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RODGER D. CITRON

Charles Reich's Journey From the *Yale Law Journal* to the *New York Times* Best-Seller List: The Personal History of *The Greening of America*

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## I. INTRODUCTION

Much commentary on the future of writing about the law observes that information technology is dissolving boundaries between the legal academy and the popular media. This development undoubtedly has had a democratizing effect, providing more opportunities for scholars to reach the general population and enabling a more efficient flow of ideas into the mainstream. But as much as the public may at times benefit from these changes, it may not always be the case that law professors are prepared for the difficulties and demands of such increased visibility. In the parlance of popular media, they may not be ready for prime time—and the costs can be severe.

To illustrate this point, I want to tell a story from what now seems like the distant past. Let's return to 1970, when there were only three major network television stations and no cable programming; no Internet and therefore no on-line publications—subscribers literally picked up and read their newspapers. In such relatively barren soil, the notion of a law professor who became famous exclusively for the book he wrote seems preposterous. Nevertheless, near the end of that year, Charles Reich, a respected Yale Law School professor, published *The Greening of America* (“*The Greening*”)—first as a long article in the *New Yorker* then, in an expanded version, as a Random House book. To the surprise of everyone involved and despite mixed reviews, *The Greening* became a runaway best-seller and Reich became—reluctantly—a celebrity.

Disenchanted with the limits of his life at Yale Law School and with the law in general, Reich transmuted his discontent into a comprehensive critique of American society and a celebration of the student counterculture. *The Greening* connected with and explained a particular cultural moment—the last optimistic gasp of the student counterculture—just before it began to recede. It provided a critique of American law, capitalism, and politics but went further than Reich's previous academic writings in its assessment of contemporary society. With the rigor of an intellectual but the enthusiasm of a teenager, Reich criticized the dominant economic and political institutions in American life and celebrated the student counterculture for its new and different way of thinking—what Reich labeled “Consciousness III.”

*The Greening* inspired immediate controversy. The book was debated extensively on the opinion pages of the *New York Times* and within a year *The Con III Controversy*, a book of collected commentary on *The Greening*, was published.<sup>1</sup> Although Reich did not seek to become a public figure, he nevertheless became a celebrity intellectual. Reich enjoyed the attention of the limelight and appreciated the widespread dissemination of his ideas. However, he also was stung by the sharpness of some of the criticism and found the demands of celebrity life foreign and ultimately overwhelming.

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1. THE CON III CONTROVERSY: THE CRITICS LOOK AT THE GREENING OF AMERICA (Philip Nobile ed., 1971) [hereinafter THE CON III CONTROVERSY].

After the era of the 1960s ended,<sup>2</sup> Reich and *The Greening* were subject to a critical backlash. This is most evident in the negative reviews of Reich's autobiographical *The Sorcerer of Bolinas Reef* ("*The Sorcerer*"), published in 1976. Today *The Greening* remains subject to critical caricature, administered most often—though not exclusively—by conservative writers frequently found on the *Wall Street Journal* editorial page.

The story of the rise and fall of Reich and *The Greening* is, in part, a cautionary tale about the promise and perils of becoming a successful popular writer. The first three parts of this article recount the story of Reich and *The Greening*. In Part II, I set the stage with a brief summary of Reich's accomplished—and conventional—career and publications up to *The Greening*. Although *The Greening* is written in the form of a legal, political, and cultural analysis, it is in fact a highly autobiographical book, and Reich drew on many of his personal and professional experiences in his critique. In Part III, I tell the story of *The Greening*. It begins with an account of Reich's struggle to get the book published; describes the immediate popular embrace of *The Greening*; and explores the divided critical response to the book. In Part IV, I examine the backlash to *The Greening*, as evidenced by the negative reviews of *The Sorcerer*. In the Conclusion, I note that *The Greening* is still discussed today in the occasional—usually derisive—references to the book in popular writing. I conclude the article with a brief discussion of Reich's work after *The Sorcerer* and his thoughts on the perils and promise of his brush with popular success with *The Greening*.

## II. PRELUDE: LAW CLERK, LAWYER, AND LAW PROFESSOR

### A. Life before Law School

Charles Reich was born in New York City in 1928.<sup>3</sup> His father, Carl, was the son of immigrants—Carl's father had been born in Hungary and his mother had been born in Germany. They met in New York, where they married and raised two children.<sup>4</sup> Carl Reich became a doctor with a general practice specializing in hematology. Reich recalls that his father was an excellent diagnostician—a skill that Reich says he inherited and applied in a different context in his scholarly efforts to describe and explain American law and society.

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2. Although there is no consensus on exactly when the era of the 1960s ended, it is generally agreed that the era extended into the early-1970s. See generally TODD GITLIN, *THE SIXTIES: YEARS OF HOPE, DAYS OF RAGE* (1987).

3. Unless otherwise indicated, the biographical information in this article is derived from the author's interviews with Charles Reich, which took place both in person and over the phone over the course of several years beginning in March 2002. Notes from the interviews are on file with the author.

4. Charles Reich, *Dawn Today*, 7–9 (Feb. 1, 1944) [hereinafter *Dawn Today*] (unpublished manuscript on file with author).

Charles's mother, Eleanor, was the daughter of American parents. Her grandparents came to the United States from different parts of Europe, including Poland and the Alsace-Lorraine region in France. Eleanor attended the Ethical Culture School in New York.<sup>5</sup> She initially worked with her husband after they were married in 1925 but left that job and eventually pursued a career in school administration.<sup>6</sup> In 1931, the family became four with the birth of Charles's younger brother, Peter.

Charles and Peter attended progressive private schools in New York City: The Harriet Johnson Nursery School (Bank Street College of Education); City and Country School through eighth grade; and the Lincoln School of Teachers College for high school. At each school, the teachers were attentive, taught liberal values, and encouraged creativity and self-expression in their students. Charles was an excellent student and enjoyed writing. However, by his own description, Reich was "seriously deficient socially and emotionally" and "[p]hysically . . . clumsy and fearful."<sup>7</sup>

Eleanor, Reich's mother, was outgoing, ambitious, and smart.<sup>8</sup> Carl, Charles's father, worked hard and preferred to spend his free time relaxing at home. In a number of ways, they were not temperamentally suited for each other—Eleanor could be demanding, Carl could be remote—and Reich recalls that they often fought. Ultimately Carl and Eleanor divorced while Charles was in high school. The parents' conflict was painful for their children but did not interfere with their academic performance.

After high school, Charles attended Oberlin, a small liberal arts college in Ohio. As in his previous schools, Reich excelled at Oberlin, where he majored in history.<sup>9</sup> Reich was uncertain what to do after graduation. Although he did not envision a career as a lawyer, he interviewed with Professor (later Dean) Erwin Griswold of Harvard Law School. After talking with Reich about his interests, Griswold told Reich he did not belong in the law and, instead, should pursue a career in sociology. Reich also discussed the prospect of law school with Tom

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5. *Id.* at 2–7.

6. See Nadine Brozan, *Spending 50 Years with Preschoolers*, N.Y. TIMES, June 6, 1982, § 1, at 64.

7. Dawn Today, *supra* note 4, at 26, 43, 52–53, 58. Although Reich perceived himself as physically awkward, he did enjoy hiking and camping at the family's home in the Adirondacks in upstate New York. The vacations in the Adirondacks instilled in Reich an appreciation and love of nature. *Id.* at 48, 107–15.

8. Reich recalls that his mother pursued an active social life, maintaining friendships with, among others, left-wing New York icons Leonard Boudin, a prominent labor and civil liberties lawyer, and I.F. Stone, a writer most known for his weekly report in the New York Review of Books and his early and vociferous criticism of the Vietnam War. Interview with Charles Reich, (July 2004) (notes on file with author). For the story of the Boudin family—or at least one version of it—see SUSAN BRAUDY, *FAMILY CIRCLE: THE BOUDINS AND THE ARISTOCRACY OF THE LEFT* (1993).

9. Letter from Wesley A. Sturges, Dean, Yale Law School, to Hugo L. Black, J. (Dec. 17, 1951) (on file with the Library of Cong.).

Emerson, a family friend who was a professor at Yale Law School.<sup>10</sup> Emerson told Reich that Yale focused on public policy and that the law school was a training ground for the nation's leaders.<sup>11</sup> Reich applied only to Yale Law School and was admitted.

*B. Yale Law Student and Law Clerk to Justice Hugo Black*

Reich began Yale Law School in the fall of 1949. At that time, Yale was well known for its commitment to legal realism. Legal realism had emerged in the late-1920s as a jurisprudential movement that criticized the formalist approach to law, expressed skepticism about the influence of the rules of law, and sought to explain how courts operated and judges made decisions. The legal realists generally urged the incorporation of social science into efforts to understand how courts decided cases and to improve court operations.<sup>12</sup>

By the time Reich and the other members of his class arrived in the fall of 1949, some of the most prominent legal realists—such as William O. Douglas and Thurman Arnold—were no longer at the law school. Nevertheless, under the leadership of Dean Wesley Sturges, Yale continued to encourage the tenets of legal realism in the classroom and in the faculty's scholarship.

Although he often shied away from speaking in class, Reich was an excellent and accomplished law student. His strong academic performance earned him an early position on the *Yale Law Journal*. While working on the journal Reich wrote a paper—known as a comment—arguing that pretrial disclosures in criminal cases should follow the broader disclosure practices in civil litigation.<sup>13</sup> Primarily on the basis of his comment, Reich was elected editor-in-chief of the *Yale Law Journal*. During his tenure as editor, the journal published a comment on the constitutional right to travel and to have a passport. Reich was involved in the editing of the article and recalls it as one of the first legal articles that helped

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10. Professor Emerson was a New Deal lawyer who joined Yale Law School in 1946. He was known by some on the law school faculty as "Tommy the Commie" because of his liberal views and activities, including his legal representation of accused Communists during the McCarthy era. See Robert W. Gordon, *Professors and Policy Makers: Yale Law School Faculty in the New Deal and After*, in HISTORY OF THE YALE LAW SCHOOL: THE TRICENTENNIAL LECTURES 75, 123 (Anthony T. Kronman ed., 2004) [hereinafter HISTORY OF THE YALE LAW SCHOOL]; see also LAURA KALMAN, LEGAL REALISM AT YALE 1927-1960, at 159, 194-95 (1986).

11. See Charles Reich, Consciousness III 29 (2002) [hereinafter Consciousness III] (unpublished manuscript on file with author).

12. My discussion of legal realism, though brief, draws on a number of excellent sources on that subject. See Gordon *supra* note 10, at 75, 123; KALMAN *supra* note 10; see also NEIL DUXBURY, PATTERNS OF AMERICAN JURISPRUDENCE (1995); EDWARD PURCELL, THE CRISIS OF DEMOCRATIC THEORY (1973).

13. Comment, *Pre-Trial Disclosure in Criminal Cases*, 60 YALE L.J. 626 (1951). Reich also wrote a note discussing New York's sex offender law. See Note, *New York's New Indeterminate Sentence Law for Sex Offenders*, 60 YALE L.J. 346 (1951).

him to articulate his view on the relationship between the individual and the state.<sup>14</sup>

For Reich, the anti-Communist crusade came close to home during his last year of law school. Two Harvard Law School students, twin brothers named David and Jonathan Lubell, were summoned to testify before the Senate Subcommittee on Internal Security. In college, according to Professor Monroe H. Friedman, “they had participated in a Marxist study group and they had distributed the *Daily Worker* on the college campus.”<sup>15</sup>

The Lubells were advised to cooperate with the committee—to confess the error of their ways and identify other students who had engaged in the same activities. They declined to do so, citing the First and Fifth Amendments and refusing to testify before the committee. At Harvard, the consequences were immediate and severe. Jonathan Lubell had earned a position on the law review—exclusively on the basis of his grades, the only criteria at the time. At the behest of Dean Griswold, the law review called a special summer meeting and removed him from the journal. A similar episode occurred in connection with his brother’s position as president of the student newspaper, the *Law School Record*, and also apparently with his position in the school’s Legal Aid Society.<sup>16</sup> Although Reich was not personally involved in any of the events, the incident personalized the McCarthy era for Reich and demonstrated that those who expressed views dissenting from the prevailing political culture could be vulnerable to punishment.

During his last year of law school, Reich decided to apply for a clerkship with Justice Hugo Black. He found Black’s dissents in a number of civil liberties cases inspiring and enlisted support for his application from Dean Sturges, Professor Emerson, and Professor David Haber, a young constitutional law professor with an interest in civil liberties.<sup>17</sup> In January 1952, Reich interviewed with Black and was offered the clerkship. Black was unable to hire Reich immediately

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14. See Comment, *Passport Refusals for Political Reasons: Constitutional Issues and Judicial Review*, 61 *YALE L.J.* 171 (1952). Six years later, the Supreme Court decided *Kent v. Dulles*, 357 U.S. 116 (1958), holding that the right to travel is a constitutional right that may not be restricted on the basis of an individual’s political beliefs—the same position taken in the comment, which had been written earlier during one of the hottest periods of the Cold War (coincidentally, Leonard Boudin argued the case on behalf of the passport holder). Ironically, the comment was cited and (incorrectly referred to as a note) by the dissent in *Kent v. Dulles*.

15. Monroe H. Friedman, *John T. Noonan, Jr.: Exemplar of Ethical Conduct*, 11 *J.L. & RELIG.* 229, 232 (1995).

16. *Id.*

17. See Letter from Tom Emerson, Professor, Yale Law School, to Hugo L. Black, J. (Dec. 7, 1951) (on file with the Library of Cong.); Letter from David Haber, Professor, Rutgers Univ. School of Law, to Hugo L. Black, J. (Jan. 9, 1952) (on file with the Library of Cong.) (“[D]espite an outer appearance of reticence and modesty, [Reich] proves to be an extremely warm and outgoing person, quite sensitive to, and aware of some of the problems of leading a life that has integrity and meaning.”); Letter from Wesley Sturges, Dean, Yale Law School, to Hugo L. Black, J. (Dec. 7, 1951) (on file with the Library of Cong.).

after his graduation from law school in 1952, however, so he decided to work at Cravath, Swaine & Moore in New York for a year.<sup>18</sup>

Reich moved to Washington, D.C., in the summer of 1953, before the Supreme Court term began in the fall. Early in the clerkship, Reich wrote to his mother that one of the previous law clerks, Huey Howerton, described Justice Black as a “complicated guy, a great liberal but very set in his opinions and difficult to win an argument with, now very isolated and lonely on the Court, with a bit of a persecution complex and some psychosomatic illnesses to go with it. When I get to know him, I’ll have my own opinions.”<sup>19</sup>

Ultimately, Reich came to view that year as the realization of a dream. Black had recently been widowed, and because his children did not want him to live alone, his clerks lived with him at his house in Alexandria, Virginia. Reich’s co-clerk that year was David Vann.<sup>20</sup> “We paid a token rent and shared gasoline charges for the daily ride to work, but the wonderful meals, including breakfast and Sunday night dinner cooked by Justice Black himself, were free.”<sup>21</sup>

At the court, Reich and his co-clerk engaged in a year-long discussion with the Justice.<sup>22</sup> Much of the education and training in the clerkship came from the ongoing conversation between the justice and his law clerks. As Reich later described in *The Sorcerer of Bolinas Reef*: “From early morning until bedtime we talked about the Constitution and the Bill of Rights. I found in Justice Black a person who had total faith in the fundamental principles of justice. He carried the Constitution in his pocket as if it were the Bible.”<sup>23</sup> Black insisted upon drafting his own opinions and employed his clerks when revising his drafts.<sup>24</sup>

The most important case on the Supreme Court’s docket that term was *Brown v. Board of Education*, which involved a challenge to the constitutionality of segregated public schools, and which had been held over from the previous term for reargument.<sup>25</sup> There were a number of other important cases decided during the 1953–54 term. For Reich, the most influential was *Barsky v. Board*

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18. Charles Reich, *Letter to a Cravath Associate*, 29 AM. LAW 108, 108 (2007).

19. Letter from Charles Reich to Eleanor Brussel (August, 1953) (copy on file with author).

20. Vann later became the mayor of Birmingham, Alabama. For a biography of David Vann, see <http://www.bplonline.org/Archives/collections/gov/vanndavidj.asp>. To access the 1995 Birmingham Civil Rights Institute interview with David Vann, see [http://www.bcri.org/resource\\_gallery/interview\\_segments/index.htm#](http://www.bcri.org/resource_gallery/interview_segments/index.htm#) (follow “David Vann” hyperlink).

21. Charles Reich, *Deciding the Fate of Brown: The Populist Voices of Earl Warren and Hugo Black*, 7 GREEN BAG 137, 137 (2004) [hereinafter *Deciding the Fate of Brown*].

22. *Id.* at 137 (“We talked about everything but the school segregation cases.”).

23. CHARLES A. REICH, *THE SORCERER OF BOLINAS REEF* 23 (1976) [hereinafter *SORCERER*].

24. ROGER K. NEWMAN, *HUGO BLACK: A BIOGRAPHY* 325–26 (1994).

25. 347 U.S. 483 (1954). Justice Black did not discuss *Brown* with his law clerks until after the Court decided the case because “the Justices had agreed to keep their deliberations secret.” *Deciding the Fate of Brown*, *supra* note 21, at 137.



of *Regents*.<sup>26</sup> In *Barsky*, the Court upheld by a six-to-three vote a physician's suspension from the practice of medicine because he had been convicted of failing to produce documents in response to a subpoena from the House Un-American Activities Committee—even though there had been no showing that he was not a competent doctor, or that he had acted improperly toward his patients.<sup>27</sup>

Justice Black, joined by Justice William O. Douglas, wrote a dissent in *Barsky*.<sup>28</sup> He acknowledged that the state of New York “has broad power to regulate the practice of medicine” but argued that “the right to practice is . . . a very precious part of the liberty of an individual physician or surgeon.”<sup>29</sup> Black continued, “[i]t may mean more than any property. Such a right is protected from arbitrary infringement by our Constitution, which forbids any state to deprive a person of liberty or property without due process of law.”<sup>30</sup> Justice Black concluded his dissent with a quotation from *Yick Wo v. Hopkins*: “For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails . . . .”<sup>31</sup>

Justice Black's dissent in *Barsky*—which insisted upon broad constitutional protection for an individual's rights against the state<sup>32</sup>—contained the seeds for a set of ideas that Reich later developed in his law review article, *The New Property*, and continued to expand upon in *The Greening*. Reich specifically has credited Justice Black's statement in *Barsky* “that a person's professional license may be more valuable than property” as a reference to what Reich would later call the “new property.”<sup>33</sup> In addition, the jurisprudence of Justice Black would loom large in Reich's academic scholarship. Before Reich became an academic, however, he was an attorney in Washington, D.C.

### C. *Private Practice*

In 1954, after his clerkship, Reich joined the law firm of Wilmer & Broun, which was the Washington office of Cravath, Swaine & Moore. With not much work to do, Reich became bored and decided to move to another law firm in early

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26. 347 U.S. 442 (1954).

27. *See id.*

28. *Id.* at 457 (1954) (Black, J., dissenting); *see also id.* at 472 (Douglas, J., dissenting); *id.* at 467 (Frankfurter, J., dissenting).

29. *Id.* at 463 (Black, J., dissenting).

30. *Id.* at 459 (Black, J., dissenting).

31. *Id.* at 463–64 (Black, J., dissenting) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 369–70 (1886)).

32. *See id.* at 460 (Black, J., dissenting) (“Our responsibility is, however, broader. We must protect those who come before us from unconstitutional deprivation of their rights, whether the state court is empowered to do so or not.”).

33. Charles Reich, *The Liberty Impact of the New Property*, 31 WM. & MARY L. REV. 295, 305–06 (1980).

1955. Ultimately, he had to decide between two elite law firms: Arnold, Fortas & Porter in Washington, and Paul, Weiss, Rifkind, Wharton & Garrison in New York.

Reich gave the matter much thought. In a letter to Justice Black shortly before his deadline for deciding, Reich spelled out the pros and cons of his prospective employers. Arnold, Fortas & Porter was appealing because of its interesting practice and congeniality and because, as Reich recognized, Abe Fortas “is a really fine lawyer.”<sup>34</sup> Furthermore, Reich believed that “[p]robably there are more courageous people in Arnold’s firm than in the other,” and admired the firm for its work in several civil liberties cases in which the government sought to punish individuals for their political views.<sup>35</sup>

However, Reich noted that “[o]ccasionally their briefs seemed very unfair to me last year, and some of their arguments unsound. In addition, they seem to love publicity and showmanship, and I don’t care for that sort of thing.”<sup>36</sup> Reich also was not thrilled by the fact that Arnold, Fortas & Porter wanted “a man to do research for their antitrust cases—primarily library work and brief writing.”<sup>37</sup> On the other hand, Paul, Weiss, Rifkind—its named partners included Randolph Paul, who had served as general counsel of the Treasury Department, and Simon Rifkind, formerly a United States district court judge—wanted “a man to do federal practice.”<sup>38</sup>

Reich chose Arnold, Fortas & Porter. The firm was small and respected and handled challenging cases, many involving complicated questions of administrative law. Reich worked on a variety of matters—not just antitrust cases—and wrote a number of briefs in cases argued before the Supreme Court.<sup>39</sup> He worked long hours and enjoyed the opportunity to work and converse with such luminaries as Thurman Arnold—by now a former District of Columbia Circuit Court of Appeals judge as well as Yale Law School professor—and Walton Hamilton—an accomplished economist who also had taught at Yale Law School—who were members of the law firm.

Fortas proved to be an especially enigmatic person, however. In *The Sorcerer of Bolinas Reef*, Fortas appears as “Mr. Henderson”—“a great liberal, a public-spirited lawyer, a man who had been a dedicated government official and

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34. Letter from Charles Reich to Hugo L. Black, J. (Jan. 17, 1955) (on file with the Library of Cong.). Reich does not recall whether he ever discussed his options with Justice Black after sending this letter.

35. *Id.*; see also NORMAN DIAMOND, A PRACTICE MOST PERFECT: THE EARLY DAYS AT ARNOLD, FORTAS & PORTER (1997).

36. Letter from Charles Reich to Hugo L. Black, J., (Jan. 17, 1955) (on file with the Library of Cong.).

37. *Id.*

38. *Id.*

39. See, e.g., Brief of Petitioner, *Parr v. United States*, 361 U.S. 912 (1959).

now still helped in many progressive causes.”<sup>40</sup> Mr. Henderson “was a self-made man” who had “followed a newer pattern: not the business success story but success in college and law school; a climb up the meritocracy . . . . He was a pragmatist, but also a man of taste and sophistication.”<sup>41</sup>

Yet in his description of a typical encounter with Mr. Henderson, Reich noted an impersonal dynamic, Reich’s subordinate position, and Mr. Henderson’s obeisance to the customs of power. Reich recalled standing before the partner’s “huge and ornate desk” and being interrogated on a memorandum. Reich was required to remain standing while the discussion was interrupted by a telephone call from “some personage” to whom Mr. Henderson “talked leisurely and graciously.” Reich was impressed by—and questioned—Mr. Henderson’s “harsh cynicism, the toughness, the oppressive self-control, the approach to everything by strategy, the need for power over people. . . .”<sup>42</sup>

While at Arnold, Fortas & Porter, Reich cultivated a friendship with Justice William O. Douglas. At first blush, the pairing seems unlikely. Reich was shy, thirty years junior to Douglas, and had been raised in New York City. Douglas could be gruff and solitary (certainly in his work at the Supreme Court), and he was an unmistakable westerner. But they shared a passion for hiking and the outdoors and became friends on long Sunday walks along the Chesapeake and Ohio Canal.<sup>43</sup> Douglas’s second wife, Mercedes Davidson, encouraged the friendship; not only was Reich an ideal hiking companion, he also became a babysitter and companion for her son from her first marriage.<sup>44</sup>

Since 1955, Reich had received invitations to join the Yale Law School faculty and eventually he made the decision to leave the law firm and become a professor. In making his decision, Reich consulted Douglas, who provided encouragement, despite his reservations about Yale Law School. In a letter dated January 6, 1958, Douglas wrote: “I think I have been wrong in advising you not to return to Yale to teach. I think that is an attitude of retreat. I think it’s time to seize some of the ramparts. The intellectual life at Yale will not be particularly exciting. But there is great challenge in that citadel of reaction.”<sup>45</sup>

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40. *SORCERER*, *supra* note 23, at 32. Reich did not identify Fortas as Mr. Henderson in *THE SORCERER OF BOLINAS REEF*. Reich later confirmed the connection to Laura Kalman for her biography of Fortas. *See LAURA KALMAN, ABE FORTAS: A BIOGRAPHY* 191 (1990).

41. *SORCERER*, *supra* note 23, at 31–32.

42. *Id.* at 32.

43. For a more detailed account of the Reich’s friendship with Justice Douglas, *see* Rodger D. Citron, *Was Bill Douglas as Bad as Bruce Murphy’s New Biography Makes Him Out to Be?*, History News Network, May 5, 2003, <http://hnn.us/articles/1428.html>.

44. *See SORCERER*, *supra* note 23, at 91–93 (setting out a fictionalized account of this friendship).

45. Letter from William O. Douglas, J., to Charles Reich (Jan. 6, 1958) (on file with the Library of Cong.) (copy on file with author). Douglas’s critical view of the law school was prompted by its decision in the early 1950s to deny tenure to several young professors, including his former law clerk Vern Countryman. *See infra* p. 397, subsection D.

Five years at the law firm had provided Reich with a ringside seat from which to observe the operation of private corporate power, in particular, the way in which it was intertwined with the exercise of the federal government's regulatory authority. The extent of the government's discretionary power and influence was enormous. It is worth recalling that when Reich practiced in the 1950s, judicial review of federal agency action tended to be deferential to the government, and protections of individual rights against the exercise of private and state power generally were minimal.<sup>46</sup>

For Reich, the experience reinforced his concern for individual rights in an era of expanding corporate and state power. Indeed, through the law firm's representation—often by Fortas—of individuals who were subject to investigation or punishment by the government for suspected Communist leanings, Reich saw first-hand the consequences of unchecked governmental power. His subsequent writings—most notably *The New Property* and *The Greening of America*—were informed by his experience as a lawyer at the elite law firm. In particular, the requirements and demands of law firm life—not just working long hours, but adopting the mindset of a “hired knife-thrower”—were evaluated critically in Reich's description of “Consciousness II” in *The Greening*.<sup>47</sup>

#### D. Yale Law School Professor

When Reich returned to Yale Law School in 1960, the school was well into the process of being remade under the leadership of Dean Eugene Rostow. Upon becoming dean in 1955, Rostow immediately began to invigorate the faculty with new young professors. During the early 1950s, several young professors had been denied tenure, and with at least one of those professors (Vern Countryman) it appeared that promotion had been denied, at least in part, because of his left-wing political views and activities.<sup>48</sup> Rostow's efforts to rebuild the faculty were successful. From 1955 through 1965, the dean recruited exceptional faculty—more than a dozen genuine stars, including the next four deans of the law school (Louis Pollak, Abe Goldstein, Harry Wellington, and Guido Calabresi) and five future judges (Pollak, Calabresi, Ellen Peters, Ralph Winter, and Robert Bork)—and managed to double the size of the faculty while maintaining the small size of the student body.<sup>49</sup>

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46. *The New Property* is one of the earliest—yet nevertheless comprehensive—law review articles to document the minimal protection of individual rights and the deferential judicial approach to agency action. See also Robert L. Rabin, *Federal Regulation in Historical Perspective*, 38 STAN. L. REV. 1189, 1265–96 (1986).

47. CHARLES REICH, *THE GREENING OF AMERICA* 78 (Bantam Books 1971) [hereinafter GREENING].

48. See KALMAN, *supra* note 10, at 194–201 (1986); see also Gaddis Smith, *Politics and the Law School: A View from Woodbridge Hall 1921–1963*, reprinted in HISTORY OF THE YALE LAW SCHOOL, *supra* note 10, at 138.

49. Robert W. Stevens, *History of the Yale Law School: Provenance and Perspective*, reprinted in HISTORY OF THE YALE LAW SCHOOL, *supra* note 10, at 1, 14–15.

Reich asked to teach constitutional law and administrative law—subjects with which he was familiar from practicing law at Arnold, Fortas & Porter. He also was assigned to teach the first semester of property—a subject he had not considered since he was a law student. He immersed himself in the relevant literature, mastering the principles and rules of property law.

Perhaps the most influential article Reich read was *Property*, by Walton Hamilton (who Reich had met at Arnold, Fortas & Porter) and Irene Till, in the *Encyclopedia of the Social Sciences*.<sup>50</sup> That article famously began by defining property as “a euphonious collocation of letters which serves as a general term for the miscellany of equities that persons hold in the commonwealth.”<sup>51</sup> Essentially, in their view, property should be viewed as “a set of legal relations between persons governing the use of things.”<sup>52</sup> Influenced by this relational view of property, Reich eventually would offer his own analysis of the relationship between government-created wealth and private individuals and entities in *The New Property*.<sup>53</sup> Reich also developed his knowledge of property in seminars he taught on the management of natural resources and the environment.

During his first six years back at Yale Law School, Reich was delighted with his departure from private practice and his return to life in the academy. He was temperamentally suited to be a teacher—patient, diligent in his preparation, and intellectually curious and rigorous. Reich quickly became an impressive legal scholar and published articles in the leading law reviews. His position at Yale provided a platform for him to propose a number of liberal law and policy reforms. From 1960 through 1966, Reich was a model member of the faculty: an energetic teacher, a productive scholar, and a responsible law school citizen. In 1964, Reich received tenure and was promoted to full professor.

Reich’s enthusiasm and passion for his work is evident in his legal scholarship during this period. His law review articles covered a number of diverse topics: the inadequacy of existing laws for protecting the environment,<sup>54</sup> the rights of welfare recipients,<sup>55</sup> the impending fissure between the interests of members of the public and the bureaucracies charged with acting on their behalf

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50. Walton H. Hamilton & Irene Till, *Property*, in 12 *ENCYCLOPEDIA OF THE SOCIAL SCIENCES* 528 (Edwin R. A. Seligman ed., 1937).

51. *Id.* at 528.

52. BRUCE ACKERMAN, *PRIVATE PROPERTY AND THE CONSTITUTION* 27 (Yale Univ. Press 1978).

53. Charles Reich, *The New Property*, 73 *YALE L.J.* 733 (1964) [hereinafter *The New Property*].

54. See Charles Reich, *The Public and the Nation’s Forests*, 50 *CAL. L. REV.* 381 (1962).

55. See Charles Reich, *Midnight Welfare Searches and the Social Security Act*, 72 *YALE L.J.* 1347 (1963); *The New Property*, *supra* note 53; Charles Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, 74 *YALE L.J.* 1245 (1965).

in the “public interest,”<sup>56</sup> and the propriety of police stops of citizens on the street.<sup>57</sup>

The most well-known of Reich’s law review articles is, of course, *The New Property*, a comprehensive analysis of the regulation of government-created wealth in the form of, among other things, licenses, contracts, and benefit payments.<sup>58</sup> *The New Property* is the most-cited article ever published in the *Yale Law Journal*.<sup>59</sup> Its popularity is due, in part, to the fact that it provided the framework for the Supreme Court’s decision in *Goldberg v. Kelly*.<sup>60</sup>

There are a number of noteworthy points about Reich’s legal scholarship during this period. He consistently expressed concern for the rights of individuals at a time when the prevailing legal regime and political culture often subordinated individual rights to the interests of the state. Reich believed that the individual’s right to privacy and autonomy were not sufficiently protected and therefore were vulnerable to deprivation by government agencies acting “in the public interest.” His most comprehensive presentation of this argument, *The New Property*, was informed—indeed shaped by—the judicial decisions of the 1950s in which the Supreme Court often ruled against individuals asserting their constitutional rights. For example, *Barsky*, the medical license case in which Justice Black dissented, was cited several times in *The New Property*.<sup>61</sup>

In *The New Property* and his other articles that examined administrative law-related subjects, Reich expressed concern about the lack of public participation in political decision-making, skepticism of the discretionary powers allocated to agency experts, and suspicion of the disruptions caused by technology and progress.

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56. See Charles Reich, *The Law of the Planned Society*, 75 YALE L.J. 1227 (1966); see also Charles Reich, *The Promised Land of Science*, 72 YALE L.J. 216 (1962) (book review).

57. See Charles Reich, *Police Questioning of Law Abiding Citizens*, 75 YALE L.J. 1161 (1966) [hereinafter *Police Questioning*].

58. See *The New Property*, *supra* note 53.

59. Fred R. Shapiro, *The Most Cited Articles from The Yale Law Journal*, 100 YALE L.J. 1449, 1462 tbl.1 (1991).

60. 397 U.S. 254 (1970). Although the Court mentions *The New Property* and another article, *Individual Rights and Social Welfare*, only in a footnote, a number of scholars have credited *The New Property* with providing the foundation and the framework for the Court’s decision that welfare recipients were entitled to a hearing before they were terminated from the welfare rolls. See, e.g., Randy Lee, *Twenty-Five Years after Goldberg v. Kelly: Traveling from the Right Spot on the Wrong Road to the Wrong Place*, 23 CAP. U. L. REV. 863, 867–70 (1994); Rebecca Zietlow, *Giving Substance to Process: Countering the Due Process Counterrevolution*, 75 DENV. U. L. REV. 9, 12 (1997). *Goldberg* was celebrated by many legal reformers but did not usher in a new regime with respect to the rights of recipients of state-created wealth. Instead, the Supreme Court subsequently limited the availability of procedural protections by adopting a balancing test that qualified the right to a hearing with other interests, including the state’s interest in efficient administration. See *Matthews v. Eldridge*, 424 U.S. 319 (1976).

61. *The New Property*, *supra* note 53, at 741 n.36, 757–58 nn.122 & 124–26, 775 nn.191–94, 782 n.223.

Reich was a child of the New Deal and did not question the propriety of endowing the federal government with the power to regulate. Yet he was acutely aware of the shortcomings of the New Deal reforms and was especially suspicious of the unbounded power vested in federal agencies. His criticism of the “public interest state” situated him in a somewhat adversarial position with New Deal liberals who did not question the exercise of affirmative powers by the federal government. As I will discuss below, this difference of opinion would be magnified when Reich moved beyond existing laws and legal institutions in *The Greening of America*.

Reich was just as troubled by the unchecked power of large private corporations. Although the federal government and private corporations were often in adversarial positions (indeed, Arnold, Fortas & Power thrived as a law firm because of the ongoing skirmishes between government agencies and the industries they regulated), Reich believed that in fact they were united in the political and structural organization that empowered both.<sup>62</sup> Together, in Reich’s view, they posed an overwhelming threat to individual liberty and autonomy.

In arguing for greater protection of individual rights, Reich articulated a constitutional law jurisprudence that was predicated upon what Reich referred to as a “living Constitution.”<sup>63</sup> Today, the phrase “living Constitution” is most commonly associated with the jurisprudence of Justice Brennan.<sup>64</sup> Reich argued that the Court should adapt the framers’ eighteenth-century notions of liberty to modern life.<sup>65</sup> In his discussion of cases in which the rights of individuals were measured against the interests of society, Reich argued that the balance unduly favored societal interests and failed to protect individual liberties.<sup>66</sup>

In a 1963 law review article, Reich argued that Justice Black’s jurisprudential approach—most notably in his civil rights and civil liberties dissents in the 1950s—embodied the “living Constitution” approach.<sup>67</sup> Although Black dis-

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62. *Id.* at 765, 767 (“[G]overnment and the private sector (or favored part of that sector) are often partners rather than opposing interests. . . . Public-private partnerships attain their greatest significance when they are translated into power. Sometimes private elements are able to take over the vast government powers deriving from largess, and use them for their own purposes.”).

63. Charles Reich, *Mr. Justice Black and the Living Constitution*, 76 HARV. L. REV. 673 (1963) [hereinafter *Mr. Justice Black and the Living Constitution*].

64. See Dahlia Lithwick, *Reasons to Go on Living*, SLATE, Aug. 23, 2005, <http://www.slate.com/id/2124891/>.

65. *Mr. Justice Black and the Living Constitution*, *supra* note 63, at 747, 750.

66. *Id.* at 753.

67. *Id.* at 753–54. Reich observed that the “trend of America today is away from its traditions . . . [and] toward strong central government, economic collectivism and a society that stresses organization and not the individual.” *Id.* at 753. Furthermore, Reich noted, “[t]his trend has been sanctioned and furthered by many Supreme Court decisions from which Black has dissented.” *Id.* In downplaying the “value of individualism, nonconformity, and dissent as significant elements in society, [t]hey have magnified, rather than feared, the primacy of the state.” *Id.* Against this set of developments Reich cast Black as a defender of the original vision of the Constitution. *Id.*

agreed with Reich's description of his approach, the article certainly provides a comprehensive summary of Reich's constitutional law views at the time.<sup>68</sup>

Finally, Reich generally did not question existing legal and political institutions in his academic scholarship (though he advocated changes in how they operated and how their actions were evaluated). His law review articles were masterpieces of the form: Reich described and analyzed the governing legal rules and case law, and then suggested a different approach or new policy. The articles usually were thoroughly researched (even today, *The New Property* stands out as a remarkable catalog of several different bodies of case law) and carefully argued. Although privately Reich was pessimistic about the state of individual rights and liberties in American society, there is only a trace of those views in the law review articles.

Nevertheless, some of Reich's law review articles published after *The New Property* suggest that he was shifting the focus of his scholarship in both form and subject. His article criticizing the unchecked discretion of police officers when they questioned citizens on the street—published around the same time the Supreme Court decided *Miranda v. Arizona*—was more personal and less academic than any of his other articles.<sup>69</sup> There were few footnotes, and Reich explained that he was inspired to write the article after a number of encounters with police while walking alone in the suburbs of New Haven and Washington, D.C.<sup>70</sup> In *Toward the Humanistic Study of Law*, Reich criticized law schools and legal education, and called for increased attention to the humanities in the law school curriculum.<sup>71</sup>

### III. THE GREENING OF AMERICA

Reich's academic interest in the humanities followed his time spent auditing undergraduate English courses at Yale College. In the mid-1960s, Reich began to shift his scholarly attention away from the law school.<sup>72</sup> Developments outside

68. ROGER NEWMAN, HUGO BLACK: A BIOGRAPHY 529 (2d ed. 1997). Black complimented Reich on the article but told his law clerks that Reich "doesn't understand me at all," suggesting that Reich had misinterpreted Black's judicial philosophy in describing it as a "method of construing provisions of the Bill of Rights in the light of current problems." *Id.* Reich's article nevertheless has been commended in other scholarly assessments of Justice Black's life and work. See Akhil Amar, *Daniel Meador Lecture: Hugo Black and the Hall of Fame*, 53 ALA. L. REV. 1221, 1235 n.52 (2002) (describing Reich's article as "penetrating"); see also Leonard A. Boudin, *Hugo Black and the Judicial Revolution*, 90 HARV. L. REV. 1733, 1733 n.5 (1977) (book review).

69. See *Police Questioning*, *supra* note 57, at 1161–62.

70. See *id.* at 1161.

71. See Charles Reich, *Toward the Humanistic Study of Law*, 74 YALE L.J. 1402 (1965). Two years later, Reich followed his own recommendation by publishing a scholarly essay on Herman Melville's *Billy Budd*—an early contribution to the nascent field of law and literature. See Charles A. Reich, *The Tragedy of Justice in Billy Budd*, 56 YALE REV. 368 (1967).

72. See David R. Legge, *The Saint of New Haven*, WASH. POST, Nov. 8, 1970, at G1; see also Israel Shenker, *Protest Has Value to New Yale Hero*, N.Y. TIMES, Oct. 16, 1970, at 43.



the law school—in particular the emerging youth movement, which opposed the Vietnam War and rejected the life and institutions of “the establishment”—engaged his attention at the same time he became disappointed with what he viewed as the limits of traditional legal scholarship in bringing about reform.

In 1966, Reich began teaching an undergraduate course entitled “The Individual in America.” The class began as a seminar but became increasingly popular among undergraduates; in the fall of 1970, six hundred students enrolled and more were denied admission to the class.<sup>73</sup> Reich assigned books describing and documenting recent developments in modern American society, including Ken Kesey’s *Sometimes a Great Notion*, Norman Mailer’s *The Naked and the Dead*, and Philip Slater’s *The Pursuit of Loneliness*. Although Reich required students to write papers, he did not give a final exam and sought to minimize competition for grades.<sup>74</sup>

Reich spent the summer of 1967—now known as the “Summer of Love”—in Berkeley, California. Initially, he resisted the student movement. In a July 1967 letter to his friend and colleague Alex Bickel, Reich wrote that “[o]ut here the atmosphere among the students is profoundly anti-intellectual. In place of thinking, they substitute ideology, and they are harshly impatient with doubters and questioners.”<sup>75</sup> Nevertheless he recognized that “[t]here is much idealism” in the youth movement and insisted that “one can’t help admire some of their values.”<sup>76</sup> The letter ended with a glimpse of Reich beginning to find his groove: “On Sundays the park is full of great sights and sounds (the latter made by electric bands with such names as The Second Coming, Big Brother and the Holding Company, and The Grateful Dead).”<sup>77</sup>

That summer was pivotal for Reich’s thinking because, as he later told an interviewer, “. . . in Berkeley, on the streets, I saw a revolution—a generation in revolt, a reversal of the corporate state under way.”<sup>78</sup> When Reich began teaching at Yale Law School in 1960, he had plans to write “a most despairing book [the working title was *The Coming of the Closed Society*] about the end of civil liberties” in the United States, but what he saw in Berkeley and learned from his students in New Haven caused him to rethink the book. Ultimately, Reich developed the lectures he gave in his undergraduate course—and that had been inspired by conversations with college students in the dining hall, in their

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73. Shenker, *supra* note 72; see also THE CON III CONTROVERSY, *supra* note 1, at 45–46 (including the reprint of the *Yale Course Guide*, an annual publication of the *Yale Daily News*).

74. THE CON III CONTROVERSY, *supra* note 1, at 45–46.

75. Letter from Charles Reich to Alexander Bickel (July 20, 1967) (on file with the Yale University Library Manuscript and Archives in the Alexander M. Bickel Papers) (copy on file with author).

76. *Id.*

77. *Id.*

78. See Legge, *supra* note 72.

dorm rooms listening to music, and in other ways—into a book-length manuscript. Reich gave the book a new title: *The Greening of America*.

So much has been said about *The Greening of America* in the nearly forty years since it was published that it is worth pausing to summarize the book on its own terms. Although *The Greening* is often dismissed as politically naïve, in particular for romanticizing the student counterculture, the book begins on a somber note: “America is dealing death, not only to people in other lands, but to its own people.”<sup>79</sup> Reich continued in his opening paragraph: “We think of ourselves as an incredibly rich country, but we are beginning to realize that we are also a desperately poor country—poor in most of the things that throughout the history of mankind have been cherished as riches.”<sup>80</sup>

Reich elaborated on his description of contemporary American society, providing an account of how and why it had arrived at its current condition, and arguing that the solution to its ills was a change in its way of thinking—a shift towards what Reich labeled Consciousness III. Reich argued that the emerging youth movement represented this new consciousness, succeeding Consciousness I, which had emphasized individualism and hard work, and characterized the era from the late eighteenth century until the New Deal, and Consciousness II, which had emphasized a successful public self and characterized the era following the New Deal.

Much of the first two-thirds of *The Greening of America* describes and analyzes Consciousness I and II, and consists primarily of conventional, even familiar, social science criticism in the manner of David Riesman’s *The Lonely Crowd* and John Kenneth Galbraith’s *The Affluent Society*.<sup>81</sup> Reich described how the self-reliant individualism of early America had given way to the status-driven conformity of corporations; criticized consumerism as a dominant, yet passive and unsatisfying, form of self-expression; and explained how the modern corporate state fails to protect the environment.

In the last third of the book, *The Greening of America* celebrates the views and mores of the college students of the 1960s—the children of Consciousness II parents. The college students were the representatives of Consciousness III, which had “emerged out of the wasteland of the Corporate State, like flowers pushing up through the concrete pavement.”<sup>82</sup> Essential to Consciousness III, Reich wrote, was “choosing a new lifestyle”—one that was authentic and genuine.<sup>83</sup> Reich insisted that a person’s “choice of a life-style is not peripheral, it is

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79. GREENING, *supra* note 47, at 1.

80. *Id.*

81. See DAVID RIESMAN ET. AL, *THE LONELY CROWD* (1950) (abridged and rev. ed. 2001); see also JOHN KENNETH GALBRAITH, *THE AFFLUENT SOCIETY* (1958).

82. GREENING, *supra* note 47, at 429.

83. *Id.* at 310, 318–20, 371, 380.

the heart of the new awakening.”<sup>84</sup> He described the various lifestyles of the youth movement, contrasting the choices made by students with those made by their parents. Reich did not, however, prescribe a specific lifestyle; the point of Consciousness III was to respect the choices individuals made in developing their own lives.

*The Greening* was highly interdisciplinary, so much so that Reich has said that bookstores had difficulty deciding where to place the book—“some bookstores shelved it under gardening,” Reich has written.<sup>85</sup> Reich combined history (primarily in his discussion of Consciousness I), sociology (in his descriptions and analysis of Consciousness II and III), and political theory (in his prophecy about the impending embrace of Consciousness III). Reich discussed sophisticated concepts in an accessible manner, drawing upon an array of sources—government statistics, political philosophy both old (Karl Marx) and new (Herbert Marcuse, Theodore Roszak), literature, films, and especially popular music—and made broad assertions, often based upon items reported in newspaper articles. And, as I will discuss below, although Reich wrote in the third-person voice of a detached analyst, his assessment of Consciousness II was in fact very personal.

#### A. *The Publishing of The Greening of America*

Reich completed his work on *The Greening of America* in early 1970. There was one major problem with the manuscript, however. Reich’s editor at Random House, Alice Mayhew, did not like it. In particular, Mayhew objected to the title, and insisted that the book could not be published as *The Greening of America*. As a result, the manuscript languished in New York despite entreaties from Reich and his supporters, including Professor Emerson. Reich kept his mother, Eleanor, informed of the lack of progress. Eleanor told the story of her son’s idle manuscript to Lillian Ross, a well-known writer for the *New Yorker* and a mother of a child at the Horace Mann School for Nursery Years, which Eleanor ran.<sup>86</sup>

Ross not only wrote for the *New Yorker*, she was the companion of William Shawn, the editor of the *New Yorker*.<sup>87</sup> Although Ross was given a copy of the manuscript, she did not have a chance to read it until it was published. Shawn read the manuscript first and was so impressed that he immediately sought to publish Reich’s work in the *New Yorker* and assigned an editor to work on the

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84. *Id.* at 380.

85. Consciousness III, *supra* note 11, at 77.

86. Reich’s account of his efforts to get *The Greening of America* published is set out in Consciousness III. *See id.* at 78–80.

87. At the time, the relationship between Ross and Shawn was a secret but she has since written about it. *See* LILLIAN ROSS, *HERE BUT NOT HERE: A LOVE STORY* (1998).

manuscript.<sup>88</sup> *The Greening of America* first burst into the public consciousness as a nearly seventy-page article in the *New Yorker* in September, 1970.<sup>89</sup>

The edited version of Reich's article in the *New Yorker* began on a different tack than the notion of "America dealing death." The magazine article started:

There is a revolution under way—not like revolutions of the past. This is the revolution of a new generation. It has originated with the individual and with culture, and if it succeeds it will change the political structure only as its final act. It will not require violence to succeed and it cannot be successfully resisted by violence. It is now spreading with amazing rapidity, and already our laws, institutions, and social structures are changing in consequence. Its ultimate creation could be a higher reason, a more human community, and a new and liberated individual.<sup>90</sup>

To promote the article, the *New Yorker* took out a full-page advertisement in the *New York Times*, which consisted primarily of this paragraph.<sup>91</sup>

The article was enormously popular—the *New Yorker* received more letters in response to *The Greening of America* than any other article in its history. The article also inspired extraordinary demand for the book. Random House moved as quickly as it could to publish the entire book by late October 1970. *The Greening of America* "was sold out within hours at many campus bookstores" and "went into its fifth printing at Random House less than two weeks after it was published."<sup>92</sup>

Overnight, Reich became a celebrity intellectual. It was an experience for which he was particularly unsuited. For someone who had spent much of his life laboring in libraries and analyzing subtle points of law and policy, the brief interviews, the demand to say something pithy and "newsworthy," and the need to simplify the somewhat difficult concepts addressed in his book ultimately proved to be discouraging and even a bit disorienting.<sup>93</sup>

Reich spoke freely with reporters from the *New York Times*, the *Washington Post*, and other publications that came to New Haven to profile the previously unknown professor, was sought by Dick Cavett and other television

88. BEN YAGODA, ABOUT TOWN: THE NEW YORKER AND THE WORLD IT MADE 362 (2000); see also Conscientiousness III, *supra* note 11, at 78–80.

89. See Charles Reich, *Reflections: The Greening of America*, NEW YORKER, Sept. 26, 1970, at 42.

90. *Id.*

91. See Advertisement, N.Y. TIMES, Sept. 24, 1970 (copy on file with author).

92. Malcolm G. Scully, *Reich's 'Greening of America' Makes Him Prophet of Youth*, CHRON. HIGHER ED., Nov. 9, 1970, at 1.

93. See, e.g., Rodger D. Citron, *What Happened to the Revolution*, LEGAL TIMES, Jan. 30, 2006. On being asked about his experience as a celebrity, Reich responded: "[I]t was a remarkable experience . . . it's like being dropped on top of Everest by a helicopter. It was bad for me to shoot my mouth off about a lot of things I hadn't thought through or didn't know how to say right or didn't know what I was talking about. I mean, that was completely contrary to the way I'm accustomed [to working]." *Id.*

interviewers, and found his book extensively discussed in the popular press. The *Washington Post* profile included an account of Reich turning down a request for an interview with the complaint that “they’re trying to turn me into a fifth Beatle.”<sup>94</sup> Years later another *Washington Post* reporter, Don Oldenburg, wrote that “[s]o desperate were the media for a piece of Charles Reich that when he turned down its offer, the ‘Today Show’ scheduled Yale’s chaplain, William Sloane Coffin, as a friend of Reich’s.”<sup>95</sup>

### B. *The Popular Response*

Reich and *The Greening of America* continued to be in great demand well into the year following its publication. Random House, for example, was required to do twelve separate printings of the book between October 1970 and March 1971. Reich received letters from readers all over the United States. The letters were written by parents, teachers, academics, students, and young adults. In one letter reproduced on one of the paperback editions of the book, the “Folks at Wheeler Ranch” were quoted as saying: “Right on. You’ve managed to put into words what we have known for a long time.”<sup>96</sup>

Through no intentional effort or planning on his part, Reich had written a zeitgeist book.<sup>97</sup> Reich captured the spirit of the student counterculture just before it began to recede, and explained the counterculture to parents in such a way as to make it seem understandable and nonthreatening. The book’s tone was just as important as its content in understanding its popularity. Although Reich was a member of the older generation—he was forty-two years old when *The Greening of America* was published—he took the youth movement seriously. Unlike many of his contemporaries, Reich was not despairing of, or was not hostile towards, the different music, practices, and attitudes of the counterculture.

For example, about smoking marijuana, Reich wrote: “Grass is a subtle and delicate experience, an educated experience (one that has to be learned), and it is not too different from the heightened awareness that an unusually sensitive or artistic person has . . . . [I]n a society that keeps its citizens within a closed system of thought . . . marijuana is a maker of revolution, a truth-serum.”<sup>98</sup>

Although Reich embraced the illegal practice of smoking marijuana (but warned that drugs, if used to excess, “dull[ ] consciousness,”<sup>99</sup>) and shared the students’ opposition to the Vietnam War, he did not portray the students as dan-

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94. Legge, *supra* note 72, at G9.

95. See Don Oldenburg, *Fame: The Blaze and the Burnout: The Separate Odysseys of Segal and Reich*, WASH. POST, April 9, 1987, at C5. Oldenburg’s article is particularly insightful, in part because he had taken Reich’s undergraduate class when he was student at Yale.

96. GREENING, *supra* note 47.

97. See Philip Marchand, *What Makes a Must Read?*, TORONTO STAR, Aug. 26, 2006, at H1.

98. GREENING, *supra* note 47, at 280–81.

99. *Id.* at 281.

gerous or threatening. This is not the same point as noting that Reich sided with the students in his celebration of Consciousness III. Instead it has to do with Reich's presentation of the students as peaceful and tame—neither a danger to themselves nor a threat to society. In his assessment of *The Greening of America*, Garry Wills described Reich as “relentlessly flattering to the kids” but “nonetheless comforting to their parents.”<sup>100</sup> In Reich's account, Wills added, “[t]he children are happy, not anguished; they will save others, not be lost themselves.”<sup>101</sup>

Regardless of whether Reich's description of the youth counterculture was accurate (certainly Wills did not think so), it reassured their parents. Two years into Richard Nixon's first term as president, with the Vietnam War ongoing and the National Guard having recently shot four students at Kent State, *The Greening* informed its readers that the revolution would not be violent, just inevitable. One example of the reassurance provided by *The Greening* is a letter Reich received from the mother of a young man in Great Neck, New York, who wrote:

For the first time I began to understand the reason behind some of my 18-year-old son's views which had heretofore perplexed and worried me. But more important, it reinforced my once passionate, long-denied feeling that each human being was important.

Several days before reading your article I mentioned to my son, a freshman in college, that I noticed in his college catalog that a professor of philosophy on the faculty had a doctorate from Yale. Before I could explain my reason for mentioning that fact . . . my son responded with—“What has that got do with what kind of human being he is?” Now I understand his response.<sup>102</sup>

The critics debated extensively whether Reich's description of contemporary society was accurate and whether his prophecy of a Consciousness III revolution was naïve. Before we turn to their responses to *The Greening*, however, it is necessary to consider the most important concept for understanding Reich and *The Greening*: authenticity. According to Reich, the corporate state of Consciousness II had choked off the value of authenticity. In the vocabulary of *The Greening*, Reich acknowledged that the development of Consciousness II had been necessary to check the “monstrous consequences” of Consciousness I: “[R]obber barons, business piracy, ruinous competition, unreliable products and false advertising, grotesque inequality, and the chaos of excessive individualism and lack of coordination and planning, leading to a gangster world.”<sup>103</sup>

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100. Garry Wills, *The Politics of Disneyland*, Universal Press Syndicate (1970), reprinted in THE CON III CONTROVERSY, *supra* note 1, at 12–13.

101. *Id.*

102. Letter from Mrs. Alfred Cosmann to Charles Reich (Sept. 29, 1970) (copy on file with author).

103. GREENING, *supra* note 47, at 63.

Reich argued that the corporate state of Consciousness II—the combination of the expansive New Deal government and the large dominant corporations in the private sector—valued reason, organization, technology, reform, and the professional meritocracy.<sup>104</sup> Reich had in fact spent his professional life succeeding at the highest levels of Consciousness II, moving from one elite institution to the next, completing a full circle from Yale Law School to the Supreme Court to private practice and finally back to Yale Law School. He wrote knowingly about the Consciousness II code of conduct and complained passionately about the artificiality that characterized the social relations of Consciousness II.<sup>105</sup>

In his critique of Consciousness II, Reich often generalized from his own experiences. For example, Abe Fortas, Reich's former employer—"Mr. Henderson" discussed above—seems to be the embodiment of Consciousness II. Reich wrote that: "Consciousness II sees life in terms of a fiercely competitive struggle for success" according to institutional values and a Consciousness II person "becomes . . . oppressive" and "does not enjoy himself while at work."<sup>106</sup>

Similarly, in describing "a modern, high-rise apartment house," Reich noted the "small, identical rectangles that provide not a wasted cubic foot of space for the occupant, nor an irregular angle or cranny where his thoughts can find refuge" and the presence of a "guard" in the "pretentious lobby" to "make sure that no occupant can expect the knock of an unexpected friend."<sup>107</sup> Six years later, in his autobiographical *The Sorcerer of Bolinas Reef*, it became clear that Reich was in fact describing life in his own apartment building on Connecticut Avenue in Washington, D.C.<sup>108</sup>

A final example: In *The Greening*, Reich included a brief discussion in general terms of the customs of dating. "For singles in their twenties and early thirties," he wrote, "the spiritual anti-community is expressed through dating and the search for a spouse or affection from the opposite sex. This adult dating . . . [involves] brutally quick appraisals that the partners make—of each other's status, prospects, personality, intentions."<sup>109</sup> Again, based upon *The Sorcerer*, it is apparent that Reich's analysis was based upon his experience as a single man in Washington, D.C.<sup>110</sup>

Reich wrote passionately about the impersonal relations and artifice of Consciousness II. His critique was rooted in his personal experience, and it was sincere. In contrast to his earlier law review articles, Reich did not qualify his

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104. *Id.* at 62–90.

105. *Id.* at 79–83, 88–90.

106. *Id.* at 78, 79.

107. *Id.* at 187–88, 200–01.

108. *SORCERER*, *supra* note 23, at 48–50.

109. *GREENING*, *supra* note 47, at 200.

110. *SORCERER*, *supra* note 23, at 77–85.

conclusions or restrain his emotions. Reich wrote in an authentic manner about the lack of authenticity of Consciousness II—and his argument resonated powerfully at the particular moment his book arrived. Furthermore, Reich's belief in the availability of genuine communication and celebration of authentic experience led to his enthusiasm for the student counterculture and Consciousness III. The sincerity and passion with which Reich wrote about Consciousness II and III were crucial in making the book so popular to students and their parents at the time.

### C. *The Critical Response*

Despite—or perhaps because of—*The Greening's* popularity and broad readership, the book received a much less favorable reception from popular and academic critics. (Years after the fact, Reich has attributed *The Greening's* popular reception, in part, to the lag between the publication of the *New Yorker* article and the release of the completed book, resulting in the formation of popular opinion before the critics had passed judgment.<sup>111</sup>) Reich had touched upon many subjects in providing a comprehensive account of contemporary society; in such a sweeping, wide-ranging book, there was much for critics to consider. As I will discuss below, they generally agreed with his description of Consciousness I and II but were dubious of his assessment of the counterculture and Consciousness III.

Initially, however, it is worth recalling that not every review was negative. John Kenneth Galbraith, the Harvard economist and author whose work was relied upon by Reich, was very complimentary of *The Greening*.<sup>112</sup> Galbraith wrote a letter to Reich lauding him for “tak[ing] ideas, including ones with which I have been struggling, and mov[ing] them a quantum step . . . . Your use of Consciousness I, Consciousness II, and Consciousness III is not only brilliant but it gives form to what many people feel. Having done so, they will shape their behavior accordingly.”<sup>113</sup>

Dwight MacDonald, one of the most respected cultural critics of the era, told an interviewer that “[t]he early parts on the analysis of the destructiveness of the corporate state and the business about Consciousness I and II are quite sound and

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111. See David Skinner, *The Graying of the Greening of America*, WEEKLY STANDARD, Dec. 19, 2005.

112. John Kenneth Galbraith, *Who's Minding the Store?*, N.Y. TIMES, (Nov. 26, 1970) reprinted in THE CON III CONTROVERSY, *supra* note 1, at 18 (“Reich has written an enormously interesting book . . . . His social evidence and interpretation are wide-ranging; his conclusions are well beyond my imagination—or courage. It will have a big audience . . . [and will affect] political thinking and behavior.”).

113. Letter from John Kenneth Galbraith to Charles Reich (Sept. 29, 1970) (copy on file with author). Galbraith also offered several “supplementary” thoughts, including a suggestion that “[t]here is a bit more to be said for the liberals, I should say us liberals, than you allow.” He noted that there “have been two wings of liberalism: one that accepts the corporate state and its goals” and another, which “has kept re-examining its ideas and which also has reacted intellectually to the plastic and conformist goals of corporate society and to the intellectual preten[sions] and pomposity of the establishment and industrial and public bureaucracy.” This latter wing of liberalism, Galbraith believed, has “not been a negligible force in paving the way for Consciousness III.” *Id.*



often quite shrewd in detail. It's been done before by [Paul] Goodman, [David] Riesman, and [Nathan] Glazer . . . . [b]ut still, it's sound."<sup>114</sup> MacDonald also shared Reich's views that any revolution must begin with consciousness and be cultural and must not be based upon economics.<sup>115</sup>

Nicholas Von Hoffman of the *Washington Post* reviewed the book favorably, saying, "Reich gives us a way of looking at our divisions without construing the groups we don't belong to as devils and without concocting a false reality."<sup>116</sup> Anthony Lewis of the *New York Times* wrote Reich to tell him he was "deeply impressed" at Reich's "understanding and articulation of what we all vaguely feel."<sup>117</sup> Lewis elaborated: [The Greening article in the *New Yorker*] is terrific, thoughtful, and amazingly perceptive and generous, and I should have said so before now. I think my hang up has been that I want to find some way to mention you and your analysis in the newspaper, and I am still wondering how."<sup>118</sup> Even Reich's old boss Abe Fortas was inspired to write a brief congratulatory note.<sup>119</sup>

Nevertheless, among professional critics, *The Greening* had more detractors than supporters. Many disagreed with his embrace of the students' lifestyle. Popular commentators disparaged Reich for taking the students' lifestyle seriously—in particular for overlooking the students' lack of discipline and organization necessary to bring about social change.<sup>120</sup> Others contended that Reich generalized too much from his interactions with the college students at Yale—

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114. Philip Nobile, *An Interview with Dwight MacDonald*, in THE CON III CONTROVERSY, *supra* note 1, at 264–65. MacDonald was referring to Paul Goodman's GROWING UP ABSURD: PROBLEMS OF YOUTH IN THE ORGANIZED SYSTEM (1960) and Riesman's THE LONELY CROWD, *supra* note 81. MacDonald elaborated: "These books have several things in common. First, they were all non-fiction bestsellers. Second, they all had catchy titles—catchy in a serious way. Third and most importantly, each one took some contemporary subject that bothers almost everybody and proceeded to name the animals. Nomenclature is crucial to the success of such books. In *The Lonely Crowd*, the nomenclature is very much what Reich has—instead of Consciousness I, II, III, Riesman has the inner-directed, outer-directed and a third one called the autonomous personality which corresponds to the liberated, spontaneous personality of Reich's Consciousness III." THE CON III CONTROVERSY, *supra* note 1, at 265.

115. THE CON III CONTROVERSY, *supra* note 1, at 264, 268.

116. Nicholas Von Hoffman, *The Soft Revolution*, WASH. POST, Oct. 23, 1970 at B1, *reprinted in* THE CON III CONTROVERSY, *supra* note 1, at 8.

117. Letter from Anthony Lewis to Charles Reich (Oct. 2, 1970) (copy on file with author).

118. *Id.*

119. Letter from Abe Fortas to Charles Reich (Sept. 29, 1970) (copy on file with author) ("Your New Yorker article is superb. There is much talk about it here in Washington.")

120. Malcom Muggeridge sounded this note in *Esquire*, denouncing Reich's theory for its "unresisting imbecility," Malcom Muggeridge, *Unresisting Imbecility*, ESQUIRE (1970), *reprinted in* THE CON III CONTROVERSY, *supra* note 1, at 1. Galbraith made the same criticism, albeit in a more temperate tone. Galbraith, *supra* note 112, at 33.

that he “ignore[d] the scaly underside of Rock culture—the heroin freaks, the self-appointed West Coast executioners,” and so on.<sup>121</sup>

Reich’s celebration of the student counterculture had profound political implications for some critics. Stewart Alsop, a political commentator for *Newsweek*, dismissed *The Greening* as “scary mush” that would tolerate a turn to fascism.<sup>122</sup> George F. Kennan, best known today for his role in promoting the doctrine of containment after the Cold War, sounded a similar note.<sup>123</sup> Kennan accused Reich of exaggerating the “various evils to which [he] calls attention”—adding that “[s]uch exaggeration of admittedly existing evils has regularly formed the initial ideological basis for fanatical political movements, including the totalitarian ones.”<sup>124</sup>

Academic commentators also took issue with Reich’s account of the student revolution. Less concerned than the popular critics with his description of the student representatives of Consciousness III, they focused on Reich’s vision of the revolution he described and anticipated. Part of *The Greening*’s popular appeal derived from its contention that only a change in lifestyle—the essence of Consciousness III—was necessary to bring about the revolutionary change in society he anticipated. The revolution would not be violent, would not require political mobilization, and could not be resisted. There was no need to sign up; one simply needed to be true to one’s self.

Reich’s prediction may have been appealing to the reading public but it dismayed critics in the academy. Critics on the radical left focused on Reich’s claim that the revolution of consciousness would occur easily and painlessly. After Reich cited Herbert Marcuse with approval in *The Greening*,<sup>125</sup> Marcuse provided a response in the *New York Times* in which he complimented Reich for his “insights and critiques” in *The Greening*, but argued that Reich overlooked the inevitable conflict associated with “revolutionary change.”<sup>126</sup> Through his

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121. Karl E. Meyer, *We’ll Build a Stairway to Paradise*, WASH. POST BOOK WORLD, Nov. 22, 1970 at 320, reprinted in THE CON III CONTROVERSY, *supra* note 1, at 5, 7; see also Peter Marin, *Whispers of Uneasiness*, N.Y. TIMES, Nov. 8, 1970, reprinted in THE CON III CONTROVERSY, *supra* note 1, at 27; Garry Wills, *The Politics of Disneyland*, reprinted in THE CON III CONTROVERSY, *supra* note 1, at 12, 13.

122. Stewart Alsop, *A Bag of Scary Mush*, NEWSWEEK, Nov. 9, 1970, at 102, reprinted in THE CON III CONTROVERSY, *supra* note 1, at 3.

123. George Kennan, *Consciousness III is not the Answer*, N.Y. TIMES, Oct. 28, 1970, reprinted in THE CON III CONTROVERSY, *supra* note 1, at 24.

124. *Id.*

125. GREENING, *supra* note 47, at 431.

126. Herbert Marcuse, *Charles Reich—A Negative View*, N.Y. TIMES, Nov. 6, 1970, reprinted as *Charles Reich as Revolutionary Ostrich*, in THE CON III CONTROVERSY, *supra* note 1, at 15.

“ostrich policy,” Marcuse wrote, Reich had written “the Establishment version of the great rebellion.”<sup>127</sup>

On the academic right, Reich was criticized by Nathan Glazer, the Harvard sociologist, for his mistaken description of the condition of American society.<sup>128</sup> Where Reich saw the weakening of the Constitution and the Bill of Rights and the rise of repression, Glazer wrote, “my impression [is] that the Bill of Rights has never been stronger.”<sup>129</sup> Glazer cited advancements in civil rights in the South and protection of “flourish[ing]” appeals to “revolution, violence, and pornography” to counter Reich’s claims.<sup>130</sup> When Reich highlighted the Woodstock concert, Glazer cited a subsequent “rock festival” where “the goings-on were more murderous than life-loving . . . .”<sup>131</sup>

While Glazer hammered away at the accuracy of Reich’s account, Charles Fried of Harvard Law School dismissed Reich as an ersatz Romantic, an undisciplined Rousseau. Fried was scathing: “What makes the picture that Reich proposes so pale is not his familiar criticisms, but the casualness of his analysis, labor, and insight.”<sup>132</sup> He continued, “I would suppose that Reich’s frequent references to the virtue of drug experience is simply a symptom of this fascination with anything that will procure novelty on the cheap, without expense of human labor and human spirit.”<sup>133</sup>

#### IV. BACKLASH

Even if the weight of the professional critics tipped the scales against *The Greening of America*, Reich nevertheless benefited from the prominence and audience that comes with being a best-selling author. In 1972, *Rolling Stone* published a lengthy interview Reich had conducted with Jerry Garcia of The Grateful Dead by Reich and *Rolling Stone* founder Jann Wenner.<sup>134</sup>

Reich continued to teach at Yale but increasingly felt alienated from the institution. Reich was more interested in being a writer than a law professor

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127. *Id.* at 17. Reich rejected the notion that constructing a new consciousness required a “process of radicalization.” See GREENING, *supra* note 47, at 293; Donald H.J. Hermann, *Recent Books*, 70 MICH. L. REV. 415, 421 n.25 (1971) (“Reich specifically rejects the notion that what is required is a ‘process of radicalization’. . . . It is here that Reich parts company with the political radicals of the New Left.”).

128. Nathan Glazer, *The Peanut Butter Statement*, THE NEW LEADER (1970), reprinted in THE CON III CONTROVERSY, *supra* note 1, at 129, 130–31.

129. *Id.* at 130.

130. *Id.*

131. *Id.* at 134 (referring to The Rolling Stones concert at Altamont in December 1969, chronicled in the film “Gimme Shelter”).

132. Charles Fried, *The Greening of America*, 84 HARV. L. REV. 749 (1971) (book review).

133. *Id.*

134. JERRY GARCIA, CHARLES REICH & JANN WENNER, A SIGNPOST TO NEW SPACE (1972) (containing the transcript from the interview sessions). The interview reads more like a conversation, and it appears that the some of the discussion took place under the influence of marijuana.

and there were personal reasons for his desire to leave New Haven. In addition, Yale Law School became more conservative institutionally in the early-1970s. In response to the turbulence of the 1960s—which included numerous protests at the law school and the drama of the Bobby Seale trial in New Haven—the law school did not promote six young faculty members who were left-wing in their political orientation.<sup>135</sup> In 1974, Reich resigned from the law school and moved to San Francisco. He assembled a new group of young friends to help him with his next book, the autobiographical *The Sorcerer of Bolinas Reef*, published in 1976.

In *The Sorcerer*, Reich described the optimism of his youth, detailed the ambivalence and occasional depression he felt while working at a high-powered Washington law firm (Reich did not identify the law firm but, as noted above, he wrote about his experience at Arnold, Fortas & Porter), described his experiences in Berkeley during the summer of 1967, and disclosed his long-repressed homosexuality. Reich described in graphic terms his journey out of the closet in San Francisco in the early 1970s—bold disclosures at the time, even after Stonewall, even for someone who lived in San Francisco during an era in which personal confession was a common form of discourse.<sup>136</sup>

*The Sorcerer* is a fascinating book—as interesting as an artifact from the mid-1970s as for what it says. Reich referred to the “new consciousness movement of the late [1960s]” and suggested that a revolution in consciousness was necessary and possible.<sup>137</sup> Instead of analyzing society, however, Reich trained his focus inward, on himself. Each autobiographical chapter is written in a different style, and in the last chapter Reich describes a trip to Bolinas, the small island near the Golden Gate Bridge in San Francisco, in what approximates a new consciousness for the book.

Because Reich still was a recognizable figure, *The Sorcerer* was extensively reviewed—inevitably in relation to its predecessor, *The Greening*—and widely panned. Anatole Broyard wrote in the *New York Times* that “like [*The Greening*], this one is incredibly . . . ‘green,’ which is to say naïve, simplistic and sentimental.”<sup>138</sup> Broyard argued that “Reich is so profoundly struck with his original epiphany that you might say he only has one book in him.”<sup>139</sup> Another review of *The Sorcerer* in the *New York Times Book Review* was no more favorable: it begins with a summary of *The Greening*, asserts that “[s]ix years

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135. LAURA KALMAN, YALE LAW SCHOOL AND THE SIXTIES: REVOLT AND REVERBERATIONS 235–36 (2005).

136. Given the disclosures in *The Sorcerer of Bolinas Reef* of his personal history of repressing his homosexuality, it is possible today to read the appeal for privacy in *The New Property* as a personal plea. See *The New Property*, *supra* note 53, at 733, 759–60, 785; see SORCERER, *supra* note 23, at 48, 51, 93. I hope to explore this idea in my next article about Reich’s life and work.

137. SORCERER, *supra* note 23, at 101, 247–48.

138. Anatole Broyard, *Books of the Times*, N.Y. TIMES (Nov. 12, 1976).

139. *Id.*

later, it's harder to hear the music, and one swallows hard to see how quickly books age in these fast times," and attacks *The Sorcerer* as "banal" and "sill[y]."<sup>140</sup>

*Newsweek's* reviewer reminded the reader of "the toasted marshmallow" of *The Greening* (which, according to the reviewer, "expressed a kind undergraduate spiritual hunger") then complained that *The Sorcerer* was "a heart-on-sleeve affair, mired in clichés of thought and language."<sup>141</sup> The *New Republic's* Carl Tucker dismissed *The Sorcerer* as "a pathetic, on-and-off honest-and-sentimental account of a mostly lost life," and reiterated a criticism often made of *The Greening*—that "the cultivation of 'consciousness' is a wasteful, self-indulgent activity if one lacks work to give existence shape and meaning."<sup>142</sup>

Not every review was negative.<sup>143</sup> But the reviews cannot fairly be described as "mixed" and the hostility in some of the negative reviews is not concealed. It is entirely possible that *The Sorcerer* was not a good book. In my view, however, the second chapter of *The Sorcerer*, describing Reich's life in Washington, D.C. in the 1950s, provides a compelling account of life in an elite corporate law firm. I assign this chapter in my "Law and Literature" class, and other professors assign it as well. It also is possible that Reich's candid discussion of his homosexuality and description of several sexual encounters dismayed some critics; for example, Broyard and *Newsweek* note that in *The Sorcerer*, Reich states that he was a virgin until his early forties.

What is most revealing about the negative reviews is the vehemence with which they attacked *The Sorcerer*—as if they were attempting to discredit, belatedly, *The Greening of America*, in particular its sincerity and naiveté. The critical reviews have the feel and tone of a purge, as if the writers not only wish to repudiate *The Greening* but also to deny that the historical moment that made *The Greening* possible ever existed.

## V. CONCLUSION

After *The Sorcerer*, Reich continued to live in San Francisco. He wrote a number of articles for alternative newspapers and frequently appeared as a guest on alternative San Francisco radio stations.<sup>144</sup> In the 1980s, he resumed teaching, offering classes at the University of California-Santa Barbara and University of San Francisco Law School. In 1991, an old Yale Law School friend,

140. Paul Zweig, *The Awakening of Charles Reich*, N.Y. TIMES, Nov. 28, 1976, at 3–4 (book review).

141. Peter S. Prescott, *Please Touch*, NEWSWEEK, Nov. 29, 1976, at 106.

142. Carl Tucker, *The Sorcerer of Bolinas Reef*, THE NEW REPUBLIC, Feb. 19, 1977, at 32, 33.

143. See Starr Jenkins, *Book Review*, 13 WESTERN AMERICAN LITERATURE 205, 206 (1978); Stephen Ford, *The Sorcerer of Bolinas Reef*, S.F. REVIEW OF BOOKS, Jan. 1977, at 9–11.

144. See, e.g., Charles Reich & James Roediger, *Beneath the Bar Facades: A Look at Why We Don't Connect*, THE ADVOCATE, May 4, 1977; Charles Reich & Gregory Marriner, *Caring: Applying Humanism to the Corporate Society*, S.F. BAY GUARDIAN, Feb. 10, 1977.

Guido Calabresi—then in his second term as dean—arranged for Reich to return as a visiting professor. Over the next four years, Reich taught one course a year at Yale Law School and, in 1995, completed a book entitled *Opposing the System*.<sup>145</sup>

*Opposing the System* revealed that in the nearly two decades since *The Sorcerer*, Reich had become more pessimistic about the fate of individual liberties and more skeptical about the combined institutional power of corporations and government. The United States, however, had become more politically conservative. The election in 1992 of Democrat Bill Clinton—who had campaigned for George McGovern in 1972 while he was a law student at Yale—demonstrated the political direction of the nation, as Clinton campaigned as a centrist “New Democrat” and assiduously avoided the liberal label. *Opposing the System* was not reviewed as extensively as either *The Greening* or *The Sorcerer*.<sup>146</sup>

Reich’s stint as a visiting professor at Yale Law School ended in 1995. Since then, he has written several short articles, including a marvelous account of Justice Black’s relationship with Chief Justice Earl Warren during the year the Supreme Court issued its first decision in *Brown v. Board of Education*.<sup>147</sup> Another recalls his year-long stint at Cravath, Swaine & Moore, evoking a bygone era of private practice on Wall Street.<sup>148</sup>

Even as Reich has receded from academic and public life, *The Greening* is still very much part of the public discourse. The 1970s best-seller enjoys a schizophrenic life today. On one hand, the book—in part because of its title—is associated with the now-established environmental movement. This association is generally positive. In the summer of 2006, *Newsweek* ran a cover story on the increase in energy conservation efforts in the United States, and apparently could not come up with a better title for the article than the one used by Reich for his book.<sup>149</sup>

On the other hand, *The Greening* is also commonly known as a political manifesto that celebrates Consciousness III and the “lifestyle” choices made by members of the 1960s youth movement. The book is frequently cited derisively, often by conservative commentators in their ongoing culture war against the 1960s.<sup>150</sup> As the author of *The Greening of America*, Reich is often caricatured

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145. CHARLES REICH, *OPPOSING THE SYSTEM* (Crown 1995).

146. The most prominent review was in the *New York Times Book Review*, which published a devastating critique by Francis Fukuyama on its front page. See Francis Fukuyama, *Dust off the Ramparts*, N.Y. TIMES, Nov. 26, 1995, § 7, at 1.

147. *Deciding the Fate of Brown*, *supra* note 21, at 138.

148. *Letter to a Cravath Associate*, *supra* note 18.

149. Jerry Adler et. al, *The Greening of America: With Windmills, Low-Energy Homes, New Forms of Recycling And Fuel-Efficient Cars, Americans Are Taking Conservation Into Their Own Hands*, NEWSWEEK, Aug. 14, 2006.

150. See, e.g., Daniel Henninger, *Wonder Land: Blue Democrats Lost Red America Back in 1965*, WALL ST. J., Nov. 5, 2004, at A12 (“Admiration for childlike fears in politics received approval in 1970 from

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as the Yale Law School professor who dropped out and became a hippie—even though he continued to teach and write after *The Greening*.<sup>151</sup>

For Reich, the most enduring legacy of *The Greening* is the fact that—despite *The New Property* and the other law review articles, *The Sorcerer of Bolinas Reef* and *Opposing the System*, the many students he taught over the course of four decades, the clerkship with Justice Black, and the friendship with Justice Douglas—*The Greening* has become his defining accomplishment. “One of the problems with fame,” Reich told the *Washington Post* in 1987, “is they try to pigeonhole you . . . like I’m stuck with ‘*The Greening of America*’ for the rest of my life.”<sup>152</sup>

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Charles Reich’s bestseller ‘The Greening of America,’ a paean to youth and a ‘new and liberated individual.’”); John Leo, *How Everything Changed*, WALL ST. J., June 28, 2000, at A20 (describing “shrewd judgment” of Roger Kimball, author of “The Long March,” that “The Greening of America” was “both a fatuous manifesto and an accurate predictor of things to come”); Amity Shlaes, *Taste - de gustibus: Blue Collar Man Endangered in Age of New Work*, WALL ST. J., Sept. 3, 1999, at W15 (“Remember Charles Reich’s mongo bestseller, ‘The Greening of America’? Since then, Mr. Reich’s promise that the baby boomers would rework society into three stages of Consciousness has been revealed as so wacky that its principal value now is as a sort of joke.”).

To be fair, not all of the criticism is from the right. Michael Kinsley described *The Greening* as “the definitive expression of the 1960s zeitgeist and possibly the most foolish book ever to be serialized in the *New Yorker* and debated on the *New York Times* op-ed page (though that is a bold claim).” Michael Kinsley, *Glass Houses and Getting Stoned*, TIME MAG., June 6, 1988, at 92; see also Michiko Kakutani, *Call it Jeanetics: Pants Now Need Their Own Specialist Scholars*, N.Y. TIMES, Aug. 8, 2006, at E8 (“Mr. Reich’s predictions—about blue jeans and just about everything else—have failed to come true.”).

151. We need look no further than the depiction of “Professor Green”—modeled on Reich—in the *Doonesbury* comic strip. *Doonesbury FAQs*, SLATE, [http://www.doonesbury.com/strip/faqs/faq\\_ch.html](http://www.doonesbury.com/strip/faqs/faq_ch.html).

152. Oldenburg, *supra* note 95, at C5.





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