

**PUBLIC LANDS:  
PRIDE, PLACE, PROXIMITY & POWER**

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*Where to place power regarding the ownership and management of public lands is a matter of longstanding debate, yet has been energized to a new degree with the advent of the Trump Administration. This essay does not seek to resolve complicated and intense matters within this debate nor propose any specific, best solutions to competing claims for proper placement of power. What this Essay does aim to do is explain some of the key metrics that should not be missed in the debates. These are metrics which could be advanced to support greater decentralization of power over public lands and that should be addressed if one is to make a valid claim for a more centralized approach to power.*

*Among the factors discussed in the Essay that make trusting decentralized control more acceptable are: (1) the pride individuals have in the resources they control, with which they identify, or from which their personal identity is enhanced; (2) the attachment to place that is exhibited by individuals who feel a connection and responsibility with a particular place, including geographic space; and (3) the relative benefits of proximity to enriching the potency of the place, pride, and other conservation-attentive characteristics of caring for public lands. The Essay focuses on what we know from property ownership as a means of understanding ways to maximize ownership-like management and control responsibilities to enhance the multiple values of public lands.*

## INTRODUCTION

THE debate over how to manage public lands has reached new heights—or, as former Department of Interior Secretary Bruce Babbitt put it, we are journeying “[i]nto a new world”<sup>1</sup>—with the advent of the Trump Administration.<sup>2</sup> One *Washington Post* headline early into the

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<sup>1</sup> Jack Healy & Kirk Johnson, *Battle Lines Over Trump’s Lands Policy Stretch Across 640 Million Acres*, N.Y. TIMES, Nov. 18, 2016, <https://www.nytimes.com/2016/11/19/us/battle-lines-over-trumps-lands-policy-stretch-across-640-million-acres.html>.

<sup>2</sup> Kirk Johnson, *Siege Has Ended, but Battle Over Public Lands Rages On*, N.Y. TIMES, Apr. 14, 2017, <https://www.nytimes.com/2017/04/14/us/public-lands-bundy-malheur-national-wildlife-refuge.html> (“Now that President Trump is in office, people here and in other parts of the 11 states where 47 percent of the landmass is publicly owned are watching to see what he will do on every-

new administration proclaimed, “The standoff between Trump and green groups just boiled into war.”<sup>3</sup> Nevertheless, as one group of *New York Times* reporters explained, “the unknowns and political variables are huge, too.”<sup>4</sup> They summarized the climate as follows: “To environmental groups, it would be a nightmare. To miners, loggers, ranchers and conservative politicians in resource dependent areas, it would be about time. Either way, Donald J. Trump’s election presages huge potential change on America’s 640 million acres of federal public lands.”<sup>5</sup>

There are a number of heated debates on controversial reforms brewing,<sup>6</sup> and the resulting policies are not certain because “[t]he Trump administration has sent mixed signals about where its public lands policies might go.”<sup>7</sup> Nonetheless, one news story reported that the lifting of the moratorium on coal leases on federal land accomplished early in the Trump Administration resulted in a situation where “[t]he first shots have been fired in what’s likely to be a long, bitter war over the environment between conservationists and President Trump.”<sup>8</sup>

This Essay advances an argument favoring greater localization of public lands decisionmaking and control, and suggests the transfer of some assets in the public lands portfolio into private ownership. But it seeks to step away from the sometimes rhetoricized debates to think about some fundamental metrics that should be considered in making any decisions on land disposition or management. This Essay does not claim that these metrics must be dispositive in every case nor that they are a comprehensive set of considerations when setting public lands policy, but it does contend that they should not be ignored. The metrics discussed here are based in principles and values that—while they can be debated in application—are less likely to be outright rejected after considered judgment.

Among the factors discussed in the Essay that make trusting decentralized control more acceptable are: (1) the pride individuals have in the resources they control, with which they identify, or from which their personal identity is enhanced; (2) the attachment to place that is exhibited by individuals who feel a connection and responsibility with a particular

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thing related to public lands, from coal mining and cattle grazing to national monuments and parks.”).

<sup>3</sup> Darryl Fears & Juliet Eilperin, *The standoff between Trump and green groups just boiled into war*, WASH. POST, Mar. 30, 2017, [https://www.washingtonpost.com/news/energy-environment/wp/2017/03/30/the-standoff-between-trump-and-green-groups-just-boiled-into-war/?utm\\_term=.2e7bbde8cf6f](https://www.washingtonpost.com/news/energy-environment/wp/2017/03/30/the-standoff-between-trump-and-green-groups-just-boiled-into-war/?utm_term=.2e7bbde8cf6f).

<sup>4</sup> Healy & Johnson, *supra* note 1.

<sup>5</sup> *Id.*

<sup>6</sup> See Healy & Johnson, *supra* note 1.

<sup>7</sup> *Id.*

<sup>8</sup> Fears & Eilperin, *supra* note 3 (“Environmental groups have been raising money and preparing to battle Trump since his election”).

place, including geographic space; and (3) the relative benefits of proximity to enriching the potency of the place, pride, and other conservation-attentive characteristics of caring for public lands.

To accept these principles as relevant does not mean that one must then support complete devolution of power. But it does open up a more informed debate on such power transfers. Each of these considerations might be useful in evaluating how to assign responsibilities within existing or emerging structures provided by inter-jurisdictional governance and cooperative or dynamic federalism-like regimes.<sup>9</sup>

Many of the metrics discussed here favor giving ownership, control, or management authority to those capable of forming high-level, localized attachments to property. Individuals tend to care for property that they own better than they do those properties they do not. We are simply more invested in those assets and resources within our dominion, where we can control their use and can benefit from the investments we make in them. We are also more likely to take pride in property we own than we would in the property of a stranger. It is a reflection of us. Our property is something to which we form a kind of attachment that ownership best facilitates. As I have explained in other work, each of these conclusions about owners' relationships with their property are fundamental outgrowths of a private property system and benefits we see obtain from protecting it.<sup>10</sup>

Nonetheless, as a society, we sometimes choose to leave resources in the hands of the "public"—where ownership does not transfer into private hands— so that we as a society can further some other purposes, including for necessary governmental functions (like a post office), or perhaps to serve other values like preservation or conservation, or to provide subsidized enjoyment to citizens such as setting aside public lands for recreation or other purposes. There may be good reasons to so commit our resources to public ends, but such decisions should not be taken for granted and should always be considered against the backdrop of what we know about the connection between ownership and wise caretaking, between attachment and stewardship. It seems that the presumption should be placed with private or local management and control rather than the reverse presumption that often seems to occupy public lands debates today: resting greater authority in federal hands.

Even assuming there are good policy goals for public ownership and control of lands and resources, we still must ask several questions. Is public ownership the best way to generate the outcomes that we currently seek from public lands or might private ownership be better? Even if

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<sup>9</sup> See, e.g., Erin Ryan, *Multilevel environmental governance in the United States*, ENVTL. SCIENTIST, 51 (Nov. 2016) [https://www.the-ies.org/sites/default/files/journals/es\\_devolution\\_nov\\_16.pdf](https://www.the-ies.org/sites/default/files/journals/es_devolution_nov_16.pdf) (identifying the types of coordinated management covering multiple distinct statutory regimes).

<sup>10</sup> Donald J. Kochan, *The Symbiosis of Pride & Property*, <https://ssrn.com/abstract=2891716>.

we retain public ownership and public management of the resources that will generate these benefits, is the federal government in the best position to have primary responsibility over such management? After all, as Erin Ryan astutely recognizes in her work on dynamic federalism, “Dilemmas about devolution have been erupting in all regulatory contexts, but environmental governance remains uniquely prone to federalism discord because it inevitably confronts the core question with which federalism grapples—‘who gets to decide?’— in contexts where state and federal claims to power are simultaneously at their strongest.”<sup>11</sup>

Part of this Essay’s purpose is to analyze some metrics that may be valuable to, but are sometimes missing from, the debate on public lands and other environmental stewardship issues. We should not automatically presume that the management power over public lands should be placed in the federal government, nor should we necessarily presume that state or private individuals are always better, either. This Essay just contends that the full picture must be assessed. After all, as Ryan cautions that asking the question “‘*Who should decide?*’ presumes a simple answer, and in contexts of profound jurisdictional overlap, there is rarely a simple answer.”<sup>12</sup>

Each of the questions above require that we at least consider some of the lessons on the owner/resource relationship we protect in the system of private property ownership generally. This essay does not attempt to finally resolve whether private ownership is always superior to public ownership. Nor does it seek to resolve whether, when lands remain in public hands, state or local government management is always superior to federal management. The aim of this Essay is more limited. It seeks primarily to stimulate readers to consider some of the same values we protect in the private property system and whether they should be seriously employed as metrics in the debate on those questions.

Most importantly, this Essay will evaluate the pride individuals have in the property they own and ask whether giving private owners or local communities a greater sense of “ownership” interest (even if not always ownership in the legal sense) might help generate pride in the resources and their value, concomitantly helping spur an even greater ethic toward the protection of such resources. It will also discuss the importance of proximity to public lands as an important metric for the attachment one has to the resources themselves and the incentives generated therefrom. Finally, it will briefly discuss our emerging understanding of “place” as an important factor in attitudes toward resources, particularly land. The greater respect for and connection one has to a place, the more likely the individual will support policies that support preservation of the place’s characteristics.

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<sup>11</sup> Ryan, *supra* note 9.

<sup>12</sup> *Id.* at 55.

Part II of this Essay introduces some of the metrics involved, including why pride, place, and identity are related to property and why each is enhanced by proximity to the land. Part III considers how these metrics relate to public lands. In particular, it examines why local or private management and control might better be able to capitalize on the positive influences that pride, place, identity, and proximity can have on commitment to protection of resources.

Each of these concepts—pride, proximity, place, and identity—can be predicted to exist to a greater extent inside private ownership or local management of resources. So, if each concept contributes to a confidence we might have in an entity’s willingness, desire, and ability to protect the resources it is charged to own or at least manage, then each concept should cause us to at least consider that private individuals and governmental units closest to the resources we seek to protect might have a comparative advantage over more distant governing bodies (like the federal government) in capitalizing on the positive influences of each condition.

#### I. PRIDE, PLACE, IDENTITY AND THEIR RELATIONSHIP WITH PROPERTY PRINCIPLES

Relatively new research in psychology is transforming what we know about “pride” as possibly “the most important human emotion.”<sup>13</sup> What is sometimes-called “authentic pride” plays a powerful role in how humans behave.<sup>14</sup>

Private property and the way owners treat it are interrelated with pride-related attachments and identity-enhancing characteristics in one’s property. In other work, I have discussed in detail the role pride plays as a motivator for, and contributor to, the acquisition, retention, maintenance, cultivation, development, and improvement of property.<sup>15</sup> There is every reason to believe the types of pride-based attachments we have with property we own can also exist with public property to which we feel a sense of belonging.

We take better care of the things we own because we have pride in them and because they help form our identity. If we take pride in other things and want to preserve the characteristics that generate that pride and maintain the identity shaped by those characteristics, we should expect a similar desire to keep those other things from changing too much

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<sup>13</sup> Jessica L. Tracy & Richard W. Robins, *Emerging Insights into the Nature and Function of Pride*, 16 CURRENT DIRECTIONS PSYCHOL. SCI. 147, 147 (2007); see also JESSICA TRACY, TAKE PRIDE: WHY THE DEADLIEST SIN HOLDS THE SECRET TO HUMAN SUCCESS 197 (2016) (“pride . . . may be the part [of our human nature] that most makes us—as individuals, and as a species—who we are.”).

<sup>14</sup> Kochan, *supra* note 10.

<sup>15</sup> TRACY, *supra* note 13, at xiv (“[P]ride—perhaps more than any other emotion—lies at the heart of human nature”).

lest we lose our ability to rely on them to shape that identity. Therefore, if public lands are part of who we are, we should want to protect them. As part of recent studies on pride, it has been shown that individuals feel it and seek it in ways that cause them to act in ways that society will respect and reward. Status will follow those who achieve and contribute to the surrounding society, because the community will reward those it sees advancing the group's agenda with status.<sup>16</sup> Wright explains, “[h]uman beings are designed to assess their social environment, and, having figured out what impresses people, do it; or, having found what people disfavor, avoid it. They're pretty open-minded about what 'it' is.”<sup>17</sup> Once humans identify what will work to impress, Wright continues, “[t]he main thing is that they be able to succeed at it; people everywhere want to feel pride, not shame; to inspire respect, not disdain.”<sup>18</sup>

Pride also relates to the special utility function of the identity enhancement it serves. George Akerlof (a recipient of the 2001 Nobel Prize in Economics) and Rachel Kranton, for example, draw on “extensive work in psychology” in proposing “a utility function that incorporates identity as a motivation for behavior”<sup>19</sup> and observe that “people have identity-related payoffs from their own actions.”<sup>20</sup> Identity helps us locate our goals and establish our preferences.<sup>21</sup> Identity is also a means of communicating the sense of oneself to the community.<sup>22</sup> As Sen acknowledges, the inclusion within groups may be a big part of identity. He posits that “[w]e all have many identities” including some based on group affiliations that “provide identities that can be, depending on the context, crucial to our view of ourselves, and thus to the way we view our welfare, goals, or behavioral obligations.”<sup>23</sup>

Policies that might stimulate more pride-enhanced investment in property or its protection and in voluntary conservation include those that allow people to feel a stronger connection with the land, much like they do with the real property they privately own. Conversely, policies that make individuals feel disconnected or unable to care for a resource will likewise work to the detriment of such a motivation. We have pride in what we own. We identify with our property, and pride affects why the property matters to the individual and why the property becomes part of our being and special enough to protect. We want to conserve the

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<sup>16</sup> *Id.*

<sup>17</sup> ROBERT WRIGHT, *THE MORAL ANIMAL: WHY WE ARE THE WAY WE ARE: THE NEW SCIENCE OF EVOLUTIONARY PSYCHOLOGY* 260 (1994).

<sup>18</sup> *Id.*

<sup>19</sup> George A. Akerlof & Rachel E. Kranton, *Economics and Identity*, 115 Q. J. ECON. 715, 718 (2000).

<sup>20</sup> *Id.* at 721.

<sup>21</sup> Amartya Sen, *Goals, Commitment, and Identity*, 1 J.L. ECON. & ORG. 341, 348 (1985).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

property we own in part for its value but also to conserve the non-financial value we place in our connectedness to that property. That same basic connection to places and things we call ours because we own them also exists in relation to other places and things for which we have an affection and to which we ascribe some meaning and associate with our identity. This affection for the resources leads us to protect them when they contribute to our identity, when they are part of who we are.

Psychologist Jessica Tracy—in her groundbreaking work on pride—explains how the desire to earn “acceptance and high status” includes “[b]eing a good social-group member” which includes being “generous, empathetic, and helpful” and behaving “in the ways society sees as right and good.”<sup>24</sup> The Western social values, for example, are often based in a conservation ethic. Tracy continues that, “the desire for pride motivates people not only to work hard to achieve, but also to work hard to be good—to do the right thing, however that thing is defined by society. For this reason, pride might be exactly what’s needed to avert the tragedy of the commons.”<sup>25</sup> Indeed, individuals will often preserve group values even when it seemingly works against the individual’s financial self-interest, so we should not assume an exploitation mentality by individuals who live within groups that value conservation. Tracy again explains that it is not uncommon for people who want to feel pride to be “willing to sacrifice their own self-interests for the sake of the group” or things valued by the group.<sup>26</sup> Pressure to conform to prevailing social norms can act as a check. People seek social standing and can get it by conforming to the conservationist ethics and stewardship expectations of the place. Moreover, just as we take care of our private property in part because it is ours, we are proud of it, and maintaining it sends signals of our worth to society to achieve the status we desire, so too can our attitude toward public property capitalize on pride motivations and pride effects.

However, when management of public lands is mostly located in federal decisionmaking bodies, “there is little connection between the groups that fight for favored policies and those that pay the costs,” including costs to the environmental resources from poor management.<sup>27</sup> The federal government often acts like a landlord who is distant from her property and who does not have the full attachment necessary to care for the property well. And, the vastness and diversity of federal government interests means that the effects of its decisions are not felt by it as landlord as directly as the renters that have to live in its home. This means that the federal government can sometimes gravitate to becoming like a

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<sup>24</sup> TRACY, *supra* note 13, at 184.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 185.

<sup>27</sup> Holly Fretwell, *Local Control is Better Management for Federal Lands* (Feb. 12, 2014), <https://www.perc.org/articles/local-control-better-management-federal-lands>.



landlord who does not care enough about managing her property efficiently or even maintaining the highest quality of the space her tenants occupy.

We should encourage policies that make individuals feel personally invested in the resource and that help them tie their personal identity to the land or resource identity. The best way to do this is to make their stake in the property and its management real and significant.

Moving more land from public to private ownership is one possible step.<sup>28</sup> People feel less connected to things they do not own, so they are more willing to tolerate poor environmental management or exploitation because their own concerns are kept too distant, because they believe it is someone else's responsibility, or because they believe that anything they do will not matter much because decisionmaking is beyond their control. If they do not own it, the lands and natural resources are not a trigger for the pride emotion. If nothing the individual has done or nothing about the individual's identity is tied up in the thing, they will care less for it. Conversely, if the identity is connected, individuals care for it because they care about their self-identity and its preservation or improvement.

Similarly, short of transferring to private ownership, creating more localized governance to narrow the gap between decisionmaking and those affected can improve the connection between the people and the public lands. Simply creating a greater governance stake will help community members feel more like they have ownership-like qualities in relation to the resource.

Each of these steps helps bridge the gap between the private interest and the public interest identified by Aldo Leopold. Regarding the land ethic, Leopold noted:

The crux of the problem is that every landowner is the custodian of two interests, not always identical, the public and his own. What we need is a positive inducement or reward for the landowner who respects both interests in his actual land practice. All conservation problems—erosion, forestry, game, wild flowers, landscapes—ultimately boil down to this.<sup>29</sup>

Pride creates a long-term view, which is far more likely to lead to conservation rather than exploitation because our pride in being part of a community that values and identifies itself with natural beauty or natural resources is connected to identity. To preserve that identity—which is a

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<sup>28</sup> See, e.g., RICHARD A. EPSTEIN, *SIMPLE RULES FOR A COMPLEX WORLD* 299-305 (1995) (describing the efficiency barriers in public ownership and the inability to make optimal decisions and concluding that we should “shift[] the bias from public to private ownership of natural resources.”).

<sup>29</sup> Aldo Leopold, *Some Thoughts on Recreational Planning*, 18 *PARKS & RECREATION* 137 (1934).

natural human desire—we need to conserve the place, to manage it well, and ensure the sustainability of the characteristics that make the place special and make the place contribute to that identity.

To bridge these gaps between public values and private concerns, we need to connect ownership principles with management principles. Non-owner or at least distant managers of property of any kind (including public lands and other conserved resources) lack the proper incentives. Similarly, even some owners who are less connected to their property are not the optimal stewards of it because they do not have the personal attachment and identity investment in it.

Pride motivates real property owners to make subjective investments in their property leading to increased objective value in property. For example, in contrast to owners who also reside on the property they own, renters and landlords have far less pride associated with their property interests and are not as likely to act as optimal stewards for property and may not maintain and care for it in the same way that one who plans to live forever in their home might.

That is why owner-occupiers are more likely to care well for a piece of property than owner-landlords who operate property but are not personally invested in it the same way an owner-occupier would be. So, in the end, placing ownership proximate to management leads to better outcomes because it maximizes the pride of ownership and pride of place for which the law should strive.

## II. THE IMPACT OF PRIDE, PLACE AND PROXIMITY ON PUBLIC LANDS MANAGEMENT

Aspects of pride associated with real and personal property might similarly be present among lands within one's control (be it the states' control or private property owners' control) and that are imbued with characteristics generated by virtue of their geographic location and where the owners having feelings of connectedness to the lands that are heightened by the lands' association with unique culturo-geographic values. Although public lands exist throughout the United States and may be subject to pride, place, and proximity effects, this Essay focuses on examining Western land values as an exemplar of pride's ability to facilitate conservation. The Western lands mentality provides a useful case study.

### *A. Introduction to Ongoing Public Lands Debates*

The federal government owns twenty-eight percent of our nation's lands, and in the Western states the percentages are even higher.<sup>30</sup> This

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<sup>30</sup> CAROL HARDY VINCENT ET AL., CONG. RESEARCH SERV., R42346, FEDERAL LAND OWNERSHIP: OVERVIEW AND DATA 6 (2017), <https://fas.org/sgp/crs/misc/R42346.pdf>. The federal government owns between twenty-eight percent to as much as over seventy-nine percent of the land

fact of federal ownership has contributed to a long history of conflict over control of lands in the Western states and disputes over the proper level of federal control, dating back to the very formation of many of the Western states.<sup>31</sup>

Across the 20<sup>th</sup> century, there were increasing legislative and regulatory movements toward federal retention of public lands, culminating in the Federal Land Policy and Management Act of 1976 (“FLPMA”) which ultimately provided that “Congress declares that it is the policy of the United States that the public lands be retained in Federal ownership, unless . . . it is determined that disposal of a particular parcel will serve the national interest.”<sup>32</sup> As James Rasband notes regarding the gradual shift in public lands policy, “[t]he move toward reservation of public lands . . . was a substantial change in public lands policy. Nevertheless, these reservations can still be understood as exceptions to the still-prevailing idea that the public lands were largely intended for disposition to private owners.”<sup>33</sup> Indeed, the ethic of disposal (rather than retention) of public lands dominated most of the country’s history.<sup>34</sup>

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in each of the following Western States: Alaska (61.3%), Arizona (38.7%), California (45.9%), Colorado (35.9%), Idaho (61.6%), Montana (29.0%), Nevada (79.6%), New Mexico (35.4%), Oregon (53.0%), Utah (63.1%), Washington (28.6%), and Wyoming (48.4%). *Id.* at 8; *see also*, David Johnson & Pratheek Rabala, *Here’s Where the Federal Government Owns the Most Land*, TIME (Jan. 5, 2016), <http://time.com/4167983/federal-government-land> (individual state maps and data); U.S. GEOLOGICAL SURV., U.S. DEP’T OF THE INTERIOR, FEDERAL LANDS & INDIAN RESERVATIONS (2005), [https://nationalmap.gov/small\\_scale/printable/images/pdf/fedlands/fedlands3.pdf](https://nationalmap.gov/small_scale/printable/images/pdf/fedlands/fedlands3.pdf) (map depicting federal lands and Indian reservations and principal federal agency holding jurisdiction over such lands).

<sup>31</sup> *See generally* PAUL W. GATES, HISTORY OF PUBLIC LAND LAW DEVELOPMENT (1968 & photo. reprint 1979).

<sup>32</sup> Federal Land Policy and Management Act of 1976 § 102(a)(1), 43 U.S.C. § 1701(a)(1).

<sup>33</sup> JAMES RASBAND ET AL., NATURAL RESOURCES LAW & POLICY 139 (2d ed. 2009).

<sup>34</sup> James R. Rasband & Megan E. Garrett, *A New Era in Public Land Policy? The Shift Toward Reacquisition of Land and Natural Resources*, 53 ROCKY MTN. MIN. L. INST. §11.02[1] (2007) (“Beginning in 1776 and continuing for most of the nineteenth and into the twentieth century, the primary goal of the United States was to dispose of as much public land as possible.”); Louis Touton, Note, *The Property Power, Federalism, and the Equal Footing Doctrine*, 80 COLUM. L. REV. 817, 818 (1980) (explaining that “[d]uring most of our history, the national government pursued a policy of promoting settlement and private development of the public domain . . . . In admitting new states . . . Congress retained ‘unappropriated lands’ within [new states’] borders and *continued its policy of encouraging settlement and development*. Nearly all of the land in the Midwest and South was distributed in this manner.” *Id.* (emphasis added); C. Perry Patterson, *The Relation of the Federal Government to the Territories and the States in Landholding*, 28 TEX. L. REV. 43, 68 (1949) (“It was never

In the years immediately before and after the passage of FLPMA, states and their state and federal representatives became increasingly vocal and present with their concerns over federal control, in their efforts to assert rights over lands within their respective states, and in asserting that such claims were superior to federal claims. Due to the volume, seriousness, and passion of the political and legal efforts during this period in the late 1960s and 1970s, that era became known (for better or worse) as the “Sagebrush Rebellion.”<sup>35</sup> States and citizen activists tried varieties of legal maneuvers during this period to diminish federal control over public lands.<sup>36</sup> Some claim that we are seeing a “new Sagebrush Rebellion” in recent years,<sup>37</sup> both before and since the advent of the Trump administration in 2017. In fact, issues regarding responsibility for resource management, environmental protection, and public lands are pivotal areas of concern where federalism concerns are often at their strongest.<sup>38</sup>

### B. Management Metrics for Public Lands

The treatment of Western lands and the allocation of responsibility for such lands should be informed by the pride-based rationale for land

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anticipated that the Federal Government would continue to own lands indefinitely like a monarch, but that its lands would be cut into states and distributed to bona fide settlers, thereby becoming subject to state taxation without doubt.”).

<sup>35</sup> For a summary of some of the major state and federal initiatives to limit federal ownership or control of lands in the West in what has become known as the “Sagebrush Rebellion,” see RASBAND ET AL., *supra* note 33, at 156-58.

<sup>36</sup> Some of the critical articles evaluating Western land claims against the federal government include, generally: Albert W. Brodie, *A Question of Enumerated Powers: Constitutional Issues Surrounding Federal Ownership of the Public Lands*, 12 PAC. L.J. 693, 696 (1981); Robert E. Hardwicke et al., *The Constitution and the Continental Shelf*, 26 TEX. L. REV. 398 (1948); Robert G. Natelson, *Federal Land Retention and the Constitution's Property Clause: The Original Understanding*, 76 U. COLO. L. REV. 327, 371-72 & n. 208 (2005); Patterson, *supra* note 34, at 43 (“[The landholding relation] is one of the most basic foundations of our federalism, if, indeed, it is not the corner stone.”); Joseph L. Sax, *Helpless Giants: The National Parks and the Regulation of Private Lands*, 75 MICH. L. REV. 239, 254 (1976) (“Every expansion of the property clause increases the power of the federal government at the expense of the states’ authority, and by the traditional jurisprudence of federalism that is cause for unease.”).

<sup>37</sup> See, e.g., Robert Gehrke, *Senate approves Utah’s new Sagebrush Rebellion*, SALT LAKE CITY TRIB. (Mar. 7, 2012) <http://archive.sltrib.com/article.php?id=53668812&itype=CMSID>.

<sup>38</sup> Ryan, *supra* note 9 (“Ongoing jurisdictional controversies in energy policy, pollution law, and natural resource management reveal environmental law as the canary in federalism’s coal mine, showcasing the underlying reasons for jurisdictional conflict in all areas of law.”).

use decisions from which we might predict a higher correlation of land preservation and improvement with strong protections of ownership values in those lands, such that individuals will take pride in spending resources towards those ends.

Western attitudes and values related to Western lands can be characterized as a type of pride in “ownership” of natural resources and attachment to region that is inextricably intertwined with the type of “pride of place” that motivates a conservation ethic and environmental protection.<sup>39</sup> We might re-envision the Western land ethic as a type of pride-based appreciation for the preservation, conservation, and improvement of land. As one advocate, Lesli Allison (executive director of the Western Landowners Alliance), has opined, “[i]n the U.S., we’ve not had public policies that encourage people to do right by the land. In fact, we’ve had some policies that run contrary to the land ethic . . . there’s a desire to do right by the land all across the West but it’s the capability part we need to tackle.”<sup>40</sup> Those in close proximity to public lands are not capable of energizing their passion for protecting the lands if they are not empowered with management authority.

There should be a higher level of confidence in giving private owners and local governments greater control over resources close to them. Consequently, we should consider how pride in ownership and attachments to property drive the conservation of natural resources and the preservation of environmental values, without the necessity of state-based intervention.

Research from the field of anthropology demonstrates “how people form meaningful relationships with the locales they occupy, how they attach meaning to space, and transform ‘space’ into ‘place.’”<sup>41</sup> The connections established heighten the protective nature of the land.<sup>42</sup> Beatley and Manning explain from an environmental and planning perspective that “‘sense of community flourishes when the public place provokes

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<sup>39</sup> Terry L. Anderson, *Private Conservation in the Public Interest*, PERC REPORTS, 5 (Winter 2015) [https://www.perc.org/sites/default/files/pdfs/PrivateConservation\\_Anderson\\_PR\\_34-2-2.pdf](https://www.perc.org/sites/default/files/pdfs/PrivateConservation_Anderson_PR_34-2-2.pdf) (“Rather than calling for policies that force private landowners to produce public goods, we follow the lead of Aldo Leopold by reinforcing a land ethic that rewards landowners who engage in private conservation.”).

<sup>40</sup> Todd Wilkinson, *The New West: A quiet revolution is sweeping across the West, forging a new approach to conservation in the 21st century*, PERC REPORTS, 27 (Winter 2015) [https://www.perc.org/sites/default/files/pdfs/The%20New%20West\\_Wilkinson.pdf](https://www.perc.org/sites/default/files/pdfs/The%20New%20West_Wilkinson.pdf).

<sup>41</sup> Setha M. Low and Denise Lawrence-Zúñiga, *Locating Culture*, in *THE ANTHROPOLOGY OF SPACE AND PLACE: LOCATING CULTURE* 13 (Setha M. Low and Denise Lawrence-Zúñiga eds. 2003) (describing the anthropological idea of “inscribed spaces”).

<sup>42</sup> *Id.* (describing literature on people’s ability to connect with space in a way that makes it sacred).

pride and identity.”<sup>43</sup> And when such connections and identity-creating places are inhabited, (like in the West) where there are “distinctive qualities of that place—its best natural, cultural or physical assets,” individuals will invest in the place and the maintenance of its identifying features that an individual considers intertwined with her own identity.<sup>44</sup>

A solid pride-based case can be made for the comparative effectiveness of a traditional federalism-based model where states are seen as having primary and unique responsibility for the land and resources within their borders. Patterson explains that “[t]he landholding relation . . . is one of the most basic foundations of our federalism, if, indeed, it is not the corner stone.”<sup>45</sup> Traditionally, State governments have had primary authority over controlling property, including over natural resources. James Madison famously observed in *Federalist 45*, foreshadowing what would be the Tenth Amendment, that “The powers delegated by the proposed Constitution to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite.”<sup>46</sup> Consequently, Madison continued, “[t]he powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.”<sup>47</sup> States hold a special place in our Republic, which Tocqueville explains in *Democracy in America*, as “fulfilling the ordinary duties and responding to the daily and indefinite calls of a community” while the federal government is “circumscribed within certain limits and only exercising an exceptional authority over the general interests of the country.”<sup>48</sup> As the Tenth Amendment guarantees, so too did Tocqueville observe, that in the United States, “The Federal government is the exception; the government of the states is the rule.”<sup>49</sup> Often today, the federal power is regular rather than exceptional and the needs of the en-

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<sup>43</sup> TIMOTHY BEATLEY & KRISTY MANNING, *THE ECOLOGY OF PLACE: PLANNING FOR ENVIRONMENT, ECONOMY, AND COMMUNITY* 174 (1997) (quoting Diana Friedman, *Community: Just What is All the Talk About?*, METROPOLIS (1996)).

<sup>44</sup> *Id.* at 175 (“It stands to reason that people will be more likely to invest and stay rooted in places that are worth caring about—places with a strong and appealing local identity, an ambiance of belonging, and a sense of place.”). The higher the connection and feeling of property as identity-shaping, the more dramatic the response an owner has when there is an offense against the property. We see that to be true in private property, such as with eminent domain. That might also explain the higher levels of resistance to federal intervention in Western land movements, for example.

<sup>45</sup> Patterson, *supra* note 34, at 43.

<sup>46</sup> THE FEDERALIST NO. 45 (James Madison).

<sup>47</sup> *Id.*

<sup>48</sup> ALEXIS DE TOCQUEVILLE, *1 DEMOCRACY IN AMERICA* 76 (Henry Reeve trans., 2002) (1899).

<sup>49</sup> *Id.*

vironment are advanced as the justification for that reversal of the allocation of power. Environmental, land use, energy, and natural resources issues are examples of the mismatch in the allocation of authority from the Founders' design and today.

Beyond authority issues, there is also a claim that when control decisions of such lands and resources are made by more local officials, superior stewardship will result.<sup>50</sup>

Consider, for example, areas owned and managed by the federal government, where the poor management by the federal government is evident across a variety of resource concerns. According to a 2015 report studying land management in four Western States (Montana, Idaho, New Mexico, and Arizona) by research fellows from the Property and Environment Research Center (PERC)—Holly Fretwell and Shawn Regan—for example, “the states examined . . . earn[ed] an average of \$14.51 for every dollar spent on state trust land management. The U.S. Forest Service and Bureau of Land Management generate only 73 cents in return for every dollar spent on federal land management.”<sup>51</sup> That means that “federal land agencies [the Forest Service and BLM] lose taxpayers nearly \$2 billion per year, on average.”<sup>52</sup>

The study reported high costs and low revenues in federal management of timber, for example, due to excessive layers of costly planning required by regulations and other bureaucratic obstacles.<sup>53</sup> The reverse was true on both metrics in state management. During 2009–2013, the report states that “the states earned an average of \$114[] per thousand board feet sold, while the Forest Service lost \$148[per thousand board feet sold] and the BLM lost \$197[per thousand board feet sold.]”<sup>54</sup> The same was true for grazing—“[f]rom 2009 to 2013, the Forest Service generated 10 cents for every dollar spent on rangeland management, while the BLM generated 14 cents for every dollar spent. State trust lands, by contrast, earned an average of \$4.89 per dollar spent on rangeland management.”<sup>55</sup> Similarly, between those same years, “mineral production from federal lands earned taxpayers [about \$20] for every dollar spent . . . the return from mineral production on state trust lands

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<sup>50</sup> See Kathleen Clarke, *Finding a Balanced Public Lands Policy*, DESERET NEWS, Nov. 14, 2012, at A12 (“Utah’s public lands would be better managed, more productive and more accessible under state stewardship. Current federal land policy and management is inefficient, ineffective and threatens the long-term use and enjoyment of the public lands.”); see also Ryan, *supra* note 9, at 55 (explaining some of the ways that “governance architects could capitalize” on what we know about comparative advantages of different levels of government to “more effectively engage insight and capacity at the local level.”).

<sup>51</sup> HOLLY FRETWELL & SHAWN REGAN, *DIVIDED LANDS: STATE VS. FEDERAL MANAGEMENT IN THE WEST* 4, 4 & 11 (2015).

<sup>52</sup> *Id.* at 9.

<sup>53</sup> *Id.* at 14.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 17.

was \$138 per dollar spent,” although with some rather significant variation in mineral returns by state.<sup>56</sup>

Even if we cannot say that the federal government completely lacks authority in a number of environmental and energy affairs, among others, that should not end the matter. Even when one entity can do something it does not always mean it should. Those more distant from property manage it less well. They do not know the unique issues well.<sup>57</sup> They are not experts and thus are at an information deficit compared to managers with closer ties to a property. They may also have other masters to please in a way that diminishes concern for the local resources. In addition, they do not have the emotional connection and pride related to a place that serve as powerful protective forces. One could argue that the federal government acts like an under-incentivized and detached landlord who has little regard for the states that it treats like tenants to which it has few obligations and whose tenancies can be conditioned in innumerable ways.

Indeed, there is an additional downside to federal control than just inferior management. The over-exertion of external federal control actually drives down the level of satisfaction that would otherwise be present by those who would have been able to identify with ownership-like interests from greater levels of responsibility and dominion over the lands and resources at issue. Western landowners-advocate Allison again gives us a sense of the feelings on the ground, making the claim that federal regulations and management control can actually crowd out innovative methods to enhance resource and public lands conservation. She explains that regulation of land uses “doesn’t have the scope to reach into the minds and hearts of landowners who are out there every day making decisions . . . . An incentive or suites of incentives can generate 1,000 positive things and inspire 1,000 more, whereas a regulation might stop one bad thing, and yet it might stymy creative approaches and flexibility.”<sup>58</sup> Local control has advantages, including because it fosters these kinds of relationships that generate pride—the local officials and residents have a real stake in the outcomes of the decisions. They can take ownership and responsibility for the management of the resources as “theirs” which, in turn, fosters the identity-enhancing aspects of the landscape. Foreign control crowds out local identity, minimizes the ability to capitalize on pride motives, and alienates people from these public properties.

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<sup>56</sup> *Id.* at 20.

<sup>57</sup> Holly L. Fretwell, *Bringing Local Knowledge to Federal Lands*, R STREET POLICY STUDY NO. 18, 2 (Feb. 2014) <http://www.rstreet.org/wp-content/uploads/2014/02/RSTREET18.pdf> (“To be sure, there is no one-size-fits-all reform that would be appropriate for all or even most federally owned lands.”).

<sup>58</sup> Wilkinson, *supra* note 40, at 27.



When those closest to the property do not have a level of control that resembles ownership characteristics, they are actually likely to be less sensitive of the environmental resources. The concept of “moral hazard” means that the less attachment and responsibility that occupiers of property are given, the less well they treat that property because they do not fully internalize the costs of their action. For example—think about how you treat your own car compared to how you treat a rental. If we treat states like they have no real stake in the land and resources, they are less likely to be fully cooperative partners in conservation goals.

In contrast to distant overseers and detached landlords of the federal estate, those closest to the property usually manage well. States and localities are more capable of customizing land and resource use policies to meet the particular needs and conditions within a state.<sup>59</sup> And states also have greater flexibility and adaptability, more independent decision making, and respond with greater agility to problems as they emerge.<sup>60</sup> Dean emeritus of Lewis & Clark Law School, James L. Huffman, explains that “[l]ocal property owners and resource users have knowledge that centralized regulators could never have. And unlike bureaucrats, private resource owners have strong incentives to make timely and informed adjustments when conditions change.”<sup>61</sup>

Furthermore, individuals closest to the resources are less likely to be susceptible to competing demands or interest group pressures that divert energy and dollars away from public lands priorities. Fretwell explains that, “budgets for federal land management are set by politicians in Washington, where special interests have more influence over agency budgets than do westerners or federal land managers.”<sup>62</sup> Those closest to the property are also more likely to care about its proper management than the diverse variety of disconnected special interest groups that overwhelm federal policy. Federal politicians often have very different interests—far more swayed by politics than by emotional attachment and sense of belonging to the land in making management decisions.<sup>63</sup>

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<sup>59</sup> James L. Huffman, *Designing Institutions for the Anthropocene: Getting the Incentives Right*, PERC REPORTS, 11 (Summer 2016) [https://www.perc.org/sites/default/files/pdfs/DesigningInstitutionsfortheAnthropocene\\_PERCReports-Summer2016.pdf](https://www.perc.org/sites/default/files/pdfs/DesigningInstitutionsfortheAnthropocene_PERCReports-Summer2016.pdf).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Fretwell, *supra* note 27.

<sup>63</sup> Fretwell, *supra* note 57, at 3. As Fretwell explains:

Rather than focus on the best available science or enhancing resource value, politicians are influenced by constituents and special interests. Consider that appropriations to manage Montana’s nearly 27 million acres of federal land are determined by 535 politicians, only three of which directly represent the citizens of the state and live in proximity to those lands. As a result, funds move toward political priorities, rather than to address management concerns. Those who are

Simply put, when an outsider manages and controls they are more detached from this sense of place and indeed less respectful of it. They do not have a sense of pride of place. As such, they are more likely to be exploitative of the local interests to serve perhaps the interests of other, more powerful states, majorities, or interest groups capable of influencing the more distant process. These were, in fact, fears of the Founders for which they believed federalism could provide safeguards.

Why do we so often end up with the current allocation of authority weighing heavily in favor of federal management? Often when those who are cautious, concerned, or resistant to greater state control over the land and other natural resources within a state's border express their opposition to that higher level of state or private control and a lesser level of federal involvement, they base their worries on the ideas of over-exploitation, race to the bottom, plunder of the lands for pure profit and other like concerns. Oftentimes that same rhetoric is used to contend that under-regulated private property ownership fosters atomistic and exploitative tendencies based on selfishness and profit incentives.

These assumptions can be challenged on a number of levels. Private property-type values are consistent with conservation.<sup>64</sup> As explained earlier, people have great affection for things in which they have a stake. The U.S. Supreme Court, for example, posited in *Ballard v. Hunter* that “[o]f what concerns or may concern their real estate men usually keep informed, and on that probability the law may frame its proceedings.”<sup>65</sup>

The general arguments regarding property rights and stewardship have been made effectively elsewhere<sup>66</sup> and are beyond the scope of this Essay. For the purposes of this Essay, we will move beyond the traditional justification for private ownership of resources and continue to discuss the parallels of pride and identity between privately owned land and publicly owned resources that likewise contribute to one's identity, generate pride of place and attachment, and that motivate a protective ethic when power is placed in those proximate to the resources.

This move too can generate the incentives necessary to provide good stewardship of resources. The incentive structure in the care, maintenance, and improvement of real property is more textured than typical wealth-maximization models display. More localized management control can be grounded in the existence of independent motivators upon

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most directly impacted by management decisions—visitors and the owners of adjacent resources—make up just a very small part of the decision-making process.

*Id.*

<sup>64</sup> Anderson, *supra* note 39, at 5 (“property rights and markets provide an avenue for rewarding private landowners who conserve the public interest”).

<sup>65</sup> *Ballard v. Hunter*, 204 U.S. 241, 262 (1907).

<sup>66</sup> See generally, e.g., Donald J. Kochan, *Economics-Based Environmentalism in the Fourth Generation of Environmental Law*, 21 J. ENVTL. & SUSTAINABILITY L. 47 (2015).

which we can trust local decisionmaking, like the pride held by officials and citizens in their areas of control. The arguments that wealth maximization leads to exploitation become less compelling when we establish that more is at play and other safeguards exist when trusting greater individualized or local control over resources. These other values and affection for resources within one's place of connection have a tempering influence against overuse of resources.

Individuals have developed a geographic and historical sense of connectedness to lands and resources—such as where the where Westerners “own” the West or citizens of a state have an ownership-like interest in their state's resources in our country—in a similar way that a homeowner owns his home. Both types of “owners” or quasi-owners use those pride-based sentiments and attachments to a “place” to help motivate conservation of natural resources and the development of environmentally sensitive policies that improve or at least maintain the earth as an asset in some of the same ways one might improve or maintain his house out of pride in ownership. Pride in land or other resources is something uniquely held by those closest to it, including states, “the people,” and private individuals. Consequently, on this basis it is often contended that “Devolution of some federal lands—or at least their management—can help improve these incentives by better connecting decisions with outcomes.”<sup>67</sup>

More and more we are becoming aware of an understanding of the super-uniqueness of land and natural resources as grounded in a place, with foundations very much like property law. These foundations call for the protection of ownership-like attributes for those who have higher order claims to sovereign-like control over the land or resources—the private owners and local governmental bodies with the closest proximity to those physical resources. As such, these pride-infused entities or individuals have a superior incentive for the efficient use of land because they take pride in the results separate and apart from profit; and pride in property acts as a constraint on overexploitation of resources.

State and local jurisdictions can capitalize not just on individual pride but also collectively generate certain identities, mindsets, and attachments that increase the value of conservation even beyond individual attachments. One advocate has characterized a “common ground” of Western landowners “is they share a deep contemporary land ethic that supports human prosperity but is driven by their desire to sustain the health of open lands and wildlife populations. . . . They bought the land because they love it and their stewardship is part of a commitment they're making to future generations.”<sup>68</sup>

Consider Montana as one example. Montanans wish to preserve the lands in Montana because they are Montana lands that help create a

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<sup>67</sup> Fretwell, *supra* note 27, at 3.

<sup>68</sup> Wilkinson, *supra* note 40, at 26 (quoting Lesli Allison, executive director of the Western Landowners Alliance).

Montana identity. Their affection for conservation is attached to the greater place in which the land is situated. Big Sky Country, as it is known, has special meaning that makes the citizens of Montana invested in the clean air that makes the beautiful landscapes shine, the mountains picturesque, and the wilderness captivating. The purity of the resources is treasured. The rangelands and grasslands become not just vital to the economic life of the community but also serve as active spaces of preservation and distinction. Significant resources inside National Parks are part of the landscape that defines the state, and they become so not because Montanans are proud they have federally owned land in their state. They become so definitional of the state's identity because of the character of the land owned. The distinct character of those natural wonders will remain no matter who owns the resources, and their importance to defining the identity of Montana will remain, if not heighten, even if the title to the resources changes hands. This kind of attachment and connection, and these types of identity-forming qualities attached to lands and their continued protection (because the protection of the lands protects the very identity of those closest to the lands), add an additional layer or pride-based rationale for preservation. Montanans get utility out of the good feeling from the resources that define their state, and they value the reputation their state has for its conservation ethic associated with those lands and resources. Thus, pride will be a driver for the maintenance of that reputation and the furtherance of the source of those warm feelings of attachment. We seek to preserve and protect the attributes of these communities that generate such pride from our attachment to them.

These conclusions are supported by the closeness and sense of attachment between citizens of a State and the state as sovereign reflected in Tocqueville's writings in *Democracy in America*:

The sovereignty of the Union is an abstract being, which is connected with but few external objects; the sovereignty of the states is perceptible by the senses, easily understood, and constantly active. . . . The sovereignty of the Union is factitious, that of the states is natural and self-existent, without effort, like the authority of a parent. The sovereignty of the nation affects a few of the chief interests of society; it represents an immense but remote country, a vague and ill-defined sentiment. The authority of the states controls every individual citizen at every hour and in all circumstances.<sup>69</sup>

This sense of identity between citizens of a state and the resources within that state cannot be replicated by a more distant sovereign.

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<sup>69</sup> TOCQUEVILLE, *supra* note 48, at 191.

With ownership-like attachment to property and a serious stake in its management and control comes a sense of “pride in place” that motivates a conservation and environmental protection ethic and consequently encourages pride-based investments in the care and improvement of the asset itself. Just as pride plays a special role in the improvement of property generally, pride in ownership and attachments to lands drive the conservation of natural resources and the preservation of environmental values. States and individuals within states exhibit a type of pride in “ownership”-like attachments to natural resources and attachments to localities and regions that are inextricably intertwined with type of “pride of place.”

In contrast, Federal government management is seen as the acts of an outsider limiting what those more closely tied with the property can do. This dampens those individuals’ enthusiasm for investing in a resource and frustrates their ability to identify the best uses and non-uses of that property. This includes squelching the pride-based spirit for conservation of the property.

My claim here is that pride-based incentives similar to those seen in real property would operate more effectively when we give states and private owners—those with the greatest proximity to the resources—greater levels of authority over local assets. Huffman counsels:

If we understand the objective of environmental policy to be the allocation of more resources to the satisfaction of environmental values, and we accept that this objective will influence the selection of institutions for resource allocation, “new ecology” provides some guidelines for getting the institutions right. The principle of subsidiarity holds that we should prefer the most decentralized approach that achieves our purposes. People closer to a problem usually have better knowledge of both the causes of the problem and the remedies likely to solve it.<sup>70</sup>

Indeed, higher levels of state management and control may generate even stronger pride-like attributes because people may connect to the land and resources within a state as owners but also see the resources as inextricably linked with the place in which they exist and for which the people have affection. In *Federalist 17*, Alexander Hamilton opined that:

It is a known fact in human nature, that its affections are commonly weak in proportion to the distance or diffusiveness of the object. Upon the same principle that a man is more attached to his family than to his neighborhood, to his neighborhood than to the community at

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<sup>70</sup> Huffman, *supra* note 59, at 13.

large, the people of each State would be apt to feel a stronger bias towards their local governments than towards the government of the Union . . . . This strong propensity of the human heart would find powerful auxiliaries in the objects of State regulation.<sup>71</sup>

State and local jurisdictions generate certain identities, mindsets, and attachments. This type of pride may find similarities with what Tocqueville calls “self interest rightly understood”<sup>72</sup> where “each American knows when to sacrifice some of his private interests to save the rest” and to “sacrifice a portion of their time and property to the welfare of the State.”<sup>73</sup> The pride of place—when tempered with prudence and respect for the legal systems and structures within which it must operate—is usually a positive force.<sup>74</sup>

The power of these connections between people and places that aid in their preservation are increasingly studied and revealed in fields like geography, sociology, anthropology, and ecology. The substantial and growing body of literature identifying the importance of understanding the importance of “place-based” and spatial concerns associated with property problems is instructive.<sup>75</sup> The character and identity of the places we inhabit are in part defined by (or at least affected by) the property rules present and applicable to the place,<sup>76</sup> and our decisions regard-

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<sup>71</sup> THE FEDERALIST NO. 17 (Alexander Hamilton).

<sup>72</sup> Peter Augustine Lawler, *Tocqueville on Pride, Interest, and Love*, 28 POLITY 217, 235 (1995) (“What Tocqueville shows the moralist is the interdependence of the distinctively human characteristics of interest, pride, and love.”).

<sup>73</sup> TOCQUEVILLE, *supra* note 48, at 595.

<sup>74</sup> Lawler, *supra* note 72, at 228 (interpreting Tocqueville as claiming that “[i]nterest needs the support of love and pride”).

<sup>75</sup> See, e.g., Franz von Benda-Beckman et al., *Space and Pluralism: An Introduction*, in SPATIALIZING LAW: AN ANTHROPOLOGICAL GEOGRAPHY OF LAW IN SOCIETY 1 (Farnham: Ashgate 2009) (“Since the spatial turn in the social sciences, impressive advances have been made in analyzing the interrelations between social organization and space, place, and boundaries.”); Nicholas Blomley, *Landscapes of Property*, 32 LAW & SOC’Y REV. 567, 569 (1998) (discussing “the saliency of the “spatial turn” within much social theory”); Low & Lawrence-Zúñiga, *supra* note 41, at 17 (describing the re-emergence of social science research focused on “space and place” in the 1990s).

<sup>76</sup> Babie explains:

Legal theorists tell us that property is constituted by a set of rights, use privileges and control powers, entitlements, or any one of dozens of ways of describing what property is. Property theorists might also tell us that those rights, or however they describe the content of property, are constituted by the social relations that exist between others and me and that may or may not be recognized and enforced by law.

ing property rules will often be colored by our idea of the places we want to preserve,<sup>77</sup> alter, or create.<sup>78</sup> When discussing the pervasiveness of “the space in which property exists, operates, and has meaning in people’s lives,” Paul Babie contends that this meaning leads to a greater appreciation for the places we inhabit because “[a]t every moment of life, we are interacting with others and the world around us through some form of property—private, common, or public.”<sup>79</sup> If we ask ourselves, when do individuals take the best care of land resources? The answer is when they own it, or at least when they have an ownership-like stake in the property.

When power is distant from place—and when proximity fails to be given strong weight in allocating responsibility, managerial power, and ownership control—the connection and attachments that generate an ethic of respectful and responsible care begin to attenuate. Annett concludes that “As the Framers of the Constitution understood, people care most about the environment in which they live, and the level of government closest to the people is the most effective at implementing policies that promote conservation of land while respecting property rights.”<sup>80</sup>

When an individual is given some special legal status and officially recognized connection with the property, her concern for it heightens. When ownership-like values are strong and individuals maintain a high degree of control over property, they are better stewards of it. Beatley and Manning explain from their environmental planning perspective that

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Paul Babie, *The Spatial: A Forgotten Dimension of Property*, 50 SAN DIEGO L. REV. 323, 330-31 (2013); see also David Delaney, Richard T. Ford & Nicholas Blomley, *Preface: Where is Law?*, in THE LEGAL GEOGRAPHIES READER: LAW POWER, AND SPACE xvi (Nicholas Blomley et al. eds., 2001) (“What has been called the spatiality of social life is an aspect of social reality that is enormously complex and dynamic, fluid and shifting.”).

<sup>77</sup> GENE BUNNELL, MAKING PLACES SPECIAL: STORIES OF REAL PLACES MADE BETTER BY PLANNING 52 (2002) (discussing land use planning as “a means of achieving and preserving the qualities and features we value in our communities”).

<sup>78</sup> Delaney et al., *supra* note 76, at xvi (“Many geographers and others have sought to grasp some of the dynamics of social space through reliance on the view that sees space not as simply being but as having been actively produced.”).

<sup>79</sup> Babie, *supra* note 76, at 325-26 (explaining we are also relating to “the space in which the social relationships that constitute property exist; the space where rights and relationships structure our lives; and the space that we structure through those rights and relationships.”).

<sup>80</sup> Alexander Annett, *The Federal Government's Poor Management of America's Land Resources*, HERITAGE FOUNDATION BACKGROUNDER 1282 (May 17, 1999) <http://www.heritage.org/environment/report/the-federal-governments-poor-management-americas-land-resources> (documenting the many inefficiencies of federal management).

our place-based connections often relate to the natural environment along with the human one:

There are many ways in which “connectedness” to and within place can manifest itself, whether that connection is to nature, as in biophilia; to the ecosystem that one inhabits, as in bioregionalism; to special aspects of the landscape, whether rolling farmland or the Manhattan skyline; to the history of a place; or . . . to the human and human-made elements of the place in which one lives. These feelings of connection, in all their various forms, combine to create a “sense of place.”<sup>81</sup>

Beatley and Manning further describe the positive impact such a sense of place has on stewardship values, explaining that the feelings associated with that place-based connection “foster a sense of caring for place, promoting stewardship and the assumption of responsibility for others and for one’s surroundings.”<sup>82</sup> These feelings also “remind us of the importance of preserving those special connections for future generations. In short, the stronger our sense of place, the more we care about and for it.”<sup>83</sup> Freeing states and the people from overbearing and unnecessary outside control ignites the flame of pride that is otherwise dimmed or even extinguished when pervasive federal control over their resources becomes the norm.

Consider Tocqueville again on the comparative affection for states versus the federal government including when it comes to natural resources. He explains that:

The Union is a vast body, which presents no definite object to patriotic feeling. The forms and limits of the State are distinct and circumscribed; since it represents a certain number of objects which are familiar to the citizens and beloved by all. It is identified with the very soil, with the right of property and the domestic affections, with the recollections of the past, the labors of the present, and the hopes of the future. . . . Thus the tendency of the interests, the habits, and the feelings of the people is to centre political activity in the States, in preference to the Union.”<sup>84</sup>

These emotional sentiments recognized by Tocqueville seem very much aligned with the type of pride this Essay is discussing.

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<sup>81</sup> BEATLEY & MANNING, *supra* note 43, at 174.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> TOCQUEVILLE, *supra* note 48, at 424.



## CONCLUSION

Pride, our attachments to place, and the ways place shapes identity all can operate to influence our management of property, land, and natural resources. We should recognize these metrics of influence when making decisions on the allocation of power and responsibility over such lands and resources. Moreover, such decisions should be tempered by a proximity preference. Those insights should lead to lessons on how the law might be shaped to maximize the benefits of the under-recognized, positive forces of pride that penetrate our treatment of those things that we own or to which we develop and attach ownership-like characteristics. An understanding of the role of pride in the conservation of public lands seems to counsel giving more guardianship authority over those resources to individuals and entities with the most proximate geographic claim to them.

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