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Jen A. Huntley  
drjenhs@gmail.com

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## Crucible of the Modern Republic: The Yosemite Grant and Environmental Citizenship Jen A. Huntley

Gathering up friends and colleagues from his newspaper days, Speaker of the United States House of Representatives Schuyler Colfax celebrated the end of America's deadliest war with an extended trip to California's Yosemite Valley. Just like millions of others would after them, the vacationers enjoyed warm afternoons swimming and fishing in the Merced River's sparkling waters, hiking to scenic lookouts, followed by evening songs and storytelling around the campfire. But the fact that the war-weary yet triumphant Speaker chose Yosemite as his postwar destination illustrates the depth of Yosemite's symbolic power just one year after it had been designated a public park through the Yosemite Grant Act.

The Yosemite Grant initiated a powerful new force that constituted a tipping point in American environmental history; the moment when the right combination of individuals, political and economic upheaval and ideological change hit a nerve in the broad social psyche of a time and launched a new environmental understanding. That new understanding included a revised role for the United States government in managing public lands—one that recognized certain landscapes for scenic value and sought to restructure the economic and policy approach to such landscapes. The new perspective also recognized and engaged the power of tourism as both a communication tool and economic strategy to activate cultural dimensions of postwar reunification and national identity. In this process, the Yosemite Grant, together with other mid-century land grants passed by the Union Congress, also profoundly altered the underlying concepts of American citizenship, particularly the relationship between citizen and government as expressed in land policy. Both by design and by practical application, the Grant was highly experimental: the United States had not attempted to deploy public lands as public parks before, and throughout the forty years of the Grant's legal and administrative existence, many unforeseen issues and events radically transformed the original intent into something else altogether. By the last decade, widespread frustration with the Grant model led most leaders to declare it a failure, and in 1904 California retroceded the Yosemite Valley to the Federal government to be joined with the rest of the territory then managed by Yosemite National Park.

But was the Yosemite Grant truly “a failure?” Seeing it as such has meant that most histories have only explored it as a brief stopover on the inevitable journey to National Park status. However, viewed in its own right, the Yosemite Grant offers insight into multiple alternative pathways that might have been taken in the course of developing scenic landscapes for national tourism. During the Grant period, for instance, people by necessity lived where they worked, supplying the tourist economy through locally-products and providing economic outlets for the energies of itinerant mountain shepherders and indigenous Californians. In the policy perspective of the National park, such activities are anathema—residence and economic activity (other than that by monopoly concessionaires) are increasingly strictly forbidden. Modern environmentalists decry the introduction of (often invasive) exotic flora and fauna brought by Grant-era farmers. However, from the perspective of twenty-first century climate crisis, the notion that Yosemite visitors would be supported through worldwide supply chains dependent on carbon fuels seems equally contradictory to the mission of a public park. How did we get to the idea that humans could not interact in a positive material way with a sacred landscape in the first place? Could there be a middle way? What ideological, economic, and political forces shaped the

symbolic meanings of Yosemite, transforming it from Colfax's symbol of peace and national unity into the starkly beautiful icon of nonhuman nature familiar around the globe today? By exploring the legal context and intent, practical efforts at implementation, and long-term legacies of the Yosemite Grant, we gain a deeper understanding of the ideological contradictions underpinning America's environmental conservation philosophy.

Almost exactly one year prior to the Colfax party's visit, Abraham Lincoln had signed into law the Yosemite Grant, the Congressional act protecting the landscape from extractive industry and transferring it to the State of California to manage in perpetuity on behalf of visitors who would come, like Colfax and his friends, for rest, recreation, and resort. A decade of photographs, paintings, lectures and travel narratives had acquainted Americans in the centers of urban power with the spectacular cliffs, waterfalls and meadows—images that touched powerful chords of wartime yearning for peace and postwar national reconciliation. That Congress would take time out of its wartime concerns to pass such an act points to both Yosemite's unique hold on northern American's imaginations, and to the feverish activity of the Northern Congress in passing progressive land-use legislation in the absence of the South. Along with the Yosemite Grant, the Morrill Act, the Railroad Act, an updated Homestead Act and several other Union policies passed in the years of war and reconstruction.

Colfax's well-publicized trip to Yosemite supplied the occasion for another vital step in the making of Yosemite's symbolic meaning. Frederick Law Olmsted, then chair of the Yosemite Commissioners, articulated several foundational ideas for the park in his "Mariposa Report," the 8,000-word treatise, which he read to a handful of other commissioners and possibly also to members of the Colfax party on August 7, articulating his vision for the postwar role of valley to heal the wounds of war and inspire a new era of American Republican philosophy. It was six months to the day since Lee's surrender at Appomattox.<sup>1</sup> In his address, Olmsted imagined the grant as a benevolent gift from an enlightened federal government to a citizenry wracked by the Civil War and worn weary by the stresses and strains of modern urban industrialism, a message that surely resonated with the east coast dignitaries even as it may have shocked the California establishment with its sticker price.

Despite the appeal of his message, in practice the actual Yosemite Grant would turn out to be equally shaped by the fractious and competing economic and political forces that brought it into being. Born out of America's bloodiest war, invented by mysterious anonymous individuals, framed by a vague law and bitter Supreme Court battle and developed through decades wracked by the second industrial revolution, the Grant remained a puzzle that visitors and inhabitants struggled to understand, develop, appreciate, and benefit from throughout its existence. From Lincoln's authorizing signature in June of 1864, to California's recession joining the valley to its surrounding National Park in 1904, the Yosemite Grant acted as both a bureaucratic experiment and a kind of cultural crucible for working out ideas of American identity, modernism, class and ethnic tensions and—quite belatedly—proto-environmentalism. Recreational tourists, artists and scientists, English hoteliers and Chinese road builders, native fishers and Mexican launderers, pioneering photographers and ambitious landscape designers all jostled and competed for fame, for money, for survival, for the right angle of light or turn of phrase that would capture and

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<sup>1</sup> Justin Martin, *Genius of Place; the life of Frederick Law Olmsted* (A Merloyd Lawrence Book). Np: DaCapo Press, 2011, p. 266

convey the landscape's inspirational energy. And, in the process of all these efforts, voices, and visions some pieces of modern America's complex relationship with landscape came into being. At its outset, the Yosemite Grant was not about environmentalism—but at the end of its 50 years, Americans' experiences with this Valley had given rise to key notions that would drive and limit the shape and extent of American environmentalism for the subsequent century.

### Part 1: Grant as Imagined: The Legal Framework

While Yosemite's physical landscape was and is simultaneously a feature of geology, biology, and human culture, the Yosemite Grant was an act of law. It may be somewhat surprising, given its long-term impact, just how quietly and quickly the Yosemite Grant legislation made its way through Congress. Introduced by California Senator John Conness in March of 1864, the bill flew through both houses with little debate and was signed into law by Abraham Lincoln in June of that year. In contrast to most legislation, the text of the "Act Authorizing...Yosemite Grant" is fairly succinct and to the point, not even fully occupying a single sheet of paper. (Exhibit A). In it, Congress clearly defined both the economic and administrative structure that would govern the park. Economically, "leases not exceeding ten years may be granted," and the incomes from these leases would fund "preservation and improvement of the property, or the roads leading thereto." Administratively, the federal grant of the land to the State of California would be managed by that state's governor, through delegation of authority to eight other governor-appointed commissioners, with no compensation for their services. The text of the act is silent on issues that would immediately bedevil the Commissioners and result, ultimately, in Supreme Court clarification nearly a decade later: whether or how to compensate those with ancestral or even more recent property claims in the valley, who or what was financially responsible for infrastructure costs beyond those offered by tourism entrepreneurs. The Grant also created an odd informal hybrid of state and federal administration, in that it was the federal government ceding the land to the state, but, as events unfolded in subsequent years, California's actual authority over the grant was effectively subject to federal oversight, even veto, with the Yosemite Commissioners frequently acting like agents of the federal government rather than servants of the state.

The single most significant context of the Yosemite Grant act was the Civil War. Sweeping up all customs, ideologies, social and economic relationships into its slaughterhouse, the Civil War was *the* defining watershed event in American history. The culmination of many decades' tension over slavery between industrializing Northern and slave-holding Southern states, the war was also borne out of the push to settle Western lands and the impact on whether the West would be slave or free. The war itself was more destructive and deadly than all other military engagements of the United States combined and left a permanent imprint on the nation's psyche.

Because so many of the histories that deal with the Yosemite Grant are more concerned with its place in the course of environmental conservation history, most have neglected to really grapple with its Civil War context, leading to the present-minded slant of so many accounts. However, once one recognizes the profound impact of that context on all of mid-nineteenth century culture, ideology, and identity, more of the motivations behind "unprecedented" acts like the Yosemite Grant become visible. To gain historical appreciation of the Yosemite Grant, then, is to understand it as one of the several Congressional acts passed during and after the Civil War era

that effectively reshaped the American government's land policies. In contrast to the pre-war land acts that promoted the vision of the Yeoman farmer in a transactional partnership with the government, postwar there was no single overriding vision of these land grants—some are more progressive, others seek to enrich corporations, others to punish the South—some do all these and more simultaneously. Many if not all of these acts were vulnerable to manipulation by corporate interests to monopolize large tracts of land, forest, or mining claims—often at the expense of settlers who had moved there under the auspices of the earlier Homestead Acts, as Hutchings had done.

During and after the conflict, the Union (North), became obsessed with national authority and regional sovereignty. In the absence of Southern opposition during the war and reconstruction period, the Union congress enacted policies to strengthen federal power and bind America's disparate regions more tightly to national political authority and economic centers. Chief among the fears of postwar Union leaders was the potential for remote regions to again develop cultural, economic, and political autonomy from the Atlantic seats of power—Washington, D.C., New York, Boston. Such autonomy, many felt, threatened to continually destabilize national power and economic consolidation, and it should be obvious that California would appear the most problematic of any region, given its distance, its urban maturity, its Pacific gaze. Yosemite emerged onto the national stage in part through the writings, and images produced by Northeasterners deeply concerned about California's potential for independence. In 1861, just as the South began to secede, Unitarian minister Thomas Starr King emphasized the spiritually and politically redemptive qualities of the Yosemite to underscore his central message that California belonged in the indivisible Union, as ordained by God. King's lectures and writings, along with photographs, reinforced the vision of Yosemite as a powerful cultural symbol of unification within a triumphant Northern power structure. Thus, the very first exposure eastern Americans had of Yosemite was in the context of the Civil War, the war shaped the Union Congress that legislated the Park's existence, and the postbellum drive for national authority and centralization shaped the second stage of legal interpretation.

The grant's silence on the matter of land ownership in the Valley almost immediately generated the second stage of the grant's legal origin: the lawsuit brought by two pre-emption claims holders, James Hutchings and James Lamon. Both men had filed homestead land claims ahead of the general survey, under the frontier practice whereby pioneers could begin the process of settlement with a claim to land that, under certain requirements, would lead to property title once the land were surveyed. It took nearly a decade for the Hutchings case to make its way through to the Supreme Court, in the process hamstringing the powers of the Yosemite Commissioners to enact meaningful administrative policies. While the Yosemite Grant itself was almost cryptic in its limited discussion of the rationale and anticipated outcomes of the park act, the Supreme Court case took a broad interpretation of then-extant land policy law and issued a decision with wide ramifications for the disposal of public lands. Together, the original act of congress and the subsequent 1872 Supreme Court decision (*Hutchings v Low*) constitute the legal basis for the Yosemite Grant. Though both the act and court case have been often cited in histories of Yosemite, national parks, and American environmental history, until now they have not received enough attention for their respective political and ideological contexts to really grapple with what Congress, and then the Supreme Court, intended at the time. In 1872, when the Supreme Court formulated its *Hutchings v Low* decision, Yellowstone was formed as a National Park.

Thereafter, the Yosemite Grant and the National Park idea were in more or less continual conversation with each other, until finally the Commissioners, the United States, and the State of California more or less agreed that the best course of action would be for the Yosemite Valley to merge into the National Park that surrounded it.

## Part Two: Practical Implementation of the Yosemite Grant

For at least 6,000 years before Senator Conness introduced the idea of a scenic park in California to the national Congress, the valley in question had been home to indigenous Californians. Utilizing fire and other methods, these inhabitants manipulated the ecosystem around them to favor the growth of edible plants, open forest floors, and meadows—creating the environment that Olmsted and other admirers thought was “natural.” Two generations prior to the first Anglo incursions into Yosemite, an epidemic disease swept through the valley, sending survivors east to the Mono Lake area to regroup and return to the valley a generation later. This historical experience, in which the Yosemite tribe adapted to changing conditions wrought by the influx of Europeans to California prior to its actual contact with the Mariposa Battalion in 1853, complicated the group’s claims to ancient and hereditary habitation in the land, according to the arbitrary standards set by Federal Indian policy decades later. In contrast, the Yosemite tribe advocates for federal status and claims ancient and hereditary rights to the land of the Yosemite Valley to this day. In the minds of nineteenth-century Anglos, any questions of indigenous land rights were settled, first by the enforced exile of native Americans from the valley during the 1852-3 “Mariposa Battalion,” and secondly through the historic period of absence from the valley. But Yosemite Indians slipped away from their exile and returned to the mountains and the Valley itself, where lack of recognition or policy in the Grant years meant a modicum of relative stability compared to their Sierra neighbors.<sup>2</sup> Yosemite Indians, though lacking legal status, participated in the tourist industry during the Grant years and for many decades into the twentieth century.

Other property claims to the valley drew more notoriety. A few years before the grant, Gus Hite filed a pre-emption claim to land within the valley, a claim later purchased by tourism publisher James Hutchings, with intentions to settle permanently in Yosemite and build a tourism-based career there. Hutchings had every intention to utilize his property claims according to the entrepreneurial, free-market ideology of the mid-nineteenth century, and having worked to bring Yosemite’s aesthetic and cultural values to the forefront of (first) California, then the Nation, looked forward to serving the anticipated flood of tourists to the newly-created park.

### Administration

Neither the land claims of indigenous Californians nor the newly-minted pre-emption claim of white settlers were considered during Congress’ brief discussion before passing the Yosemite Grant Act. These questions of ownership and belonging were among many issues that remained to be worked through experience in the decades of the Grant’s existence, some controversies remain even today. Just as the law required clarification through a second legal act, questions of how to administer, develop, and fund a space intended for “all” were left up to various

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<sup>2</sup> Kathleen Hull, *Pestilence and Persistence: Yosemite Indian Demography and Culture in Colonial California* (Berkeley: University of California Press, 2009)

practitioners to create, test out, modify and keep or discard according to rapidly shifting economic and technological realities as well as changing values, aesthetics, and ideology. At its narrowest focal point, the practical development of the grant idea centered on the administrative efforts of the Yosemite Commissioners to execute the letter and intent of the law, a bureaucratic drama in which the administrators sought to guide, benefit from, or limit the entrepreneurial efforts of private tourism developers, even as they futilely begged the parsimonious California legislature for more than their annual sums of fiscal support. Caught between the demands of tourism entrepreneurs in the valley, the vagaries of the state legislature, and the suspension of authority due to court proceedings, the original commissioners were almost fated to be seen as failures. In 1879, when California adopted a new state constitution, the existing commissioners were replaced with an entirely new slate of administrators, who nevertheless soon encountered many of the same challenges as the original generation. The tale of the Yosemite Commissioners, whether hapless heroes or malign powerbrokers has also been studied historically and is often the extent of the analysis of the Yosemite Grant in those histories.

### Tourism

However, the Yosemite Grant in practice involved many other participants beyond the official administrators. Tourism was key to the vision of the Grant, whether articulated in the law itself, in Olmsted's Mariposa report, in the Supreme Court decision, and in the patterns of economic development that unfolded across the valley floor and routes to it. The novelty of the Yosemite Grant idea lay not so much in any kind of proto-environmentalism as in the granting of public lands explicitly for people who would NOT live on, or work, those lands. The tourist dynamic depended both on a tourist infrastructure and the tourists themselves. In the first case, the grant intended that a version of free market capitalism would support the needs—lease-holding entrepreneurs would furnish the necessary room, board, and transportation, with guidance and regulation from the Yosemite Commissioners. These individuals, combinations, and various for-hire workers constituted one dimension of the practical implementation of the Yosemite Grant. Tourism, in turn, created its own demand for products and services that could be met through the local economy. This economy engaged both business leaders and more marginalized individuals whose presence and activities would later become anathema to National Park operation. Among these, immigrant high-country shepherds and indigenous Californians—including the Yosemite band—found it possible to continue traditional lifeways within the Grant, “under the radar,” so to speak, of official gaze. Mexican laundry workers and Chinese roadbuilders also labored for the tourist economy, reflecting the ethnic diversity of California's nineteenth century working classes.

At another level were the tourists themselves. Like the journalist members of the Colfax party, many of the Valley's visitors were culture makers who generated literary, scientific, or visual interpretations of Yosemite, in turn often offering commentary on wider issues facing the region and the nation as a whole. Key to the ongoing creation of Yosemite's symbolic meaning were the works of both scientists and artists, whose discussions and images of the place helped to build the tourist draw while simultaneously tying Yosemite's imagery and import into broader questions about American identity in the postwar era of economic consolidation, industrialization, and urbanization. Although in theory, the Yosemite Grant was open to “all” Americans, the practical expense of a Yosemite visit virtually guaranteed that tourists to the

valley, in contrast to workers within it, would be overwhelmingly affluent and white. Thus the practical implementation of the Yosemite Grant resulted from complex, contradictory dynamics that played out through personal dramas, local developers, nationwide power struggles, and the continuous stream of tourists responding to the place that was rapidly transforming into a kind of secular-sacred national icon.

Several nineteenth-century celebrities visited and offered their spin on Yosemite, but of those dozens, John Muir strides onto the stage of late 20th-century imagination, offering his Transcendentalist-saturated philosophy for the contemplative individual seeking peace of another sort in nature. Muir resided in Yosemite for four years, probably long enough to shed the “tourist” designation, but he attempted to remain aloof from the day-to-day concerns of those Yosemite residents who operated the tourist trade. His authorial persona was blithe and unconcerned with (if not downright hostile to) the more mundane matters of economic survival, instead articulating ecstatic visions of the California Sierra as sites of personal redemption and spiritual renewal.

Muir’s was not the only voice of Yosemite visitors who undertook the cultural work of interpreting the lands under the Grant’s purview, but his is the name most recognizable a century-and-a-half later. It was Muir, and the many others like him whose names have been forgotten, who initiated the cultural process transforming Yosemite from a symbol of post-Civil War reconciliation and national unity, into a symbol of salvation from the ills of modern, industrial life. Here, in the cultural interpretation of Yosemite during the Grant years, are the origins of modern, twentieth-century environmental conservation— with its emphasis on spectacular landscapes and the park mechanism (and affluent, white visitors), first the federal government and then states would concentrate on setting aside swaths of land, protected from development and made available for recreation.

### Part Three: Legacies

Many writers of the day, and historians since, considered the Yosemite Grant a failure. Viewing the Grant retrospectively through the lens of the National Park System that came to replace it, common wisdom holds that the Grant was too flimsy an architecture to withstand the conflicting demands placed upon it. Many aspects of this assumption are true enough. But to then dismiss the Grant as unimportant is to gloss over its incredible contributions to environmental history— first and foremost, of course, the legacy of sacred national landscapes and their phenomenal power in shaping American self-identity. For all the National parks, state parks, wilderness areas, national monuments descend from this act. Furthermore, and perhaps more interestingly, the Grant is instructive in all the ways that were rejected in the subsequent National Park management. In its administrative looseness and ambiguity, the grant allowed for various interpretations of sacred landscapes, including the residence and participation of people who would later become anathema to the Park administrators—native Americans, itinerant shepherders, residential hotel keepers.

The innumerable paintings, essays, poetry, scientific discourses and photographs generated throughout the decades of the Yosemite Grant were one strand of the emerging environmentalist consciousness, captured most famously by John Muir. Muir’s vision of solitary communion with

nature grew into the “Wilderness Myth,” lately under critique by environmental historians as an ideology more in service of upholding colonizing white identity than in supporting a truly environmentally-sound politics. Here, too Muir was foundational to another strand, the political organization and activism that would energize environmental policymaking for another century. Arising out of regional efforts to control access to the high Sierra around Yosemite in the late 1880’s, Muir, James Hutchings, and several other concerned Yosemite leaders formed the Sierra Club, America’s first environmental organization devoted to preserving (and maintaining access to) spectacular scenic landscapes.

That America’s modern environmental conservation movement emerged in the architecture of the Yosemite Grant generated several problematic legacies as well. For one thing, while Yosemite was theoretically open to all visitors, in practice only those who could afford it could actually visit it. Affluent, white, and usually urban or suburbanites with the time, energy, and means constituted the overwhelming majority of Yosemite tourists, and therefore, were the majority voices of those defining its meaning and symbolism. This factor has translated into an environmentalist politics overwhelmingly white, affluent, urban, and educated. The racial and ethnic biases limiting this perspective meant that scientists and culture-makers like Muir would vehemently oppose land-use practices of the marginalized groups. Most spectacularly, racism and ethnic bias underpinned a widespread condemnation of the indigenous and sheepherders use of fire as a forest-management tool, leading to a century of fire suppression with catastrophic results in recent years.

Simultaneously, the affluent and white environmentalist constituency was more drawn to preservation of sacred wilderness over an environmentalism that would challenge the depredations of industry and pursue environmental justice, delaying those challenges by several generations. This legacy, then, parlays into the enduring power of the Wilderness Myth articulated by William Cronon in 1994— a myth that essentially utilizes “preserved” sacred spaces for individuals to imaginatively re-enact primal moments of “discovery” rather than promote responsible engagement with the material consequences of our modern, urban-industrial economy. Our delayed response to the crisis of global warming illustrates the deadly cost of wandering too long in the wildernesses of our own imaginations, neglecting the need to make common cause across class, racial, ethnic, and political boundaries to forge a “responsible” environmental politics, until, perhaps, it’s too late.

## Conclusion

The legal processes of legislative craft and courtroom wrangling tell only one fraction of the story of the Yosemite Grant. Multiple, interlocking and competing efforts at interpreting or resisting the legal implications of the Grant over the four decades of its existence constitute a larger, more complex narrative with significant long-term consequences for the cultural biases and practical exercise of American environmental conservation into the twentieth century and beyond. Yosemite was a place to visit, to study or depict in art, a place to work, even, for some, a place to live.

Yet, the history of the Yosemite Grant offers more than simply a nostalgic review of the precursor to our modern parks and the 20th century environmentalist politics. In all the spaces

left open in the law, Americans had the opportunity to experiment with alternative visions of how humans could “rest and recreate” in a unique, spectacular landscape set aside in the hope of national unity in a peace after war. Just as the Articles of Confederation, for all their failings, were in many ways more democratic than the subsequent Constitution—so too the Yosemite Grant, for all its failings, was a more open approach to the land. In the Grant, indigenous Californians had a place to live, at least seasonally, to adapt their lifeways to the tourist economy. The heritage those survivors passed down to current generations are proving to be vital to our understanding of high Sierra fire ecology. Yosemite National Park was one of the first places in the high Sierra to adopt “let burn” fire management policies thirty years ago, and now Forest Service managers are looking to that experiment, as well as consulting with indigenous leaders, to develop pro-active fire management policies in the Sierra. In the Grant, immigrant sheepherders grazed their flocks on upper meadows, a practice long denounced by Muir and his intellectual descendants. However, in light of the vast carbon footprint generated by the current far-flung worldwide textile industry, a localized source of non-chemical fibers that transform into long-lived textiles seems more like a worthy candidate for at least some of our public lands than the scourge decried by Muir and Garret Hardin.

What if racism and ethnic bias had not been so powerful in the nineteenth and twentieth centuries? What if sacred lands like Yosemite had not come to be defined as valuable only with people extracted from it, as “wilderness?” In Japan, a traditional approach to human habitation in the land promotes biodiversity through farming and harvesting practices that create niche ecosystems in rice paddies and common-access forests. Known as Satoyama landscapes, they blur distinctions between “human” and “wilderness” and tend to support human habitation and culture for many generations, in contrast to industrial agriculture and forestry practices. Now recognized by the United Nations as characteristic of traditional lifeways around the world, the UN-based Satoyama Institute is dedicated to discovering and documenting any remnant examples of these landscapes. One way to think about the alternative “paths not taken” out of the Yosemite Grant is to recognize the way the Grant itself allowed a kind of cultural satoyama system to exist, briefly, within its physical boundaries. Perhaps our current environmental and identity crises will motivate us to look again at the potential of national lands to re-inform a “responsible environmentalism” through a broader interpretation of the power and meaning of sacred space, and the human place within that space.