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On the State of Environmental History

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THE STATE OF THE NATURAL RESOURCES LITERATURE

Hal K. Rothman* on the State of Environmental History

Books Discussed:

ROBERT BULLARD, Dumping in Dixie: Race, Class, and Environmental Quality (1990).
WILLIAM DEBuYS, Enchantment and Exploitation: The Life and Hard Times of a New Mexico Mountain Range (1985).
RODERICK NASH, Wilderness and the American Mind (1967).

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In many ways, environmental history provides the context from which environmental law and policy stem. The laws and policies embody the dreams of nostalgists and regulators alike. But the making of them is often much messier, like making sausage, and the actual history reminds us that the laws may not become a blueprint for how to manage the natural world.

In its brief modern history, environmental history has filled in the story of the creation of environmental law, charting not only the establishment of the corpus of statute but providing a picture of the cultural context, premises, values, constraints, and political structure that stemmed from them as well. If the laws themselves tell us what people decided, environmental history reveals why they made the choices they did, what made them see the range of options they considered, and, in some cases, why avenues of decision that seem open to the present were closed in the past. In this, environmental history offers a roadmap, a guide to the cultural impulse that underpins natural resource law. In turn, these explanations provide insight into the reasons that environmental laws offer the options they do and the policies that they birth have the limits they contain. In the end, environmental history also demonstrates why environmental law does not answer some of the pivotal questions of our time.

A Brief History of Environmental History

The discipline of environmental history, the study of human interaction with the physical world over time, does much to illuminate these limitations. Although the roots of modern environmental history can be traced to writers such as Walter Prescott Webb, author of The Great Plains (Grosset & Dunlap 1931), and the Annales School in France and its descendants such as Emmanuel Le Roy Ladurie, from a policy perspective, Samuel P. Hays emerges as the founder. His seminal work, Conservation and the Gospel of Efficiency: The Progressive Conservation
Movement (Harvard 1959), inaugurated the integration of history and policy as he assessed the rise of the conservation movement and the motivations of its leaders. Along with the more ideological Roderick Nash, Wilderness and the American Mind (Yale 1967), Hays opened the way for the emergence of modern environmental history.

Hays and Nash together carved a broad path for environmental history. Hays fashioned a nuts-and-bolts policy history, a look at what the issues of the time were and how conservationists banded together to solve them through the use of influence that led to legislation. In this, the conservationists were typical Progressive era Americans: they believed that passing a law assured that all right-minded citizens would respect its provisions. In their view, statute alone would be sufficient. Good Americans would abide by the law because it was the law, would see the virtue in the corrective legislation, and would add whatever law forbid to the list of taboos of late Victorian America.

Nash offered a different picture, a vision of the American response to the natural world as simultaneously a fear of the wild and, later, a response to its scarcity. Echoing the noted historian Frederick Jackson Turner, who fashioned a sense of loss from the announcement of the closing of the American frontier in 1890, Nash strongly insinuated that the appreciation for wilderness stemmed from its scarcity in a rapacious industrial society—and from the sense of loss that accompanied the transformation of America from agriculture to industry and the urbanization that accompanied it.

Together the two created an intellectual rationale and an analysis of its application as the regulatory state took shape. Although Nash was decidedly passionate, the two illustrated how widely held sentiments created law that led to policy and eventually started a set of management practices that became American institutions. In another sense, Nash and Hays together explained why the federal agencies created in the first two decades of the twentieth century—the Reclamation Service, the United States Forest Service, and the National Park Service prominent among them—bore the “service” moniker rather than that of “agency” or “bureau.” The impulse came from the same place as Woodrow Wilson’s call for “Princeton to the nation’s service” during his tenure as president of that venerated institution. Early conservation was noblesse oblige, part of the building material of a maturing society.

During the two decades following 1970, a strident advocacy and a strong moral tone marked the emergence of environmental history. In a manner similar to the role of scholarship about race, class, and gender, environmental history provided scholarly justification for the goals of the environmental movement. Environmental historians became advocates of the environment; they argued against the main currents of American and world society, embracing the ethos of the 1960s, creating a pantheon
of heroes, and using history to suggest alternative visions of a better world. This was a complicated dance, powerful at times, but easy for its opponents to dismiss as partisanship. This environmental history made its mark in the classroom, not the boardroom or in hearings. Part and parcel of the American Cultural Revolution, the constellation of changes colloquialized as "the 1960s," its reach was as great as the movement that spawned it and equally limited.

In this first generation, Donald Worster emerged as the leader. Worster's first major book, *Nature's Economy: A History of Ecological Ideas* (Cambridge 1977) presented the first articulation of an intellectual relationship between scientific thought and nature. Worster's idea and his later work became the basis of a type of environmental thought that I call the "tragedy school." In a compelling and even seductive formulation, Worster treated human endeavor as a fall from grace, from a purer time in which a smaller humanity embraced agriculture and was able to limit its impact on the land. This declensionist thinking reflected strains from Roderick Nash's work but reached full fruition in Worster's *Dust Bowl: The Southern Plains in the 1930s* (Oxford 1979), an indictment of capitalism and American attitudes toward the physical world. A compelling and influential scholar, a man with the passion of John Muir, Worster brilliantly blended advocacy and scholarship, passion and insight, and shaped the direction of environmental history for the subsequent decade, in the process all but burying the policy dimensions of the field.

A counter trend to Worster's point of view emerged at about the same time, pointing the way toward assessing policy and law from a different perspective. Throughout the 1980s and 1990s, scholars analyzed the environmental actions of societies and the consequences of those decisions, gradually attaining distance from the position of defending nature—although that component remained prominent—and moving toward weighing the impacts of human endeavor and factoring in the consequences of cultural choices. Despite his position as one of the leading advocate-scholars in environmental history, Worster receives much of the credit for this innovation. Both *Dust Bowl* and *Rivers of Empire: Water, Aridity, and the Growth of the American West* (Oxford 1985) persuasively argued that ecological disasters and the hierarchical societies they produced were the consequences of cultural choices and human actions far more than the result of environmental circumstances.

From *Rivers of Empire*, it was a short step to an even more complicated look at the way human societies interact with the physical world around them. In the mid-1980s and early 1990s, a series of books, most prominently Richard White, *Roots of Dependency: Subsistence, Environment, and Social Change among the Choctaws, Pawnees, and Navajos* (Nebraska 1983), William deBuys *Enchantment and Exploitation: The Life
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and Hard Times of a New Mexico Mountain Range (Knopf 1985), and William Cronon, Nature's Metropolis: Chicago and the Great West (Norton 1992), convincingly argued that human values and the decisions they spawned were at the core of the transformation of environment, creating in their aftermath some environmentally untenable situations. Cronon went so far as to suggest that nature was not a constant. There could be different kinds of nature, an idea that adherents to a catholic view of nature found difficult to swallow. White, deBuys, and Cronon saw a vibrant nature responding to human endeavor, but in their formulation, culture more than nature lay at the core of environmental transformation.

During the 1990s, this idea acquired the sobriquet "the social construction of nature." Articulated in an amazing array of ways and places, prominently in the influential collection Uncommon Ground: Toward Reinventing Nature (Norton 1996), edited by William Cronon, this general idea virtually assured that the era of reverence in environmental history had come to an end. After Cronon, even the most fervent had a hard time believing in a pristine nature. For policy scholars, this evolution had positive results. The older advocacy view left little room for policy analysis. When environment was morally right, it was hard to weigh options—a problem that environmental professionals faced as well. Negotiating for environment meant compromise, and in an era when organizations such as Earth First!, with its motto, "no compromise in defense of mother earth," dotted the landscape, a middle position that attained results and engendered respect remained elusive. As the older advocate perspective was diminished and replaced by a clear intellectual rationale, the field made room for an articulated policy approach to environmental history.

Policy and Environmental History

Water is perhaps the most widely studied question in environmental history and for good reason. As the best histories of water—Worster, Rivers of Empire; Donald J. Pisani, From Family Farm to Agribusiness: The Irrigation Crusade in California and the West, 1850-1930 (California 1984), To Reclaim a Divided West: Water, Law and Public Policy, 1848-1902 (New Mexico 1992), and Water, Land, and Law in the West: The Limits of Public Policy, 1985-1920 (Kansas 1996); and Norris Hundley, Jr., The Great Thirst: Californians and Water, A History (revised edition, University of California Press 2001)—show, the control of water, especially in the western half of the nation, provides the control of the direction of the society in question. There is a direct line between owning water and dominating society. Nowhere in twentieth-century America is the role of policy more prominent in determining who gets water;
nowhere are the consequences for the losers as grave nor the successes of the winners as great.

A closer look at this remarkable body of scholarship reveals powerful trends. Water is a "might makes right" business; social good is in the eye of the beholder and can be construed in many ways, negating arguments about common goals and shared resources. Water management is a superficially democratic process in the sense that institutions of democratic government play a role in determining the direction that water—and the wealth that accompanies it—will travel. Even more, this story, told from the many viewpoints of outstanding scholars, suggests the power of bureaucracy and its ability to inflict its wishes on other constituencies.

This of course is the story of Chinatown, the 1975 film that turns on the ability to bring water to the desert of southern California. This is an often-told story, with writers as diverse as the late journalist Marc Reisner, Cadillac Desert: the American West and its Disappearing Water (Viking 1986) chiming in, and its most basic processes, the transfer of water from rural to urban uses, called "reallocation," is now underway at an even faster pace than William Mulholland and the fictional Jake Gittes ever dreamed. Reallocation figuratively takes water from the cotton fields outside of Yuma, Arizona, and deposits it at water parks like the Schlitterbahn in New Braunfels, Texas, emphasizing one economic regime over another in exactly the manner of the struggles of the early twentieth century. The process is already well underway in California, where the numbers reveal a surprising reality. In California in 1990, 19.4 percent of the water used went to non-agricultural purposes. The more than 80 percent of rural agricultural water generated about two percent of the state's gross income, an inefficiency so great that it overcomes even the value of California's fabulous agricultural bounty.

Reallocation inspires deep-seeded passion, for it suggests an administrative rewriting of customs of the past one hundred years. Like the farmers of the Owens Valley, who took out an advertisement that read, "We who are about to die salute you," as Los Angeles drained them of their water in the 1910s, the rural West of today sees in the shift of water to urban use a kind of social genocide that renders them not only irrelevant, but destitute. They argue for their viability with "culture and custom" arguments, romantic figments of their imagination that tugged on the heartstrings of many but demonstrated how archaic their philosophy was as well as how much power the rural West had lost. For generations, they won this battle through careful manipulation of state and federal redistricting and by using the power they attained as the oligarchic beneficiaries of federal water to grease campaign coffers. By the late 1970s, they began to stumble, and as they lost power, a backlash against change emanated from the rural West. It argued for a
perpetuation of obviously inefficient practices for the social good they created and, even more, for the extension of greater federal resources to rural areas.

The Sagebrush Rebellion, as the movement that gave these ideas credence was called, was not really new; it merely reshaped the objections of the previous century in current terms. The rebellion was about land, but its ideals applied equally to water. Rebels believed that mining, ranching, and agriculture still held sway in the rural West, even though most western states were more than 90 percent urban. As R. McGregor Cawley, Federal Anger, Western Land: The Sagebrush Rebellion and Environmental Politics (Kansas 1993) suggests, the Sagebrush Rebels were heir to a long tradition that argued for local control. Their complaints sounded like characteristic griping but struck a chord in a changing nation. Advocating an updated version of "states' rights," the idea that state authority supersedes federal authority, the Sagebrush rebels fashioned local government as the most—and sometimes only—viable form of democracy.

This philosophy was hardly new; instead it was a challenge to the way the United States had operated since the Civil War. That war had been about the concept of union as much as the issue of slavery; its aftermath had been proof of the supremacy of the federal system in the United States. Although throughout the late nineteenth century and the first half of the twentieth, federal authority endured numerous attacks aimed at its authority over federal land, its supremacy held into the 1970s. Despite the anti-authoritarian cast of the 1960s, even that tumultuous decade saw the expansion of federal power and the use of it to protect land from development rather than to allow it to move from national to local hands. In this context, the Sagebrush Rebellion seemed anachronistic, a relic of an earlier America.

The larger trends in American society did little to suggest to rural westerners, themselves threatened not only by the changing economic climate but by the changing culture of American society, that they should cede age-old prerogative. The rural West prided itself on its self-reliant traditions, rarely acknowledging the role of federal subsidies for water, electricity, and even grazing that underpinned their independence. "Culture and custom," the code words for the insistence that time-honored use of public lands conveyed de facto ownership to long-time users, became the watchwords of the Sagebrush Rebellion. Hardly different from "squatters' rights," this idea lacked a basis in law, but it resonated on the stump. Although many western states had never even owned the land that sagebrush rebels targeted for transfer, the idea of more local control was appealing. This was not local land, as sagebrush rebels liked to insist. It was merely "locally located," proximate to people who had made long use of it under federal terms.
Nevertheless, the Sagebrush Rebellion spoke to deep-seated regional fears that crystallized in the rural West. The individual rights revolution of the 1960s, the growing distrust of authority and the federal government in particular, and the impact of environmental regulation inspired fear and disgust at what some westerners self-righteously believed was a powerful federal lash. The strident cries of the rebels reminded the nation of the fears of rural westerners and many who found inspiration in the mythology of the American West offered at least tacit support.

Two different segments of American society seemed juxtaposed in a zero-sum conflict. One would win; the other would lose. One side saw itself as the heir to the Jeffersonian tradition of the Agrarian Republic, individual yeoman farmers and ranchers who believed that they were the honest backbone of American society. On the other side stood an impressive array of Americans, many of whom lived elsewhere but professed belief in a set of goals that could best be described as communitarian. The reason for protecting such lands and keeping them in federal hands was simply so that all Americans, if they chose, could enjoy them. The different levels of protection, from restrictive wilderness to limited national park area to almost open BLM land, created a scale that allowed anyone either the solitude and quiet they coveted or use of the technological gizmos they craved.

Clearly class plays a role in such disputes over land and water and environmental historians have begun to study its role in shaping the values that surround environmental history. This work has been carried on mostly by younger scholars and is beginning to make an impact on the field. Louis S. Warren, The Hunter's Game: Poachers and Conservationists in Twentieth-Century America (Yale 1997), and Karl Jacoby, Crimes Against Nature: Squatters, Poachers, Thieves, and the Hidden History of American Conservation (California 2001), have begun a new dialogue that reframes conservationists, and by inference later environmentalists, as powerful purveyors of a class-based value system that is regarded as oppressive by those who do not share such values. While this would be a simple dispute in most circumstances, the power of the conservationists, the ones determining what is permissible, was so much greater than their opponents that it relegated opposing values to a bottom rung and criminalized behavior that locals thought normal. In this, such scholars set up an argument that conservationists were elitist, a charge made in recent years against environmentalists by non-white groups as well as scholars such as Robert Bullard, Dumping in Dixie: Race, Class, and Environmental Quality (Westview 1990); Devon G. Pena, ed., Subversive Kin: Chicano Culture, Ecology, and Politics (Arizona 1998); and Laura Pulido, Environmentalism and Economic Justice: Two Chicano Struggles in the Southwest (Arizona 1996). Such works present a different
dimension of the challenge offered by the Sagebrush Rebels, suggesting an even greater role for class in future analysis.

Environmental History and Policy in the Real World

In 2000, Clark County, Nevada, home to Las Vegas, created an Endangered Species Act Habitat Conservation Plan for seventy-nine endangered species in the 200-mile long county. Hailed as model by no less a luminary than then-Secretary of the Interior Bruce Babbitt, the plan set a fee of $550 per acre for species mitigation. Developers had to pay before they could proceed. For once, the Endangered Species Act seemed to work. None of the finger pointing, the threats to bring political power to bear, or the requisite lawsuits to enforce its provisions followed. In Las Vegas?

The Endangered Species Act (ESA) was perhaps the most contentious piece of environmental legislation ever passed. Born of the bipartisan environmentalism of the 1960s and 1970s, it perfectly reflected the traits of the era that spawned it. The ESA came from a flush society, where putting aside economic resources to preserve threatened species was tenable because of the widespread sense that everyone had enough of the pie to give up a little. In some ways, the ESA was as class-based as the turn-of-the-twentieth-century conservation movement; in others, especially in the power of its provisions, it stemmed from much later development of the regulatory state. Its advocates were passionate about its application; its opponents apoplectic about its very existence. In 1978, five years after its passage, the ESA nearly stopped the construction of the Tellico Dam. It seemed the epitome of 1970s environmentalism.

Then the curtain came down. OPEC, Vietnam War-related inflation, and the end of post-war prosperity all hit at once, best epitomized by the rising cost of gasoline for which the nation stood in line in 1974. In an instant, the pillars of post-war prosperity, cheap energy, the rising value of wages, and low inflation, came crashing down. The United States faced a new world, one with far fewer opportunities. Beginning in 1974, the United States entered a 23-year period that in essence represented a regression to the American mean. The catalyst was the annual drop—for each of those 23 years—in the real value of hourly wages. Simply put, people worked longer hours to stay where they were on the socio-economic ladder. One-income families declined; it took more hours to make the grade in each successive year and middle-class women entered the workforce in greater numbers than even earlier times in American history. The period between 1945 and 1974 was a great aberration, an era in which one typical income went farther than at any other point in American history.
A product of the heady time when Americans truly thought they could permanently solve problems like poverty and disease and they possessed a pie big enough that pieces of it could be kept out of commercial use forever, the Endangered Species Act of 1973 came at a time when the conditions that created it—and nearly every other piece of environmental legislation that followed the Wilderness Act of 1964—were rapidly coming to an end. That brand of environmentalism was a product of wealth, idealism, and optimism, once abundant traits that became scarce after the mid-1970s. Bipartisan environmentalism came apart as the economic rules of post-World War II American society ceased to apply. As the nation lost industries like electronics and nearly gave up others like automobiles, holding back resources for social rather than economic purposes made sense to fewer politicians. Designed for an era of plenty, the ESA became controversial in a more lean time.

Yet in Las Vegas, where money was at the root of every transaction in a clear and candid way, the ESA applied as it did nowhere else in post-1975 American society. The ESA was first invoked in 1989 to protect the desert tortoise, threatening to bring a nascent development boom in Las Vegas to a screeching halt. On August 4, 1989, Secretary of the Interior Manuel Lujan, Jr., a New Mexican and no environmentalist by any measure, implemented the Endangered Species Act emergency provisions to protect the tortoise. The filing sent shivers through Las Vegas developers. By 1989, big national players had seen what Las Vegas had to offer. The world's largest master-planned community in the world, twenty-six square miles of the northwest Las Vegas Valley containing more than 35,000 acres of land, was underway at a cost of more than $60 million in infrastructure for this project. The entire project was located almost entirely on prime desert tortoise habitat, and under the ESA emergency provisions, it and everything else in the valley—flood control projects, new schools, roads, and homes—all stopped cold. With the desert tortoise listed as an endangered species, no work could proceed and developers could not discern any clear process for mitigation.

As a constellation of development forces sought to overturn Lujan's order, one local government entity, Clark County, moved toward a different solution. Seeing itself as a stakeholder and a facilitator, the county initiated discussions with developers, the five incorporated municipalities in the county, the Nature Conservancy, environmental groups, recreation interests, and even ranchers and miners. On August 28, 1989, they formed the Clark County Desert Tortoise Habitat Conservation Plan Steering Committee. The committee planned to find a way through the wreckage and come up with a solution that simultaneously complied with the ESA and let the developers continue.
The motivation was money. With all of the forces in favor of development lined up and heavily invested and a recession that drove Californians east by the thousands, there was too much profit at stake to run the risk of being stopped. In a low tax state like Nevada, growth paid whatever portion of the bills that tourists did not. Impact fees, user fees, and the like were an essential part of the budget of every governmental entity—city, county, and even state—and the threat of the termination of that source of revenue brought people to the table. The City of Las Vegas estimated that the tortoise listing would cost $11 million in lost revenues during the first year alone. Developers recognized that the vast profits aching to be taken from the construction of new subdivisions were in peril. They had experienced the ups and downs of the previous years and with the opening of the Mirage, the Excalibur, and all the other hotels along the Strip that took Las Vegas from gambling to gaming to tourism to entertainment in a decade, anybody with the heart of a developer recognized that this was the moment. Litigation, even successful litigation, took way too long. They had to build and build now. The only way was to reach some kind of compromise.

A clause in the ESA permitted "incidental taking" of individual members of a listed species if a plan to further the survival of the species as a whole made compromise possible. A strategy that stemmed from the flush days of the 1970s, this clause allowed the creation of a Habitat Conservation Plan (HCP). Applied in Clark County, it might save the tortoise and not wreck the local economy. In a community that had been on the periphery of American society for so long, the chance for growth and the legitimization that came from it was too valuable to be too expensive. Under the circumstances, if an HCP cost a lot, so be it. The developers knew they could make more, the city and county knew its revenue stream, dependent on growth, would continue, and tortoise advocates figured they could save the species in the process.

Here was incontrovertible proof that the ESA was a full-stomach phenomena rooted in the environmental ethic of the 1970s. Developers agreed to pay for the privilege of continuing to build on land where development had begun before the listing date of August 4, 1989, and the Clark County Short Term Habitat Conservation Plan was cobbled together. Tortoise advocates asked for $2.3 million for research, land acquisition, and a conservation center away from the main corridors of regional growth. In exchange, developers were allowed to continue to build on 7,000 acres at a fee of $250 per acre.

The program worked so well that in the course of a decade, the short-term plan led first to a long-term HCP and finally to another incidental take permit for 79 other species and received approval in November 2000. The battle between developers, the environmental community, and the law in Clark County ended without protracted
litigation. Not everyone got everything they wanted, but nearly everyone could live with the result. The grease was money. The roots of the ESA in affluence and optimism made it possible to mitigate with the application of dollars. The law had been written from a set of assumptions that made it viable in 1990s Las Vegas. Full stomach environmentalism met unbridled capitalism for the first time in two decades. Everyone, even developers, became environmentalists when enough money was involved, and in Clark County, Nevada, there was more than enough money to go around.

Even more stunning, Las Vegas initiated a pattern that became a model for the rest of the nation for resolving ESA disputes. When Bruce Babbitt hailed the 2000 multi-species plan as the example he intended to use to show people how ESA compromises could be accomplished, he unconsciously illustrated the importance of environmental history for policy makers. The ESA had been controversial; an analysis of its origins revealed a series of values encoded in it that worked in specific circumstances. Problems began when the economic situation in the nation changed, making the assumptions that underpinned the design of the law archaic. The rancor disappeared when the circumstances recurred, as they did in Las Vegas in the 1990s. The law had been applied with so little rancor there that the experience heartened people on both sides of environmental disputes. Nowhere else had developers and the environmental community found a solution that everyone could live with. The idiosyncratic town in the desert, the one that everyone pointed to as the worst example of environmental excess, had something significant to offer American environmentalism.

It also highlighted why, despite Babbitt’s hope, the Clark County HCP model was unlikely to be widely emulated. The circumstances in Las Vegas were unusual and reminiscent of an earlier era, and they were decidedly not the norm throughout the nation. The tools of environmental history revealed not only why the policy worked in Clark County, but also why it would not in most other situations. In that, it proves a prescient guide for scholars of natural resources.

In the end, environmental history has much to show scholars as they assess policy. Law is not created in a vacuum, and the context of creation is, in the end, as important as the results of the process. Environmental history explains that process, grounding it in time and articulating the premises that underlie law. In this sense, it is a precursor of policy, a necessary corollary to understanding the law itself.