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THE PROMOTION AND PRESERVATION OF CULTURE AS PART OF ENVIRONMENTAL POLICY

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Here lie the most significant deficiencies in existing models for identifying and assessing environmental impacts. The definitions of human environment in which they work are impoverished. They are conceived in economic, demographic, and governmental terms. Their social, cultural, and psychological qualities and dimensions are rarely taken into consideration.¹

The individuals who have minds pass away one by one. The works in which meanings have received objective expression endure. They become part of the environment, and interaction with this phase of the environment is the axis of continuity in the life of civilization.²

I. INTRODUCTION

This essay begins with a tale of two federal agencies. After close scrutiny by Congress, both agencies face significant funding cuts for fiscal 1996. One could be eliminated altogether. The beleaguered agencies are the National Endowment for the Arts ("NEA")³ and the Environmental Protection Agency ("EPA" or "Agency"). Proposals abound to rectify problems with the EPA and with our environmental laws in general; suggestions have also been offered to improve the NEA. Many of us appear to be fed up with environmental regulation, but we nevertheless know that dealing with environmental problems is a matter of survival. Not surprisingly, numerous suggestions exist to streamline the EPA so that its unquestionably important task can be efficiently undertaken. On the other hand, public disenchantment with the NEA has led opponents of government arts funding to suggest that we decrease or eliminate NEA funding. The arts community

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¹ Roy A. Rappaport, *Human Environment and the Notion of Impact*, in WHO PAYS THE PRICE? THE SOCIOCULTURAL CONTEXT OF THE ENVIRONMENTAL CRISIS 160 (Barbara R. Johnston ed., 1994).

² JOHN DEWEY, ART AS EXPERIENCE 326 (1958).

³ The NEA has been treated as an agency by the courts. See, e.g., *Finley v. National Endowment for the Arts*, 795 F. Supp. 1457 (C.D. Cal. 1992). In *Finley*, the court held that the NEA's review of grant applications is reviewable under the Administrative Procedure Act and that the NEA is an agency subject to the Freedom of Information Act's venue provision. *Id.* at 1464-65, 1467 n.13.

continues to fight for NEA's survival at existing funding levels, although some arts advocates have offered proposals that would restructure the agency. The proposals vary in certain respects, but all would retain the endowment model for government arts support. Those who believe that the promotion of art and preservation of culture is the business of government need to do more than try to preserve the status quo; they must present alternatives.

Throughout this piece, the terms "cultural promotion" and "cultural preservation" are used with an artistic bias.⁴ As used here, those terms refer to activities that promote or protect America's many art forms. The visual and performing arts of all kinds embody our cultural traditions, and it is the use of federal dollars to protect and promote the arts that this essay addresses.

We begin with a basic premise: our quality of life is enriched when we are regularly exposed to culturally diverse art forms. These art forms, which make up our cultural surroundings, are one component of our environment. Because a healthy cultural environment improves our quality of life, the promotion and preservation of culture is, in essence, an environmental goal. An art-as-part-of-environment orientation eschews the segregation of cultural promotion and preservation which plagues our current legal structure and instead places those goals within an environmental frame of reference. Oddly enough, our national environmental policy, to the extent there is one, expressly recognizes the culture-environment link,⁵ yet our laws fail to implement it. Making cultural policy a subset of a larger environmental policy has advantages, and pro-arts interests should make use of this environmental construct. This is not to say that cultural promotion and preservation should be given the same attention as cleaning up our drinking water or restricting the emission of air pollutants. However, making cultural promotion part of a more holistic approach to environmental regulation would give new legitimacy to arts promotion and, quite importantly, would enable arts interests to retain some level of government support.

Now is a particularly opportune time to consider this alternative. One of the recurring criticisms of environmental regulation is that it disregards important disciplines that could play a helpful role in formulating policy.⁶ Cultural preservation and promotion is simply one more "discipline" to embrace in a more comprehensive approach to achieving a healthy environment. Further, because cultural protection and promotion, and its connection to the environment, is already recognized both domestically and internationally, this approach does not represent an altogether new policy; rather, it seizes upon and implements an existing policy

⁴ Admittedly, there are broader definitions of culture. See, e.g., IRWIN ALTMAN & MARTIN M. CHEMERS, *CULTURE AND ENVIRONMENT* 3 (1980) (Culture "refers to beliefs and perceptions, values and norms, customs and behavior of a group or society."). For purposes of this essay, "cultural protection" will be used interchangeably with "cultural preservation."

⁵ See *infra* text accompanying notes 119-23.

⁶ See *infra* text accompanying notes 70-83.

that has not been fully realized.

Making cultural promotion and protection part of environmental policy would not be easy because it would require nothing less than an overhaul of the present legal structure. How such an effort could be undertaken is not addressed here. Rather, this essay merely suggests that it is time to consider a true integration of cultural promotion with environmental policy. The current regime, largely through the existence of the NEA, singles out the arts for funding, making them vulnerable to attack.

What follows is a brief look at the problems currently faced by the NEA and a sampling of suggestions to rectify them. Problems at the EPA are also highlighted, along with proposals to streamline the Agency and expand the scope of environmental law making. Finally, the suggestion that cultural promotion and protection should be included in a new environmental policy is presented. A broadened environmental agenda—one that includes cultural protection and promotion—is an alternative to NEA funding which would maintain government support for the arts and could be more palatable to Congress and the American public.

II. THE NEA

Attacks against the NEA have come fast and furious over the past few years. Initially, opponents took aim at particular projects supported by the agency, claiming the art was elitist, or obscene, or both. Not surprisingly, these attacks eventually led to calls for the curtailment of NEA funding. As things stand, both the NEA and the National Endowment for the Humanities ("NEH") face significant funding cuts in 1996, and some lawmakers support a total elimination of government support for the arts.

Funding for the arts and humanities in the United States has historically engendered controversy or ambivalence. In the nineteenth century, Americans protested the government's purchase of Thomas Jefferson's library as well as its funding of John Trumbull's American Revolution paintings which hang in the Capitol Rotunda.⁷ The Works Projects Administration employed many artists in the 1930s, but New Deal critics allowed it to die out in the early 1940s.⁸ The establishment of the NEA in 1965⁹ might suggest that, by that time, an enlightened

⁷ Robert Hughes, *Pulling the Fuse on Culture: The Conservatives' All-Out Assault on Federal Funding Is Unenlightened*, TIME, Aug. 7, 1995, at 60.

⁸ JOHN FROHNMAYER, LEAVING TOWN ALIVE 9 (1993). This engaging book chronicles the rise and fall of Mr. Frohnmayr, the only Chairperson of the NEA to be fired.

⁹ The statutory provisions creating and governing the NEA can be found beginning at 20 U.S.C. § 951 (1994). The NEA is part of the National Foundation of the Arts and Humanities. The Chairperson of the NEA is appointed by the President and has the power to promulgate regulations pertaining to his or her functions. 20 U.S.C. §§ 954, 955, 959 (1994).

American public was more accepting of government-funded art. But that has not been the case. Although the NEA functioned quietly for over two decades,¹⁰ it has experienced heated controversy beginning in the late 1980s.¹¹ Since then, a string of NEA-supported projects has outraged segments of the American public. Andres Serrano's "Piss Christ" photograph,¹² Robert Mapplethorpe's photo-retrospective,¹³ and a gay arts festival at a California arts center¹⁴ are prominent examples. Opponents have eagerly latched on to these events, blasting the NEA as an elitist agency that sponsors "state-subsidized porn."¹⁵ Harsher critics claim that labeling the NEA elitist is too complimentary. To them, the NEA caters to an arts community that values "voyeurism, perversion, nihilism, victimology and an infantile obsession with human waste."¹⁶

The Republican-dominated Congress has made an issue of what it sees as a long list of NEA mistakes. Congressional critics rationalize NEA funding cuts or elimination by attacking the values (or lack thereof) of the culturally elite.¹⁷ But funding critics also maintain that eliminating the NEA would lead to a privatized arts industry and self-reliant cultural choices.¹⁸ To them, dismantling the NEA would further the *Contract with America* goal of getting the government out of Americans' lives.¹⁹

The pro-arts response to NEA critics has been loud, all the while stressing that the NEA must remain intact. In an attempt to appeal to the congressional mind-set which often views issues in terms of dollars and cents, proponents first emphasize that arts funding is economically viable.²⁰ They point out that the economic impact of the arts in the United States more than justifies the minuscule amount of funding the government has traditionally appropriated for the NEA.²¹

¹⁰ FROHNMAYER, *supra* note 8, at 29.

¹¹ See generally *id.*; Charles M. Dorn, The Flatlining of U.S. Cultural Policy, Address at the 19th Annual Conference on Social Theory, Politics, and the Arts (Sept. 30, 1993).

¹² FROHNMAYER, *supra* note 8, at 23.

¹³ *Id.* at 25, 30-31.

¹⁴ Don Feder, *Defense of the NEA: A Vicious Whine by Show-off Snobs*, BOST. HERALD, Aug. 7, 1995, at 19.

¹⁵ Hughes, *supra* note 7, at 60.

¹⁶ Feder, *supra* note 14, at 19.

¹⁷ Hughes, *supra* note 7, at 60. Hughes pointed to the conservative "soundbite" that the NEA is "elitist welfare for the rich." *Id.*

¹⁸ Lance S. Gudmundsen, *Who Should Pay to Enrich Our Lives?*, SALT LAKE TRIB., Aug. 25, 1995, at B4 (reporting remarks of state industrialist and philanthropist regarding NEA cuts); see also Spencer Abraham, *Other Ways to Fund the Arts*, WASH. TIMES, July 20, 1995, at A23 (suggesting that NEA and NEH should be preserved but should be privately funded).

¹⁹ Gudmundsen, *supra* note 18.

²⁰ Hughes, *supra* note 7, at 60.

²¹ *Id.* The not-for-profit arts industry generates \$37 billion annually for the economy, pays \$3.4 billion in annual taxes, and employs 1.3 million people. *Id.* The amount paid in taxes by these non-profits is twenty times greater than the NEA budget. *Id.* Yet, the United States spends less than five-

They also point out that a great amount of private money combines with federal dollars for arts support.²²

A second tier of pro-NEA arguments is of a more substantive nature. Proponents argue that federal arts funding promotes the welfare of all Americans, an ideal embraced in the preamble to the U.S. Constitution.²³ Others claim that every American has the absolute right "to have an interactive, personal . . . up close access to cultural and artistic enrichment."²⁴ Some arguments point to past NEA successes and claim that, without the NEA, the nation will become culturally impoverished.²⁵ The pro-NEA arguments, then, reflect the belief that the agency should remain intact because it has compiled a strong record of success at a low cost and because it is needed to promote the arts, which are important to our well-being.

NEA funding was not eliminated in the most recent congressional proposals. Rather, after joint House and Senate negotiations, a plan emerged that would reduce funding for both the NEA and NEH by slightly more than one-third.²⁶ The Senate members of the joint committee refused to phase out NEA funding in two years.²⁷ However, under the joint proposal, the NEA would receive \$99.5 million in 1996, representing a thirty-nine percent cut in funding.²⁸ In addition, the committee adopted Senator Jesse Helms' restriction against art that is either

hundredths of one percent of the national budget on culture. *Id.*

²² Letter from Jane Alexander, Chair, National Endowment for the Arts, to Congressional Representatives (June 15, 1994), reprinted in 3 ARTS RAG (Romalyn Tilghman, Long Beach, Cal.), July-Aug. 1994, at 7. Pro-NEA forces almost do themselves a disservice by arguing that the arts make up a large segment of the national economy and enjoy a substantial amount of private support. An abundance of private support seems to militate against calls for a government subsidy.

²³ See Jane Alexander, Remarks at Congressional Breakfast, in 16 ACA UPDATE (American Council for the Arts, New York, N.Y.), Apr.-May 1995, at 6.

²⁴ Michael Greene, President of the National Academy of Recording Arts & Sciences, Inc., Remarks at Congressional Breakfast, in 16 ACA UPDATE (American Council for the Arts, New York, N.Y.), Apr.-May 1995, at 7.

²⁵ See Harry Belafonte, *Don't Cut the Arts Fund: Government Help Opened a New World For Me - and Many Others*, WASH. POST, July 15, 1994, at A21. Mr. Belafonte cites the successes of NEA dance, theater, and art workshop projects nationwide. *Id.*

²⁶ H.R. 1977, 104th Cong., 1st Sess. (1995); see also Douglas McLennan, *Final Showdown Looms in Congress for Embattled NEA*, NEWS TRIB. (Tacoma, Wash.), Sept. 14, 1995, at SL6. As of the writing of this article, NEA funding remains uncertain. President Clinton vetoed H.R. 1977 on December 18, 1995, leaving the NEA to operate under a continuing resolution. *Clinton Vetoes EPA, Interior Bills; Agencies Shut Down For a Second Time*, 26 Env't Rep. (BNA) 1552 (Dec. 22, 1995) [hereinafter *Clinton Vetoes*].

²⁷ A House proposal provided for funding for three years, then a repeal of the National Foundation on the Arts and the Humanities Act of 1965 in 1998. H.R. 1557, 104th Cong., 1st Sess. §§ 8, 11 (1995); see also McLennan, *supra* note 26.

²⁸ McLennan, *supra* note 26. The NEH would receive \$110 million, representing a 37% decrease in funding. *Id.*

sexually explicit or that denigrates any particular religion.²⁹ A resolution offered by Senator Christopher Dodd (D-Conn.), which would allocate \$150,000 to explore alternatives to arts funding, was also approved.³⁰

The NEA would be hard hit by the proposed cuts. The elimination of staff is inevitable, no individual artist grants will be funded, and organization grants will be scaled back.³¹ Under the new funding measures, the NEA will no longer be divided into disciplines³² which could mean, for example, that orchestras would have to compete against dance companies for federal dollars.

The congressional solution to what it sees as a wayward NEA is simply to cut funding. This way, the private sector can take over a greater share of arts support, and there will be less risk that government dollars will subsidize art that may be distasteful to the majority of Americans. But others who are concerned with the plight of the NEA and who believe in government arts funding have made suggestions which would reshape the administrative and decisionmaking structure of the agency. Despite the nature of their suggestions, these legislators and commentators share one belief: the NEA, in one form or another, should remain intact.

Some lawmakers believe that the NEA is top-heavy and that federalism should be better reflected in our arts policy. They would decentralize arts support and funnel more federal money to the states, removing the bulk of the funds from the national level. Senate Bill 1071, introduced in the summer of 1995 by Kay Bailey Hutchinson, is illustrative.³³ The bill would provide funding for the arts for five years and would pass along most of the funds to the states.³⁴ Commentators agree that states must be given an increased role in determining how federal funds are distributed if we are to create a national environment that will allow culture to flourish.³⁵

NEA restructuring is also seen as crucial to its continued survival. For example, in addition to stressing the importance of state involvement, Senate Bill 1071 would have only one endowment.³⁶ The new umbrella agency would replace

²⁹ H.R. 1977 § 331.

³⁰ McLennan, *supra* note 26.

³¹ *Id.*

³² *Id.*

³³ National Endowment Restructuring Act, S. 1071, 104th Cong., 1st Sess. (1995) (Senator Hutchinson sponsored the bill); *see also* ACA UPDATE (American Council for the Arts, New York, N.Y.), Sept. 11, 1995.

³⁴ S. 1071, 104th Cong., 1st Sess. § 7 (1995); *see also* ACA UPDATE (American Council for the Arts, New York, N.Y.), Sept. 11, 1995.

³⁵ *See, e.g.*, Richard Swaim, *To Every Age Its Art, To Art Its Age*, 24 J. ARTS MGMT. L. & SOC'Y 33 (1994).

³⁶ S. 1071, 104th Cong., 1st Sess. (1995).

the NEA, the NEH, and the Institute for Museum Services ("IMS").³⁷ This new super-endowment would have one director and three deputy directors.³⁸ The plan would streamline government funding for the arts, humanities, and museums³⁹ but would still retain a separate agency for that purpose.

A number of commentators presuppose the continued existence of the NEA but criticize the agency's priorities and decisionmaking process. Some believe, for example, that the NEA's major initiative should be the promotion of arts education.⁴⁰ Others argue that the NEA must reach a multi-cultural audience to build a wider base of support.⁴¹ Still others feel that the NEA should devote more attention and money to existing American culture as opposed to new art⁴² in order to avoid what many see as a war between "culture and counter-culture."⁴³ Yet another view suggests that, if anything, the NEA must become more elitist by focusing on the quality of the art it supports.⁴⁴

Proponents of arts funding often make provocative statements regarding the place of culture in our lives. We are told that we need to get beyond attacks on the type of art promoted by the NEA and look at "the very character of the arts themselves;"⁴⁵ that the arts are viable only if we are conscious of them in our minds and hearts;⁴⁶ that the controversy over the reauthorization of the Endowments is not about money, but about "the soul of America;"⁴⁷ and that the arts "are deeply embedded in that which makes us truly human."⁴⁸ Thoughts such as these may not always be articulated by those favoring government arts funding, but the substance of those thoughts is the foundation of the pro-NEA position and is significant for two reasons. First, it indicates that many share the belief that a strong arts policy will improve America's cultural environment, something which is seen as an

³⁷ The IMS was established by Congress "to encourage and assist museums in their educational role." 20 U.S.C. §§ 961, 962 (1994).

³⁸ S. 1071, 104th Cong., 1st Sess. §§ 5, 6 (1995).

³⁹ *Id.* § 4.

⁴⁰ See Swaim, *supra* note 35, at 35. Congress has also recognized the importance of arts education. See 20 U.S.C. § 951(9) (1994) ("Americans should receive in school, background and preparation in the arts and humanities to enable them to recognize and appreciate the aesthetic dimensions of our lives . . .").

⁴¹ Swaim, *supra* note 35, at 37.

⁴² Dorn, *supra* note 11.

⁴³ *Id.*

⁴⁴ Hughes, *supra* note 7, at 9. Hughes admits that to do so would actually require an expanded NEA budget. *Id.* at 9-10.

⁴⁵ Dorn, *supra* note 11.

⁴⁶ *Id.*

⁴⁷ Michael Barnes, *In Defense of Arts Subsidies*, AUSTIN AM.-STATESMAN, Sept. 15, 1995, at E1 (quoting the remarks of Sheldon Hackney, Chairman of the NEH).

⁴⁸ Ernest L. Boyer, *Perspective: Quality of Culture Is Paramount*, Addresses at the Western Alliance of Arts Administrators' Annual Conference and at Arts 21, in 3 ARTS RAG (Romalyn Tilghman, Long Beach, Cal.) Nov. 1994, at 5.

important objective. Second, it demonstrates that arts advocates, although recognizing that their goals deal with an aspect of our environment, continue to cling to the NEA as the best vehicle for furthering their agenda. This NEA loyalty is limiting. Because pro-arts forces seldom consider how the government might fund culture without an independent endowment, their NEA-or-nothing stance presents Congress with fewer options.

III. THE EPA

The summer of 1995 was almost as trying for the EPA as it was for the NEA. On September 13, the Senate approved an appropriations bill that would cut EPA's budget by twenty-three percent.⁴⁹ After the bill emerged from the conference committee, the EPA fared better. Nevertheless, the Agency would still face a fourteen per cent cut over fiscal 1995 funding.⁵⁰ Legislative provisions appended to the bill would restrict various EPA activities.⁵¹ Echoing two arguments raised against the NEA, Republicans favoring EPA cuts maintain that the Agency is an "out of control bureaucracy"⁵² and that down-sizing is necessary for the Agency to run efficiently.⁵³ Additionally, some legislators are concerned that the EPA's "over-regulatory agenda" is detrimental to the economy.⁵⁴ To a degree, the proposed EPA cutbacks reflect the same anti-government, anti-bureaucratic views that colored NEA funding debates.

As was the case with the NEA, however, there are EPA critics who point to substantive problems. According to some, the EPA has a propensity for engaging in rulemaking on too many issues where there is no compelling public need.⁵⁵ Others stress that our environmental laws and regulations operate in isolation from the rest of the world, and because the laws have been enacted in piecemeal fashion, we have never reached a consensus on an overall environmental policy.⁵⁶ To them, the United States' environmental laws are "lopsided" because

⁴⁹ H.R. 2099, 104th Cong., 1st Sess., Title III (1995); see *Senators Limit Cuts, Eliminate Riders Approved By House In EPA Funding Bill*, [Current Developments] Env't Rep. (BNA) 901-02 (Sept. 15, 1995) [hereinafter *Senators Limit Cuts*].

⁵⁰ *Conferees Approve EPA Funding of \$5.7 Billion; Temporary Spending, Reconciliation Bills Passed*, [Current Developments] Env't Rep. (BNA) 1265 (Nov. 24, 1995) [hereinafter *EPA Funding*].

⁵¹ *Id.*

⁵² Jacqueline Arnold, *Republican House Divided/Party Ties Alone Can't Unite Two Central New York Lawmakers on a Vote to Cut Environmental Funding*, SYRACUSE POST STANDARD, Aug. 7, 1995, at A1.

⁵³ *Id.*

⁵⁴ Tom Johnson, *EPA Exec Rips Planned Budget Cuts as Jersey Legislator Cites Savings*, NEWARK STAR-LEDGER, Sept. 7, 1995.

⁵⁵ *Morning News* (Fox television broadcast, Aug. 8, 1995). The broadcast featured an interview with EPA Administrator, Carol Browner.

⁵⁶ See William F. Pedersen, "Protecting the Environment"—What Does That Mean?, 27 LOY. L.A. L. REV. 969 (1994).

they focus on the protection of health at the expense of the protection of nature and behavior modification.⁵⁷ What has resulted is a nation with an abundance of "inconsistent or even conflicting" laws⁵⁸ and no clear environmental policy.⁵⁹

In his 1993 book, *The Vicious Circle: Toward Effective Risk Regulation*, Supreme Court Justice Stephen Breyer (then Chief Judge of the United States Court of Appeals of the First Circuit) exposed what he views as problems with the EPA's risk assessment procedures.⁶⁰ He points to the narrow focus of EPA employees who are routinely delegated specific tasks and to a system that randomly chooses its agenda. The result is inconsistency.⁶¹ Justice Breyer believes, as others do, that the narrow focus and random agenda problems at the EPA have robbed the country of a rational overall environmental policy.⁶²

The congressional response to the EPA's super-regulatory undertakings is first, to trim the Agency's budget, and second, to restructure the Agency. Both ideas are included in the proposed funding measure,⁶³ which not only cuts EPA appropriations generally, but also directs how the funds should be used. For example, the appropriations bill mandates cuts in existing programs, provides that forty percent of the money shall be allocated to the states, and also requires structural changes within the agency by providing for the combination of existing programs.⁶⁴ Further, the bill would restrict the listing of new Superfund sites, cut back on the EPA's ability to oversee wetlands permitting, and limit the Agency's standard-setting for radon in drinking water.⁶⁵

More radical changes in the EPA's organization have also been proposed. Justice Breyer suggests that a new group should be created within the EPA whose responsibility would be to rationalize risk assessment decisions.⁶⁶ In addition, to avoid the problems caused by frequent employment turnover, a separate career path should be carved out in agencies such as the EPA so that personnel can develop longevity and expertise.⁶⁷ The goal under this approach is to create a group of

⁵⁷ *Id.* at 971-73.

⁵⁸ William K. Reilly, *Environmental Law Symposium: Speeches and Comments: The Future of Environmental Law*, 6 YALE J. ON REG. 351, 355 (1989).

⁵⁹ *Id.* But see *infra* text accompanying notes 114-23.

⁶⁰ STEPHEN BREYER, *BREAKING THE VICIOUS CIRCLE: TOWARD EFFECTIVE RISK REGULATION* (1993). This text critiques risk assessment, the process which measures the health risks associated with dangerous substances. *Id.* at 9. The EPA is one of several agencies involved in the regulation of hazardous substances and risk assessment. *Id.* at 8.

⁶¹ *Id.* at 21.

⁶² See *id.* at 19.

⁶³ H.R. 2099, 104th Cong., 1st Sess. (1995).

⁶⁴ *Senators Limit Cuts*, *supra* note 49, at 902.

⁶⁵ *EPA Funding*, *supra* note 50, at 1265-66. H.R. 2099 was vetoed by President Clinton on December 18, 1995. Since then, EPA funding has come from a continuing resolution. *Clinton Vetoes*, *supra* note 26.

⁶⁶ BREYER, *supra* note 60, at 59-60.

⁶⁷ *Id.*

experts having inter-agency jurisdiction. Such a group could help coordinate health risk decisions, making the system more coherent.⁶⁸ Acknowledging that deregulation is not the answer, Justice Breyer points to the need for more centralized coordination which could be achieved by professionals who would approach environmental policy decisions from an interdisciplinary perspective.⁶⁹

Just as some critics have stressed that problems with the NEA must be resolved by changes that go beyond organization, so too are there EPA critics who claim that the agency's problems are the result of poor national policy on the environment. These commentators stress the need for substantive changes in the nation's environmental laws. To some, our present emphasis on market-based approaches and advanced clean-up technologies bypasses solutions that target social institutions and individual behavior.⁷⁰ Implicit in this view is the notion that a greater number of interests must play a role in developing environmental policy.⁷¹ Specifically, academics and policy makers should be called upon to devise "relevant utopias" upon which environmental policy can be based.⁷² Under this approach, optimal environments would be designed by experts who would work with various values at the same time, allowing those values to be considered in context with one another.⁷³ The result would be an integrated, bottoms-up approach to environmental policy which would be markedly different from our current piecemeal scheme.

The idea of broadening environmental policy to include other disciplines is shared by a number of authors. Recently, commentators have pointed out that our view of the human environment is too narrow,⁷⁴ and that environmental problems should be examined by looking not only at their impact on health, but also at their considerable impact on esthetics, religion, and culture.⁷⁵ Further, environmental impacts that are not health-related should be considered even though they are difficult to quantify.⁷⁶ These critics believe our view of the environment is "impoverished";⁷⁷ they reject what they see as an over-emphasis on economic and governmental terms and instead endorse a holistic approach to environmental lawmaking.⁷⁸

Similarly, some scholars see a weakness in our environmental policy

⁶⁸ See *id.* at 60.

⁶⁹ *Id.* at 80-81.

⁷⁰ Pedersen, *supra* note 56, at 976.

⁷¹ *Id.* at 977.

⁷² *Id.* (Pedersen borrows the term "relevant utopias" from STANLEY HOFFMAN, *CONTEMPORARY THEORY IN INTERNATIONAL RELATIONS* 184 (1960)).

⁷³ *Id.* at 976-77.

⁷⁴ Rappaport, *supra* note 1, at 160.

⁷⁵ *Id.* at 160-61.

⁷⁶ *Id.*

⁷⁷ *Id.* at 160.

⁷⁸ *Id.* at 165-66.

because it fails to take into account the "social fabric" of affected populations.⁷⁹ To them, what is needed is an interdisciplinary approach which would effect a drastic change in the field of environmental economics.⁸⁰ According to this view, the social sciences are key to the development of a more enlightened environmental policy,⁸¹ in part because they can illuminate the connections between our lives in society and our physical world.⁸² These commentators believe that the time is gone when a technological fix is the answer to our environmental woes. Instead, today's environmental policymakers need to pay more attention to society and individual behavior.⁸³

Proposed solutions to the EPA's costly piecemeal regulatory agenda can take many forms, from cost-cutting, to restructuring at the agency level, to opening up our environmental lawmaking process to other disciplines. It is the last suggestion that presents an opportunity for those in the cultural community.

IV. CONSIDERING AN INTEGRATED APPROACH

The problems at the NEA and the EPA become particularly interesting when considered together. On the one hand is an agency—the NEA—that is seen by some as a luxury the country can either do without or strictly limit.⁸⁴ Its champions suggest that the NEA must remain intact but should perhaps streamline and restructure its programs or change its decisionmaking strategies.⁸⁵ On the other hand is an agency—the EPA—that is considered by some to be a super-regulatory beast, out of touch with its true mission.⁸⁶ Its champions also suggest restructuring, while other environmental proponents stress that changes are needed in the overall approach to environmental policy. In particular, a number of critics believe a more interdisciplinary approach to environmental lawmaking is needed.

Faced with increased congressional hostility and funding cuts, NEA proponents should look beyond a newly-efficient NEA as a solution to its plight. This is especially true when the NEA, as an independent agency, could conceivably

⁷⁹ Beat Bürgenmeier, *Introduction*, in *ECONOMY, ENVIRONMENT, & TECHNOLOGY: A SOCIO-ECONOMIC APPROACH* 3-4 (Beat Bürgenmeier ed., 1994).

⁸⁰ *Id.* See Garner Brown, *Estimating Nonuse Values Requires Interdisciplinary Research*, in BÜRGENMEIER, *supra* note 79, at 11-12.

⁸¹ Brown, *supra* note 80, at 24. Specifically, their help is needed to collect the data used by environmental economists. *Id.*

⁸² See Riley E. Dunlap et al., *Understanding Environmental Problems: A Sociological Perspective*, in BÜRGENMEIER, *supra* note 79, at 29.

⁸³ *Id.* at 39.

⁸⁴ Jerry Gray, *Arts Phase-Out Stays on Course*, N.Y. TIMES, July 18, 1995, at D23.

⁸⁵ *Id.*

⁸⁶ John H. Cushman, Jr., *House Coalition Sets G.O.P. Back on Environment*, N.Y. TIMES, July 29, 1995, at A1.

vanish at the hands of the current Congress.⁸⁷ As an alternative, consideration should be given to integrating cultural promotion and preservation within a broadened environmental policy. Such an approach flows from the premise that the promotion and protection of culture better our quality of life and in turn enhances our environment. As such, cultural promotion and preservation has a place within a holistic environmental policy. To those who are comfortable with the status quo of our environmental laws and the existing structure of the EPA, the idea might seem earth-shattering. To the arts community the idea may be heresy, because it presupposes the elimination of the NEA as an independent establishment. But it is an idea expressed by authors who increasingly call for an interdisciplinary approach to environmental policy. The idea also would not seem totally out of place to art philosophers and anthropologists who, over the years, have repeatedly tied the arts to the environment. Indeed, domestic law and a number of international agreements already recognize the art-environment link.⁸⁸

Art philosophers, art anthropologists, and cultural ecologists reinforce the notion that our environment is not limited to the air we breathe, the water we drink, and the land upon which we live. To many of these thinkers, culture and its many traditions, including art, form part of the environment as well. This essay does not attempt to fully explore the scholarship in this area. Nevertheless, two themes are revealed from a sampling of the literature: (1) the physical environment influences art and culture, and (2) art informs us about existing cultural environments. Both themes suggest that art is a part of the environment.

The first theme, that the environment influences art, was reflected in a number of early beliefs. A cornerstone of early thinking was the view that the earth was carefully designed by a higher being and that artists should strive to duplicate the workmanship of the earth itself.⁸⁹ Ancient Western writers also recognized that environmental factors can impact human cultures.⁹⁰ The early Cynaethan culture, for example, used music extensively in daily activities.⁹¹ Contemporaneous writers stressed that the Cynaethans relied on music to soften the effects of their harsh environment and that music was not so much a luxury as it was a necessity to civilize the population.⁹² The ancient Chinese also sensed a connection between environment and expression. Their view of the world combined seasons and natural

⁸⁷ See Gray, *supra* note 84, at D23.

⁸⁸ See *infra* text accompanying notes 109-38.

⁸⁹ See CLARENCE J. GLACKEN, TRACES ON THE RHODIAN SHORE 79 (1967); see also DEWEY, *supra* note 2, at 15-16.

⁹⁰ GLACKEN, *supra* note 89, at 95, 709. The environment's impact on culture is often emphasized. For example, Eskimo carvers' art is closely tied to their environment, which is a formless one of snow and ice. ROBERT LAYTON, THE ANTHROPOLOGY OF ART 32-33 (2d ed. 1991). Eskimo carvers believe they are freeing the art object that is hiding within the material. *Id.*

⁹¹ GLACKEN, *supra* note 89, at 95.

⁹² *Id.* at 95-96.

resources with colors and emotions.⁹³

A more current view suggests that culture, in a broader sense, informs art. As a result, art is a valuable tool that teaches us about the world's diverse cultures.⁹⁴ John Dewey,⁹⁵ writing about the philosophy of culture in the early twentieth century, told us that in order to really understand art, we need to look beyond it to the community which gave it birth.⁹⁶ Art becomes less meaningful when it is segregated from its immediate social environment.⁹⁷ The rise of capitalism and nationalism has led to the creation of museums, and although these institutions preserve art, they nevertheless segregate it. As a result, today's art assumes a "superior cultural status" that removes it from its "native and spontaneous culture."⁹⁸ According to Dewey, the separation of art from our immediate environment threatens our culture or, at the very least, undermines the quality of artistic output.⁹⁹

An arts policy that is segregationist in any respect can only be harmful to a healthy cultural environment. Not only does such a policy place art experience and appreciation beyond the reach of many, but it encourages artists to exaggerate their individualism to reflect the separate status of art.¹⁰⁰ In effect, an escalating cycle results. Art is placed on a pedestal in museums, and artists become driven by the belief that their work must achieve an elite status. The general public may not respond favorably to the art, but museums and galleries accept it. The next generation of artists will arguably be more out of touch with everyday life as they attempt to emulate the art that is exhibited in the museums and galleries, and their creations will become even more exaggerated. According to Dewey, a healthy cultural environment cannot emerge from this pattern. Instead, the arts must be closely tied to everyday environment. In reality, culture and its art forms can only arise through an ongoing interaction with the environment,¹⁰¹ and cannot flourish if the two are torn apart.

If this view is accepted—that, in an ideal setting, artists react to their

⁹³ ALTMAN & CHEMERS, *supra* note 4, at 41.

⁹⁴ See generally ARNOLD HAUSER, 1 THE SOCIAL HISTORY OF ART (Vintage 1973) (1951). Hauser points out that prehistoric cave drawings show that human art can reflect naturalism and magic, areas of importance to ancient civilizations. *Id.* at 7. During the Middle Ages, art was often commissioned by the middle class, reflecting the increasing importance of art in society. *Id.* at 259.

⁹⁵ John Dewey (1859-1952) was an American philosopher considered to be a "seminal modern thinker" who wrote extensively on numerous topics, including the philosophy of art. JOHN DEWEY, 114 CONTEMPORARY AUTHORS 128-29 (1985).

⁹⁶ DEWEY, *supra* note 2, at 4.

⁹⁷ *Id.* at 4.

⁹⁸ *Id.* at 9.

⁹⁹ *Id.* at 6. Dewey claimed that history demonstrates art is at its best when it remains closely tied to everyday life. *Id.*

¹⁰⁰ *Id.* at 10.

¹⁰¹ *Id.* at 28.

immediate environment, and their creations become part of our culture—then art rightfully is considered part of the environment.¹⁰² Additionally, because art remains a part of the environment, it must be considered not simply in relation to contemporaneous society, but it also must be considered through time.¹⁰³ Art is, then, an anthropogenic part of the environment which influences present and future generations.¹⁰⁴

Dewey's writings are not alone in tying the arts and culture to the environment. Other authors point out that art is not simply entertainment, but is an essential part of our cultural tradition and immediate environment.¹⁰⁵ Even though much of today's art remains segregated from everyday experience, some arts advocates strongly maintain that "[t]he arts are not the preoccupation of a narrow elite; they are the defining sinews of the good society."¹⁰⁶ Still other authors believe that people, the environment, and culture work together in one large system, making art and culture something that should not be segregated.¹⁰⁷ To these scholars, known as cultural ecologists, culture and environment are interdependent, not so much in the cause and effect pattern posited by earlier thinkers, but more in the nature of a network or web.¹⁰⁸

Non-legal thinkers are not alone in exposing the link between art, culture, and the environment. Even though the current American legal scheme treats government arts support as a cause entirely separate from environmental policy, statutory pronouncements make clear that cultural promotion and preservation is an environmental concern. Case law further supports this view. International agreements also recognize the importance of cultural protection and promotion, and further reveal a connection between culture and the environment.

The United States has long recognized the importance of cultural protection; more importantly, for twenty-five years it has acknowledged that the promotion and protection of culture should be part of national environmental policy. Statutes such as the Historic Sites, Buildings and Antiquities Act of 1935,¹⁰⁹ the National Historic Preservation Act of 1966,¹¹⁰ and those statutes creating the

¹⁰² *Id.* at 27.

¹⁰³ Don R. Brothwell, *Visual Art, Evolution and Environment*, in BEYOND AESTHETICS 41, 43 (Don Brothwell ed., 1976) [hereinafter BEYOND AESTHETICS].

¹⁰⁴ Marshall H. Segall, *Visual Art: Some Perspectives from Cross-Cultural Psychology*, in BEYOND AESTHETICS, *supra* note 103, at 98.

¹⁰⁵ DAVID MANDELL, CHANGING ART, CHANGING MAN 34 (1967).

¹⁰⁶ Winton M. Blount, 1995 Nancy Hanks Lecture on Arts and Public Policy (date unknown) in ACA UPDATE (American Council for the Arts, New York, N.Y.), Apr.-May 1995, at 3.

¹⁰⁷ ALTMAN & CHEMERS, *supra* note 4, at 1.

¹⁰⁸ *Id.* at 9. Although these authors may be working with a definition of culture that is broader than the art-based definition used in this essay, the environment connection is still relevant, as art is one component of culture.

¹⁰⁹ 16 U.S.C. §§ 461-467 (1994).

¹¹⁰ *Id.* §§ 470a to 470w-6.

NEA and NEH¹¹¹ unquestionably reveal a national policy which recognizes the importance of the arts and culture.¹¹² This legislation protects our cultural heritage because of its intrinsic importance,¹¹³ but because they stand alone these statutes leave an impression that cultural protection in this country is a policy unto itself.

Nevertheless, since 1970, federal legislation has tied cultural concerns to environmental policy. Specifically, the National Environmental Policy Act ("NEPA"),¹¹⁴ thought to be one of the most significant environmental laws on books,¹¹⁵ requires that federal agencies consider the impact of major actions on physical and cultural environments.¹¹⁶ NEPA's unquestionable effect on agency decisionmaking has been widely addressed.¹¹⁷ However, the statute also includes a declaration of national environmental policy which is of interest here. Section 101 of NEPA provides that it is the government's ongoing policy to create an environment where we can live in harmony with nature.¹¹⁸ In order to carry out this policy, the federal government has the dual responsibilities of assuring "safe, healthful, productive, and esthetically and culturally pleasing surroundings" and preserving "important historic, cultural, and natural aspects of our national heritage."¹¹⁹ NEPA unambiguously includes cultural protection and promotion as goals within national environmental policy by stressing both cultural preservation

¹¹¹ 20 U.S.C. §§ 951-960 (1994).

¹¹² See generally Marilyn Phelan, *A Synopsis of the Laws Protecting Our Cultural Heritage*, 28 NEW ENG. L. REV. 63 (1993). Professor Phelan states that, although the United States has laws in place to protect and promote culture, it has been late in enacting them. *Id.* at 63. Statutes such as those referenced above differ from legislation such as the Copyright Act, which protects artists' economic interests. See *Stewart v. Abend*, 495 U.S. 207, 228-30 (1990).

¹¹³ *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 108 n.1 (1978).

¹¹⁴ 42 U.S.C. §§ 4321-4370(d) (1988 & Supp. V 1993).

¹¹⁵ See, e.g., ROBERT V. PERCIVAL ET AL., *ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY* 109 (1992) ("NEPA revolutionized environmental policymaking . . . by mandating changes in the decisionmaking process of federal agencies."); JACKSON B. BATTLE ET AL., *ENVIRONMENTAL DECISIONMAKING: NEPA AND THE ENDANGERED SPECIES ACT* 147 (2d ed. 1986) ("[B]y many yardsticks, [NEPA] is one of the most significant of all the statutes passed by Congress to protect the nation's environment.").

¹¹⁶ NEPA provides, in relevant part, that federal agencies shall:

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment; . . . (C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—(I) the environmental impact of the proposed action

42 U.S.C. § 4332 (1988).

¹¹⁷ See, e.g., PERCIVAL ET AL., *supra* note 115.

¹¹⁸ 42 U.S.C. § 4331(a) (1988).

¹¹⁹ *Id.* § 4331(b)(2), (4).

and the maintenance of pleasing cultural surroundings.¹²⁰

Ties between culture and the environment are also seen, to a lesser extent, in the very legislation that established the NEA. The National Foundation on the Arts and Humanities Act¹²¹ defines "the arts" to include the study and application of various art forms "to the human environment."¹²² The reference to the environment was added to the Act in 1968 with the idea of relating the arts to the improvement of the human environment.¹²³

Pronouncements of the United States Supreme Court also leave no doubt that cultural protection is an environmental concern. In *Penn Central Transportation Co. v. New York City*,¹²⁴ the Court agreed that "historic conservation is but one aspect of the much larger problem, *basically an environmental one*, of enhancing—or perhaps developing for the first time—the quality of life for people."¹²⁵ If historic preservation is an environmental concern because it addresses quality of life, then other efforts which preserve and promote culture may also be considered environmental initiatives.

Environmental standing case law also places concern for esthetics and our national heritage in an environmental context. In a series of celebrated cases in which environmental organizations challenged federal agency actions which allegedly threatened the environment, the Supreme Court has repeatedly held that esthetic concerns qualify for the type of cognizable interest needed for standing. For example, in *Sierra Club v. Morton*,¹²⁶ Justice Stewart noted that "[a]esthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society."¹²⁷ Despite what many perceive as a narrowing of

¹²⁰ *Id.* § 4331. The states also encourage cultural promotion and preservation in their laws. See Phelan, *supra* note 112, at 76-78. Some states afford constitutional protection to the esthetic value of the natural environment. See, e.g., FLA. CONST. art. II, § 7 ("It shall be the policy of the state to conserve and protect its natural resources and scenic beauty."); PA. CONST. art I, § 27 ("The people have a right to . . . the preservation of the . . . esthetic values of the environment.").

¹²¹ 20 U.S.C. §§ 951-960 (1994).

¹²² *Id.* § 952(b).

¹²³ The legislative history states that the amendment to the definition of "arts" was based on the "recognition of the science of 'ekistics' which seeks to relate all disciplines to the betterment of the human environment." S. REP. NO. 1103, 90th Cong., 2d Sess. (1968), *reprinted in* 1968 U.S.C.C.A.N. 2090, 2096.

¹²⁴ 438 U.S. 104 (1978). *Penn Central* involved a Fifth Amendment takings challenge stemming from the designation of New York City's Grand Central Terminal as a landmark under the city's landmarks preservation ordinance. *Id.* at 115.

¹²⁵ *Id.* at 108 (emphasis added) (quoting Robert Stipe, Address Before the 1971 Conference on Preservation Law, Washington, D.C. (May 1, 1971) *quoted in* Frank B. Gilbert, *Precedents for the Future*, 36 LAW & CONTEMP. PROBS. 311, 312 (1971)); see also Phelan, *supra* note 112 (summarizing preservation laws).

¹²⁶ 405 U.S. 727 (1972).

¹²⁷ *Id.* at 734.

the standing doctrine as it relates to environmental interests,¹²⁸ the Court continues to recognize that esthetic interests can, if substantially threatened by agency action, provide a basis for standing in cases dealing with environmental issues.¹²⁹ Like *Penn Central*, *Morton* points out that issues dealing with esthetics relate more broadly to our quality of life, which is essentially an environmental concern. These cases suggest that artistic experiences, which are esthetic in nature, are in essence environmental experiences.

International law also endorses the view that the promotion and protection of culture is an environmental goal. A number of international agreements, some of which the United States has signed and ratified, expressly tie cultural issues to the environment. It is apparent that the global community views cultural protection and promotion as important goals. For example, the Universal Declaration of Human Rights¹³⁰ provides that the participation in community cultural life and the enjoyment of the arts is a human right.¹³¹ To a lesser extent, the Charter of the United Nations also recognizes the significance of culture. It provides that the UN's purposes include the achievement of "international co-operation in solving international problems of an economic, social, cultural, or humanitarian character."¹³²

Other international agreements more clearly link cultural and environmental concerns. Notably, the recitals to the World Charter for Nature¹³³ state that "[c]ivilization is rooted in nature, which has shaped human culture and

¹²⁸ See, e.g., *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) (holding that environmental organization did not have standing to challenge rule promulgated by Secretary of the Interior, pursuant to Endangered Species Act, which rendered Act applicable only to actions within United States). See generally Cass R. Sunstein, *What's Standing After Lujan? Of Citizen Suits, "Injuries," and Article III*, 91 MICH. L. REV. 163, 226 (1992) (setting forth critique of *Lujan*, pointing out that congressional grant of citizen suit is no longer enough to confer standing).

¹²⁹ In *Lujan v. National Wildlife Federation*, Justice Scalia stated that there is "no doubt that 'recreational use and aesthetic enjoyment' are among the *sorts* of interests" NEPA was "designed to protect." 497 U.S. 871, 886 (1990) (emphasis added).

¹³⁰ *Universal Declaration of Human Rights*, art. 27(1), U.N. GAOR, 3d Sess., Pt. I, Resolutions, at 71, U.N. Doc. A/810 (1948). This agreement represents the United Nation's first attempt at setting forth the full scope of human rights. LAKSHMAN D. GURUSWAMY ET AL., *INTERNATIONAL ENVIRONMENTAL LAW AND WORLD ORDER* 939 (1994). The authors noted that the "legally binding nature of custom" is not an easy subject to grasp. *Id.* at 938. The United States voted in favor of adopting the Declaration. *Id.* at 1298.

¹³¹ *Universal Declaration of Human Rights*, *supra* note 130, art. 27(1). This provision states that "[e]veryone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits."

¹³² U.N. CHARTER, ch. I, art. 1, para. 3.

¹³³ *World Charter for Nature*, G.A. Res. 37/7, U.N. GAOR 37th Sess., Annex, U.N. Doc. A/37/51 (1982), 22 I.L.M. 455 (1983). The Charter is an international declaration of principles relating to international environmental protection, and it has had "undeniable" influence on international law. GURUSWAMY ET AL., *supra* note 130, at 135-36. The United States voted against the Charter. *Id.* at 1267.

influenced all artistic and scientific achievement, and living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation."¹³⁴ This language could not state more clearly that environment impacts culture and that environmental protection is needed to maximize artistic output. The Rio Declaration¹³⁵ connects culture to the environment in a different way. Its Principle 22 provides that "[s]tates should recognize and duly support [the] identity, culture and interests" of indigenous people and their communities.¹³⁶ This principle is one of twenty-seven adopted at the Earth Summit, all of which focus on environmental goals that will assure the sustainable development of the world's communities.¹³⁷ Principle 22's focus on the cultures of indigenous peoples recognizes that the preservation of culture is a necessary part of global environmental policy.¹³⁸

Thus there exists not only a national, but a truly global belief that cultural protection and promotion is an environmental goal. Because government funding for the arts is one way to preserve and promote culture, thought should be given to making arts funding an environmental initiative. NEPA's statement of environmental policy and the World Charter for Nature's recognition that the natural environment shapes culture can be springboards for a new movement in cultural and environmental policy. The many other theories discussed here are also available to support such a movement. Those who value cultural protection and promotion should seize the present opportunity and argue that any bottoms-up interdisciplinary approach to environmental policy must include considerations of culture.

It is not enough that examples of existing law and scholarship promote this view. Because it is comprised of piecemeal and unconnected recognitions of the culture-environment link, existing authority lacks a coherent, coordinated approach to implementing its goals. This is the same problem that plagues United States

¹³⁴ *World Charter for Nature*, *supra* note 133, at 456.

¹³⁵ *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26 (Vol. 1) (1992), 31 I.L.M. 874 (1992) [hereinafter *Rio Declaration*]. The Rio Declaration on Environment and Development of the United Nations Conference on Environment and Development embraces sustainable development as the "officially sanctioned approach" to global environmental issues. GURUSWAMY ET AL., *supra* note 130, at 220. The Declaration was adopted by consensus at the Earth Summit on June 13, 1992. *Id.* at 1268.

¹³⁶ *Rio Declaration*, *supra* note 135, at 880 (Principle 22).

¹³⁷ See generally GURUSWAMY ET AL., *supra* note 130.

¹³⁸ Very recently, a conference of the United Nations Educational, Scientific, and Cultural Organization ("UNESCO") approved the "Seville Strategy," which relates to the protection of the world's biosphere reserves. *UNESCO Conference Approves Draft on Requirements for Biosphere Reserves*, [Current Report] Int'l Envtl. Rep. (BNA) 261 (Apr. 5, 1995). The Strategy suggests that these reserves must protect human cultural diversity at the same time that environmental diversity is protected. *Id.* These twin goals show that UNESCO is also sensitive to the delicate linkage between culture and environment. See *id.*

environmental policy in general.¹³⁹ Pro-arts forces need to take advantage of the culture-environment connection and urge a new policy coordination. Failure to do so will perpetuate the current approach to cultural preservation and promotion, and result in a continued struggle for the arts in this country.

If environmental law needs to take a close and careful look at itself, as has been suggested, and if, in doing so, it decides to open itself up to other disciplines, it is only logical that it embrace cultural protection and promotion. A bottoms-up approach to environmental policy would properly assign a priority to cultural concerns, just as it would assign priorities to biodiversity, waste management, and air pollution. Admittedly, culture lobbyists might discover that the priority assigned to their cause will be lower than that assigned to many other environmental concerns. However, once cultural issues are prioritized, they would have a place as true environmental objectives. Assuming that the EPA would remain the agency responsible for carrying out environmental policy, cultural promotion and protection would be assigned to that agency and would receive its funding from EPA appropriations. Under such an approach, cultural promotion and preservation would not only be properly positioned as an environmental initiative but would receive federal dollars as well.

The specifics of such a monumental restructuring are not addressed here. Nevertheless, a few very general thoughts can be expressed. Assuming that environmental policy becomes truly holistic, the EPA might design certain general classes of environments, such as urban, suburban, rural, and protected.¹⁴⁰ Within each, various environmental media could be addressed, such as air, water, waste, and culture. In short, relevant utopias¹⁴¹ could be designed for each different class of environment. Cultural efforts within each environmental classification might include mandatory public arts funding, enhanced arts education in schools, preservation of historic sites, and funding for culturally diverse art forms. Urban area environmental funding might target industrial air pollution along with historic preservation. Rural areas might receive funds to combat water pollution caused by agricultural run-off as well as dollars to encourage the preservation and creation of folk art forms.

Arts education, public art, and historic preservation are initiatives of the NEA and other agencies under our present legal structure. The question may be, then, why bother to reshuffle the effort? The point is that even though initiatives to protect and promote culture under a new environmental agenda might in some respects duplicate current cultural support, the pro-culture efforts would be

¹³⁹ See *supra* text accompanying notes 74-78.

¹⁴⁰ The EPA is considering the concept of a unified environmental law. It has assigned a task force to make recommendations about the concept and projects that a report will be completed by the end of 1996. *Recommendation on Unified Environmental Law Expected Before End of 1996*, *EPA Official Says*, 26 Env't Rep. (BNA) 1125 (Oct. 27, 1995).

¹⁴¹ See *supra* note 72 and accompanying text.

undertaken in a new context. And the change in context is crucial. No longer would cultural issues be segregated; rather, they would become an integral part of a national environmental design and policy.

V. CONCLUSION

As a nation, we seem at once to know how important cultural promotion is, yet we do not know how to fully achieve it. The experience with the NEA shows that an approach to cultural preservation and promotion that segregates art is failing. The arts community cannot continue to swallow NEA funding cuts, or it may soon find itself without any federal support for culture.

It is time to take a closer look at how the government might achieve cultural support without an NEA, especially in light of calls to reinvent national environmental policy. The nation's environmental efforts are perceived as being too narrowly focused, and there are suggestions for a holistic bottoms-up approach to environmental lawmaking. Calls for an interdisciplinary environmental agenda should be seen as an invitation to include cultural protection as part of environmental policy. A long line of commentators on art and culture have stressed the interdependency of culture and the environment and have shown that art is, in fact, part of the environment. Further, the law not only recognizes the link between environmental health and cultural well-being, but declares cultural concerns to be part of our national environmental policy.

This essay's purpose is to present an alternative to our current troubled cultural and environmental policies. Certainly an undertaking of the magnitude suggested here would not be simple, but the benefits would be substantial. Future generations would define, without question, a healthy environment to include not only clean air and water, but esthetically pleasing and culturally significant materials as well. Members of diverse communities would be enriched by healthy physical and cultural environments. Under such a coherent and integrated environmental policy, we would, as John Dewey advocated,¹⁴² bring the arts and culture back into our everyday existence, into our immediate experience, where they can truly flourish.

¹⁴² DEWEY, *supra* note 2, at 10.