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Anasazi Jurisprudence

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ANASAZI JURISPRUDENCE

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I. Introduction

Arizona, Colorado, Utah, and New Mexico touch at a common point in the high desert of the American southwest. Surrounding these four corners is some of the most stunning, haunting, beautiful, and difficult topography in the United States. These are lands of achingly clear light,[1] pastel colors, deep canyons, weather-sculpted sandstone, ancient piñion and hardy juniper trees — and limited, variable precipitation. It would seem an improbable place for non-nomadic, sedentary civilizations; yet, for the last two millennia native people — the prehistoric Anasazi Indians and their descendants, the Pueblo[2] — have

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1. In recent years air pollution from huge, coal-fired power plants and from distant cities has partially compromised the crystalline purity of the air. However, the light and air remain striking because of the high pressure and low humidity. *See* Michael Tennesen, *On a Clear Day*, NAT'L PARKS, Nov./Dec. 1997, at 26, 27-29.

2. The names given by whites to prehistoric and historic native peoples are problematic in both the sense of their origin and in the sense of their meaning. "Anasazi" is a Navajo word meaning, roughly, "enemy ancestors." *See* DAVID H. THOMAS, EXPLORING ANCIENT NATIVE AMERICA: AN ARCHAEOLOGICAL GUIDE 94 (1994). The word is offensive to many modern-day Pueblo. *See* DAVID ROBERTS, IN SEARCH OF THE OLD ONES 13 (1996). The word "Pueblo" is Spanish for city or village and is thus a remnant or reminder of a period of severe racial, cultural, and economic oppression. ROBERTS, *supra*, at 13; *see also* DAVID J. WEBER, THE SPANISH FRONTIER IN NORTH AMERICA 122-46 (1992).

The Term "Indian" is probably a reflection of both Columbus' destinational confusion and of

survived and even flourished in these arid environs.

Although the Anasazi were skilled as hunters and, according to legend, migratory,[3] their basic economy was sedentary agriculture. By utilizing water-retaining sand and natural flooding and by manipulating runoff with diversion dams, canals, and terraces,[4] the Anasazi were able to successfully grow enough corn, squash, beans, and cotton to satisfy subsistence needs and create a surplus.[5] The Anasazi also possessed a culture of such depth and richness that their pottery, lithics, rock art, and ceremonies have bridged the centuries and provided both tangible proof of the Anasazi enlightenment,[6] as well as inspiration for current artistic, cultural, and religious endeavors.[7]

It is, perhaps, the architecture that has made the Anasazi so intellectually and emotionally intriguing. Willa Cather, in a fictional description of Richard Wetherill's actual discovery of Cliff Palace in a Mesa Verde canyon,[8] wrote:

> I wish I could tell you what I saw there, just as I saw it, on that first morning, through a veil of lightly falling snow. Far up above me, a thousand feet or so, set in a great cavern in the face of the cliff, I saw a little city of stone, asleep. It was as still as sculpture — and something like that. It all hung together, seemed to have a kind of composition: pale little houses of stone nestling close to one another, perched on top of each other, with flat roofs, narrow windows, straight walls, and in the middle of the group, a round tower.
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> It was beautifully proportioned, that tower, swelling out to a larger girth a little above the base, then growing slender again.

European inability or unwillingness to differentiate among the various tribal peoples. A few, such as Peter Matthiessen, suggest that the term "Indian" comes from the Spanish "In Dios" — a people in God. *See* PETER MATTHIESSEN, INDIAN COUNTRY 3 (Penguin Books 1992) (1984).

Despite all of this, I will continue to use these somewhat flawed or imprecise terms for several reasons. Archaeology has utilized the classification "Anasazi" and "Pueblo" for most of the twentieth century, ROBERTS, *supra*, at 13, and revisionism at this late date might prove confusing. Beyond this, most contemporary tribalists do not despise the terms "Indians" or "Pueblo"; nor do they clearly prefer the rather unspecific substitute "Native American." *See* STEPHEN L. PEVAR, THE RIGHTS OF INDIANS AND TRIBES 1 (1992). In truth, most tribalists prefer to be referred to by the name of their particular people but, failing such specificity, the collective sobriquet "Indian" or "Pueblo" will suffice. *See* JACK UTTER, AMERICAN INDIANS 14 (1993).

3. THOMAS E. MAILS & DAN EVEHEMA, HOTEVILLA 74-130 (1995) [hereinafter HOTEVILLA].

4. ROBERT LISTER & FLORENCE LISTER, THOSE WHO CAME BEFORE 31-32 (2d ed. 1994).

5. R. DOUGLAS HURT, INDIAN AGRICULTURE IN AMERICA 21-26 (1987).

6. *See* J. J. BRODY, ANASAZI AND PUEBLO PAINTING 21-79 (1991); JESSE W. FEWKES, DESIGNS ON PREHISTORIC HOPI POTTERY 105-81 (Dover 1973); LAVAN MARTINEAU, THE ROCKS BEGIN TO SPEAK 19, 87 (Gweneth R. DenDooven ed., 1973). The linkage of contemporary Pueblo ceremonies with the Anasazi may be less direct and tangible, and more dependent on archaeolcgical inference and ethnographic testimony. *See infra* notes 66-106.

7. *See* ROBERTS, *supra* note 2, at 83-84; *see also* HOTEVILLA, *supra* note 3, at 139.

8. *See* FRANK MCNITT, RICHARD WETHERILL: ANASAZI 24 (1966).

> There was something symmetrical and powerful about the swell of the masonry. The tower was the fine thing that held all the jumble of houses together and made them mean something. It was red in color, even on that grey day. In sunlight it was the color of winter oak-leaves. A fringe of cedars grew along the edge of the cavern, like a garden. They were the only living things. Such silence and stillness and repose — immortal repose. That village sat looking down into the canyon with the calmness of eternity. The falling snow-flakes, sprinkling the piñons, gave it a special kind of solemnity. I can't describe it. It was more like sculpture than anything else. I knew at once that I had come upon the city of some extinct civilization, hidden away in this inaccessible mesa for centuries, preserved in the dry air and almost perpetual sunlight like a fly in amber, guarded by the cliffs and the river and the desert.[9]

The Anasazi built vast numbers[10] of habitation sites throughout the Four Corners area, ranging from pithouses and single-family surface room blocks to the vast, elaborate, pluralistic, multistoried cities such as Pueblo Bonito, Aztec, Chetro Ketl, Keet Seel, and Cliff Palace.[11] These elegant structures, often located in or on dramatic, seemingly defensive settings such as caves, canyons, pinnacles, ridge crests, and mesa tops, offer the most tangible present-day indications of politically complex, socially integrated, and value-oriented societies.[12]

The Anasazi's established presence in the Four Corners area dates from at least the beginning of the Christian era.[13] This arrival may have been preceded by a location in the Great Basin area[14] and, even earlier, in Asia.[15] The first millennium, up to A.D. 700, was dubbed the "basket maker" era by Richard Wetherill.[16] The term "basket maker" was formally established in the anthropological lexicon at the 1927 Pecos Conference.[17] This gathering of

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9. WILLA CATHER, THE PROFESSOR'S HOUSE 179-80 (1990).

10. Stephen Kelley, *Potshards and Sun Calendars: BLM Management of Cultural Resources on the Colorado Plateau*, 18 PUB. LAND & RESOURCES L. REV. 87, 88 (1997).

11. *See generally*, WILLIAM FERGUSON & ARTHUR ROHN, ANASAZI RUINS OF THE SOUTHWEST IN COLOR (1987).

12. *See* John Ragsdale, *The Rise and Fall of the Chacoan State* 64 UMKC L. REV. 485 (1996) [hereinafter Ragsdale, *Chacoan State*].

13. THOMAS, *supra* note 2, at 91. There are numerous scholars who set the arrival date earlier. *See e.g.*, FERGUSON & ROHN, *supra* note 11, at 1 (700 B.C.); THOMAS MAILS, SECRET NATIVE AMERICAN PATHWAYS: A GUIDE TO INNER PEACE 24 (1994) (100 B.C.).

14. FERGUSON & ROHN, *supra* note 11, at 1.

15. *Id.* at 1. *But see* VINE DELORIA, JR., RED EARTH, WHITE LIES: NATIVE AMERICANS AND THE MYTH OF SCIENTIFIC FACT 81-107 (1995).

16. *See* MCNITT, *supra* note 8, 64-66.

17. *See* ALFRED V. KIDDER, AN INTRODUCTION TO THE STUDY OF SOUTHWESTERN

Southwestern archaeologists, called by Alfred Kidder, also adopted the nomenclature of "Pueblo" to designate the eras stretching on from the basket maker period into the second millennium.[18] The Anasazi civilization crested in the first third of the second millennium and sites already established at Acoma, Zuni, Hopi, and along the Rio Grande began to grow with immigrants from the four corners region.[19] By the year 1300, the major settlements of the Four Corners had been substantially abandoned.[20]

The Anasazi legacy and mystery survived the abandonment and migrations, and now compel both the direct Pueblo descendants and, increasingly, the majoritarian society.[21] What thoughts, values, and precepts organized and directed such a people? What visions and philosophies led them along an ordered, ascending path, guided the design and placement of their cities and the character of their economy, prompted the abandonment of an area clearly loved and revered, and finally, precipitated the establishment of the still vibrant Pueblo cultures of today? In a particular sense, can we discern or postulate a jurisprudence for the Anasazi?

Preliminary problems with a reconstruction of an ancient jurisprudence include those of definition and probative evidence. Such problems are compounded by a preliterate silence and by the Anasazi withdrawal nearly 700 years ago. Beginning first with definition for the term "jurisprudence," we can note the standard[22] characterization of jurisprudence as a science or philosophy of law.[23] Some current jurisprudential scholars prefer to depict "law" narrowly and concentrate on a limited functional or institutional segment such as statutory promulgation, market operation, or particular adjudications.[24] It would seem more realistic and accurate to view law in a broader, more holistic sense. Law could include all the forces, institutions, and conventions that serve to order and guide individual and group conduct in the society. Under this more expansive approach jurisprudential study could deal with the duties and obligations posed by religion, philosophy, custom, and personal conscience, as well as the requirements presented by statutes, administrative rulings, and adjudications.

ARCHAEOLOGY WITH A PRELIMINARY ACCOUNT OF THE EXCAVATIONS AT PECOS 36 (1962).

18. *Id.*; *see also* THOMAS, *supra* note 2, at 91.

19. *See* J. O. Brew, *Hopi Prehistory and History to 1850 in* 9 HANDBOOK OF NORTH AMERICAN INDIANS 514 (Alfonso Ortiz ed., 1979).

20. Michael Adler, *The Great Period: The Pueblo World During the Pueblo III Period, AD 1150 to 1350, in* THE PREHISTORIC PUEBLO WORLD, AD 1150-1350, at 5, 8 (Michael Adler ed., 1996).

21. *See* JERRY MANDER, IN THE ABSENCE OF THE SACRED: THE FAILURE OF TECHNOLOGY AND THE SURVIVAL OF THE INDIAN NATIONS 168-70 (1991).

22. WEBSTER'S NEW WORLD DICTIONARY 734 (3d college ed. 1994).

23. *Id.*

24. *See e.g.*, STEPHEN B. PRESSER & JAMIL S. ZAINALDIN, LAW AND JURISPRUDENCE IN AMERICAN HISTORY 711-1063 (2d ed. 1989).

The dictionary definition of jurisprudence employs a perhaps unnecessary disjunction of science from philosophy. These are indeed different approaches, but they are not necessarily inconsistent. Science, especially Western science, is concerned with precise description, quantitative and linear measurements, and functional explanations.[25] Scientists — and technologists — deal with the measurable and the tangible, and do not easily accept mystery, mysticism, or the unknown.[26] Indeed, as Eric Freyfogle has written, "the implicit suggestion of the scientific method is that things we don't know and can't prove don't exist."[27]

Jurisprudence can include a focus on philosophy, and a concern with meaning, intangibles, holism, mystery, emotion, and qualitative values. This branch of jurisprudence is less concerned with the mechanics of the law and more interested in the beliefs and values that precede the law. Robert Pirsig said, "[v]alue is the predecessor of structure. It is the preintellectual awareness that gives rise to it. Our structured reality is preselected on the basis of value, and really to understand structured reality requires an understanding of the value source from which it's derived."[28]

Grant Gilmore implicitly endorsed the qualitative essence of jurisprudence and the ideal that value precedes structure when he characterized law as "a mechanism for the settlement of disputes in the light of broadly conceived principles on whose soundness . . . there is a general consensus . . . ."[29]

How can one discern philosophy or jurisprudence from a preliterate, prehistoric society? Although the Anasazi did not bequeath a printed legacy, they did leave evidence from which one can glean or extrapolate attitudes, beliefs, and values. The architecture, for instance, of an ancient society connotes much about the relations of the group with the environs and with each other.[30] The symbols, designs, and pictures baked by fire onto pottery, painted on the dwelling and canyon walls, and chiseled into the rock can reveal a considerable amount about the feelings, fears, obligations, and sacrosanctities of an ancient people.[31] In addition, the agricultural practices of the ancients can reveal a necessary relationship with the seasons, the land and the elements, and can suggest much about the role of values precedent to

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25. ERIC T. FREYFOGLE, JUSTICE AND THE EARTH: IMAGES FOR OUR PLANETARY SURVIVAL 113-19 (1993).

26. DELORIA, *supra* note 15, at 16-18.

27. FREYFOGLE, *supra* note 25, at 117.

28. ROBERT M. PIRSIG, ZEN AND THE ART OF MOTORCYCLE MAINTENANCE 255 (New Age ed. 1981) (1979).

29. GRANT GILMORE, THE AGES OF AMERICAN LAW 109 (1977).

30. Vincent Scully wrote: "All human construction involves a relationship between the natural and the man-made. That relationship physically shapes the human cultural environment. In historical terms, the character of that relationship is a major indication of the character of the culture as a whole." VINCENT SCULLY, PUEBLO, MOUNTAIN, VILLAGE, DANCE 4 (1975). *See infra* Part II.

31. *See* BRODY, *supra* note 6, at 176-77; FEWKES, *supra* note 6, at 113-14, 179-80; MARTINEAU, *supra* note 6, at 14.

law.[32] Finally, there has been, since the advent of Columbus and European influence in the Americas, numerous histories and anthropological observations of the Anasazi descendants. These, along with direct ethnographic testimony, may afford a strong inference of prehistoric beliefs — especially because the traditional Pueblo, although flexible in methodology, have been remarkably resistant to the revision or erosion of fundamental beliefs.[33] Indeed, some current scholars believe that the myths of the contemporary Indian people are more than mere fictitious illustrations of contemporary morality; they feel that such myths may represent precise, orally transmitted composites of the beliefs, values, and actual histories of the prehistoric societies.[34]

A study of antecedents to law even more fundamental than beliefs and values might include a foray into the *generation* of the beliefs and values themselves. One might speculatively suggest that the origins of value lie, in part, within the human condition and the universal needs and strivings for survival, security, and meaning. Simon Ortiz wrote:

> Of course, there are distinct ways the Pueblo Indians of Acoma differ from the citizens of Indianapolis, but there are also ways they are not so different. People are people, and they have the same needs to feed, clothe, and shelter themselves; their societies may differ in organization but essentially they exist to ensure the security, health, and well-being of the citizens.[35]

The origins of value may also stem from the human ability to observe, reflect upon, and honor the fundamental patterns and rhythms discerned in the world and cosmos. If a person senses deep-seated natural patterning that

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32. *See* HURT, *supra* note 5, at IX-X; *see also* Simon J. Ortiz, *What We See: A Perspective on Chaco Canyon and Its Ancestry in* CHACO CANYON: A CENTER AND ITS WORLD 65, 66 (Mary Wachs ed., 1994).

33. "There were guidelines for well-ordered living. What the Pueblos have now as an unwritten 'Tribal Code' was essentially in operation in ancient times, remembered and obeyed as though carved in stone. The Code was respected, understood and taught from generation to generation." JOE SANDO, THE PUEBLO INDIANS 19-20 (1976).

34. WILLIAM SULLIVAN, THE SECRET OF THE INCAS 5-18 (1996).

> The oral tradition of Acoma Pueblo, and of all the other Pueblos, is central to the consciousness of who they are, and it is basic to their culture. It is through the oral tradition that their journey on the [road of life] is told — the whole of their Pueblo's cultural development and experience. From the beginning to the present, nothing is left out because the Pueblo's insist that the purpose of knowledge is to clarify and demystify. Their ongoing journey on the road of life is delineated through the oral tradition in order that the people may be secure and fully aware within their cultural environment.

Ortiz, *supra* note 32, at 65.

35. Ortiz, *supra* note 32, at 66.

precedes and transcends transitory mortal existence, then an essential value in these patterns and a basic duty of respect may arise.[36]

Finally, although many scientists might resist the conclusion, the origin of values may lie in the voices and perceived commands of the deities.[37] Indeed, law as promulgated by gods *or* humans may well have its own self-contained inculcatory power. Subsequent adherents may hold values as such simply because the laws or the gods have spoken.

The origins of value stemming from, at least, biology, consciousness, and conscience present the strong possibility of correspondence and congruity between elemental values of diverse societies, separated by time and space. Although configurations vary, the roots are similar.[38] In this commonality of intercultural, intergenerational experience lies the relevance of reconstructing an Anasazi jurisprudence. For one thing, an exploration into ancient jurisprudence or philosophy may provide a more accurate understanding about the motivations of the past than is afforded by hard science alone. Archaeologists and anthropologists tend to project their own calculated, measured dispassion onto the people at the center of their study.[39] Thus, because of their personal hesitancy to make inferential leaps and premature conclusions on beliefs, intangible values, or philosophy, such scientists may conclude that the ancient Anasazi were also humorless, dispassionate, linear thinkers. They may assume that the Indians operated from the dominant premise of rationality and that law and conduct were the product or embodiment of economic efficiency and the need for security.[40] Such assumptions leave no supervening role for the emotions or beliefs of the ancients.[41]

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36. *See* John Ragsdale, *The Natural Law of Rhythm and Equality*, 58 UMKC L. REV. 375, 379 (1990).

37. HOTEVILLA, *supra* note 3, at 17.

38. *See supra* note 34; *infra* Part IV; *see also* ROGER KENNEDY, HIDDEN CITIES 248 (1994). "[T]hey were modern people, essentially like us. Therefore, we need not be excessively chary about imagining ourselves into their spaces and developing from that imaginary experience some explanations for why those spaces were created." *Id.*

39. SULLIVAN, *supra* note 34, at 49-50; *see also* DAVID FREIDAL, ET AL., MAYA COSMOS 36 (1993) [hereinafter, MAYA COSMOS].

40. John R. Stein & Stephen H. Lekson, *Anasazi Ritual Landscapes in* CHACO CANYON: A CENTER AND ITS WORLD 45, 45 (Mary Wachs ed., 1994).

41. *See* James N. Hill, *Prehistoric Social Organization in the American Southwest: Theory and Method in* RECONSTRUCTING PREHISTORIC PUEBLO SOCIETIES 10, 33 (William A. Longacre ed., 1970). "Actually, there is no need to be concerned with what people thought at all; we are really interested in what they actually *did* (real behavior)." *Id.* Some contemporary scholars would arrogate to themselves the soulfulness they would deny the objects of their study. David Roberts, on finding an Anasazi site, wrote: "The site seemed to my modern sensibility blissful and serene, a lordly nook in a wilderness that made the heart soar. But the Anasazi would have regarded it chiefly in practical terms . . . ." ROBERTS, *supra* note 2, at 18.

In actuality, civilizations, conduct, and law are based on ideas, values, and beliefs.[42] This is especially true with respect to intensely religious people, such as the Pueblo, who view their religion as organic and integral to the individual and to the group,[43] and who regard their conduct, law, and course of life as the fulfillment of a covenant with the gods.[44] Among such people the keeping of sacred obligation and the honoring of fundamental values or philosophy would clearly rival and probably surpass the reasoned pursuit of favorable cost-benefit ratios and the practicalities of physical and economic security.[45]

Reasoned speculation about Anasazi metaphysics may bear strong relevance to our views of the future as well as the past. It seems certain that, at some point, exponential growth — in production, consumption, population, and pollution — will collide with the essentially finite physical boundaries of the world's various systems and result in a general ecological breakdown.[46] The second law of thermodynamics[47] holds that ongoing growth will overwhelm inevitably energy, resources, and environmental margins, and the results may include both absolute scarcities and untransformable externalities.[48] It is also likely that high technology, capitalism, and continuing growth will, beyond the environmental impacts, open up or aggravate disparities in economic distribution.[49] The critical legal studies movement in American jurisprudence suggests that these inequalities may become institutionalized when the politically powerful use law and process to maintain and enhance their advantages.[50] The have-nots and the less fortunate seem to have usually tolerated this throughout American history because the possibility of their own gains in the future may have countered or overcome

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42. *See* WILLIAM H. CALVIN, HOW THE SHAMAN STOLE THE MOON 123 (1991).

43. EDWARD T. HALL, WEST OF THE THIRTIES 74 (1994).

44. HOTEVILLA, *supra* note 3, at 149.

45. Thomas Mails and Dan Evehema feel that the objective scientific method inaccurately marginalizes the critical role of belief:

> The most commonly advanced reasons for Anasazi/Hopi movements include exhausted resources, droughts, overburdened facilities, enemy pressures, and more recently the idea that factionalism is a common and ongoing Hopi trait that has led to frequent partings.
>
> But the scientists may be looking in the wrong places and not listening to the right people. The Elders say that Hopi movements came from the suggested reasons only as secondary causes. The primary cause in each instance was the keeping of the Covenant that laid out for them a pattern of life to follow.

HOTEVILLA, *supra* note 3, at 17.

46. *See* John Ragsdale, *Ecology, Growth and Law*, 16 CAL. W. L. REV. 214 (1980) [hereinafter Ragsdale, *Ecology, Growth and Law*].

47. *See* JEREMY RIFKIN, ENTROPY, 33-44 (1980).

48. WILLIAM OPHULS, ECOLOGY AND THE POLITICS OF SCARCITY 46-137 (1977).

49. *See* Ragsdale, *Ecology, Growth and Law*, *supra* note 46, at 255-57.

50. STEPHEN B. PRESSER & JAMIL S. ZAINALDIN, LAW AND JURISPRUDENCE IN AMERICAN HISTORY 968-1017 (2d ed. 1989).

their awareness of unfairness, exploitation, and the irresponsible use of power and law.[51] In a growing economy, the prospect of increase, equalization, or even distribution will conceal or subordinate the internal problems of distribution.[52] A society which venerates linear expansion and lacks a core of qualitative principle may, however, have grave difficulty surviving disaster or decline in living standards and economic promise. If there is no transcendent social ethos beyond naked self-interest, then a descent can precipitate either an unseemly free-for-all or a repressive central coercion.[53]

For this rather cataclysmic prospect, the Anasazi jurisprudence may provide at least the beginning of an alternative.[54] The core Anasazi values, which we will explore shortly, were principles capable of promoting fairness and equality within the group and able to sustain and dignify a society, even when pressure from outside forces — famine, heat, cold, drought, erosion, or invasion — became inescapable. A study of Anasazi jurisprudence could translate to both a reviewing of the past, a revisioning of the future, and a better understanding of the community among humans and with the world itself.[55]

John Collier recognized these prospects in the early 1930s. His role in the formulation of the Indian Reorganization Act of 1934,[56] which halted the assault on tribalism and made a provision for its continuation and enhancement, was based on this conviction:

> War can no longer be met and controlled through war. Force can no longer be met by force. Nowhere but in the soul can our hope rest now; and the expression of what we call the soul is to be found only in the social art — the art of living. Ancient man could send us a message if he could speak and if he could be heard. For he knew and practiced the truths of the shaping of human nature — truths which we as a society have lost.[57]

II. The Fundamental Jurisprudence of the Anasazi

The core Anasazi jurisprudence, lying at the heart of their way of life, was the belief that everything in the universe was bound together in an interactive,

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51. ROBERT L. HEILBRONER, AN INQUIRY INTO THE HUMAN PROSPECT 61-95 (1975).

52. *Id.*

53. *See* OPHULS, *supra* note 48, at 142-64; ROBERTO VACCA, THE COMING DARK AGE 131-40 (Dr. J.S. Whale trans., Doubleday & Co. 1973) (1971); ROBERT L. HEILBRONER, BUSINESS CIVILIZATION IN DECLINE 101-24 (1976) [hereinafter BUSINESS CIVILIZATION].

54. BUSINESS CIVILIZATION, *supra* note 53, at 120.

55. *See* JOHN COLLIER, INDIANS OF THE AMERICAS 7-16 (slightly abr. 1947) [hereinafter INDIANS OF THE AMERICAS].

56. Indian Reorganization Act, ch. 576, 48 Stat. 984 (codified as amended at 25 U.S.C. §§ 461-479 (1994)).

57. INDIANS OF THE AMERICAS, *supra* note 55, at 24; *see infra* Part IV.

divinely orchestrated whole, that every element — each animal, place, person, rock, or tree, each plant, each star, and space itself — was united in a living, vibrant community.[58] In one sense, the completeness of the unity suggests or compels a concept of functional equality among the components, all of whom have a place and infinite relationships.[59] In another sense, the Anasazi believed that each element in the universe was itself a totality that mirrored the whole, and had life and spirit regardless of the external form.[60] The Anasazi believed that this whole, although enduring and eternal, was in motion with ebbings, flowings, cycles, and rhythms.[61] Although the Anasazi believed themselves and other humans participated in this cosmic dance, they regarded their position as special.[62] The powers of the mind, body, and consciousness were seen to give humans the power to achieve, maintain — or disrupt — the harmony and balance of life and the embracing unity.[63]

From this and other perceptions of the cosmic order came the fundamental prescriptions for Anasazi law and behavior. The Anasazi felt that they, as a people and as individuals, bore a responsibility commensurate with their power. The responsibility or duty borne was one of reciprocity — an obligation to give, in return for blessings and advantages received, to the community of the world — the people, the land, and even the heavens. The sacred task was to maintain the balance and the rhythm of the whole — for the sake of all the people, spirits and lives in the world.[64]

The responsibility or duty of reciprocity was accepted by the Anasazi in part because of awareness and logic but, beyond this, because of promise. The Anasazi believed that they had, indeed, a covenant with the gods, a binding pact to maintain the balance through the correct performance of their thoughts, actions, ceremonies, and very lives. In sum, then, the fundamental unity — the community of the people, with the world, the cosmos, and each other, and the covenant to keep the world in balance — was the sacred fountainhead of the Anasazi people. This was the foundational jurisprudence and the law and the way of life thus followed from the beliefs and perceived obligations.

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58. ADOLPH BANDELIER, THE DELIGHT MAKERS 43-44 (1971); KENDRICK FRAZIER, PEOPLE OF CHACO 212 (1986); DON WATSON, INDIANS OF THE MESA VERDE 109-10 (1961).

59. SANDO, *supra* note 33, at 15-20.

60. Stein & Lekson, *supra* note 40, at 50.

61. JOHN COLLIER, ON THE GLEAMING WAY 89-91 (1962) [hereinafter ON THE GLEAMING WAY].

62. LAURA THOMPSON, CULTURE IN CRISIS: A STUDY OF THE HOPI INDIANS 133-35 (1973).

63. *Id.*

64. *See* FRAZIER, *supra* note 58, at 212; *see also* LAURA THOMPSON & ALICE JOSEPH, THE HOPI WAY 36-37 (1965). "Theoretically, all phenomena, natural and supernatural, living and dead — including man, animals, plants, the earth, sun, moon, and clouds, the ancestors and the spirits — are interrelated and mutually dependent through the underlying dynamic principle of the universe — which we shall call the law of universal reciprocity." THOMPSON & JOSEPH, *supra* at 37.

> They were determined loyalists who, even though the process went on for centuries, crafted everything they did with loving devotion. It was prayed into existence and endowed with fertility. That's why it was, and still is, so beautiful. They were keeping creation in harmony and balance, and the aura of that knowledge carried them along like a flowing wind. The structures they lived and worshiped in, the items they fashioned and used, and the costumes they wore were painstakingly sculptured to serve the Covenant in the best way possible as it was kept and moved forever year after year.[65]

How can one accept or prove this when the formulators and adherents of the jurisprudence left no written guide? They possessed an oral culture and the jurisprudence, the law, and the enfolding patterns of correct, necessary, lifelong behavior were passed by word of mouth from person to person, and generation to generation with a painstaking, face to face educational process. We who are not privy to these immediate transmissions must look elsewhere for the essence. Although the Anasazi did not speak directly to us, they have still left much significant evidence.

A. The Architectural Reflections of the Jurisprudence of Community

The role of architecture can extend far beyond efficiency, form, and utilitarian functioning. The necessary and the practical can be hallowed and the physical structures can reflect and promote the beliefs of the people about the human community within and the relationships of the group with the world.[66] "Architecture . . . is constructed by people in response to their needs and their conception of how both their community and the universe are ordered. Furthermore, once constructed, the built environment can contribute to maintaining and reinforcing social order, or if modified, the built environment can help to transform that order."[67]

In a preliminary, visual sense, it is apparent that the constructions of the Anasazi flowed out of the natural order — extensions rather than transformations. Rock, timber, clay, and water were united by the energy of

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65. HOTEVILLA, *supra* note 3, at 56. A covenant or obligation is, thus, not necessarily synonymous with burden. In fact, a sworn duty or pledge is inextricably bonded to the veneration of highest values; the choice to serve these sacred beliefs provides a core of energy, a context, a purpose, and a meaning for the lives of the individuals and the course of the society. Laurence Tribe wrote: "To be free, it seems, is to choose what we shall value; to feel coherence over time and community with others while experiencing freedom is to choose in terms of shared commitments to principles outside ourselves . . . ." Laurence Tribe, *Ways Not to Think About Plastic Trees: New Foundations for Environmental Law*, 83 YALE L.J. 1315, 1338 (1974).

66. Michelle Hegmon, *Social Integration and Architecture in* THE ARCHITECTURE OF SOCIAL INTEGRATION IN PREHISTORIC PUEBLOS 5 (William D. Lipe & Michelle Hegmon eds., Occasional Paper No. 1 of the Crow Canyon Archaeological Center 1989).

67. *Id.*

the sun and human endeavors, and bonded or blended with the ground. In general, the Anasazi did not physically modify their building sites and they used local materials.[68] Thus, the earth received the dwellings and the dwellings in turn mirrored the composition and even the shapes of the natural order. Many Anasazi buildings gracefully ride the ridge crests or blend into undercut sandstone with a perceptible rhythm that parallels their surroundings.[69]

The architectural recapitulations of community go much deeper than the readily observable. A closer examination reveals not only the consecration of community within the physical structurings, but also the attendant responsibility that characterized the central focus of Anasazi life and law.[70]

1. Community with the Sky

The Anasazi were high desert farmers living in a precarious balance with the forces of life. Each day of brilliant, often unrelenting sun, each season of unpredictable rain, and each night of luminous, crystalline intensity had to remind them of the impropriety of human arrogance and the ultimate futility of attempts at separation from the natural order. Although a society cannot, in the long run, avoid the limits of the land or the constraint on human meaning posed by infinity, a society can choose to either make a futile and destructive attempt at escape through growth and transformation, or it can seek a repose in balance.[71]

The architecture of the Anasazi was a physical and intellectual expression of a deep belief in unity with the celestial harmony. Many buildings, like Pueblo Bonito, one of the largest and most carefully designed of the Chaco Canyon Great Houses, Casa Rinconada, a Chaco Canyon great kiva, and the D-shaped towers at Hovenweep, were laid out to reflect the seasonal pathways of the sun, moon, stars, and galaxies.[72] This emulation of cosmic patterns in the human built environment seems clearly an attempt to participate in the universal community and to reaffirm these principles in the daily living of the people. As Roger Kennedy wrote, with respect to similar architectural

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68. JOHN B. JACKSON, A SENSE OF PLACE, A SENSE OF TIME 33 (1994). In some cases, like Chaco Canyon, building materials such as trees may have been imported from a considerable distance. *See* Julio L. Betancourt, et al., *Prehistoric Long-Distance Transport of Construction Beams, Chaco Canyon, New Mexico*, 51 AM. ANTIQUITY 370, 371 (1986).

69. SCULLY, *supra* note 30, at 9-10. This is in marked contrast to the architecture and building of Western civilization which has tended toward freedom from nature. *Id.* at 7.

70. *See* RAY WILLIAMSON, LIVING THE SKY 134-35 (1984).

71. *See* JEREMY RIFKIN, ALGENY 247-55 (1984) [hereinafter ALGENY].

72. *See* WILLIAMSON, *supra* note 70, at 112-50; CALVIN, *supra* note 42, at 128-38; E. C. KRUPP, ECHOES OF THE ANCIENT SKIES 231-36 (1983). Similar architectural tendencies among the prehistoric inhabitants of the Americas have been described by KENNEDY, *supra* note 38 (Ohio and Mississippi Valleys); SULLIVAN, *supra* note 34 (Incas); and MAYA COSMOS, *supra* note 39 (Mayans).

tendencies among the prehistoric inhabitants of the Ohio and Mississippi Valleys: "Their cerebral, geometric, one might say 'classical' or renaissance engineering appeared to be motivated by desire to bring their buildings into harmony with nature — with the passages of the sun and the moon. Their architectural forms implied a search for order in continuous and predictable patterns."[73]

Certain other constructions seemed to have been designed more as human observatories than as astronomical models. The Anasazi would create towers or use natural notchings such as those at Chimney Rock[74] in order to view the moon or sun at a given point in the sky, on the horizon, or during the year, and relate this to the timing of agricultural or devotional practices.[75] Thus, the people could integrate cosmic time, through architecture, into their daily routines and the affirmation of the universal community could occur.

A community with the energy from the sky, practical as well as celebratory or devotional, was consummated by effective architectural utilization of solar flows. Cliff dwellings were generally built in south- or southwest-facing caves where the summer sun would arch high over the insulated, shaded interiors and sheltering the inhabitants from the fiercest heat as well as the wind and rain. In the winter, the rays from the low-riding sun would fill the caves and penetrate the heat-absorbing sandstone and adobe.[76]

The great Chacoan pueblos such as Bonito and Chetro Ketl stood apart from canyon cliffs and caves, but still maintained a balance with the sun. The massive sandstone walls of the great houses, like the walls of the caves, served as barriers to the rapid passage of heat or cold, thus keeping the rooms within relatively warm in the winter and cool in the summer. In addition, the terracing and setback of the pueblo floors, the orientation toward south, and the concave structuring around a central plaza[77] made the pueblos comfortable places in all seasons.[78]

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73. KENNEDY, *supra* note 38, at 277. Kennedy noted the paralleling architectural tendencies among the Anasazi of the Southwest. *Id.* at 17.

74. *See* FLORENCE LISTER, IN THE SHADOW OF THE ROCKS 106 (1993).

75. WILLIAMSON, *supra* note 70, at 117, 143; CALVIN, *supra* note 42, 128-38; *see* PETER NABAKOV & ROBERT EASTON, NATIVE AMERICAN ARCHITECTURE 363 (1989).

76. *See* ROBERTS, *supra* note 2, at 18-19; WATSON, *supra* note 58, at 39; DUANE A. SMITH, MESA VERDE NATIONAL PARK 5 (1988).

77. See the diagrams in Robert Powers, *Regional Interaction in the San Juan Basin: The Chacoan Outlier Systems in* RECENT RESEARCH ON CHACO PREHISTORY 23, 29-31 (W. James Judge & John Schelburg ed., 1984).

78. WILLIAMSON, *supra* note 70, at 147. "Their shape was like an amphitheatre with every seat a room. Facing south to get the sun, their backs to the canyon wall, they rose from a height of one room at the front to three, four, and five at the back." RUTH M. UNDERHILL, FIRST PENTHOUSE DWELLERS OF AMERICA 11 (1976).

2. Community with the Earth

As noted earlier, the architecture of the Anasazi visually and physically blended with the earth. The builders used local materials and unmodified landscapes to create structures that flowed from and with the land, rather than transcending or escaping it. The architecture, however, sought more than ostensible compatibility; it pursued a sacred union with the earth which the Anasazi regarded as the living source of humanity and the enduring core of their life and law.

The origin myths of the historic and contemporary Pueblos, emanating out of their Anasazi past,[79] described the emergence of the people from a life in the underworld out to an existence on the surface.[80] Architecture reflected the myth, bonding the surface to the underworld and joining the inhabitants in the resultant union. Early pithouses, domestic clan kivas, and the multiclan ceremonial great kivas combined the practical and the hallowed aspects of the subsurface into Anasazi society. The imagery of the emergence and the return was reinforced by a ceiling-hole and ladder entrance into most kivas and a Sipapu, or ceremonial hole, in the floor of the kiva.[81]

The joinder with the earth was a prominent, component of all Anasazi architecture, even within the essentially sky-oriented communities such as those representative of the Chacoan Phenomenon.[82] Thus, the great kivas in Chaco Canyon and in outlying communities on the rim of the San Juan Basin all exhibited an orientation toward the earth and the origin myths as well as toward the sky and the cardinal directions.[83]

Some Anasazi settlements seemed to invert the emphasis on the sky and orient predominantly toward the earth, even though significant heavenly contacts were still maintained. The great cave cities of the Mesa Verde and

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79. *See* EDWARD P. DOZIER, THE PUEBLO INDIANS OF NORTH AMERICA 1 (1970).

80. HAMILTON TYLER, PUEBLO GODS AND MYTHS 4-9 (1964).

81. The Sipapu was a normative feature of Anasazi architecture:

> The Pueblo, people, however, did not forget Sipapu, the place of their beginning. In every kiva built by them they construct a Sipapu hole in the floor to remind them of this sacred place. In every ceremonial house of these pueblo dwellers is found a small two- to three-inch diameter hole drilled into the earth to symbolize this memorial occasion. The spirits which still dwell under the earth are thought to enter the kiva through the Sipapu during ceremonies to sanctify the activities.

WILLIAM E. COFFER, SIPAPU viii (1982).

82. The height of the Chacoan Phenomenon occurred from about the mid-eleventh century to 1130, *see* FRAZIER, *supra* note 58, at 181, and centered in Chaco Canyon in the heart of northwestern New Mexico's San Juan Basin. The range of Chacoan influence extended over 100,000 square kilometers. *See* David E. Doyel & Stephen H. Lekson, *Regional Organization in the American Southwest in* ANASAZI REGIONAL ORGANIZATION AND THE CHACO SYSTEM, 15, 15 (David E. Doyel ed., Maxwell Museum of Anthropology, Anthropological Papers No. 5, 1992).

83. WILLIAMSON, *supra* note 70, at 132-44.

the Kayenta Plateau were usually seen by archaeologists and observers as lifestyle choices inspired by physical comfort or security.[84] However, it was also pointed out that water and fuel procurement were often extremely difficult and a steep tradeoff for natural shelter, and that cliff sites were more often traps than effective fortresses.[85] It would seem reasonable, instead, to see major cave cities such as Cliff Palace, Keet Seel, and Betatakin as grand expressions of a redevotion to the earth.[86] "[I]t was perhaps mankind's first wholly conscious attempt to reach back out, or down, to mother earth in this area — his first major philosophical leap, or regression, not to separate himself from nature but to attempt a firmer grip on more of it."[87]

The living heart of Anasazi residence and ceremony, if not economy,[88] was, in the case of the cliff and cave dwellings, enfolded in the rock where the inhabitants' observation of the celestial procession was obscured or limited. The contrast between the brilliant patterns of the southwestern night sky, continually observable by all residents of mesa top or valley floor dwellers, and the uncompromising, sky-obscuring closure of the sandstone caverns was dramatic. Indeed, given the timing of the cliff-house constructions at Mesa Verde, the return to the earth may have been a reaction to the failures of the Chacoan system,[89] and a partial rejection of the overriding orientation to the heavens. The shape of the cavern and the energy of the earth,[90] rather than the paths of the stars, governed the contours of the architecture and the course of their lives.[91]

3. Community Within

The Anasazi's fundamental concern with holism, balance, and interconnection was revealed by the symbolic and reverential community that architecture forged with the earth and the sky, and was also demonstrated by the egalitarian community that architecture reflected and nurtured among the people themselves.[92] Though the sophistication and complexity of cities like

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84. 1 THOMAS E. MAILS, PUEBLO CHILDREN OF THE EARTH MOTHER, 362-63 (1983); ROBERTS, *supra* note 2, at 19.

85. *See* MAILS, *supra* note 84, at 362; SCULLY, *supra* note 30, at 24.

86. SCULLY, *supra* note 30, at 24-30.

87. *Id.* at 24-26.

88. The fields were generally on the mesa-top above the canyons, cliffs, and caves, and occasionally on the canyon floor. *See* FERGUSON & ROHN, *supra* note 11, at 4-46.

89. *See generally* Ragsdale, *Chacoan State*, *supra* note 12. The Anasazi began to move into the cliffs around 1150 — approximately the end of the Chacoan florescence. *See* FERGUSON & ROHN, *supra* note 11, at 94.

90. Some have speculated that the Anasazi and other prehistoric peoples may have been closely in tune with the electromagnetic flows of the earth and thus able to live and travel along the points or lines of concentrated force. *See* JAMES A. SWAN, SACRED PLACES 144-45, 230 (1990); NATASHA PETERSON, SACRED SITES 165 (1988).

91. *See* SCULLY, *supra* note 30, at 29.

92. Michelle Hegmon has concluded that the prehistoric Anasazi architecture discouraged

Pueblo Bonito, Aztec, and Cliff Palace bespeak of internal hierarchy and specialization of function in the planning, procurement, and construction,[93] the rooms have a general equality of dimension that cuts against implications of aggravated distributional disparity and entrenched privilege.[94] It suggests that heightened authority was in service to the people and that power was bound inextricably with responsibility toward the general welfare.[95] Not only were the living quarters of the Anasazi of rhythmic, basic equality,[96] but they were closely bonded with common or shared walls, ceilings, and floors — much like a modern condominium. Such physical proximity and mutuality diminished or negated impulses toward proprietariness and exclusivity and promoted cooperation and communication.[97] Material privilege implied and usually required separation — and such distancing was physically as well as intellectually precluded by the cohesion of the Anasazi residential community. In one sense, then, this compactness fostered a concentration of social energy and will.[98] The Anasazi could, under optimum conditions, function like a single, living entity. In another sense, there was a conservation of space or land. Space was obviously crucial when dwellings were constructed in the rigid confines of sandstone caves, and saved increments of arable land were

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social segregation and promoted integration. Hegmon, *supra* note 66, at 5. She also noted:

> Architecture contributes to integration by defining boundaries and by symbolically reinforcing ideology and social norms. It is constructed in a historical and social context, and the intended uses of an architectural facility will ordinarily be considered in its design and construction. Thus the social context will, in a sense, have shaped the structure. In turn, the form of the structure will continue to shape the activities that take place within it and the perceptions of the participants. Therefore, the relationship between architecture and society is an active and dynamic one.

Hegmon, *supra* note 66, at 7.

93. Ragsdale, *Chacoan State*, *supra* note 12, at 523-27.

94. In describing Pueblo Bonito, Vincent Scully said, "[n]o throne rooms or megara, as in the Bronze Age palaces of the Aegean emerge among them; the principle is equalitarian." SCULLY, *supra* note 30, at 15.

95. This influence is supported by observations of the Anasazi descendants. Among the Hopi "traditional leadership is unsought, self-effacing, and fraught with heavy moral obligation . . . . The emphasis is always on responsibility for tribal welfare attached to a ceremonial office, rather than on the prestige or power of the individual who assumes it." THOMPSON, *supra* note 62, at 73.

96. John Jackson has noted that, in Anasazi cities, the rooms in isolation have little meaning, but in clusters of equals there is a "*repetition* which creates the periodic or rhythmic recurrence of spaces and events, the cosmic order." JACKSON, *supra* note 68, at 32.

97. R. GWINN VIVIAN, THE CHACOAN PREHISTORY OF THE SAN JUAN BASIN 468-71 (1990); Michael A. Glassow, *Population Aggregation and Systematic Change: Examples from the American Southwest in* EXPLANATION OF PREHISTORIC CHANGE 185, 208 (James N. Hill ed., 1977).

98. VIVIAN, *supra* note 97, at 468-71; Glassow, *supra* note 97, at 208.

often vital to pueblos like the Chaco Canyon greathouses, which were located on the margins of eroding stream courses.[99]

Anasazi architecture featured substantial common or public areas in the form of plazas, great kivas, storage facilities, reservoirs, and roadways. This physical evidence of a tendency toward inclusiveness rather than elitism[100] is heightened by a uniformity of architectural style throughout the Anasazi region.[101] These demonstrations of an overriding concern with universal access and equal participation, combined with contemporary ethnographic corroboration of the fundamental importance of inclusion,[102] confirm the architectural focus on the human community.

The scale of Anasazi architecture and the scope of the enfolded internal community change dramatically on several occasions in prehistory. In the era dubbed Pueblo II, from roughly A.D. 900 to 1100, the architecture was predominantly characterized by decentralized, self-sufficient blocks of two stories and six to fifteen rooms.[103] During Pueblo III and the Chacoan Florescence, from about A.D. 1050 to 1300, there were larger concentrations of population, planned instead of incremental construction of villages, multistoried conglomerates of up to 700 rooms, and a higher degree of regional economic and religious integration.[104] Then, following A.D. 1300, there was abandonment of the San Juan Basin and dispersal east to the Rio Grande Valley, south to the Acoma mesa, southwest to Zuni, and west to the Hopi villages.[105] Although the Chacoan Phenomenon and the cliff cities of Mesa Verde and Kayenta featured larger concentrations, more complicated architecture and a higher order of integration than the Pueblo II unit houses, the principles of community remained the same. Likewise, when the Anasazi reconceptualized the physical forms and locations in Pueblo IV and V and often reduced the complexity of structure and integration, they retained — indeed targeted — the values of balance and holism.

> Beliefs and values were clearly expressed in these structures. With adaptive flexibility and constant modification of structures, "those gone before us" left their legacy of people working within

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99. VIVIAN, *supra* note 97, at 469-70.

100. *See* Gregory Johnson, *Dynamics of Southwestern Prehistory in* DYNAMICS OF SOUTHWEST PREHISTORY 371-87 (Linda Cordell & George Gumerman eds., 1989).

101. "[T]he dwellings of the prehistoric Pueblo Indians were similar to one another, not only in each individual village, but throughout the region." JACKSON, *supra* note 68, at 30.

102. "With the Hopi . . . every individual in the group, male or female, young or old, has his proper place and role in the organization of the community, with corresponding responsibilities and privileges." THOMPSON, *supra* note 102, at 65.

103. FERGUSON & ROHN, *supra* note 11, at 38-40.

104. *See generally* Ragsdale, *Chacoan State*, *supra* note 12.

105. *See* FERGUSON & ROHN, *supra* note 11, at 18-19; *see* LINDA CORDELL, PREHISTORY OF THE SOUTHWEST, 312-25 (1984). "[T]he situation may have been one of decentralization, reduced coordination of labor, and changes in village layout." *Id.* at 325.

> human scale creating aesthetically functional structures using accessible, simple materials, such as mud, wood, and stone. The unity of these forms is impressive and speaks about the concept of an inherent oneness of human beings with the land and the sky. Yet, the variety of the built forms is remarkable. The myriad expressions of house clusterings, village forms, enclosures, and plaza spaces are endless and, at the same time, give an overwhelming sense of wholeness as if one spirit pervaded them all.[106]

Thus, in Anasazi architecture, all forms reflected the same, central jurisprudence. Aggregation or dispersal could unfold with relative smoothness because the strong philosophical core provided focus and flexibility. Substance could triumph over form; central beliefs were dominant over the physical and material; and, the dignity and the purpose of the people could continue even in times of pressure, change, or decline.

B. Rock Writing and Design

It is often asserted that the Anasazi did not have a written language, that they were an oral culture,[107] but it seems more accurate and relevant to say that they did not utilize the same transcriptive elements — the alphabet, structured grammar, and the printed page — that have dominated Western communications for centuries. In this regard, however, it seems likely that the Anasazi's and Pueblo's holistic perceptions of time and space were, in part, made possible by a linguistic alternative to the precise, formalistic European literacy that confines, regulates, and linearizes patterns of thought as well as communication.[108]

Although the Anasazi did not communicate or record with a literateness recognizable by European standards, one should not regard them as a purely oral culture. The Anasazi made extensive use of visual imagery in the form of petroglyphs chiseled in the rocks, pictographs painted on stone and plaster, and designs on pottery and basketry.[109]

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106. Rina Swentzell, *Foreword, in* WILLIAM N. MORGAN, ANCIENT ARCHITECTURE OF THE SOUTHWEST vii (1994).

107. SANDO, *supra* note 33, at 15.

108. *See* Benjamin Lee Whorf, *Time, Space and Language, in* CULTURE IN CRISIS: A STUDY OF THE HOPI INDIANS 152, 152-72 (1973).

> Every language binds the thoughts of its speakers by the involuntary patterns of its grammar. The grammar of our mother tongue determines not only the way we build sentences but also the way we view nature and break up the kaleidoscope of experience into objects and entities about which to make sentences.

Id. at 153.

109. *See generally*, BRODY, *supra* note 6; FEWKES, *supra* note 6; MARTINEAU, *supra* note 6.

It was long thought that the inscriptions and designs were literal representations or merely decorative. Scholars now feel, however, that rock writing as well as pottery designs encode abstractions about Anasazi religion, world view, and fundamental societal principles.[110] It is now hypothesized that these images speak of myth, belief, and duty and transfer or reify the conceptualization of the nonphysical into the physical.[111] In purpose and effect, then, the petroglyphs and vessel designs were more than the transitory and personal predilections of the various authors; rather, they constituted a real writing system where symbols conveyed or affirmed complex, consentaneous meanings and beliefs among substantial numbers of autonomous groups.

What do the paintings, design, and inscriptions on the rocks actually say? The subsequent chapter will take a more focused look at the role of symbolism and the meaning of particular icons, but one should note now that the general precepts of the Anasazi jurisprudence spring forth from the imagery. The designs tell of the people's emergence from the mother, the wanderings along the cardinal lines as dictated by the gods and cosmic motions, the relations between humans and the living elements of the natural order, the obligations of humankind to balance and sustain the myriad interconnections of the universal plan, and the ultimate return to a permanent life at the center place.[112]

> Culture and nature; the social order and the universal one; the world of humans and the world of the supernaturals; mediation between realms through prayer and ritual — these, apparently, were the prime subjects, content, and motivation for Anasazi pictorial art. Anasazi art was about religion, but it was also about history and for society.[113]

The conclusion that these ideas and beliefs issue from the rock inscriptions and pottery designs represents a longer inferential leap than the deductions drawn from architecture. The human habitational and ceremonial constructions offer more tangible, verifiable evidence of necessary personal relationships and orientations in space.[114] Inscriptions and designs, in contrast, are more

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110. MICHELLE HEGMON, THE SOCIAL DYNAMICS OF POTTERY STYLE IN THE EARLY PUEBLOAN SOUTHWEST 20 (Occasional Paper No. 5 of the Crow Canyon Archaeological Center 1995); M. JANE YOUNG, SIGNS FROM THE ANCESTORS 231 (1988).

111. CAROL PATTERSON-RUDOLPH, PETROGLYPHS AND PUEBLO MYTHS OF THE RIO GRANDE 99 (2d ed. 1993).

112. *Id.* at 17-19; *see supra* notes 79-81; *see also* ALEX PATTERSON, A FIELD GUIDE TO ROCK ART SYMBOLS OF THE GREATER SOUTHWEST 89, 143, 145, 182, 192, 205 (1992).

113. BRODY, *supra* note 6, at 174.

114. Hegmon, *supra* note 66, at 5-9. "The concreteness and invariance of architecture and other forms of material culture should make them particularly suitable for conveying the same kinds of messages that religious ritual emphasizes — messages about basic values and

abstract and purely visual, and their meanings are less verifiable from utility and objective interconnections. There are, however, some significant sources of corroboration. Some scholars are using sophisticated crypto-analysis or decoding techniques to assess patterns, consistencies, and, ultimately, meanings from the rock writings.[115] Beyond this is the extensive ethnographic testimony.

Archaeologists are, as noted previously, often wary of not only ethnographic testimony about prehistoric motivations, but of all attempts at reconstituting the thoughts and ideas of ancient people.[116] These scientists feel that the intangibilities and inconsistencies of human thought are always difficult to deduce and that the inherent vagueness of even present-day testimony becomes hopelessly compounded when used in the attempt at illuminating the mental processes of the past. The use of ethnographic testimony from contemporary Puebloans to decipher the Anasazi thought embraced in the ancient writings seems relevant, however, if not decisive, for several reasons. The present day Pueblos, the descendants and legatees of the Anasazi, have stable, conservative societies which change traditional ways only with caution and which adhere to past practices and beliefs with care and a sense of history and deep obligation.[117] The Pueblos employ a careful, intensive educational process in which the values and beliefs of the past are recounted and repeated until exact transmission to the next generation is accomplished.[118] This ongoing sanctification of education and the core lessons of the past provides a strong basis for believing that present-day informants can speak authoritatively about the jurisprudence of their ancestors. Simon Ortiz, an Acoma, writes:

> At Chaco Canyon, I have touched the stone walls of Pueblo Bonito and felt the sacred existence that has sustained my people and culture from the beginning, a presence within the walls of the dwellings built a thousand and more years ago . . . . To the Acoma people and other Native Americans, time and place are linked, a sacred continuum in which human consciousness is interdependent with creation and its process. And Chaco Canyon and its marvelous prehistoric communities attest to the undeniable truth of the existence of Native Americans a thousand years ago and more, very much as they exist today.[119]

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conceptions of how the world is ordered." *Id.* at 9.

115. *See* MARTINEAU, *supra* note 6, at 179; PATTERSON-RUDOLPH, *supra* note 111, at 100.

116. *See supra* note 41.

117. DOZIER, *supra* note 79, at 10-14; *see supra* note 33.

118. HOTEVILLA, *supra* note 3, at 147-49; *see also* Nancy J. Parezo, *The Hopis in* PATHS OF LIFE 237-66 (Thomas E. Sheridan & Nancy J. Parezo eds., 1996).

119. Ortiz, *supra* note 32, at 72.

Modern day informants from the Rio Grande Pueblos, from Acoma, from Zuni and from the Hopi Mesas have convinced researchers that the symbols in the rocks relate to religious beliefs, the myth of emergence, and the Anasazi world view.[120] They further state that the jurisprudence or central path of life and law, which emanates from the rocks and continues in the Anasazi descendants, would hold that:

> [A]ll created things, human and non-human, have individuality, and each individual has its proper place in relation to all other phenomena, with a definite role in the cosmic scheme. Whereas the nonhuman individuals fulfill their obligations more or less automatically, man has specific responsibilities that must be learned and fulfilled in the traditional Way . . . .[121]

C. Agriculture

Agriculture as practiced today in the semiarid regions of North America, such as the high plains is hardly demonstrative of a central belief in what Thomas Berry calls "a numinous presence throughout the entire cosmic order."[122] The bludgeoning of the prairie with steel plows, annual plantings, petrochemical fertilizers, pesticides, deep-well, center-pivot irrigation systems, and air-conditioned combines speak more of fervid attempts at domination, and of a shortsighted exchange of high yields and rapid right-offs for a long-term uncertainty.[123] Modern American agriculture is a highly capitalized, energy-intensive effort to transform the farm into a depreciable machine or a factory.[124]

Agriculture on a sustainable or subsistence level, however, practiced with a sense of mindfulness and obligation can speak of a belief, perhaps necessitate a faith, in metaphysical concepts of unity and community. Wendell Berry, in an essay on sustainable agriculture, wrote:

> A farmer's relation to his land is the basic and central connection in the relation of humanity to the creation; the agricultural relation stands for the larger relation. Similarly, marriage is the basic and central community tie; it begins and *stands for* the relation we have to family and to the larger circles of human association. And these relationships to the creation and to the human community are in turn basic to, and may stand for,

120. YOUNG, *supra* note 110, at 92, 238-39; PATTERSON-RUDOLPH, *supra* note 111, at 90; HOTEVILLA, *supra* note 3, at 146-49.

121. HOTEVILLA, *supra* note 3, at 148.

122. THOMAS BERRY, THE DREAM OF THE EARTH 184 (1988).

123. WES JACKSON, NEW ROOTS FOR AGRICULTURE 14-35 (Bison Books 1985) (1980).

124. *Id.* at 75-92.

> our relationship to God — or to the sustaining mysteries and powers of the creation.[125]

The Anasazi and their descendants, the Pueblo, have been, as noted, successful farmers for millennia in one of the harsher agricultural environments in North America, and substantial evidence exists of both their practices and the central faith that accompanied them. By the eleventh century, the Anasazi had developed several agricultural approaches. Ak-chin, or flood-water farming, was practiced along drainages or water-courses where the periodic spring or summer runoff would deposit fresh alluvium, saturate the soil or sand, and raise the water table.[126] Floodwater farming along the stream course margins was localized and labor-intensive, and left little in the way of archaeological evidence except for residual vegetative patterns that indicate the former presence of successive ak-chin fields.[127] More striking is the evidence of the methods employed at the height of the Anasazi residence in Chaco Canyon and on the Mesa Verde, where check-dams and reservoirs trapped the runoff waters and canals diverting them in more regularized flows to fields and terraced gardens.[128] Other physical indicators of the agricultural process are the extensive number of grainaries and storage rooms in the village room plans. Indeed, storage at Chaco Canyon, rather than residence, probably accounted for the substantial majority of the rooms in the greathouses,[129] and may have been the partial basis for regional trading and ceremonial patterns. A further archaeological indicator which bridges the gap between the practical and the sacred are the numerous sighting and charting positions built into the fabric of the architecture with the goals of accurately marking the celestial pathways and timing the planting and harvesting of crops, and the ceremonial accompaniment.[130]

Although Anasazi agriculturalists sought to create enough surplus to hedge against periods of underproductivity or emergency, the overall systems of mobile ak-chin farming and more stationary, intensive diversion systems remained keyed to natural flows of energy and precipitation. There were no real attempts to escape or distort or accelerate the pattern. The land, its forms and its soils, and the cycles of sun, season, and weather provided the matrix in which the society rested.[131]

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125. WENDELL BERRY, A CONTINUOUS HARMONY 160 (1972).

126. *See* GORDON VIVIAN & TOM W. MATHEWS, KIN KLETSO 12 (Southwest Parks and Monuments Assoc. 1973).

127. *Id.*

128. *See* R. Gwinn Vivian, *An Inquiry into Prehistoric Social Organization in Chaco Canyon, New Mexico in* RECONSTRUCTING PREHISTORIC PUEBLO SOCIETIES 59, 75-83 (William A. Longacre ed., 1970); FERGUSON & ROHN, *supra* note 11, at 87.

129. *See* Thomas Windes, *A New Look at Population in Chaco Canyon in* RECENT RESEARCH IN CHACO PREHISTORY 75, 84 (W. James Judge & John D. Schelberg eds., 1984).

130. *See generally*, WILLIAMSON, *supra* note 70, at 77-150.

131. J. DONALD HUGHES, AMERICAN INDIAN ECOLOGY 68-77 (1983).

What does a subsistence agriculture mean in the sense of fundamental philosophy or jurisprudence? In a broad sense, some economic and political philosophers might say that the mode of production is the primary determinant and repository of the core of values of the people.

> The ultimate motive force of [the] entire process of social change is economic. The quest for a living, or for a better living, is a fundamental impulse of man, which overrides all other interests in case of conflict. In other words, at the basis of all historical change there is the logic of an autonomous gradual economic development, of progress in the methods and the organization of production.[132]

If the means of production are mechanical and technical, and if the economic arena is competitive, then the associated values tend to be quantitative. There is veneration for speed, efficiency, and above all, growth.[133] William Ophuls said, "[g]rowth is the secular religion of American society, providing a social goal, a basis for political solidarity and a source of individual motivation."[134]

Linear values provide validation or verification only in the relative sense of measuring movement along an endless, ascending line. Temporary satisfaction is provided by the comparison of the increases of the present over the past and by the hope for further future expansions. Long-term stability seems theoretically impossible as incessant incremental growth, let alone exponential increases, necessitates a parallel expansion of the tangible environment — a dynamic incompatible with the basic, conservative laws of matter, energy, and thermodynamics.[135]

If the means of production are intertwined with the earth's weather cycles, seasons, and solar flows, then the values of the agriculturalists tend to lean towards the orientation of rhythm, balance, holism, and cooperation.[136] The movements of the sun, moon, and stars, the changing of the seasons, and the falling of spring and summer rains are part of the flowing basis for economy. The laws, ceremonies, beliefs, and lives of the people are in necessary correspondence with these universal patterns. Black Elk, the revered Sioux spiritual leader said,

> Then I was standing on the highest mountain of them all, and round about beneath me was the whole hoop of the world. And while I stood there I saw more than I can tell and I understood

132. EDUARD HEIMANN, HISTORY OF ECONOMIC DOCTRINES 142 (1974).

133. Theodore J. Gordon, *The Feedback Between Technology and Values*, *in* VALUES AND THE FUTURE 148, 151-53 (Kurt Baier & Nicholas Rescher eds., 1969).

134. OPHULS, *supra* note 48, at 185.

135. HERMAN E. DALY, STEADY-STATE ECONOMICS 98-127 (Island Press 1991) (1977).

136. *Id.* at 44-48.

> more than I saw; for I was seeing in a sacred manner the shapes of all things in the spirit and the shape of all shapes as they must live together like one being. And I saw that the sacred hoop of my people was one of many hoops that made one circle, wide as daylight and as starlight, and in the center grew one mighty flowering tree to shelter all the children of one mother and one father. And I saw that it was holy.[137]

The human community of subsistence agriculturalists inclines toward a closely bonded, internal egalitarianism, and generally displays cooperation and limited material disparities, in contrast to the competition and unbalanced accumulations of the growth societies.[138] The perishable nature of agricultural produce, and the intrinsic limits on potential consumption, even with redistributive arrangements, militate against a skewed acquisition of power, wealth, and materials. Such disproportionate advantage is not necessarily precluded, however. Agriculture is based on arable soil and concepts of exclusive ownership or privatization of such land lends itself to privatization in order to control production.[139] These concepts, however, did not emerge among the Indians.

The Indians of North America, in general, and the Anasazi and their Pueblo descendants believed as a matter of central, but not inevitable, principle that the individuals could not own or sell the land, or treat it as a commodity. They felt, instead, that the people were joined with the land in a timeless relation of reciprocity or protective trust.[140] Individuals might use the land with the consent of the tribe and the people might defend the land and their ties to it with an unquestioning passion, but these forms of exclusivity did not extend to individual or collective exploitation.[141]

These associations with the land and these concepts of possession were not inevitable or predetermined. In fact, the European civilization of the Americas embraced a central theme of individualized and privatized agriculture and land relations.[142] This premise was the central pillar of the new United States in both its land distribution schemes and its nineteenth century policy of Indian assimilation.[143] This divergence from the Native American approach was a strong reminder that the connections to the land and among the people were not irresistibly predetermined — even by the powerful influences of an

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137. JOHN G. NEIHARDT, BLACK ELK SPEAKS 36 (1972) [hereinafter BLACK ELK].

138. WENDELL BERRY, WHAT ARE PEOPLE FOR? 129-44 (1990).

139. FREYFOGLE, *supra* note 25, at 49-50.

140. HUGHES, *supra* note 131, at 140-41.

141. *Id.* at 105-10.

142. *See* DONALD WORSTER, THE WEALTH OF NATURE 98-111 (1993).

143. *See* John Ragsdale, *The Movement to Assimilate the American Indians: A Jurisprudential Study*, 57 UMKC L. REV. 399, 410-15 (1989) [hereinafter Ragsdale, *Movement to Assimilate American Indians*]; *see infra* Part IV.

agricultural way of life; rather, they lie substantially within the realm of chosen belief and obligation.

In sum, then, the jurisprudence of the Anasazi, as reflected in the architecture, material culture, and economy, was in chosen service to rhythm, balance, and unity within the natural and human communities. Law, custom, construction, and ceremony emanated out of the jurisprudence and operated to reflect, confirm, restore, and maintain the balance. An embracing, homeostatic resonance rather than ongoing, dissonant growth was the central focus of the society and its incremental efforts.

III. Symbols, Myths, Legends, and Visions as Jurisprudence

The central jurisprudence or philosophy of a people can function as the fountainhead of the law — and it should, if the law and social conduct are to rise above naked positivism and secure meaning and permanence.[144] Such enduring law can flow directly from the core of collective values, but this is not inevitable or essential. Rather, one can link a stable, coherent law to a symbol system which itself is tied to the central jurisprudence. Symbols, or symbolic myths, legends, visions, and rituals can emanate out of the jurisprudence and may represent intermediate focal points for the law, conduct, and organization of a society.[145] Such elements may provide representations, affirmations, or composites of the basic beliefs.[146] As ideological short-form, then, such symbolism can furnish a method of succinctly integrating and communicating a complex background of experience, thought, and fundamental belief.

Beyond its role as a surrogate for the jurisprudence, a symbol may, in its own essence, become an object of emulation or a model for social response. Symbols can thus play a dual role of verifying the jurisprudence and forming polestars to guide the conduct of the individual and the collectivity. Through the power of belief, the symbols — images, myths, legends, and visions — can command the focus, harness the will, and elicit the energy and obligation of the people. John Collier wrote about the importance of symbolism among the Pueblo.

> This symbol system conserves from very ancient times the world view of the Pueblo, the orientations and values that are essential to Pueblo life, the intuitively held philosophy of the Pueblo, and the *whither* of Pueblo destiny.
>
> . . . the Pueblos in their complexities appear to be integrated through their symbol systems; and through their symbol systems, their social imperatives appear to become implanted as truly

144. GILMORE, *supra* note 29, at 109.

145. RICHARD SLOTKIN, REGENERATION THROUGH VIOLENCE 14-15 (1973).

146. *See supra* notes 108-21.

> internalized conscience, and as precise and deep-dyed aesthetic instinct, within their individuals.[147]

A. The Cross, the Circle, and the Hologram

In the white societies of Western Europe and North America, the cross has provided a central symbol for religious, economic, and political behavior.[148] The cross most immediately portrays the crucifixion of Jesus and the reaction to His teachings. Less directly but no less forcefully, the symbolic power of the cross echoes the Christian principles of individual salvation and eternal heavenly life as a reward for spiritual faith and the earthly performance of appropriate deeds.[149] In addition, the crucifix suggests a human transcendence over nature and the other species,[150] both in the sense that the ultimate destination of the true believers is an unworldly heaven, and additionally, because the Bible enjoins humans to subdue the earth and use it for their personal gratification.[151]

The idea that Christian dogma condones, if not compels, environmental rapaciousness is debated among theologians and scholars;[152] however, it seems relatively clear that the symbolic power of the cross and the attendant message of individual salvation came, in the eighteenth and nineteenth century, to be associated with indicatory implications of economic growth.[153] Though there are biblical indications that modesty, stewardship, and compassion are primary social virtues, it was also advanced that worthy individuals could receive a preliminary blessing on earth. The accumulation of wealth and material possessions through economic growth and free-market profitmaking could, therefore, be seen as a tacit demonstration that the accumulator was chosen for salvation.[154]

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147. ON THE GLEAMING WAY, *supra* note 61, at 93-94. Eric Freyfogle has also written on the central jurisprudential role of symbols in America:

> A well-drawn image should stimulate and organize our aspirations. It should provide a vision of justice and a benchmark to use in measuring right and wrong; it should serve as a glittering grail or a new Jerusalem, as a spiritual context, as a focus that gives meaning to our life, if we pursue it with vigor.

FREYFOGLE, *supra* note 25, at 16.

148. The title of a complete history of the interactive forces on the pueblo of Pecos is evocatively focused on symbolism. *See* JOHN KESSELL, KIVA, CROSS AND CROWN (1979).

149. FRANCIS P. PRUCHA, AMERICAN INDIAN POLICY IN CRISIS 152-55 (1976) [hereinafter AMERICAN INDIAN POLICY].

150. *See* Tribe, *supra* note 65, at 1332-36.

151. WORSTER, *supra* note 142, at 187.

152. *Id.*

153. *See* BERRY, *supra* note 122, at 75-80; Robin P. Malloy, *Letters from the Longhouse: Law, Economics & Native American Values* 1992 WIS. L. REV. 1569, 1623.

154. VINE DELORIA, JR., GOD IS RED 172 (1983) [hereinafter GOD IS RED].

America's Protestant hegemony,[155] with its informal alliance of political, economic, and spiritual systems, reached its zenith in the late nineteenth century.[156] In the twentieth century, the symbolic power of the cross was overshadowed if not supplanted by the associated symbolism of economic growth.[157] Growth which has since been called, "the secular religion of American society,"[158] achieved and still retains a central presence as the orienting point of American law, economics, politics, and society. In this convergent position, growth assumes the characteristics of myth and vision, and thus, surpasses the strictures of pure reason. "However rational modern economics might be, the driving force of economics is not economic, but visionary, a visionary commitment supported by myth and a sense of having the magical powers of science to overcome any difficulty encountered from natural forces."[159]

The Anasazi, Pueblo, and indeed, most Indian tribes of North America, traditionally venerated the circle as a central symbol of their foundational belief in the intertwined whole of humans, animals, plants, spirits, place, and cosmos.[160] The circular image, as utilized by the Anasazi and Pueblo, often incorporated a cross,[161] not as a reflection of crucifixion or transcendence, but as a depiction of the cardinal directions within a sphere.[162] The circle also encompasses, by visual and logical necessity, the concept of a center[163] from which life begins and around which the actual and symbolic movements and migration of the universal elements take place.[164] The symbol of the centered, multidirectional circle thus captures metaphorically the basic beliefs that existence is unitary, characterized by cycle, rhythm and relation and, beyond this, that humans with their gift of consciousness bear a heightened responsibility for maintaining the balance, harmony, and continuity.[165] One can view the circle-symbol, linked directly to the Anasazi and Pueblo world view and philosophy, as the synoptic jurisprudential trail-head for the laws, institutions, and behavior of the people. More specifically, the circle restated the philosophy of a resonating whole and could elicit the energy and desire to maintain it; a circle could also have prompted the people to move, build,

155. FRANCIS PRUCHA, THE INDIAN IN AMERICAN SOCIETY 59 (1985).

156. AMERICAN INDIAN POLICY, *supra* note 149, at 158-59.

157. GOD IS RED, *supra* note 154, at 172.

158. OPHULS, *supra* note 48, at 185.

159. BERRY, *supra* note 122, at 75.

160. JOSEPH E. BROWN, THE SPIRITUAL LEGACY OF THE AMERICAN INDIAN 39-40 (1982); WALTER O'KANE, SUN IN THE SKY 247 (1950); PATTERSON-RUDOLPH, *supra* note 111, at 188.

161. HOTEVILLA, *supra* note 3, at 33.

162. *See* 1 ELSIE C. PARSONS, PUEBLO INDIAN RELIGION 98-100 (Bison Books 1996) (1939); DOZIER, *supra* note 79, at 204-07.

163. PARSONS, *supra* note 162, at 98-100; PATTERSON-RUDOLPH, *supra* note 111, at 118.

164. YOUNG, *supra* note 110, at 231-39.

165. THOMPSON, *supra* note 62, at 125-27.

and think in a circular, rhythmic fashion — thus fulfilling the jurisprudence and proliferating the symbolism.[166]

A variant on the core imagery of the circle is the hologram. Indeed, to the extent that a circle can represent both the whole and the center of the whole, it usually *is* a hologram. The holographic model suggests, in its broadest sense, that each segment of the manifested order is a microcosm of the entire universe and, further, that there is a "dynamic interconnectedness" of all things, animate and inanimate.[167] Holographic symbolism was embraced in the lives and cultures of the Anasazi and Pueblo. On the individual level each person had, from childhood on, internalized the myriad aspects of unity and was able to employ them through reference to the principle of reciprocity. Reciprocity, as a holographic abstraction, suggests that

> all phenomena, natural and supernatural, living and dead-including man, animals, plants, the earth, sun, moon and clouds, the ancestors and the spirits — are interrelated and mutually dependent through the underlying dynamic principle of the universe — which we shall call the law of universal reciprocity. This law implies the concept of immanent or cosmic justice. The emphasis is not, however, on the idea of rewards and punishments alone (retribution) but on the mutual exchange of essentially equivalent but not identical values according to fixed traditional patterns, in the interests of the common weal.[168]

Holographic reciprocity, then, as a symbol and as part of the collective consciousness and conscience of the Anasazi and their descendants, counseled (though it did not compel)[169] the people to live responsible lives and to maintain harmony and balance within themselves, their cities and the world.[170]

The holographic image was also manifested in the Anasazis' tangible constructs, most notably their architecture. It was previously stated that the Anasazi-built environment reflected the jurisprudence of unity and community.[171] In addition and relatedly, the architecture also recapitulates the hologram; each unit house, kiva, dwelling room, storage facility, village,

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166. *See* GLADYS A. REICHARD, NAVAHO RELIGION 162-63 (Princeton Univ. Press 1977) (1950).

167. MICHAEL TALBOT, THE HOLOGRAPHIC UNIVERSE 48-50 (1991); *see* BLACK ELK, *supra* note 137. "And I saw that the sacred hoop of my people was one of many hoops that made one circle . . . ." *Id.* at 36.

168. THOMPSON & JOSEPH, *supra* note 64, at 37; *see also* PARSONS, *supra* note 162, at 93.

169. The principles of free will and free choice on how or whether to fulfill one's responsibility remained intact. ON THE GLEAMING WAY, *supra* note 61, at 102.

170. Ortiz, *supra* note 32, at 71; HOTEVILLA, *supra* note 3, at 56.

171. *See supra* notes 66-106.

and regional arrangement simulated each other and, simultaneously, the universal whole.[172]

> If the total built environment of a traditional society (and perhaps any society) consists of a basic pattern (the icon) repeated in a hierarchy of forms, the cosmogony will be encapsulated in the most basic manifestation of the pattern as well as in the most grandiose. For example, the entire Anasazi concept of cosmos may be symbolically encapsulated in the architectural features of a single kiva. The same symbolism may be repeated in the expanded architectural relationships among the kiva, surface rooms, and midden of the common dwelling. It may enfold again among dwellings or groups of dwellings within the context of a "community" and yet again in relationships among distant communities, provinces, and the significant topography that together shape the landscape of the nation.[173]

B. The Origin of Symbols

There are a variety of potential ways in which a symbol might emerge, restate the jurisprudence and assume a position of both primary and derivative societal importance. A number of these avenues seems likely to have existed among the Anasazi. A symbol may arise as the result of observation and reflection on surrounding natural patterns. The circle or hologram, for instance, can represent the summary conclusion drawn from the repeated experiencing of the designs, coincidences, cycles, and rhythms of nature and the heavens. The *values* placed on the functioning of the natural patterns and the obligation or responsibility to maintain and protect the balance with law and social conduct come, however, from sources beyond neutral, scientific observation.[174] Investing a pattern or a symbol with authority and charging the people with responsibility may depend on a belief that the natural order embodies the existence, the word, or the continuing desire of the gods.[175] Simon Ortiz, a native of Acoma Pueblo, wrote:

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172. ABY WARBURG, IMAGES FROM THE REGION OF THE PUEBLO INDIANS OF NORTH AMERICA 15-17 (1995); FRANK WATERS, MASKED GODS 362 (1975).

173. Stein & Lekson, *supra* note 40, at 50.

174. Douglas Linder, *New Directions for Preservation Law: Creating an Environment Worth Experiencing*, 20 ENVTL. L. 49, 67 (1990). "There is no answer to the question 'Why worry about preserving the integrity of the ecosystem, except to the extent that it may add to the well-being of human beings?' that does not depend on undemonstrable religious or moral assumptions." *Id.* at 67.

175. The belief that the natural order represents an interested, divine presence has been held by numerous European and American denominations as well. *See* Charles Myers, *An Introduction to Environmental Thought: Some Sources and Some Criticisms*, 50 IND. L.J. 426, 430-34 (1975).

> Basic to [the Anasazi's] building was the realization that they were interdependent with the natural environment and that, just as the land, Mother Earth, was responsible for them, they were responsible for it. This reciprocity erased the line between the human-made and natural environment . . . .
>
> . . . .
>
> I believe this is what happens when a culture has a consciously interdependent relationship with its natural environment. The requirements of this relationship determine how a culture develops and builds . . . . [T]he character of your culture does not deny its history and heritage. Instead, it does all it can to fulfill its purpose of confirming sacred existence.[176]

If the environment, as the indirect word of the gods, provided a basis for the ascribed power of the circle or the holograph, the direct commands of the deities would seem even more compelling — though, in a cross-cultural sense, less consistent in content. The Pueblo myths and legends speak of actual contacts with the gods and occurrences which parallel and reinforce the abstract logic of the core symbols. The emergence stories of the various Pueblo people speak of the human entrance on the earth's surface from the world below the ground.[177] At the point of emergence, the legends say, the people met a great spirit who told them of his requirements for residence in the new world, which included circular migrations, along prescribed pathways, proper conduct, and an ultimate, final residence at a sacred center place.[178] Thus, the people sought both unity and a sacred place within it. The living, natural flows suggested such a conclusion, and the legendary words of the gods commanded it. The quest for unity and the center place, symbolized by the center of the circle or the hologram, became a convergence point for the peoples' consciousness.

The Hopi laws furthered the authority of the symbol by postulating an actual covenant with the great spirit wherein the Hopi promise to observe the holographic reciprocity and keep the world in balance.

> [P]eople were created by the "Creator," and, like the Biblical Adam and Eve, they lived joyfully in what can only be described as a paradise. There was equality, oneness, a spiritual center, and life was everlasting. Peace and happiness reigned. But with these gifts came responsibility and the need to be wise. He gave them laws, which were guidelines, and the people promised to live by them. This was more than simple obedience. It was a lifeway to

176. Ortiz, *supra* note 32, at 71.

177. *See* PARSONS, *supra* note 162, at 210-66.

178. *Id.* at 215; Parezo, *supra* note 118, at 240-41; *see infra* notes 217-32.

> which the people committed themselves. Therefore, a Covenant existed from the very beginning.[179]

The symbol of the centered circle or the hologram, and the attendant obligation of balance, can spawn subsidiary symbols — much the same as the symbol of the cross and the ideologies of transcendence and individual salvation gave rise to supplementary symbols such as growth and profit. Roads and pathways were, among the Anasazi, secondary symbols related not only to the myth of divinely commanded migrations but also to the fundamental duty of maintaining balance and harmony through proper living and ceremony. In this latter sense, for example, the Hopi Way or Path of Life is deemed the individual and collective route of obligation and responsibility to the gods and the universe, and it is symbolized by the imagery of a road.[180] The road as a central metaphor helps explain the physical enigma of the extensive Chaco Canyon road system which, characterized by precise planning, over-engineering, and obsessive linearity, has long seemed incongruous to modern archaeologists, especially in the absence of evidence of wheeled vehicles among the Anasazi.[181]

Symbols and legends may often seem to have arisen from abstract thoughts and to be instructive only of moral precepts. There is evidence, however, that symbols, myths, and legends may act as actual historic sign posts as well as behavioral predicates. A singular event may occur that dramatically affirms the peoples' world view, that forces reconceptualization, or that unifies a social response. An element that accompanies the event may emerge as a symbol that not only reflects the history but also the message.[182] The Star of Bethlehem and the cross accompanied the birth and death of Christ and, as emergent symbols, they not only portray history but fundamental principles as well.[183]

Ancient architecture and ethnographic testimony from contemporary Pueblo confirm that the Anasazi were sky-watchers and that the patterns of astral procession were firmly planted in their awareness, chronicled in their symbols and myths, and institutionalized in their conduct.[184] An extraordinary

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179. HOTEVILLA, *supra* note 3, at 50.

180. MASKED GODS, *supra* note 172, at 174-77; Parezo, *supra* note 118, at 237. The road as a companion image to the circle is prevalent in other Indian cultures, such as the Sioux. *See* BLACK ELK, *supra* note 137, at 24; *see also* KENNETH LINCOLN & AL LOGAN SLAGLE, THE GOOD RED ROAD (1987).

181. KATHRYN GABRIEL, ROADS TO CENTER PLACE 184-99 (1991). Some authors have suggested that the surface activities of Indians may follow either legendary occurrences, celestial patterns or power sources within the earth. *See* HALL, *supra* note 43, at 47-48; *see* HEATHER PRINGLE, IN SEARCH OF ANCIENT NORTH AMERICA 121-23 (1996).

182. SULLIVAN, *supra* note 34, at 17-18.

183. *See* KENNEDY, *supra* note 38, at 275.

184. *See* J. MCKIM MALVILLE & CLAUDIA PUTNAM, PREHISTORIC ASTRONOMY IN THE SOUTHWEST 21-98 (rev. ed., 1993).

celestial event, such as an eclipse of the sun or moon, or a comet, was likely seen in both its tangible essence and as a special sign from the gods.[185] But a sign of what? The Indians had to interpret these omens and postulate a relevance for human affairs. Once the significance of the astronomical event was agreed upon, a symbolic representation of the event — a picture, carving or myth — could project forward as both an historical marker and an affirmation of basic values. An eclipse of the sun, for example, might have been viewed and recounted with trepidation because, as a withdrawal of the critical solar life force, it might signify the deities' extreme displeasure with some aspect of human behavior.[186] A comet, however, as a curious interloper in the sky rather than a disrupter of basic and natural rhythms, may have been viewed with less dread and attendant negative symbolism.[187]

The supernova of 1054 must have presented an extreme enigma for the Anasazi. The written recountings of Chinese and Japanese astronomers indicate that, in July 1054, a new star appeared in the firmament, burning with an intensity that made it visible from earth in the daytime.[188] After two years of dominating the skies, the supernova faded and then disappeared. The Anasazi at Chaco Canyon composed a striking pictograph in the rock near the city now called Penasco Blanco, which depicts a star that was likely the supernova.[189] Chacoan culture was ascending at the time of the supernova and, in the decades following its appearance and abrupt departure, building activity reached its zenith.[190] It seems possible that the Anasazi of Chaco Canyon, bent on the regionalization of trade, architecture, politics, and economy,[191] viewed the star as an omen confirming their course of state, or perhaps they felt that an intensification of efforts in Chaco Canyon would induce the star to return. The star was, thus, likely viewed as a favorable omen, and its symbolism counseled a continuation and acceleration of current approaches. Its subsequent disappearance could have been viewed as divine disapproval, but the Chacoan Anasazi apparently did not regard it as a sign for cessation or change of ongoing florescence. A reorientation of the regional scope of the Chacoan state would not transpire until new events and symbols emerged in the next century.[192]

Societies may, in their span, have moments of epic weakness, contradiction, or despair. If the memories of these events are repressed,

185. WILLIAMSON, *supra* note 70, at 189.

186. *Id.* at 189.

187. *Id.*

188. *Id.* at 182.

189. *Id.* at 184-89.

190. MALVILLE & PUTNAM, *supra* note 184, at 28-30.

191. Stephen H. Lekson, *Thinking About Chaco, in* CHACO CANYON: A CENTER AND ITS WORLD 11, 37 (Mary Wachs ed., 1994).

192. *See* Ragsdale, *Chacoan State*, *supra* note 12, at 544-45; *see also* STEPHEN PLOG, ANCIENT PEOPLES OF THE AMERICAN SOUTHWEST 111 (1997).

avoided, or uncritically rationalized, then depravity or dissonance can become normalcy and the problems will likely repeat. The disregard or denial of racism or environmental breakdown, for instance, will more likely lead to the acceptability of such practices than to enhanced equality, tolerance, or balance. Wisdom would counsel critical reflection and recommitment to principle; the understanding of the existence of a mistake or observation is not the same as approval or apology. Symbols are often formed from this dualism and tension between polar opposites — darkness inspires an image of and quest for light, hate reaffirms love, chaos validates order, and weakness is balanced by strength.[193] Thus, negative symbols can spur and energize the symbols and pursuit of the positive. The Hopi, descendants of the Anasazi, have a deep appreciation for the dual nature of existence and have numerous symbols that represent the tension.[194] "Duality in the Hopi worldview . . . represents two correlates in a reciprocally balanced universal scheme, and each correlate is conceived as an indispensable part of the whole, neither one being essentially subordinate to the other."[195]

The Anasazi were likely to have embraced abstractions of dualism too and to have found symbolism in the negative. Cities such as Pueblo Bonito, Pueblo del Arroyo, and Wijiji were symmetrically divided in their construction thus providing a physical demonstration that the Anasazi had incorporated the energy of dualism into architectural and social arrangements.[196]

Not all dualistic imagery was associated with abstract reflection or architecture. In some cases, the negative symbolism came from hard-edged experience that the society had to confront and respond to the attendant consequences. Drought, for example, could suggest that a present social direction was unacceptable to the gods. In Chaco Canyon the repeated failure of the rains in the twelfth century was likely to have caused a questioning of the celestial blessing on the course of regional empire. The more mobile, less centralized lifestyle that followed was likely to have been in response to the negative symbolism from the drought.[197]

A dramatic and disturbing counter-symbol was created for the Hopi, midway between the Anasazi era and modern times, at the city of Awatovi. Awatovi, located on Antelope Mesa and at a distance from most other Hopi villages, which were positioned on southern spurs of the Black Mesa, was settled around 1300, shortly after the Anasazi had abandoned Mesa Verde and

193. *See* DOZIER, *supra* note 79, at 207.

194. HALL, *supra* note 43, at 71.

195. THOMPSON & JOSEPH, *supra* note 64, at 44.

196. *See* VIVIAN, *supra* note 97, at 432-33; Stephen Lekson, *Standing Architecture at Chaco Canyon and the Interpretation of Local and Regional Organization in* RECENT RESEARCH ON CHACO PREHISTORY 55-69 (W. James Judge & John Schelburg eds., 1984).

197. *See* FRAZIER, *supra* note 58, at 206-07.

the Kayenta region.[198] The city, containing multiple stories and as many as 5,000 rooms, was perhaps the largest site in the Southwest,[199] and considerably more accessible to outsiders than were the other Hopi cities. Awatovi thus lay in the path of the advancing conquistadors and the Catholic priests who entered the area in 1540 and called it Tusayan.[200] Employing both military and ideological force, the Spanish overrode the Hopi and the other Southwestern Pueblo. After a century of oppression, the traditionally autonomous Pueblo cities secretly united under the leadership of Popé, a San Juan Pueblo Indian. They arose in synchronized and forceful resistance on August 13, 1680, and drove the Spanish and the Catholic Church out of the cities and back from the Southwest.[201] It was only temporary. Within twelve years, the Spanish had regrouped and reentered the area.[202]

The Hopi of Awatovi were apparently more willing than the other Hopi to accept the return of Spanish rule and Catholicism — too willing, in fact.[203] The Chief of Awatovi, distressed by the peoples' complicity and lack of faith in the Hopi Way, was able to enlist the other villages, which had remained steadfast in their religion and hatred of the Spanish, in a draconian plan.[204] Men from the villages of Walpi, Shongopovi, and Mishongnovi united in a conspiracy and attacked at dawn, in the autumn of 1700, when the men of Awatovi were in their kivas. Most or all of the men were killed by arrows, fire and smoke, and the women and children were carried off.[205] The raiders apparently disagreed over the division of the captives and many of the prisoners were killed and mutilated in an ensuing battle.[206]

With the fall of Awatovi, the Spanish thrust into Tusayan was blunted and Hopi autonomy and religion have since remained relatively uncompromised. There has been, however, a price to pay. The fiery murders of neighbors and kinsmen, the destruction, the enslavement and the cruelty stand in stark, unprecedented — and unrepeated[207] — contrast to the Hopis' legendary regard for peace and tolerance.[208]

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198. GEORGE J. GUMERMAN, A VIEW FROM BLACK MESA 105-15 (1992); Jeffry S. Dean, *Aspects of Tsegi Phase Social Organization: A Trial Reconstruction, in* RECONSTRUCTING PREHISTORIC PUEBLO SOCIETIES 140, 140-73 (William Longacre ed., 1977).

199. ROBERTS, *supra* note 2, at 162.

200. HOPI RUIN LEGENDS 276 (Ekkehart Malotki trans. & ed., 1993).

201. HARRY C. JAMES, PAGES FROM HOPI HISTORY 51-58 (1974).

202. *Id.* at 59-60.

203. HOPI RUIN LEGENDS, *supra* note 200, at 277.

204. JAMES, *supra* note 201, at 62.

205. RICHARD O. CLEMMER, ROADS IN THE SKY 30 (1995).

206. JAMES, *supra* note 201, at 63-64. Some have even suggested cannibalism was practiced. *See* ROBERTS, *supra* note 2, at 101.

207. HOTEVILLA, *supra* note 3, at 101.

208. *See* MISCHA TITIEV, OLD ORAIBI 65 (1992). "The policy of the 'state' is one of nearly complete laissez faire and the phrase 'Pi um i' ('It's up to you') may well be the motto of the Hopi society." *Id.*

Some would downplay both the deservedness of the Hopi reputation for peace, and their angst over the occurrences at Awatovi.[209] Others, however, including many contemporary Hopi, feel that the massacre was a troubling psychological and ideological blow that remains as a deep-seated symbol within the Hopi memory.[210] Frank Waters would go so far as to state that the Awatovi affair was a "tragic defeat of the Hopi spirit of universal brotherhood by the frailties of the flesh."[211] Thomas Mails and Dan Evehema, however, give assurance that the Hopi principles continue and that Awatovi, as a symbol and a lesson, was not in vain.

> [W]ith only a handful of other exceptions where deaths occurred, the Awatovi affair was the only one of consequence to physically mar the peace during the last thousand years of Hopi existence. If the rest of the world could match that record, think how secure and serene life would have been and be for everyone.[212]

C. Reinterpretation

There is a fluidity to symbolism and the relation of means and ends.[213] A symbol of the central faith may become the direct object of respect rather than the short-form communication of the original precepts. Likewise, a method or means of achieving a core value may become valued as an end in itself. In the white societies, one might say that economic growth, as a symbol of preheavenly transcendence or salvation, has been reinterpreted and become itself the central truth or objective, with its own network of supporting symbols, laws, and institutions.[214] If one were to reevaluate speed and efficiency as a means to the ends of salvation and growth, they could appear valuable in their own stead without regard to objective. There are indications that the Anasazi and other Indians may, likewise, have revisited some of their symbols, either drawing new meanings from old signs or abandoning symbols or methodology that had proved incongruous with the central jurisprudence.

Among the Anasazi, the symbols of the sun, moon, planets, and stars were representative of the dominating belief in universal connection and harmony, and the Anasazi adopted the cosmic patterns into their architecture, laws, ceremonies, and economy. The Anasazi were, therefore, likely to have viewed

209. HOPI RUIN LEGENDS, *supra* note 200, at 293; PRINGLE, *supra* note 181, at 125-26.

210. ALBERT YAVA, BIG FALLING SNOW 95 (1978); HOTEVILLA, *supra* note 3, at 100; ROBERTS, *supra* note 2, at 162; FRANK WATERS, BOOK OF THE HOPI 324 (1974).

211. WATERS, *supra* note 210, at 325.

212. HOTEVILLA, *supra* note 3, at 101.

213. Tribe, *supra* note 65, at 1323.

214. *See supra* notes 157-59; *see* BERRY, *supra* note 122, at 76, 80.

the disappearance of the supernova of 1054[215] as of extreme relevance to the human role in the maintenance of natural balance. It appears conceivable that the pictograph of the star in Chaco Canyon was a literal rendition of the supernova.[216] It would further seem possible that the Hopi myth of the Pahana stemmed from the Anasazi past and originally symbolized the vanishing star, although the connection between the myth and the supernova has not been discussed by contemporary sources. The current Hopi myth, therefore, is contendedly a reinterpretation of an original Anasazi symbol.

The Hopi myth of the Pahana tells of a meeting between the Hopi people and the god, Maasauu shortly after their emergence from the underworld onto the earth's surface. Maasauu gave the Hopi a course of migration and conduct, and stone tablets to guide their actions.[217] The Hopi, in turn, gave their word that they would follow this way.[218] Two Hopi brothers, sons of a chief, later resolved to correct mistakes that their elders had made on the journey.[219] Each took part of a stone tablet and one departed to travel east, while the other was to complete the migrations and await his brother's return.[220] The wait continues to this day. There are several versions of the myth. Some suggest that the absent brother is red.[221] Most, however, state that the long lost brother is white and the waiting brother is red.[222] In some cases, the return of the white brother is messianic and accompanied by the rising of a new white star.[223] In virtually all cases, however, the return of the absent brother is a heraldic prelude to the restoration and fulfillment of the Hopi Way.[224]

The contemporary myth is, in sum, a prophecy about the faltering and resurgence of the Hopi obligations under their covenant with the gods,[225] a prediction about the interaction between the white and red races,[226] and possibly a vision of universal racial unity and harmony.[227] The modern versions of the myth seem to treat the human and coloration images literally and thus make the tale a prophecy about the community of humans.

It seems possible that this racial, humanistic version of the myth is a post-Columbian reinterpretation of a story that originally and literally focused on

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215. *See supra* notes 188-91.
216. WILLIAMSON, *supra* note 70, at 189.
217. *See* ROBERT BOISSIERE, THE RETURN OF PAHANA 1 (1990).
218. *See supra* notes 177-78.
219. ARMIN GEERTZ, THE INVENTION OF PROPHECY 46, 169-70 (1994).
220. CLEMMER, *supra* note 205, at 190.
221. HOTEVILLA, *supra* note 3, at 54.
222. BOISSIERE, *supra* note 217, at 10.
223. Thomas Banancya, *quoted in* GEERTZ, *supra* note 219, at 419.
224. HOTEVILLA, *supra* note 3, at 54.
225. *Id.* at 50-55.
226. *Id.* at 55.
227. BOISSIER, *supra* note 217, at 1.

cosmic occurrences, particularly the disappearance of the supernova.[228] The Hopi, Pueblo, and probably the Anasazi refer in legends and myths to the sun as father,[229] and to the stars and planets, in particular the morning and evening stars, as children of the sun.[230] The actual identity of the eastern morning star is not beyond dispute but several Native American scholars have felt it was Mars, the red planet.[231] It would seem possible that the supernova of 1054, which was of reddish-white or golden hue,[232] and the brightest star in the sky, and which vanished within two years of its arrival, was the legendary lost white brother whose return in the eastern sky has been anticipated by the Anasazi and the Pueblo for almost a millennia. The retooling of the myth to deal with European entrance into the Americas demonstrates that Anasazi and Pueblo symbolism and the central jurisprudence are, like the very universe they represent, living entities.

If time or society proves that the symbolism of the central jurisprudence — signs, legends, or myths — is erroneous or unworkable, or if circumstances change and the symbols become separated from either the core principles or from reality, then the possibility exists for the society to lose its way. The United States, for example, has operated under some flawed mythology in its western course of empire, and resultant misfortune has often been visited on the weak or the inanimate. Federal Indian policy was long premised on the illusions that Indian society was unviable after contact with white Christian influence, and the Indians, as tribalists if not as individuals, would inevitably vanish.[233] The myth of inescapable disappearance was, in significant part, the justification for the United States' aggression toward and removal of the tribes, and the dispossession of lands the policy makers conveniently believed the Indians would not need. "White injustice, not inevitable destiny, made the red man droop 'like the fading flower before the noon day sun.' The belief in the Vanishing Indian was the ultimate cause of the Indian's vanishing."[234]

The United States government also believed the fallacious myth that "rain follows the plow" and that intensive agriculture would promote a temperate climate, even in the semiarid zone.[235] The Homestead Acts and other federal land disposition plans lured the settlers and their steel plows into the short-grass prairie, the high plains and even the great basin. These ill-thought agricultural invasions had severe consequences for the resident Indians, the unprepared homesteaders, and the land itself.[236]

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228. It is reemphasized that myth can have its origins in actual events and thus can have more the character of a history than an abstraction. *See* SULLIVAN, *supra* note 34, at 12-18.

229. WILLIAMSON, *supra* note 70, at 278; TYLER, *supra* note 80, at 51, 85, 87.

230. WILLIAMSON, *supra* note 70, at 99.

231. *Id.* at 225.

232. *Id.* at 179, 182.

233. BRIAN DIPPIE, THE VANISHING AMERICAN 10-11, 32-44 (1982).

234. *Id.* at 71.

235. *See* WALLACE STEGNER, BEYOND THE HUNDREDTH MERIDIAN 296-98 (1982).

236. RICHARD WHITE, "IT'S YOUR MISFORTUNE AND NONE OF MY OWN": A HISTORY OF

The United States has long had a stubborn, related vision of the landed, independent, self-sufficient yeoman. This image has driven politics, land distributions, capital expenditures, and national aspirations far past the point where the combination of urbanism, industrial technology, and corporativity had marginalized the yeoman.[237]

These misadventures of Western vision, although provocative of negative consequence, have not resulted in a terminal national crisis of either physical or spiritual nature.[238] The compromised symbolism was related to the central philosophy of growth and progress but not identical with it. In the aftermath of the breakdown and unmasking of flawed symbolism, the core faith and national resolve continued on intact and unabated. New or retooled symbols and mythologies centering on technological salvation[239] or the alchemy of economic deregulation[240] help the nation continue on its course of growth and entropic consequence.[241]

When the downfall of symbols, myths, and legends is simultaneously paralleled by the collapse of the fundamental jurisprudence of world view, then the consequence will consist of more than mere side effects or the frustration of isolated endeavor. The erosion of meaning and purpose in life itself may result. The society may lose its overarching rationale and its members may flounder along with it. So devastating is the consequence that people and governments will cling to their primary beliefs and symbols, even when futility seems inevitable. In fact, like the supernova effect of increased radiance in the instance before collapse,[242] faith and commitment may increase in the hour of ultimate crisis, leading to a more precipitous descent. When, for instance, the core growth values of the United States' economy have been threatened by the confinements of an eroding environment, diminished resources or uneven social distributions, the country has tended to respond, not by refocusing on an enduring, sustainable balance, but by reaffirming the "solvent of growth."[243] The affirmation of the traditional values in the presence of inescapable complexities seems a hope or a wish rather than a faith that intensifying the familiar will keep the tensions of entropy and disparity at bay — for at least a little longer.[244]

THE AMERICAN WEST 143-54 (1991).

237. DONALD WORSTER, UNDER WESTERN SKIES 3-18 (1992).

238. Intensive agriculture on the high plains was a leading factor in the devastating dust storms of the twentieth century. *See* WORSTER, *supra* note 237, at 93-105.

239. *See* JERRY MANDER, IN THE ABSENCE OF THE SACRED 120-37 (1991).

240. *See* CHARLES REICH, OPPOSING THE SYSTEM 161 (1995).

241. *See* NICHOLAS GEORGESCU-ROEGEN, THE ENTROPY LAW AND THE ECONOMIC PROCESS 1-21 (1971).

242. WILLIAMSON, *supra* note 70, at 180-81.

243. OPHULS, *supra* note 48, at 180.

244. *See* BUSINESS CIVILIZATION, *supra* note 53, at 102-11; ROBERT L. HEILBRONER, BEYOND BOOM AND CRASH 84 (1978); ROBERT HEILBRONER, VISIONS OF THE FUTURE 99-100

The Indians outside the American Southwest have been less fortunate. Their religions, homelands, economies, and tribal structures have been under relentless assault throughout the eighteenth and nineteenth centuries as the white incursion rolled relentlessly westward. By the late 1800s, the buffalo were almost gone, most tribes were compressed onto truncated remnants of their former lands or transported to unfamiliar soils such as the Oklahoma Indian Territory, and traditional ceremonies or practices were limited or banned altogether.[245]

The fading light of the central vision of the western tribes brought forth a desperate resurgence — or convulsion — as the century drew to a close. A Paiute Indian from Nevada, named Wavoka, became known as a visionary and a prophet, and was regarded by many as a messiah.[246] Wavoka's most compelling pronouncement concerned a ghost dance religion and a resurrection of pre-white, Indian America, with the restoration to occur in the year 1891.[247]

The religion and its dance spread among the tribes which incorporated the basic premises into the various world views and philosophies.

> The great underlying principle of the ghost dance doctrine is that the time will come when the whole Indian race, living and dead, will be reunited upon a regenerated earth, to live a life of aboriginal happiness, forever free from death, disease, and misery. On this foundation, each tribe has built a structure from its own mythology, and each apostle and believer has filled in the details according to his own mental capacity or ideas of happiness . . . .[248]

The result was an ecumenical assemblage of diverse yet unified ghost dance adherents, not unlike the loosely cohering sects of Christian believers. Indeed, the ghost dance religion was, doctrinally as well as organizationally, similar to Christianity and Wavoka was, in the eyes of many, the returning Jesus.[249] "The gospel as it came from the mouth of the Messiah was one of peace and love — as Christlike in concept as the Sermon the Mount. 'You must not fight. Do no harm to anyone. Do right always.'"[250]

Not all the versions of the religion were completely pacific. One distinctive element of the religion, eagerly adopted by the warlike Sioux, was the belief that ghost dancing in special shirts would make the dancer immune to soldiers' bullets.[251]

(1995).

245. *See generally* AMERICAN INDIAN POLICY, *supra* note 149.

246. *See* PAUL BAILEY, GHOST DANCE MESSIAH 7-9 (1970).

247. *Id.* at 1, 195-200.

248. JAMES MOONEY, THE GHOST-DANCE RELIGION AND WOUNDED KNEE 777 (1973).

249. BAILEY, *supra* note 246, at 201.

250. *Id.* at 8.

251. MOONEY, *supra* note 248, at 788-91.

The ghost-dance supernova burned out in a span of several months, beginning with the massacre at Wounded Knee, South Dakota, on December 29, 1880, and ending with the nonapocalyptic passage of the prophecized critical year of 1891. The religion had taken a firm hold amidst the despair on the Great Sioux Reservation and the frenzied appearance of the dance itself provoked nervousness from neighboring whites. Reservation officials called for assistance from the United States cavalry.[252] The soldiers and Indian police, believing that Sitting Bull, the revered Sioux spiritual leader, was a major reason for the ghost dancing, attempted an arrest that degenerated into violence and the ensuing death of Sitting Bull.[253] The shooting stunned a nearby band of Miniconjou Sioux who, led by an ailing Chief Big Foot, took flight south toward Red Cloud's camp at Pine Ridge.[254] Big Foot's band was intercepted by the pursuing cavalry, confined under heavy guard in the village of Wounded Knee, and for precipitating causes still unclear, nearly exterminated in a withering crossfire from soldier canons and rifles.[255]

The ghost shirts and dancing had not stopped the bullets, and the failure of the prophecy to materialize in the time frame foretold by Wavoka[256] brought the resurgent vision of the tribes to an anticlimactic halt. The massacre at Wounded Knee, as a negative image of wanton oppression, was left as the principle residuum, and an affirmative vision and jurisprudence for the Plains Indians still awaits its renaissance.

The vitality of the central world view of the Pueblo remained firm during the pivotal nineteenth century. The substantial continuation of the traditional agrarian economy, the retention of the aboriginal homelands, the limited impacts of allotment and the resilience of the ancient ceremonial system combined to buffer the core jurisprudence from external assault.[257] There have been, certainly, unaffirmative symbols along the way, and certain courses of conduct have proved problematic or unsustainable. Such untenable symbolism and actions, however, have not been identical with the basic jurisprudence and, thus, reformation of the symbols and directives, in order to better reflect and serve the primary themes of unity, was possible. For example, the massive constructions at Chaco Canyon, and the integration of regional economy, ceremony and politics were spectacular efforts far beyond the traditional Anasazi approach of decentralized autonomy.[258] The focal point for all effort, however, was still the jurisprudence of unity and community, and the physical model, although dramatically scaled up, was still

252. *Id.* at 849.

253. *Id.* at 856-64.

254. CONGER BEASLEY, JR., WE ARE A PEOPLE IN THIS WORLD 46-49 (1995).

255. *Id.* at 95-115.

256. MOONEY, *supra* note 248, at 774.

257. DOZIER, *supra* note 79, at 104-06; SANDO, *supra* note 33, at 2.

258. W. James Judge, *Chaco Canyon - San Juan Basin in* DYNAMICS OF SOUTHWEST PREHISTORY 234, 235 (Linda S. Cordell & George J. Gumerman eds., 1989).

holographic.[259] When the rains failed repeatedly in the twelfth century and drought not only made regionalism highly difficult, but also implied divine displeasure,[260] the Anasazi readjusted their symbols and actions. Perhaps the supernova and its message for the course of regionalism had been misinterpreted; maybe the extensive physical constructions and integrated institutions as means to fulfill the central philosophy and honor the astral sign had been miscalculated. The basic values of unity and community remained undiminished, however, and a philosophically nontraumatic deescalation to restore balance was possible — with dignity, purpose, and perhaps even a sense of fulfillment.[261]

IV. John Collier, The Vision of Community and the Indian Law[262]

Jurisprudence, in its broadest sense, can constitute the ideological engine of the society. As a central philosophy, it drives the laws, institutions and tangible conduct of the people. True and lasting social reform, as opposed to cosmetic or transitory changes must, therefore, take place within the arena of basic values. The United States, physically and numerically dominant over the resident Indian tribes by the midpoint of the nineteenth century, undertook to fundamentally transform the Indian societies, to break up tribalism and the associated world views, and to absorb the remnant individuals. To accomplish this, the United States took direct aim at the central jurisprudence of tribalism, and sought to change the focus on community into a fixation on competitive, gain-seeking individualism. The process, which was to last until 1934 was called assimilation and its course was to prove physically, economically, and psychologically devastating to many of the tribes.

Prior to the assimilation movement, which began in earnest after the Civil War, the United States had dealt with the tribes, through force and negotiation, as independent, if not equal nations.[263] The main thrust of such militaristic and legal force was to procure land from the Indians. By the mid-1850s, the United States had used the gun, treaty pen, and statute to remove and relocate most of the eastern and southern tribes to the frontier lands west of Missouri.[264]

The Indian frontier was to provide but short respite. When California, Texas, and Oregon were added to the United States a new dynamic began and the centralized Indian nations became subject to increased pressure from all

259. Stein & Lekson, *supra* note 40, at 45-58.

260. WARBURG, *supra* note 172, at 3.

261. W. James Judge, *New Light on Chaco Canyon*, *in* NEW LIGHT ON CHACO CANYON 8 (David Noble ed., 1984).

262. *See generally* Ragsdale, *Movement to Assimilate American Indians*, *supra* note 143.

263. *See* Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 16 (1831) (stating that "the acts of our government plainly recognize the Cherokee Nation as a state").

264. *See* GRANT FOREMAN, INDIAN REMOVAL 392-93 (1932).

sides. The growing white desire for land, transportation routes, game, water, and minerals all led to a new round of treaties, statutes, and military incursions designed to break up the large reserves and concentrate the displaced tribes on smaller, less strategic reservations.[265]

The reservation system was primarily intended to remove the Indians from the path of the advancing whites. In a secondary sense, the system provided a basis of management, and the United States had several diametric options: the maintenance of the tribes as distinct and separate cultures, or tribal assimilation.[266] Separate maintenance was problematic because many Indian economies had been drastically disrupted; traditional hunting and gathering practices were often ineffective within the static reservation settings which usually involved parcels considerably smaller than the aboriginal holdings.[267] Assimilation in an affirmative sense involved a reeducation of the tribalists in the social, political, economic, and religious principles of white America; it contemplated economic self-sufficiency and a melding within the political and economic mainstream.[268] In a less positive way, one could view assimilation as a systematic cultural annihilation that approached genocide.[269]

Assimilation and the blending of the discrete individuals necessarily included an assault on the tribal form since, to the traditional Indian the group was transcendent of self.[270]

> In our Indian way of looking at the world, the individual isn't important, only the group. We forget the names of our heroes and villains, while remembering what the group did, for good or evil and how it met the challenges and dangers, and how it lived in balance with nature.[271]

Assimilation necessitated a substitution of growth-oriented precepts for the Indian core values of natural community, and the inculcation of competitive individualism to replace the communalistic, cooperative processes of the tribal community.[272] Assimilationists also stressed the necessity of a concept and

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265. *See, e.g.*, John Ragsdale, *The Dispossession of the Kansas Shawnee*, 58 UMKC L. REV. 209 (1990).

266. FREDERICK HOXIE, A FINAL PROMISE: THE CAMPAIGN TO ASSIMILATE THE INDIANS 1880-1920, at 2-11 (1984).

267. Peter Nabokov, *Long Threads, in* THE NATIVE AMERICANS 369 (Betty Ballantine & Ian Ballantine eds., 1993).

268. *See* Carl Schurz, *Present Aspects of the Indian Problem, in* AMERICANIZING THE AMERICAN INDIANS 13-26 (Francis P. Prucha ed., 1978).

269. Rennard Strickland, *Genocide at Law: An Historic and Contemporary View of the Native American Experience*, 34 U. KAN. L. REV. 713, 713-15 (1986).

270. JAMAKE HIGHWATER, THE PRIMAL MIND 171-73 (1981).

271. YAVA, *supra* note 210, at 139.

272. Linda J. Lacey, *The White Man's Law and the American Indian Family in the Assimilation Era*, 40 ARK L. REV. 327, 349-56 (1986).

a veneration of private property, especially in land. Merill Gates, a leader of the nineteenth century reform group, the Friends of the Indians, said in 1896:

> We have, to begin with, the absolute need of awakening in the savage Indian broader desire and ampler wants. To bring him out of savagery into citizenship we must make the Indian more intelligently selfish before we can make him unselfishly intelligent. We need to awaken in him wants. In his dull savagery he must be touched by the wings of the divine angel of discontent. Then he begins to look forward, to reach out. The desire for property of his own may become an intense educating force. The wish for a home of his own awakens him to new efforts. Discontent with the tepee and the starving rations of the Indian camp in winter is needed to get the Indian out of the blanket and into trousers — and trousers with a pocket in them, and with a pocket that aches to be filled with dollars! The most intelligent students of physiological psychology in the training of children tell us that it is a misfortune to make a very little child so absolutely unselfish that he wants to give away everything. Such an unselfish childhood is most unpromising. The person who blindly gives away everything of what he gives in the mere wish to be smiled upon — and without any consideration of the value of what he gives — is not fitting himself to be a helper of others, but is taking the first steps toward becoming a vague pauper, looking for a readiness on the part of all others to distribute whatever they can lay hands on to all who will smile when they receive it. The truth is, that there can be no strongly developed personality without the teaching of property — material property, and property in thoughts and convictions that are one's own.[273]

The United States' efforts at suppressing tribalism took a variety of forms including restraints on religious observances, funeral practices, plural marriages, hunting and meat slaughtering.[274] The federal government, in addition, correctly deduced that the young were the lifeblood of a culture, and that the molding and transformation of the children and their values might prove an effective way of destroying Indian heritage at its roots.[275] In 1870,

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273. Merrill Gates, *Address at the Lake Mahonk Conferences*, *in* AMERICANIZING THE AMERICAN INDIANS 334-35 (Francis P. Prucha ed., 1973).

274. *See* Lacey, *supra* note 272, at 364-69; U.S. COMM'N ON CIVIL RIGHTS, INDIAN TRIBES: A CONTINUING QUEST FOR SURVIVAL 20 (1981).

275. MARGARET SZASZ, EDUCATION AND THE AMERICAN INDIAN: THE ROAD TO SELF-DETERMINATION SINCE 1928, at 8 (2d. ed. 1977).

therefore, the government began to fund nonvoluntary, off-reservation schooling which was often provided by particular religious denominations.[276]

American Indians, though often castigated by reformers as communalistic, had distinct concepts of private property in personality.[277] They did not, however, generally believe in the individual ownership of land or the selling of land as a commodity. John Collier wrote:

> Tribal society and the communally possessed land were two aspects of a single fact. The earth lived; individuals of the tribe were members of one another and part of the earth. Individuals had no wish to own some one, detached piece of the land; they were co-owners of it all. But they were not even co-owners; they were co-operators with the land, defenders of it, at once its guardians and its children. "What," the famous Tecumseh had exclaimed, "Sell land! As well sell air and water. The Great Spirit gave them in common to all."[278]

The collectivist approach to land tenure and the group ties to sacred places were recognized by the assimilationists as core practices and values that needed replacement.[279] The reformers believed that private, individualized land holdings would act as the key to the transformation of the tribalists and would function as a most convenient way of opening much of the sparsely populated reservation land to white occupancy.[280] The tool chosen by the reformers to install the pivotal veneration of private property and to open the underused lands of the Indians was allotment in severalty.

The General Allotment Act of 1887,[281] commonly known as the Dawes Act, provided for the allocation of tribal lands to individual members in fee simple, and in acreage amounts that parallel those available under the various United States homesteading provisions.[282] Upon the individualized parcels, the Indians would theoretically be able to learn about the values and benefits of privatized land, to produce food, to compete economically, and to end dependency.[283] In addition, the tying of Indians as individuals to quarter sections of land would leave millions of extra acres of tribal land available for disposition to whites.[284] Beyond this, the allotment of the collective lands

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276. FELIX S. COHEN'S HANDBOOK OF FEDERAL INDIAN LAW 139-40 (Rennard Strickland et al. eds., 1982).

277. *See* KARL LLEWELLYN & E. ADAMSON HOEBEL, THE CHEYENNE WAY 212-38 (1941).

278. INDIANS OF THE AMERICAS, *supra* note 55, at 128.

279. HOXIE, *supra* note 266, at 24.

280. ANGIE DEBO, A HISTORY OF THE INDIANS OF THE UNITED STATES, 299-300 (1970).

281. Ch. 119, 24 Stat. 388.

282. WHITE, *supra* note 236, at 137-54.

283. JANET MCDONNELL, THE DISPOSSESSION OF THE AMERICAN INDIAN 1887-1934, at 1-5, 18 (1991).

284. *Id.* at 121-22.

would strike a massive blow at the tribe itself, as the communal center of the Indian's social universe. Allotment was described by reformer Merill Gates in 1896 as a "mighty pulverizing engine for braking up the tribal mass."[285] John Collier further observed:

> Allotment broke the tribal domain up into individual holdings — so much for each man, woman, and child. Unallotted 'surpluses' were thrown open to white entry. Allotted parcels could be rented to whites, and sold to whites upon the death of the allottee. Forced fee patenting to living allottees was widely used to expedite passage of title to whites. An Allotment was much more than just a huge white land grab; it was a blow, meant to be fatal, at Indian tribal existence. Its intended consequence was the divorce of the Indian from his community.[286]

If allotment was designed to cripple the tribal entity and to feed the white land hunger through massive transfers of Indian lands, it was indeed a success; but to the extent that it was designed to foster individual self-sufficiency and new world views, it was an abject failure. By the early 1930s, it was apparent that the allotment process had intensified poverty and despair among the Indian people.[287]

Support for allotment and assimilation was further eroded by the passing of the American frontier. In 1934, the Taylor Grazing Act[288] effectively closed the public domain to further wholesale disposition, and the land hunger that had in large part fueled the allotment schemes began to subside. In addition, the Taylor Grazing Act as the beginning of centralized management of the residual public domain indicated a veering toward communalism that was accelerated by the intransigence of the great depression and the midwestern dust bowls.[289]

Though the setting for reconsideration of allotment and assimilation was favorable in the early 1930s, the actual impetus for transformation came from the visions of a single individual — John Collier. Collier, like other American philosophers such as Ralph Waldo Emerson, John Muir, Henry David Thorough, and Aldo Leopold,[290] had a deep appreciation for wilderness, and often took extended sojourns in the southern Appalachian mountains.[291] In

285. Gates, *supra* note 273, at 342.

286. JOHN COLLIER, FROM EVERY ZENITH 129-30 (1963) [hereinafter FROM EVERY ZENITH].

287. MCDONNELL, *supra* note 283, at 120-25.

288. 43 U.S.C. §§ 315-316 (1976).

289. *See* Jack M. Balkin, *Ideology and Counter-Ideology from Lochner to Garcia*, 54 UMKC L. REV. 175, 186-87 (1986).

290. *See* Charles Myers, *An Introduction to Environmental Thought: Some Sources and Some Criticisms*, 50 IND. L.J. 426, 427-39 (1975).

291. FROM EVERY ZENITH, *supra* note 286, at 48.

addition, Collier, who studied widely at New York and Paris universities, developed a profound, abiding and mystical sense of community.

> Always it has appeared to me that there exists forever an inflow and outflow between the human being and the human being in groups, and between these and the world of nature. This consciousness of the union of man with man, and of man and of the race of man with nature, with each thing and with all things and with the everything that is — the consciousness has been the living center of my life's philosophy.[292]

Though Collier did not realize it in the early 1900s, he had developed a philosophy that closely paralleled the central jurisprudence of the ancient Anasazi and contemporary Pueblos. It was a world view that stood in marked contrast to the white society's pervasive orientation toward individualism, materialism, and growth. In his autobiography, he wrote:

> Well into the 1920's, and even yet spread far and wide, the nineteenth-century view of man was still the all-prevailing view. . . . The nature of man was believed to be founded in traffic and acquisition of goods — and the human personality was, therefore, base, calculating, and shallow. Nothing beyond the individual was perceived; the human group was nothing more than a contract between self-seeking individuals. The meager optimism of this view rested in the belief that diffusion of knowledge and an increase in security and conveniences would mitigate the age-old aberrant tendencies of man. Man had always been, it held, and would always be, an isolate, an address, a role in a competitive society.[293]

This opposition between competitive growth and cooperative community led in part to the failure of Collier's early organizational work among the immigrant peoples of New York City.[294] Yet Collier's hope for a community bonded within and externally with nature was to persist and was realized eventually when he encountered the living embodiment of the Anasazi, the Pueblo Indians of New Mexico.

In 1920, Collier, recovering from the futility in New York City, visited the home of a friend, the legendary patron Mabel Dodge Luhan, in Taos, New Mexico. On Christmas Eve, in bitter cold and heavy snow, Collier was transfixed by the vision of the Red Deer Dance at the Taos Pueblo.

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292. *Id.* at 32.

293. *Id.* at 119.

294. *Id.* at 68-94; *see also* KENNETH R. PHILP, JOHN COLLIER'S CRUSADE FOR INDIAN REFORM, 1920-1954, at 238 (1981).

> None has described adequately, in words, the great dances of the Pueblos, of which the Red Deer Dance is one. And I cannot describe any of them; but they entered into myself and each one of my family as a new direction of life — a new, even wildly new, hope for the race of man . . . .
>
> The discovery that came to me there, in that tiny group of a few hundred Indians, was of personality-forming institutions, even now unweakened, which had survived repeated and immense historical shocks, and which were going right on in the production of states of mind, attitudes of mind, earth-loyalties, amid a context of beauty which suffused all the life of the group.[295]

John Collier had found a living community, infused with the continuing jurisprudence and philosophy of the ancient Anasazi — a jurisprudence which propounded unity of the people, the land and the universe, which approached balance and permanence and which presented the possibility of an immutable meaning to life that appeared lost in the illogic and demonstrated unworkability of continuous individualized growth.

> The Pueblos, I suggest, in their philosophy and practice of the man-nature relationship, and in their ecological practice which makes of the human society a co-operant part of the planetary and cosmical ecological creation, are the askers of a question and the propounders of an answer even more universal than were the questions and answer of Rochdale. The question and answer of the Pueblos ring like bells in the heart of every human child, and ring like bells muffled by many veils and almost drowned in many noises, yet audible, in the forsworn deeps of the adults of our epoch which is rushing to its terminus. They tell that happy man, unwounded earth, and long, endless future can be had by our race still.
>
> . . . .
>
> [E]very phase or part of pueblo life, if examined patiently is found to lead to all the other parts, and to involve them. Pueblo life is complicated and is almost uniquely many-sided, while at the same time its integration is so complete and profound that every particular item or expression is found to involve, and to be involved with, all the rest of the many-sided complication. This interrelatedness of all the parts is not a matter of mere physical proximities or of formalized prearrangements; rather, it is like the interrelatedness of the organs and cells of a living being, and it suggests that unique goal-seekingness and striving-togetherness of

295. FROM EVERY ZENITH, *supra* note 286, at 126.

> all the organs and functions of a living body, which is the distinguishing character and the ultimate mystery of organic life.[296]

Collier felt that such a core was not only worthy of respect and protection within the fabric of the American law, he believed, further, that the United States needed to ultimately replace the laissez faire, free market, growth-oriented individualism of the United States and the Western nations.[297] He felt that the jurisprudence of unity was the best, perhaps the only hope for the long-term salvation of the world itself.

> They had what the world has lost. They have it now. What the world has lost, the world must have again, lest it die. Not many years are left to have or have not, to recapture the lost ingredient.
>
> This is not merely a passing reference to World War III or the atom bomb — although the reference includes these ways of death, too. These deaths will mean the end if they come — racial death, self-inflicted because we have lost the way, and the power to live is dead.
>
> What, in our human world, is this power to live? It is the ancient, lost reverence and passion for human personality, joined with the ancient, lost reverence and passion for the earth and its web of life.
>
> This indivisible reverence and passion is what the American Indians almost universally had; and representative groups of them have it still.
>
> They had and have this power for living which our modern world has lost — as world-view and self-view, as tradition and institution, as practical philosophy dominating their societies and as an art supreme among all the arts.[298]

Collier was, after 1920, committed philosophically to the preservation of the Anasazi jurisprudence which had continued on in the minds, laws, and society of the Pueblos and other unassimilated tribes. His core of fundamental value, like the jurisprudence of a tribe or nation, was the well-spring for his life's work; his beliefs became a source of obligation, energy, and ultimate fulfillment. He stated in his autobiography:

> This Memoir, then, as a whole, would address itself to that open secret at the heart of being in man, creatures, and the world: to the never all-availing central purpose which never does yet permanently surrender, and is the sustainer of meaningful effort

296. ON THE GLEAMING WAY, *supra* note 61, at 93.
297. INDIANS OF THE AMERICAS, *supra* note 55, at 13.
298. *Id.* at 15-16.

> in this disarranged world (of) our own, and the cosmically destined maker of worlds to be. In the perspective of time beyond time, and in the present heart of man, the central purpose does move "the sun in heaven and the other star."[299]

Collier began his crusade in 1923, joining with the Pueblos in a successful defense against the Fall-Bursum bill, a proposed scheme that would have favored white trespassers in quiet title actions against Indians.[300] After defeat of the bill, he headed the American Indian Defense Association, an educational and political organization that lobbied against government-sponsored assimilation and that laid an intellectual foundation for the reform of Indian law.[301] When Franklin D. Roosevelt chose Harold Ickes, a member of the American Indian Defense Association, as Secretary of the Interior, and Ickes in turn nominated Collier as the Commissioner of Indian Affairs, the road to transformation was opened.[302]

A cross-cultural transmission of jurisprudential value, from the Anasazi to the Pueblo to John Collier and ultimately to the American polity enabled the passage of the Indian Reorganization Act of 1934.[303] The Act, by political necessity a product of compromise, was less than Collier wanted but still of critical significance. It was revolutionary in that it ended the assault on tribalism through allotment and assimilation, and provided a foundation, if not a finished structure, for Indian self-government in the modern era.[304] It thereby assured the tribes of promises made in the early treaties of a continuing and "measured separatism."[305]

The Act was also conservative in that it was born from an ancient vision of community. Some have criticized Collier for drawing too heavily on the Anasazi and Pueblo world views and generalizing to the neglect of variations in the visions of other tribes.[306] Yet Collier's vision, and indeed the jurisprudence of the Anasazi, though rooted in the past was not entrapped there. The vision of unity — of community, cooperation, and reciprocity within the human and cosmic spheres, was a core image of flexibility, adaptability, balance, and timeless rhythm. It was — and is — a central focus and promise, not just for the Anasazi and Pueblo, but for all peoples dedicated to achievement and maintenance of enduring harmony.

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299. FROM EVERY ZENITH, *supra* note 286, at 475.

300. INDIANS OF THE AMERICAS, *supra* note 55, at 252.

301. GRAHAM TAYLOR, THE NEW DEAL AND AMERICAN INDIAN TRIBALISM 12-13 (1980).

302. PHILP, *supra* note 294, at 115.

303. Indian Reorganization Act, ch. 576, 48 Stat. 984 (codified as amended at 25 U.S.C. §§ 461-479 (1994)).

304. Comment, *Tribal Self-Government and the Indian Reorganization Act of 1934*, 70 MICH. L. REV. 955, 972 (1972); *see* VINE DELORIA, JR., THE NATIONS WITHIN 15 (1984).

305. CHARLES WILKINSON, AMERICAN INDIANS, TIME AND THE LAW 4-5 (1987).

306. PHILP, *supra* note 294, at 239.

V. Epilogue: On High Desert Visions

The jurisprudence of unity, the symbols and visions that represent it, and the power over law and conduct accorded them stem from observation, reflection, synthesis, and the choice of obligation.[307] Leaders such as Alexander, Caesar, Napoleon, Crazy Horse, and Patton, as well as authors and philosophers such as Thoreau, Muir, Cather, Leopold, and Abbey, have found solace, faith, commitment, and fulfillment in the desert wilds. When John Collier, for example, encountered the Taos Indians and their ceremonies on the high desert of northern New Mexico, at the base of the Sangre De Christo mountains, his abstract beliefs on community were reified and a compelling vision was etched in his consciousness. The primal rhythms of the Red Deer Dance, and its ancient patterns, carefully handed down through generations from the Anasazi to the present Pueblo, captured his senses and his thoughts. He witnessed and never forgot the understated yet powerful radiance of a resolute, enduring people, joined voluntarily but irrevocably in a timeless dance, moving with purpose and passion over a vibrant earth. Their vision became Collier's and it drove not only the law of the Pueblos but, after 1934, the Indian law of the federal government.

Why has the desert been a crucible for the forging of mysticism and revolution? The aridity, the pellucidity of the air, the absence of pretense, the elemental directness, and the stillness allow new perceptions of truth and different angles on reality.

> The light is psychedelic, the dry electric air narcotic. To me, the desert is stimulating, exciting, exacting; I feel no temptation to sleep or to relax into occult dreams but rather an opposite effect which sharpens and heightens vision, touch, hearing, taste and smell. Each stone, each plant, each grain of sand exists in and for itself with a clarity that is undimmed by any suggestion of a different realm . . . .
>
> I am free, I am compelled, to contemplate the world which underlies life, struggle, thought, ideas, the human labyrinth of hope and despair.[308]

Modern urbanites, anesthetized by their habitual cocoons of artificial light, incessant noise, fiber optic transmissions, synthetic materials, and conditioned air, are often stunned by their first real encounter with the shimmering intractability of the desert. The sky is vast and overwhelming — brilliant blue by day and luminous at night. Yet the desert can feel like an embrace; and the light from the rising and setting sun and from the moon and stars can

307. *See* Tribe, *supra* note 65, at 1338.

308. EDWARD ABBEY, DESERT SOLITAIRE: A SEASON IN THE WILDERNESS 155 (1971).

comfort as well as humble. Similarly, the high desert visions are often dreams of inclusion, peace, and resonance rather then isolation. Willa Cather wrote of a solitary experience on a high desert mesa:

> This was the first time I ever saw it as a whole. It all came together in my understanding, as a series of experiments do when you begin to see where they are leading. Something had happened in me that made it possible for me to co-ordinate and simplify, and that process, going on in my mind, brought with it great happiness. It was possession. The excitement of my first discovery was a very pale feeling compared to this one. For me the mesa was no longer an adventure but a religious emotion. I had read of the filial piety in the Latin poets and I knew that was what I felt for this place. It had formerly been mixed up with other motives but now that they were gone, I had my happiness unalloyed.[309]

The vision of community, nurtured in the purity of the Southwestern high desert was at the core of the Indian society, from the Anasazi to the Pueblo, in the minds of many reflective, non-Indian visitors, and behind the text of the cross-cultural Indian Reorganization Act. Could this vision govern the law of a larger society or, as John Collier wondered, must it? Jeremy Rifkin has recently echoed Collier's observations that community is vital to all mankind and of critical concern now as science reaches a point where humans can unravel or rewrite the sacred text of life itself with their technologically powered, self-interested quest for immortality.

> Increasingly, Western men and women have sought knowledge in order to control their environment. We pursue knowledge so that we may better predict what lies ahead. The goal of knowledge has been foresight, and Western civilization has used foresight to tighten its grip on the becoming process. We need to pursue a different knowledge path, a path whose goal is to foresee how better to participate with rather than to dominate nature. To better understand the why of things as opposed to the how of things. This is the knowledge of relationship and is in strong contrast to the knowledge of usurpation that so obsesses the modern mind.
>
> Today we are well versed in how to pursue technological knowledge but virtually untutored when it comes to pursuing empathetic knowledge. Technological knowledge gives us foresight so that we can better appreciate the life around us. Empathetic knowledge gives us foresight so that we can better

309. CATHER, *supra* note 9, at 249.

> cooperate with the community of life. With technological foresight, security comes in exercising power over nature. With empathetic foresight, security comes from belonging to a community.
>
> To end our long, self-imposed exile; to rejoin the community of life. This is the task before us. It will require that we renounce our drive for sovereignty over everything that lives; that we restore the rest of nature stands before us as the great mission of the coming age.[310]

Neither Collier nor Rifkin were particularly sanguine about the probability that Western nations will voluntarily forsake or temper their attempts at technological dominance and refocus on enduring balance.[311] Other futurists also fear that the inertia of growth will continue into breakdown.[312] Thus, the jurisprudence of community may have to reemerge, phoenix-like, from collapse. In the interim, however, the Pueblo will persevere and continue to honor the jurisprudence of community and the covenant of balance and permanence that they keep for all humankind.

310. ALGENY, *supra* note 71, at 251-52.

311. *See* INDIANS OF THE AMERICAS, *supra* note 55, at 187; *see also* ALGENY, *supra* note 71, at 255.

312. OPHULS, *supra* note 48, at 243-44.