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Curry on Brooks, 'Before Earth Day: The Origins of American Environmental Law, 1945-1970' (book review)

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Karl Boyd Brooks. *Before Earth Day: The Origins of American Environmental Law, 1945-1970.* Lawrence: University Press of Kansas, 2009. xxii + 263 pp. $34.95 (cloth), ISBN 978-0-7006-1627-5.

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The Rise and Fall of American Environmental Law

"Perhaps no single goal will be more important in our future efforts to pursue the public happiness than that of improving our environment."–Richard M. Nixon, 1970

Karl Boyd Brooks's examination of environmental law in the mid-twentieth century serves to remind us of the widespread popular and bipartisan political consensus for protecting the environment that had coalesced by the time Americans celebrated the first Earth Day in April 1970. Brooks argues that "ordinary people made environmental law" (p. 5), by which he means that citizens identified unacceptable risks to the environment and initiated protests to which lawyers, legislators, regulators, courts, and policymakers were forced to respond. His account identifies and illuminates the key actors, laws, policies, and processes that produced environmental law as a viable field of professional practice as well as a subject included in standard law school curricula.

Brooks begins his study in 1945 and credits "conservationists" with initiating major actions to protect the environment in the wake of severe degradations it had suffered after years of massive New Deal public works projects and the exigencies of rapid industrial expansion in World War II. Further, Brooks argues, the "administrative state" had become a behemoth, shaping "every facet of the complex dynamic relationship between citizens and the subhuman world" (p. 41). Using two key pieces of legislation enacted in 1946, the Fish and Wildlife Coordination Act and the Administrative Procedure Act, citizens began to "destabilize federal administrative law" by forcing a shift in the locus of lawmaking to public hearings and court rooms (p. 42). This was followed by a new phase in which activist citizens enlisted the aid of scientific experts in pushing for improvements to the quality of their air and water, particularly in severely polluted major metropolitan areas. Courts wrestled with questions concerning the reach of state legislatures to rein in polluters by employing their traditional police powers to protect the public's health. Thus, by the time Congress enacted the first federal air pollution statute in 1963, it was building on a solid fifteen-year foundation of state and local environmental lawmaking (p. 62).

Popular enthusiasm for cleaning up the environment was also building by the 1960s due to Americans' increased ability to enjoy leisure activities in outdoor environments, pursuits that were once the exclusive province of the rich. Popular environmentalism created a political consensus for nationalizing environmental law, as "local people came to realize the value of air and water law enforced by the strongest agent, the United States government, whose authority to do so was conferred by Article VI's Supremacy Clause" (p. 124). Brooks next shifts to an in-depth examination of the efforts of one attorney, Bruce Bowler of Boise, Idaho, in order to illustrate in detail the making of environmental law and the pioneering efforts of its earliest practitioners. After tracing the appearance of environmental law in law school texts and curricula, Brooks concludes his study with a sobering analysis of the field's stagnation in the late twentieth century and its apparent decline in the early twenty-first. The early decades of environmental law, he argues, were active and vibrant, the outgrowth of creative tensions between citizens and government, as well as among local, state, and federal governments. But the same dynamism that made the field fluid and responsive also left it unstable and vulnerable. Comparing its trajectory to that of labor law, Brooks argues that as environmental law became institutionalized it settled into prosaic dispute resolution–"defanged" of its original confrontational spirit and vitality (p. 208). Significantly, although environmental perils loom larger than ever in the twenty-first century, Brooks sees little hope in the possibility that the field will be revitalized through renewed public pressure to employ law in nature's defense. "Resentful of constraints on consumption, dedicated to

maximizing their comfort, eager to wield ever-greater power over nature," he warns, "twenty-first-century citizens seem unable to perceive their culpability in causing dangerous environmental changes" (p. 209).

Brooks's narrative of the emergence and development of American environmental law after World War II, while most carefully constructed and thoughtfully presented, does have some drawbacks. Although Brooks makes a repeated claim that he is presenting an "environmental history of environmental law" (p. 13), his analysis makes little reference to the larger historical picture of American environmental thought and policy that predates the beginning of his study. Brooks does not differentiate between preservationists and conservationists, for example, so there is no discussion of the deep-seated ideological differences that at times placed them on opposing sides in legal and policy battles. The successors to John Muir and the preservationists make only a few passing appearances, while conservationists are described rather enigmatically as "heirs to a movement rooted for a half-century in field sports" rather than the progenitors of the idea of national parks and forests (p. 39). The lack of reference to a larger history of Americans' thinking about the environment is most noticeable when Brooks ventures away from lawmaking and into popular environmentalism, in a chapter that struggles to find its argument. In addition, Brooks's nonlawyer audience may not find it particularly compelling to know that this "environmental history of environmental law" differs from accounts presented in law schools, an assertion Brooks makes several times. The same readers may also find jarring a description of one individual who "though not a lawyer … was no dummy either" (p. 64).

Overall, though, Brooks's law-centric approach allows him to delve very deeply and knowledgeably into his subject, capturing complex processes in rich detail. The book therefore makes a significant contribution to our understanding of the dynamic, often turbulent, relationship between Americans and their natural environment and provides us with important insight about the current state of American environmental law.

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