

LAW, SOCIETY, AND THE ENVIRONMENT:

A Theoretical Overview

". . . the Law, he thinks, should be accessible to every man and at all times, but when he looks more closely at the doorkeeper in his furred robe, with his huge pointed nose and long thin Tartar beard, he decides that he had better wait until he gets permission to enter."

--Kafka

Doug Torgerson

examples of archaic law ①

Nearly everyone seems to have a favorite example <sup>of one</sup> ~~of what~~ are called "archaic" laws. Established in all seriousness at some point in history, <sup>such</sup> ~~these~~ laws have, over time, eventually become outdated, ignored, and forgotten. They remain on the books--and technically in force--but they are so far removed from the realities of society that no one would really think of actually enforcing them. The only social role they play seems to be as <sup>occasional</sup> party jokes. But archaic laws, ~~are~~ in fact, <sup>have</sup> far more significance ~~than~~ than this, for they provide a helpful clue towards understanding the complex relationship between law and society.

Although the law is often thought to be somehow sacred and eternal, archaic laws <sup>provide dramatic illustration of</sup> ~~illustrate dramatically~~ how law is actually closely linked to the times. The laws of society do not flow from some sacred and eternal source, but from changing social interests and shifting currents of political power. Legislation is subject to a wide range of pressures and influences, and in the end ~~represents~~ <sup>victory or</sup> ~~defeat or compromise~~ ~~or a victory and a defeat~~ for forces in society. Enforcement tends to be subject to the same kinds of influence as legislation. When important ~~interests~~ interests in society ~~are~~ are affected by legislation, ~~enforcement~~ enforcement is, then, either actively promoted or discouraged. The ~~result~~ result will reflect the ~~effective~~ effective power of the interests involved. Archaic laws, in fact, are laws that are consistently unenforced because their enforcement would benefit no one. ~~If~~ If the situation should change, however, and the enforcement of an archaic law should become important to someone, the law could

be dug up and revived. In an opposite case, laws can ~~evolve~~  
evolve historically from long accepted ~~practices~~ practices and customs,  
and as "common" laws, ~~they can,~~ they can, ~~being~~ being  
~~and~~ <sup>^</sup> ~~without ever~~ <sup>same</sup> ~~formally~~ <sup>^</sup> formally  
legislated, ~~have the~~ <sup>^</sup> ~~binding force of~~ <sup>^</sup> ~~legislation.~~  
legislation. To put it simply and bluntly, law and law  
enforcement do not stem from divine revelation or from impartial  
considerations of justice: both, in reality, stem from power.

~~If there are just and idealistic elements in a legal system,~~ <sup>in a legal system,</sup>  
~~it is because idealistic people have been powerful, or because~~  
~~powerful people have sought to disguise their interests behind~~  
~~an exalted facade.~~

If there are just and idealistic elements in a legal system,  
it is because just and idealistic people have been powerful,  
or because the victims of injustice have <sup>themselves</sup> managed to <sup>become</sup> powerful, <sup>and</sup>  
~~powerful~~ <sup>^</sup> ~~or it is because~~ <sup>somewhat</sup> powerful people have sought to disguise  
their interests behind an exalted facade. <sup>^</sup>

can be viewed as

*in recent times*

The environmental movement is a new social force that has emerged in Canada and other nations. ~~the rest of the world~~ The existence of the ~~movement~~ movement reflects a growing awareness in numerous sectors of society that catastrophe looms in the future if the historical trends of growth in industry and population are ~~not halted soon~~. Despite the gravity ~~of the situation~~ of the situation, the environmental movement remains relatively weak in relation to powerful forces in society that continue to promote growth in pursuit of their immediate interests. It is true that there ~~have~~ <sup>have</sup> been effective responses to some of the exceptionally gross cases of pollution. But despite ~~innumerable~~ innumerable statements of good environmental intentions, massive pollution continues, both legally and illegally. The spectre of resource depletion and rising prices ~~have~~ <sup>have</sup> prompted some ~~to~~ faint moves in the direction of conservation. Still--from ignorance, blind greed, or naive technological optimism--the predominate momentum of society remains fully committed to growth.

*- But other moves against environmentalists - fear of job loss - push to get out resources regardless of environmental cost.*

As an integral part of a growth oriented society, the legal system is <sup>itself</sup> slanted in favor of growth. Tax law, for example, is actively ~~designed~~ <sup>designed</sup> and enforced to promote ~~economic~~ <sup>economic</sup> growth. . . . But even when ~~in favor of the environment~~ <sup>in favor of the environment</sup>, legislation is worded strictly ~~in favor of the environment~~ <sup>in favor of the environment</sup> enforcement is ~~often lax~~ <sup>often lax</sup>. . . . ~~the law has developed along with the widely accepted maxim that growth is both necessary and good.~~ Historically, the law has developed along with the widely accepted maxim that growth is both necessary and good. When the environmental movement steps into the legal arena, it enters a game where the rules have long been

*But I TA pollution advice write off.*

set in favor of the opposition. In a serious conflict, the odds are with growth at the expense of the environment. What this means is that the ultimate aim of the environmental movement cannot be simple legal reforms. Although reform would be helpful in the short run, the long term goal must be a fundamental change in the orientation of the law. What this means, in turn, is that the environmental movement ultimately ~~seeks~~ seeks ~~the~~, not simply ~~the~~ the law, but a basic transformation in the orientation and priorities of society as a whole. Environmentalism presents a challenge not only to the legal system, but also to the social forces and values that underly it.

Governments and leaders of society do not ~~generally~~ generally like to talk about the mundane origins of laws. They prefer to equate law with justice and <sup>to</sup> wrap both in an aura of eternal sanctity. This <sup>emerges as a</sup> stubborn obstacle for environmentalists <sup>discover the</sup> when they ~~confront~~ the sacro-sanc principle of <sup>work</sup> in the law or confront the growth ~~of~~ "sacred" rights of property. To overcome this

~~obstacle~~ obstacle, it is necessary to consider the principles of political philosophy that underly ~~our~~ our present environmental predicament. ~~The philosophical~~

~~created the single greatest impact on the law of the~~  
~~English speaking world~~ <sup>This leads us to</sup> ~~the ideas~~  
~~of John Locke, whose phi~~ ~~sophy~~ ~~exerted a fundamental~~  
~~impact on the law of the English speaking~~ ~~world.~~

*This leads us to examine the political thought of John Locke.*

seventeenth century,

Locke lived during the time of a burgeoning market economy and

a time when people were developing an awareness of the potential industry and technology, to ~~exert~~ <sup>had exert</sup> the <sup>of man</sup> human mastery over nature, <sup>both</sup>

~~his political philosophy reflected this new awareness and helped to~~ <sup>outlook</sup> Locke's whole theory was based on the ~~notion~~ <sup>notion</sup>

~~that~~ that humankind is somehow detached from nature, that nature ~~is~~ <sup>primarily</sup> has little intrinsic worth and is meant for human exploitation. There is not only a right, but almost an obligation, to promote economic growth and the domination of ~~nature~~ <sup>nature</sup>. <sup>4</sup>

For "land that is left wholly to nature . . . is called, as indeed it is, waste." <sup>5</sup>

Concern for private property was at the heart of Locke's political philosophy. In fact, Locke believed that the fundamental purpose of government and law <sup>was</sup> the "preservation" of property. <sup>6</sup> In a society characterized by ~~vast~~ vast inequalities in wealth, he argued that the central function of law was to act as ~~"fences and guards"~~ <sup>for property</sup> ~~in~~ the poor should "forget respect" and "break in upon the rich, and sweep all like a deluge." <sup>8</sup> But Locke's concern did not stop with the mere preservation of property. He believed that property should not be static, but dynamic, constantly growing. <sup>9</sup> The dynamic property of the ~~"industrious and rational"~~ "industrious and ~~rational~~ <sup>10</sup> rational" needed to be protected because it was the basis of a ~~not~~ pursuit for wealth that, he argued, was of ultimate benefit to human society as a whole. <sup>11</sup>

In the effective administration of government, he saw a means to insure against the possibility that the

*ideas were*

*that was*

Locke's ~~thoughts~~ tied to a new vision of man ~~emerging~~  
emerging in his day. While acknowledging the importance of  
economic activity, the <sup>previous</sup> medieval tradition had ~~it~~ consistently  
attempted to restrain the acquisitive impulse within a larger  
spiritual order. In deference to this tradition, Locke began  
by stressing the moral limitations to appropriation. But in  
the course of his argument, the traditional limitations fall  
away; and in the end, Locke <sup>to</sup> "has turned the tables" on the  
earlier tradition ~~and~~ provided a justification for the  
unlimited <sup>acquisition</sup> ~~expansion~~ of individual wealth. <sup>12</sup>

~~insert~~ ~~key limitation~~ ~~the~~ ~~Locke~~ ~~confronted~~ ~~was~~ ~~the~~ ~~assumption~~ ~~that~~ Since the  
earth was given by God to all people in common, <sup>it was traditionally believed that</sup> no one has a  
right to more property than would leave "enough and as good" <sup>13</sup>  
for others. ~~Locke argued that~~

~~Locke~~ acknowledged that, although there was more  
than enough land to go ~~around~~ <sup>in fact</sup> around for everyone, large property  
holdings had introduced scarcity. <sup>14</sup> ~~But~~ ~~we~~ ~~have~~ ~~seen~~ ~~that~~  
<sup>but to have</sup> nature ~~has~~ little intrinsic worth. He argued, then, "that he  
who appropriates land to himself by his labour, does not lessen  
but increase the common stock of mankind." <sup>15</sup> Private appropriation  
actually is of benefit to the whole of society because it  
substantially ~~and~~ increases the worth of land that otherwise would  
be left "lying waste in common." <sup>16</sup> ~~Locke~~ ~~assumes~~ ~~that~~ ~~this~~ ~~benefit~~  
<sup>Assuming Locke assumed</sup> ~~would~~ ~~somehow~~ ~~filter~~ ~~down~~ ~~to~~ ~~the~~ ~~poor~~ ~~and~~ ~~it~~ ~~is~~ ~~claimed~~ ~~that~~ ~~in~~ ~~the~~

~~the~~ ~~New~~ ~~World~~, <sup>17</sup> "king of a large and fruitful territory . . . feeds,  
lodges, and is clad worse than a day labourer in England." <sup>18</sup>

*Thus, he claimed in the*

~~Historical~~

A century after Locke, Adam Smith could take ~~the~~ the "sacred ~~rights~~ rights of private property" for granted, and he could enshrine acquisitiveness and growth as central principles of classical economic theory. But <sup>19</sup> Locke could still feel the weight of ~~previous~~ previous tradition. ~~His task was~~

to justify ~~the~~ the realities of <sup>a new</sup> emerging historical era in light of ~~the~~ ~~principles~~ ~~of~~ ~~natural~~ ~~right~~ ~~that~~ ~~lingered~~ ~~in~~ ~~opposition~~. ~~These~~ ~~principles~~ ~~of~~ ~~natural~~ ~~right~~ stressed the subordination

of the economic to the ~~the~~ spiritual dimension of existence;

~~the~~ ~~conception~~ ~~of~~ ~~right~~ ~~was~~ ~~tied~~ ~~to~~ ~~the~~ ~~just~~ ~~and~~ ~~proper~~ ~~order~~ ~~of~~ ~~soul~~, ~~society~~, ~~and~~ ~~cosmos~~ ~~that~~ ~~could~~ ~~be~~ ~~known~~ ~~through~~ ~~reason~~. <sup>and</sup> <sup>idea</sup> <sup>of</sup> <sup>the</sup> <sup>goods</sup> <sup>--</sup> <sup>to</sup> <sup>a</sup> <sup>of</sup> <sup>the</sup> <sup>individuals</sup> <sup>identified</sup> <sup>and</sup> <sup>known</sup> <sup>through</sup> <sup>reason</sup>.

~~For~~ ~~Locke~~ ~~and~~ ~~those~~ ~~who~~ ~~followed~~ ~~him~~, ~~however~~, ~~the~~ ~~idea~~ ~~of~~ ~~a~~ ~~rational~~ ~~idea~~ ~~of~~ ~~a~~ ~~rationally~~ ~~defined~~ "good" was abandoned in favor of <sup>a</sup> <sup>vague</sup> <sup>notion</sup> <sup>of</sup> <sup>a</sup> <sup>free</sup> "pursuit of happiness" <sup>that</sup> <sup>was</sup> <sup>conducted</sup> <sup>on</sup> <sup>the</sup> <sup>basis</sup> <sup>of</sup> <sup>"rational"</sup> <sup>calculation</sup>. In practice, this new approach <sup>undermined</sup> <sup>the</sup> <sup>spiritual</sup>, <sup>and</sup> <sup>unleashed</sup> <sup>the</sup> <sup>acquisitive</sup>, <sup>impulse</sup>, <sup>and</sup> <sup>established</sup> <sup>the</sup> <sup>unquestioned</sup> <sup>"right"</sup> <sup>--</sup> <sup>perhaps</sup> <sup>even</sup> <sup>the</sup> <sup>obligation</sup> <sup>--</sup> <sup>to</sup> <sup>pursue</sup> <sup>an</sup> <sup>unlimited</sup> <sup>accumulation</sup> <sup>of</sup> <sup>wealth</sup>.

<sup>Confronted</sup> <sup>by</sup> ~~In~~ ~~the~~ ~~face~~ ~~of~~ traditional ideas of "natural right" that lingered in opposition, Locke's task was to justify the new realities of a rising propertied class and an emerging historical era. <sup>20</sup>



The reflection of Locke's ideas can easily be seen ~~in~~ <sup>the</sup> features of our society that ~~have~~ <sup>led</sup> us into ~~an~~ <sup>the present</sup> environmental crisis. ~~At the root of the matter is~~ <sup>the distinction between nature and man, along with</sup> Locke's rigid ~~distinction between nature and man, along with~~ <sup>the seeming</sup> disrespect for ~~nature~~ <sup>expressed in his</sup> notion that undisturbed land is "waste." Locke speaks not of the sanctity of ~~wild~~ nature, but of the sanctity of property.

In our society, as in Locke, this disregard for ~~wild~~ nature is ~~connected to~~ <sup>connected to</sup> a whole set of other ~~values~~ <sup>values</sup>. Fundamental ~~is~~ <sup>is</sup> a preoccupation with <sup>economic</sup> growth. The "pie" must continually <sup>get</sup> bigger, ~~and~~ runs the familiar ~~argument~~ <sup>argument</sup>, because, in that way, all levels of society benefit. True, it is admitted, ~~that~~ <sup>that</sup> different levels do not all benefit equally. But unequal distribution is ~~needed~~ <sup>needed</sup> in order that there can be large concentrations of ~~capital~~ <sup>capital</sup> to finance further growth to benefit all ~~levels~~ <sup>levels</sup> of society. With that, the circle is complete, and we step onto an endless treadmill of restless economic activity, ~~and a vision~~ <sup>driven by a notion</sup> of life that exhorts ~~the~~ <sup>the</sup> frantic pursuit <sup>of</sup> ~~wealth~~ <sup>property, wealth,</sup> and status. There is often talk of ~~the~~ <sup>the</sup> "progress" and "convenience" and "consumer demand" but seldom does any one claim that life in the consumer society is one of lasting fulfillment. <sup>As in the</sup> ~~There is~~ <sup>concern</sup> is constantly ~~in~~ <sup>with</sup> possession and future acquisition rather than actual ~~enjoyment~~ <sup>enjoyment</sup>; "Life is a joyless quest for joy." 23

The predominate Lockean view has not gone completely unchallenged. Although following in the same intellectual tradition as Locke and Adam Smith, ~~John~~ John Stuart Mill expressed serious doubts about growth a century ago. <sup>perhaps</sup> ~~In a world we would consider relatively quaint and pastoral,~~ ~~he~~ he could already ~~en~~ envision the possibility of a "world with nothing left to the spontaneous activity of nature," a world where ~~hardly~~ hardly "a wild ~~shrub~~ shrub or flower could grow without being eradicated as a weed ~~in the~~ in the name of improved agriculture." ~~In his~~ In his Principles of Political Economy, he argued that, except ~~for~~ <sup>for</sup> what ~~we~~ <sup>is now</sup> ~~today~~ <sup>is now</sup> ~~all~~ the ~~Third~~ Third World, ~~the~~ the real economic need was not for "increased production," but "better distribution." Dismayed by a world that was preoccupied with "struggling to get on," he asked a question few ~~people~~ <sup>yet</sup> had bothered to consider: "Towards what ultimate point is society tending by its industrial progress?" <sup>24</sup> Unfortunately, Mill's concerns did not ~~substantially~~ substantially shake the fundamental Lockean faith. Faced today with a frightening environmental crisis, the onward ~~rush~~ <sup>drive for</sup> of growth continues.

If we can see Locke's ideas reflected in our society as a whole, we can especially see them mirrored in our legal system. As in Locke, concern for the rights of property plays a central role in the Canadian ~~legal system~~.

But ~~again~~ again, as in Locke, ~~the~~ Canadian law is not so much concerned with the preservation of mere "static" property as it is with the support of "dynamic," growing property. ~~The small farmer and the small businessman are continually on the defensive against the advance the ever growing power powers of large, centralized, monopolistic in corporations.~~ The lack of effective protection for the small property holder is ~~explained~~ explained away with the notion that he is simply ~~that he~~ a <sup>fair</sup> so-called victim of competition on the "free" market. He cannot survive because ~~his~~ his size makes him "inefficient." What has actually happened, ~~of course~~ is that he has been ~~squeezed~~ squeezed out by larger powers ~~that~~ that, because of their size and ~~strength~~ strength, are able to manipulate the market and expand, very efficiently. <sup>25</sup>

Tax law provides ~~a~~ a good illustration of the way the legal system is geared to promote <sup>steady</sup> growth. The progressive income tax was ~~introduced~~ introduced in Canada and other countries ostensibly to ~~reallocate~~ reallocate a lopsided distribution of wealth that was widely perceived to be unjust.

Because of

In bare outline, the ~~can~~ Canadian income tax seems, in fact, to be highly progressive. And because of the ~~is~~ fairly general affluence in most ~~industrialized~~ industrialized nations during decades, ~~the~~ assumed the past few ~~years~~ it is often widely ~~believed~~ that wealth has actually been redistributed. But this is an illusion.

~~The tax structure is such that the distribution of wealth is not~~  
~~substantially changed. Because of all sorts of~~  
exemptions and loopholes in the law, and because of other types of ~~taxation~~ <sup>provisions</sup> in the tax structure that are actually regressive, the distribution of wealth relative to the various levels of society has not substantially changed. What has happened is ~~that~~ that the "pie" has simply grown, so that everyone's ~~piece~~ <sup>total</sup> piece has gotten larger. The motor of ~~wealth~~ <sup>affluence</sup> has not been better distribution, but more production ~~growth~~. In fact, in periods of low growth, governments typically provides ~~the~~ legal tax breaks to ~~many~~ corporations as "incentives" to spur ~~an~~ increased production.

~~The concept of property is, of course, not natural, but~~  
The concept of property is, of course, not natural, but social ~~and legal~~. By the institution of private property, a society grants ~~individuals~~ an individual member fairly exclusive control over specific areas and particular goods. What can be done with the property is often mitigated <sup>measures</sup> by such ~~things~~ as zoning regulations and building codes. But in terms of environmental protection, the limits to what a property owner may <sup>legally</sup> do with his property has been <sup>traditionally</sup> ~~fairly~~ lax. The needs of economic growth have consistently been paramount. What is of particular interest, however, is not what the ~~property~~ holder has been allowed to do to his own property, but, instead,

how he has been allowed to ~~adversely affect~~ affect adversely what does not belong to him. Generally, the law seeks to ~~prevent and regulate disputes~~ prevent and regulate disputes arising from the relations of property holders. The law usually responds ~~effectively~~ effectively in clear cases of infringement such as theft or direct property damage. But the law is exceedingly lax when it comes to the common property of society such as the air and the water. In the interests of economic growth, the government has generally been content to tolerate massive amounts of pollution, known in economic jargon as the "externalization of diseconomies."

*ref.*

Attempts to control pollution have met with some success, but they have constantly run up against the claim that controls are "uneconomic" and a hinderance to growth. It has recently become clear that when growth is on the decline, the opposition becomes increasingly intense and environmental considerations tend to be pushed aside, both in terms of legislation and actual enforcement. In addition to adverse effects on the common domain, society and its laws also tend to tolerate indirect damage to private property in the form of noise, air pollution, the poisoning of land and the contamination of water. The most dramatic cases of this usually occur when a large industry is harming surrounding--often residential--property.

*ref.*

Another victim of growth, is the worker who is daily affected by the polluted

*also  
pollution  
& fauna*

environment of the workplace. ~~Historically,~~ <sup>workers have</sup> ~~workers have~~ safety  
had enormous difficulty in securing the most minimal of ~~standards~~  
~~standards~~ <sup>blatant</sup> standards against ~~blatant~~ dangers. The difficulties  
are simply magnified, then, when the worker faces the more subtle  
threat of industrial pollutants <sup>such as radioactivity</sup> ~~obvious~~ that may not have any ~~apparent~~  
health effects for years, even decades.

Not only private, but also ~~public~~ <sup>legislated</sup> ~~public~~ property  
in the form of ~~a~~ crown corporations, is devoted to the  
~~maintenance~~ maintenance of growth. Ontario Hydro ~~is~~ <sup>legislated</sup> ~~public~~  
mandate ~~is to provide~~ for the energy needs of the province.

In practice, this means to provide for the needs of a growth  
~~oriented~~ oriented industrial ~~economy~~ economy. Hydro's planned  
expansion is based upon the assumption of a continuation of  
past exponential rates of ~~growth~~ growth in energy consumption.  
This will mean a doubling and redoubling of capacity <sup>well before</sup> the  
year 2000, relying predominately on nuclear fission. In this  
way, ~~expansion~~ <sup>expansion</sup> in the private sector is literally  
fueled through ~~legislation~~ legislation. Government and law  
act as fundamental safeguards for growth.

Bound up historically with the established social order, law has seldom been ~~an~~ an effective weapon for social change. Believing that the law provides the cohesive force that binds society together and prevents it from slipping into chaos, conservative thinkers like Burke have consistently stressed the notion of a primeval, sanctified origin of law that ~~effectively~~ ~~places~~ places ~~it~~ it beyond the whims of human action. Much effort has gone into fostering this view, and consequently the law is wrapped up in a maze of mystifying procedures, ~~and~~ and terms <sup>individual</sup> rituals that can leave the ~~feeling~~ feeling as if he has entered some strange, Kafkaesque world. For the ordinary citizen, a visit to this world ~~requires~~ requires a lawyer, a technical expert in legal language and procedure who can guide him through the maze. But what this <sup>practically</sup> ~~means~~ means for many citizens of ordinary means is that ~~it~~ is beyond their ~~grasp~~ financial grasp.

also  
alien  
factors  
keeping  
citizens  
from  
access

~~These features of the law discourage citizens from raising fundamental questions about it. In fact, the law is the effective answer of ~~the government to society's~~ fundamental questions. And once these questions have been answered, the remaining questions are mainly technical ones of administration and adjudication. Since, in our society, it has long been established that growth~~

These features of the law discourage citizens from raising fundamental questions about it. In fact, the law is the effective answer of <sup>government to society's</sup> fundamental questions. And once these questions have been answered, <sup>the</sup> the remaining questions are ~~mainly~~ mainly technical ones of administration and adjudication. Since, in our <sup>and in our laws</sup> society, it has long been established that growth

is a desirable ~~primary~~ goal, there is little room for citizens  
to participate in <sup>basic</sup> decisions about it, <sup>provided</sup> either <sup>in</sup> a political or  
legal forum. In circles of real power, the questions being  
asked about growth are the technical ones of how to provide for  
it--not the central one of whether or not to limit it. Citizen  
participation in such such questions ~~could~~ could only be  
considered an annoying ~~nuisance~~ interference.



The overwhelming bias of the law in favor of growth should not blind us to the fact that, in specific situations, the law can be a useful tool and weapon. The law can ~~and~~ and has been used to protect both private holdings and the common domain from environmental degradation.

*perhaps*  
*several examples: occupational health*

*Handwritten mark*

~~and~~ <sup>also</sup> legal action can have important reverberations. ~~Even~~ Even when environmental legal ~~battles~~  <sup>fights</sup> have been lost, they have had educational value. For those directly involved, the ins and outs of the ~~struggle~~ battle have helped to create a more sophisticated understanding of the law and the powers behind it. ~~Environmentalists~~ <sup>At the same time,</sup> legal fights ~~in~~ <sup>and</sup> help to keep environmental issues in the public eye <sup>and sometimes illuminate the need for legal change.</sup>

*Small banks*

~~Environmentalists~~ Interestingly, one ~~one~~ particular kind of law that has proven useful in environmental battles ~~is~~ <sup>is</sup> ~~is~~ archaic law.

~~Environmentalists~~ In a desperate search for legal weapons, environmentalists have ~~in~~ <sup>largely</sup> dredged up ~~laws~~ <sup>largely</sup> forgotten laws, and <sup>with them</sup> have won significant ~~wins~~ <sup>victories</sup>. In the most significant case of this, ~~though~~ <sup>though</sup> the victory was short-lived.

*acts within examples as well*

Environmentalists, using a \_\_\_\_\_ law, were able to ~~block~~ <sup>work on</sup> stall the ~~construction~~ <sup>of</sup> the Alaska pipeline. However, massive corporate and political power intervened and ~~the~~ new legislation paved the way for construction.

What this all means, in short, is that environmentalists should always view the law in <sup>a bit</sup> its social and political context. The law is an essential part of any political battle. Legal knowledge ~~is an essential part of any political battle~~ and ~~the~~ expertise legal assistance is needed in fights against polluters, in attempts to block developments, and in hearings on ~~the~~ resource issues. (more?) ~~As the various issues deal with the legal obstacles they confront, and need to arise, environmentalists need to make use of the legal tools available to them.~~ But this does not change ~~the~~ the reality that the law is totally inadequate to protect the environment. A key focus ~~is~~ for environmentalists ~~is~~ should be the need for changes in the law, and the legal system as a whole.

One very ~~very~~ practical need involves the problem of legal expenses. It is extremely costly to hire lawyers and ~~researchers~~ researchers for ~~the~~ legal fights. (expand: public funding? ~~or~~ who should pay? strings?)

A key legal change that is needed is provision for <sup>impact</sup> environmental assessment prior to developments. This has proven an effective weapon in the United States. (expand)

Other?  
— environmental contaminants act?

7 with the go  
the fact  
Board of the  
Mark and  
Resolving  
arbitrary laws  
leads to  
product  
beyond  
their  
inherent  
creation  
effect but  
law

on the way  
to the  
division of  
the  
the

But the fight for better environmental laws is a social and political struggle in the ~~strict~~ <sup>broadest</sup> sense. The ultimate aim cannot be simply a narrow reformism, but a transformation of the entire growth oriented ~~a~~ direction of society. ~~Legal~~ ~~changes~~ ~~in~~ ~~the~~ ~~legal~~ ~~system~~. This is not to say that legal reforms ~~could~~ could not be an important step in this direction. ~~Real~~ ~~Major~~ ~~changes~~ ~~in~~ ~~the~~ ~~legal~~ ~~system~~ <sup>observed,</sup> would be a major ~~step~~ <sup>strengthened</sup>, and would greatly ~~enhance~~ ~~the~~ ~~power~~ of the environmental movement. But at the same time, really substantial legal change <sup>likely</sup> ~~and~~ would ~~bring~~ ~~about~~ ~~a~~ ~~shift~~ ~~in~~ ~~the~~ ~~balance~~ ~~of~~ ~~power~~ in favor of environmentalists. The relationship between increased power and better environmental laws ~~and~~ is reciprocal: the two go hand in ~~an~~ hand, *reinforcing one another.*

The environmental predicament calls into question the assumption that the economic "pie" should continue to grow indiscriminately bigger. ~~The~~ ~~assumption~~ ~~that~~ ~~the~~ ~~economic~~ ~~"pie"~~ ~~should~~ ~~continue~~ ~~to~~ ~~grow~~ ~~indiscriminately~~ ~~bigger~~. ~~At~~ ~~the~~ ~~same~~ ~~time~~, it calls into question what Adam Smith called "the sacred rights of private property." It is quite clear that traditional assumptions about ~~private~~ property rights have been altered under the impact of a growing awareness of ~~private~~. <sup>Although much is allowed, ~~there~~ no</sup> of past environmental damage. ~~no~~ longer is it the presumed right of an owner to do anything he ~~pleases~~ <sup>pleases</sup> with his property. <sup>And</sup> ~~restrictions~~ <sup>restrictions</sup> on the emission of effluents into the common ~~domain~~ <sup>central</sup> domain and onto the property of ~~others~~ <sup>others</sup>. But beyond all this lies the ~~central~~ <sup>central</sup> problem: the right, since about the seventeenth century, to the ~~unlimited~~ <sup>unlimited</sup> private accumulation of wealth. The ~~central~~ <sup>central</sup> economic

*Procedural*

justification for this has been that the right to accumulate endlessly is necessary to provide incentives for development. At the same time, it has been argued, large private accumulations of wealth are needed to provide the finance ~~capital~~ capital for growth. Interestingly, both points rest upon the assumption of the necessity for continued growth. But ~~why~~ why is growth necessary? The answer to this was provided by Locke: growth increased the overall wealth of the whole society, increased the living standards of the poor above what ~~they~~ otherwise would have been, and--therefore--justified ~~the~~ ~~unlimited~~ unlimited private appropriation. ~~The~~ <sup>the right to infinite</sup> right In other ~~and~~ words, ~~unlimited~~ accumulation was necessary to provide for growth, and growth was necessary to justify infinite accumulation. <sup>no doubt</sup> ~~Perhaps~~ In Locke's time, there was a need <sup>for economic development,</sup> ~~for growth.~~ But a century ago, Mill could say that the need was not for greater production, but better distribution <sup>of a</sup> burst of economic growth since ~~Mill's~~ time and viewed against <sup>an</sup> environmental crisis that threatens our very existence, Mill's judgement certainly holds for us today. And once the assumption of a need for <sup>is abandoned,</sup> ~~growth goes,~~ the entire structure of ~~the~~ the Lockean faith is undermined. With an end of the need to <sup>(continually)</sup> finance massive growth, the needs for <sup>investment</sup> incentives and growing accumulations of finance capital, <sup>in turn,</sup> ~~diminishes.~~ Less needs to be reinvested, and thus more is <sup>wealth</sup> ~~available~~ available. ~~Freedom~~ <sup>freed up</sup> for ~~redistribution~~ a more equitable distribution.

*of social wealth*

*freed up*

clearly <sup>basic</sup>  
 Environmental ~~reality~~ reality poses a challenge to ~~fundamental~~  
 ideas and practices. ~~in society. Fundamental ideas and practices~~  
~~are the result of a long and complex process of social evolution.~~  
~~Under the present legal system, the environmental movement~~  
~~is in a very difficult position.~~

~~Both society's legal system and the~~ ~~political philosophy~~ ~~underlying it are,~~ ~~traditionally~~ ~~in this way,~~ ~~called into~~  
 question; Environmental necessity points towards an historical <sup>of course,</sup> transformation <sup>of course,</sup>  
~~of the first magnitude.~~ It is, <sup>obvious</sup> that such change  
 will require political action involving both legal and extralegal  
 tactics. ~~Historically,~~ <sup>however,</sup> such change has not come about  
 smoothly, but <sup>instead</sup> has been ~~accompanied~~ accompanied by considerable  
 social disruption. The question <sup>which now</sup> this <sup>now</sup> raises is what possible  
 role ~~might~~ illegal action, or "civil disobedience," ~~might~~ might  
 have in the environmental movement. Underlying this question,  
 in turn, is ~~what~~ <sup>truly</sup> the ~~more~~ fundamental one; <sup>basic</sup> ~~what~~ ~~view~~ ~~is~~ ~~the~~ ~~attitudes~~ ~~towards~~ ~~the~~ ~~law~~  
~~environmentalists~~ ~~should~~ ~~the~~ ~~environmental~~ ~~movement~~ ~~adopt?~~

A great practitioner of civil disobedience, Thoreau argued  
 against the desirability of cultivating "respect for the law,  
 so much as for the right." ~~This distinction between~~  
~~justice and the letter of the law~~ ~~has a considerable tradition.~~

This distinction between  
 justice and the ~~letter of~~ the law  
 has a considerable tradition.  
 In addition, <sup>today</sup> the ~~moral~~ <sup>right</sup> of civil disobedience has a <sup>Pickering</sup>  
 fairly wide acceptance and, <sup>at times,</sup> is even echoed by <sup>some</sup> ~~major~~ ~~legislators.~~

absolutely denied or  
 either ~~justified~~  
 But, in general, the right is admitted only with extreme  
 reluctance. ~~It is not a right which is admitted only with extreme~~  
 In Locke, a  
 justification for the violation of formal law is present,  
 but he makes it clear that this is  
 to ~~be~~ only in the most exceptional situation. Similarly,  
 in Burke's conservatism, illegality is justified only in  
 obvious, Otherwise,  
 cases of extreme emergency. The law is regarded as a  
 instability,  
 bulwark against ~~it~~ a link with a transcendent order that  
 keeps society secure in the traditions of its ancient foundations.  
 violate  
 To ~~violate~~ the bounds of law is to ~~violate~~ this  
 of society  
 sacred connection and to ~~violate~~ risk a degeneration into  
 chaos.

~~argument~~  
 argument  
 The limitation of this ~~argument~~ in terms of the present  
 now  
 situation is that instability has largely been institutionalized.  
 Continual growth ~~generates~~ generates  
 incessant social  
 change, a constant upheaval ~~and~~ and dislocation  
 of individuals that has been ~~grasped~~ grasped  
 by  
 imagination ~~with~~ the notion of "future shock." But even more  
 important than ~~this~~ this is the consideration that growth ~~is~~ is  
 beginning to strain the ~~limits~~ limits of the environment.  
 In this respect, Robert Heilbroner has written:

. . . whether we are unable to sustain growth or  
 unable to tolerate it, there can be no doubt that  
 a radically different future beckons. In either  
 eventuality it seems beyond dispute that the present  
 orientation of society must change. In  
 place of the long-established encouragement of  
 industrial production must come its careful restric-  
 tion and long-term diminution within society.

~~continued growth itself~~ In the context of environmental limitations, <sup>then,</sup> ~~threatens~~ society with chaos. In ~~this~~ this way, a ~~society~~ society and a legal system dedicated to growth undermine the conditions of their own ~~stability~~ <sup>EXISTENCE</sup>. With this in mind, ~~it~~ becomes ~~it~~ it questionable whether illegality is a ~~more~~ greater threat to social peace ~~than the continuation~~ than the continuation of existing law.

In fact, illegal tactics have been used by environmentalists. They have chained themselves to trees and ~~blacked out~~ ~~have~~ have stalled developments by blocking the movement of equipment. In the United States, the "Fox" has become a kind of folk hero by plugging ~~smokestacks~~ smokestacks and ~~dumping~~ dumping dead fish in the offices of polluters. In ~~fact~~ <sup>addition,</sup> "ecotage" has emerged as a term for ecological sabotage. <sup>occured</sup> The most spectacular case of this ~~was~~ when an opponent of nuclear power toppled a major transmission ~~line~~ line that had been erected for a new ~~plant~~ generating plant. In Japan, the opening of a new airport has been delayed for years by opponents who, ~~refusing~~ <sup>towers</sup> refusing to give up, constructed ~~tall poles~~ towers to block the approaches to the runways and pledged to defend them with their lives.

These considerations should not be interpreted to be an argument for ~~indiscriminate~~ indiscriminate illegality. The point is simply that environmentalists should not ~~carelessly~~ mindlessly allow their courses of action to be ~~circumscribed~~ circumscribed by the ~~strict~~ strict limits established by law. ~~Instead~~ Instead, strategies should always be chosen with an acute awareness of the nature of the law and a deep sensitivity

to current social and political circumstances.

~~to the extent that the law is not simply a set of rules to be followed but a process of negotiation between the state and the citizenry~~  
~~the law is not simply a set of rules to be followed but a process of negotiation between the state and the citizenry~~  
~~the law is not simply a set of rules to be followed but a process of negotiation between the state and the citizenry~~  
~~the law is not simply a set of rules to be followed but a process of negotiation between the state and the citizenry~~

There is always ambiguity in what is and is not legal. This is because the law is never simply what it might seem to be on paper. From legislation to enforcement, from ~~the~~ bureaucratic ~~decisions~~ prejudices to judicial interpretations, ~~the~~ a legal system forms an integrated totality. And despite what formal statutes might ~~actually say~~ literally say, ~~there~~ <sup>their</sup> ~~implementation~~ practical implementation always occurs against the decisive backdrop of social interests and political power.

*Embracing as a human process*

~~Like the Ontario~~ disruption, a law might seem to prohibit all ~~aspects~~ of the environment.

Within our present context, however, such blanket prohibitions are never literally ~~enforced~~ enforced. <sup>Between</sup> ~~the~~ the words and the reality, <sup>is</sup> there is a vast ~~gap~~ distance. What might appear <sup>as a</sup> ~~to be~~ violations ~~are~~ <sup>is</sup> openly permitted because

*Rock cliffs*

in the present ~~align~~ alignment of ~~align~~ social forces that is the only practical thing to do. It is important to be aware of this in the formulation of strategy, in the decision to fight for the passage of legislation, or to try to get a <sup>statute</sup> ~~law~~ enforced, or to violate an existing law. ~~The~~

*Top avoided of the mountain*

Environmental action should never lapse into a hollow fight to get legislation on paper, nor should it ~~degenerate~~ <sup>degenerate</sup> into



~~xxxxxxxxxxxx~~

a desperate adolescent rebellion against authority, ~~and~~  
Strategy should always be conceived in light of the ultimate  
aim: to create social and political conditions in ~~which~~ which  
growth is no longer "practical" and ~~in which~~ ~~there~~  
both the illegal and formally legal <sup>deterioration</sup> ~~degradation~~ of the  
environment are no longer tolerated.

P. 8

~~At the heart of the matter is a lack of sensitivity to the natural world--in fact, a disrespect exemplified by the notion that land undistributed is "waste."~~

At the heart of the matter is a lack of sensitivity to the natural world--in fact, a disrespect exemplified by the notion that land undistributed is "waste."

P. 5

Of course, no individual ~~is determined by himself~~ by himself determines the direction of history. But Locke's political philosophy both reflected this new awareness and helped to foster it. Closely in tune with ~~the existing~~ trends in science and religion, <sup>with</sup> ~~as well as~~ the rising economic and political forces of his ~~time~~ <sup>age,</sup> Locke's ~~ideas~~ <sup>thoughts</sup> ~~had~~ <sup>had</sup> an important impact in his own time and ~~has~~ <sup>his</sup> since exerted a major ~~influence~~ influence on law and society

in the English speaking world, (3) In this way, an examination of his ideas provides a window on our own past,

P. 6

11

One limitation on accumulation that Locke encountered was especially significant.