural resources and environmental law. His article, Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 MICH. L. REV. 471 (1970), has been enormously influential. The article, coming as it did at the inception of the modern era of natural resources law, not only resuscitated the public trust doctrine but also conceptualized a model of judicial review for what was essentially a new field. In addition to *Mountains Without Handrails*, Sax has written other valuable pieces on the national parks. See, e.g., Sax, *Buying Scenery: Land Acquisition for the National Park Service*, 1980 DUKE L.J. 709; Sax, *Helpless Giants: The National Parks and the Regulation of Private Lands*, 75 MICH. L. REV. 239 (1976). His work on federal water subsidies to western irrigators is excellent. See Sax, *Federal Reclamation Law in 2 WATERS AND WATER RIGHTS* §§ 120-120.13 (R. Clark ed. 1967); Sax, *Selling Reclamation Water Rights*, 64 MICH. L. REV. 13 (1965). See also J. SAX, *DEFENDING THE ENVIRONMENT* (1970); J. SAX, *WATER LAW, PLANNING AND POLICY* (1968).

2. Although *Mountains Without Handrails* is styled as a work on the national parks administered by the National Park Service in the Department of the Interior, its reasoning can be generalized to apply to other wild areas not designated as national parks. Thus, while the author uses the term "national parks" throughout the book, he intends that the book's philosophy apply to all "high quality wilderness" in public ownership, including National Forest and Bureau of Land Management lands, state lands, and even some parkland held by local governments. *MOUNTAINS WITHOUT HANDRAILS*, *supra* note 1, at 115-16 n.2.

source philosophy. But Sax plainly aims for more: his goal in writing the book is to revamp national park policy. Sax's precepts have sufficient force that they are likely to receive considerable airing during the political debates over park policy that are occurring now, and will occur over the rest of this century and beyond.

Sax's approach has antecedents and is not literally new. In particular, Sax draws upon a recently discovered manuscript by Frederick Law Olmsted, a mid-19th century landscape architect best known as the designer of Manhattan's Central Park. Olmsted's report, which made proposals for the management of Yosemite Park, argued that the park should encourage a park user to engage the "contemplative faculty."³ Olmsted's writing, supplemented by the works of Emerson and Thoreau, provides the core concept that Sax expands and applies to modern park management controversies.

Sax uses the "contemplative faculty" notion to argue that parks should be preserved in essentially their natural states so that they will benefit the people who use them. The pure and, it can fairly be said, radical nature of Sax's approach should not be understated. This is not a book about natural wonders. Sax eschews rhapsodic passages about the stirring beauty of the national parks. There are no photographs. He almost self-consciously reminds the reader that the book "talks so little about nature for its own sake."⁴ Rather, Sax's premise is that wilderness provides benefits to people. Wild land should be preserved for that reason, leaving aside the intrinsic natural beauty of the parks.

Because the central argument fixes on the value of parks to the user, *Mountains Without Handrails* is ultimately utilitarian. Preservation is treated as a resource. Water, timber, forage, and minerals have traditionally been identified as the only resources on the public lands. Some, including this writer,⁵ have argued that other, less traditional resources—wildlife, recreation, and preservation—should properly be considered as coequals with the

3. Olmsted, *The Yosemite Valley and the Mariposa Big Trees* (1865), reprinted in 44 *LANDSCAPE ARCHITECTURE* 13 (1953).

4. *MOUNTAINS WITHOUT HANDRAILS*, *supra* note 1, at 103.

5. E.g., G. COGGINS & C. WILKINSON, *FEDERAL PUBLIC LAND AND RESOURCES LAW* (1981); Wilkinson, *The Field of Public Land Law: Some Connecting Threads and Future Directions*, 1 *PUB. LAND L. REV.* 1, 36 (1980).

economic resources. Sax provides an important philosophical underpinning for treating the preservation resource as a coequal with the economic resources. In justifying the use of grazing land, timber land, or minerals, developers are not required to prove that hay stalks, lodgepole pine trees, or oil shale rocks are intrinsically valuable; they must show only that the resources should be consumed in order to benefit civilization by feeding cattle, building houses, and fueling furnaces.

Sax makes the same argument for preservation: the preservation resource should be consumed in order to benefit the public. The preferred use is to maintain the resource in its pristine state because consumption in that form produces greater benefits to people than would the construction of roads, curio stands, resorts, and trails for off-road vehicles. Thus park lands should be preserved in their natural states not because they are pretty, or even because they have scientific worth, but simply because the consumption of their inherent values provides benefits to human beings.

This attempt to analyze management of the preservation resource in the same terms that developers analyze management of economic resources—by focusing on the good that the resource brings to consumers—raises a number of fundamental questions. Exactly what kind of good results from preserving land in a pristine state? Why are not users who favor motorized vehicles, resorts, and roadside stands entitled to have their preferences met? And just why is it that all of us should abide by a set of values for national parks divined by a relatively small number of preservationists? *Mountains Without Handrails* deals with each of these queries in considerable depth.

Sax believes that wild land provides a valuable experience that is necessarily diminished by development—even by a few handrails and the sale of plastic alligators. Land in its pristine state, he argues, is one of the rare stimuli in our society that promotes self-awareness, self-initiation, and self-fulfillment. A direct, uninhibited relationship with nature forces contemplation. By contrast, tour guides obviate self-planning. Like television sets, views of mountains framed in windshields breed passivity. The woods represent to Sax, as they did to Thoreau, a “resistance to taming,” a chance to depend on one’s own resources.

Motorized vehicles and other heavy equipment do not belong

in the parks envisaged by *Mountains Without Handrails*. The engines, not the wilds, become the focus and prevent the elemental, one-on-one relationship with nature that undeveloped areas require. Easy access diminishes the self-sufficiency and self-imposed discipline that wilderness demands. Motors not only make contemplation impossible, they replace it with competition. They promote drives for power and dominance, emotions fulfilled aplenty in the cities. And there are millions of acres of public lands, other than parks, where such activities can be pursued. Finally, motorized traffic and resorts alter the land; in Sax's formulation, we should strive for intensity of experience for the individual and avoid intensity of impact on the parks.

Sax looks to the extensive literature on trout fishing to reinforce his argument. By using the minimum amount of gear, the flyfisher effectively moves into the world of the fish, the stream, and the mountains. The goal is not to conquer the trout but to become a partner, a colleague—just as surely as John Muir blended with a high Sierra pine tree and the weather itself as he clung to the topmost part of the stem during a violent mountain storm.⁶

Critics typically charge that preservationists are antidemocratic. They say that locking up public lands smacks of elitism and exclusivity. In *Mountains Without Handrails*, Sax makes a perceptive characterization that cuts to the quick of the preservationist philosophy. The preservationist is a "secular prophet" who, rather than seeking to exclude the uninitiated, is a "moralist who wants to convert them."⁷ And that, to anyone who knows the breed, is telling it straight. Setting aside lands as wilderness is only a means to an end: ultimately, preservationists are out to change minds, to alter world views.

Sax then presents the rationale for making park policy based on the recommendations of these prophets. He argues that preservationists are the only group that can lay claim to having produced a coherent, comprehensive philosophy of park use. Al-

6. THE WILDERNESS WORLD OF JOHN MUIR 186-90 (E. Teale, ed. 1954).

Sax examines the literature on hunting, concluding that hunting has an ethic similar to that of flyfishing. MOUNTAINS WITHOUT HANDRAILS, *supra* note 1, at 32-33. Mountain climbing, on the other hand, is highly ambiguous, mixing "climbing for the climb itself" and competitive drive. *Id.* at 35-40.

7. *E.g.*, *id.* at 14, 103-04.

though no formal degree is needed to become one, "for better or worse, the preservationist is the only spokesman we have for the tradition of man-in-nature." We should thus defer to preservationists in their area of specialty just as we habitually defer to teachers, librarians, and museum directors.

These are heady ideas that, if wholly adopted, would cause a major revamping of park policy. There is a temptation, therefore, to assume that Sax, who is amply sophisticated in the tug-and-pull world of public lands policy, knows full well that a balancing is required: he must be arguing that *most* park areas should be spared from handrails and plastic alligators but that those uses should continue to be tolerated in some areas of the parks. Certainly the book offers examples of acceptable activities that depart from the pure wilderness ideal.⁸

I think, however, that it is a mistake to read Sax as calling for such concessions. The author wants a revolution in the tough areas of park policy. Probably three-quarters of all national park acres are now in a pristine state, or something close to it. Sax would retain those lands—as well as the entire wilderness system, lands barely referred to in *Mountains Without Handrails*—in their present conditions. In addition, Sax would reverse the policy on park land that is already partially or wholly developed. He aims directly at the asphalt of Yosemite Valley and Yellowstone and at the resorts, restaurants, and ski areas of the big concessionaires.

This is not, then, a book espousing a multiple-use philosophy for the parks, and it does not argue merely for a greater emphasis on wilderness values. Though Sax does not refer directly to the drawbacks of multiple-use management, one guesses that he would resent having his pure kernels of contemplative faculty debased by the "succotash syndrome" that too often characterizes multiple-use areas. No, Sax would make his compromises on the macro level of land management systems. Forest Service and Bureau of Land Management multiple-use lands can go to the snow-mobiles, dune buggies, ski lifts, and guide buses. The parks (and the wilderness systems that the preservationists already have in

8. *E.g., id.* at 63-64 (some auto traffic, concessions in Yosemite Valley); *id.* at 73 (the "sparsely developed" ski facility at Alta, Utah); *id.* at 87 (Mount LeConte Lodge).

hand) would be reserved for the contemplative faculty. How many acres? Most of them: proponents of high-density uses would bear the heavy burden of showing that there is a real demand and that there is "no alternative" except the use of park lands.⁹ The comparatively low key ski area at Alta, Utah (built, Sax suggests, for skiing, not *apres ski*) and a hike-in lodge in the Great Smokies would survive. Most concessionaires—who, as Sax rightly points out, are subsidized and who stimulate even more intensive park use by their advertising¹⁰—would not. Sax's proposal, then, is not a mealy one. It calls for a jolting change in policy that would cause howls from many a sector.

These controversial views can be attacked on a number of fronts. It may be more than the public can stomach to allocate still more land to wilderness. *Mountains Without Handrails* certainly soft-peddles the fact that the United States has already committed 79.8 million acres of land, easily more than any other nation, to wilderness. Many would find it presumptuous to bottom federal park policy on what preservationists think is best for others, a characterization of Sax's argument that is not too far from the mark. The anointment of preservationists as the final arbiters for all of us on tens of millions of acres of park lands may be beyond the point of current public acceptance. Yet these are vital, starkly drawn ideas that deserve to be confronted and robustly debated.

Mountains Without Handrails has special qualities apart from its philosophical content. It is a testimonial that lawyers can write in plain English, proof that the profession's rap as one replete with "whereases" and "parties of the third part" is a bum one, or at least outdated. The book cuts across disciplines—a reminder that since the late 1930's and 1940's the law has moved away from its role as handmaiden to the economy toward a front and center position in most areas of public policymaking. Like William O. Douglas and Charles Reich, Sax sheds the more restrictive raiments of the law (he avoids citing even one case in *Mountains Without Handrails*) and uses the lawyer's essential tools of organization and logic to produce a tight, compelling product that would make any profession proud. And the sources sparkle. The splendid bibliography would make a joyous library

9. *Id.* at 67.

10. *Id.* at 71-75, 132-33 n.25.

for anyone who loves the wilds and their history, philosophy, and lore. His sources run the gamut from Roderick Nash to Edward Abbey to Robert Pirsig to William Faulkner to Emerson and Thoreau to Izaak Walton. In addition to uncovering Frederick Law Olmsted, Sax leads us to Norman MacLean's wonderful *A River Runs Through It*.¹¹ MacLean, whose father was a Presbyterian minister, opens his book with words reminiscent of Sax's description of the preservationist as a secular prophet: "In our family, there was no clear line between religion and trout fishing."

On the second to the last page, Sax finally confesses what his readers surely suspected all along—that he counts himself among the ranks of the preservationists. This means that Sax is himself part secular prophet and that he is in the business of changing minds. This means further that his true goals in writing *Mountains Without Handrails* cannot be achieved unless reasonably sweeping change in park policy is achieved.

It is, then, too early to judge whether *Mountains Without Handrails* will be a success in the terms most dear to the author. But it would be wrong to underestimate the potential reach of this book. Ideas spawn political movements, which in turn spawn laws. There are powerful ideas in this book. They may well blend with other ideas, personalities, and events to make a difference in preservation policy. This, of course, has already occurred with the ideas of preservationist-writer-activists such as John Muir, Aldo Leopold, and Bob Marshall. That is not bad company and, whether or not generations hence will count Sax within it, *Mountains Without Handrails* affords a vivid and bright view of the same star that those earlier pioneers so avidly sought.

11. N. MACLEAN, *A RIVER RUNS THROUGH IT AND OTHER STORIES* (1976).

