

## Books Received

### BRANCHING OUT, DIGGING IN: ENVIRONMENTAL ADVOCACY AND AGENDA SETTING

Sarah B. Pralle. 3240 Prospect Street NW, Washington, DC 20007: Georgetown University Press, December 2006. (202) 687-5889. <http://www.press.georgetown.edu>. ISBN: 1-58901-123-6, 279 pages. \$29.95 Paperback.

Late in 1993 citizens from around the world mobilized on behalf of saving old-growth forests in Clayoquot Sound, British Columbia. Yet, at the same time only a very few took note of an even larger reserve of public land at risk in northern California. Centered on conflicts between environmentalists seeking to preserve old-growth forests and timber companies fighting to preserve their logging privileges, both cases marked important episodes in the history of forest politics in their respective countries but with dramatically different results.

Pralle analyzes how the various political actors—local and national environmental organizations, local residents, timber companies, and different levels of government—defined the issues in words and images, created and reconfigured alliances, and drew in different governmental institutions to attempt to achieve their goals. She develops a dynamic new model of conflict management by advocacy groups that puts a premium on nimble timing, flexibility, targeting, and tactics to gain the advantage and shows that how political actors go about exploiting these opportunities and overcoming constraints is a critical part of the policy process.

Sarah B. Pralle is an assistant professor of political science at the Maxwell School of Citizenship and Public Affairs, Syracuse University.

### YEARBOOK OF CULTURAL PROPERTY LAW 2007

Edited by Sherry Hutt. 1630 North Main Street, #400, Walnut Creek, CA 94596: Left Coast Press, March 2007. (925) 935-3380. <http://www.lcoastpress.com>. ISBN: 978-1-59874-078-3, 288 pages. \$69.95 Hardback.

The Yearbook provides those in the heritage management world with summaries of notable court cases, settlements and other dispositions, legislation, government regulations, policies, and agency decisions that affect their work. Interviews with key figures, refereed research articles, think pieces, and a substantial resources section rounds out each volume. Thoughtful analyses and useful information from leading practitioners in the diverse field of cultural property law will assist government land managers, state, tribal, and museum officials, attorneys, anthropologists, archaeologists, public historians, and others to better preserve, protect, and manage cultural property in domestic and international venues. The 2007 volume highlights interviews with John Henry Merryman, emeritus professor at Stanford Law School, and UC Berkeley law professor Joseph L. Sax and features articles on the international art market, looting, Native American remains, and museum trusteeship. All royalties are donated to the Lawyer's Committee on Cultural Heritage Preservation.

Sherry Hutt is the program manager for the National Native American Graves Protection and Repatriation Act Program in the Department of the Interior.

FLAGGING STANDARDS: GLOBALIZATION AND ENVIRONMENTAL, SAFETY, AND  
LABOR REGULATIONS AT SEA

Elizabeth R. DeSombre. 55 Hayward Street, Cambridge, MA 02142: MIT Press, March 2007. (800) 405-1619. <http://mitpress.mit.edu>. ISBN: 0-262-54190-4. 308 pages. \$24.00 Paperback.

Shipping is among the most globalized of industries. Ship owners can choose where to register their vessels, based on cost, convenience, and the international and domestic regulations that would govern their operation. This system of open registration, also known as flags of convenience (FOC), can encourage a competition in regulatory laxity among states that want to attract shipping revenues—a race to the regulatory bottom. In *Flagging Standards*, Elizabeth DeSombre examines the effect of globalization on environmental, safety, and labor standards in the shipping industry. She finds that the economic advantages of lowered standards can be offset by the collective action of international organizations, states, and non-governmental actors to exclude low-standard ships from the advantages of globalization. Open registries are pressured to raise their standards while traditional maritime states lower theirs somewhat when they create international or second registries. The result is a competition not for the regulatory bottom but for the middle ground.

DeSombre examines the decisions made by states and ship owners that lead to this race to the middle and explores the effectiveness of strategies used by both state and nonstate actors aimed at raising regulatory standards, including port control, labor actions against FOC ships that fail to meet international labor standards, and trade restrictions against shipped goods that were not obtained within the requirements of international agreements. Globalization, DeSombre finds, may lead to a downward trend in regulatory

2007]

BOOKS RECEIVED

1243

standards but has also created many opportunities to raise these standards and does not necessarily signal a reduction of state control.

Elizabeth R. DeSombre is the Frost Associate Professor of Environmental Studies and Associate Professor of Political Science at Wellesley College.

THE PRECAUTIONARY PRINCIPLE IN ENVIRONMENTAL LAW: NEITHER ARBITRARY  
NOR CAPRICIOUS IF INTERPRETED WITH EQUILIBRIUM

Luciano Butti. Via Busto Arsizio, 40 – 20151 Milano, Italy: Dott. A. Giuffre' Editore SpA, March 2007. (02) 380-892-90. <http://www.giuffre.it>. ISBN: 88-14-13404-9, 153 pages. \$14.00 Paperback.

Luciano Butti explains that an irrational approach to environmental and health risks is not just an Italian problem. It is just as pressing throughout the rest of Europe. However, Butti argues that there is an important tool with which to combat this problem: the precautionary principle. Many in Europe have viewed the use of the precautionary principle as overly cautious, and Butti responds with a passionate defense of the precautionary principle, and its cultural and legal foundations. *The Precautionary Principle in Environmental Law* links the precautionary principle to the principle of proportion, cost-benefit analysis, and the need to also take the potential negative effects of certain precautionary measures into consideration. Butti also considers the challenges presented by nanotechnologies and the challenges that their environmental effects will present in concluding that only by bringing a hefty dose of equilibrium back into the picture can safety of the environment and the precautionary principle be shielded from the numerous attacks hurled at them from many sides.

Luciano Butti is a contract professor of International Environmental Law at the University of Padua (Italy) and member of the Teachers Board of the "Master on Environmental Law" of Milan State University. Luciano Butti also practices in Italian and International Environmental Law for the Italian law firm of B & P Avvocati.

THE NEW ENVIRONMENTAL REGULATION

Daniel J. Fiorino. 55 Hayward Street, Cambridge, MA 02142: MIT Press, March 2007. (800) 405-1619. <http://mitpress.mit.edu>. ISBN: 0-262-56218-9. 290 pages. \$23.00 Paperback.

Environmental regulation in the United States has succeeded, to a certain extent, in solving the problems it was designed to address; air, water, and land are indisputably cleaner and in better condition than they would be without the environmental controls put in place since 1970. But Daniel Fiorino argues in *The New Environmental Regulation* that—given recent environmental, economic, and social changes—it is time for a new, more effective model of environmental problem solving. Fiorino provides a comprehensive but concise overview of U.S. environmental regulation—its

history, its rationale, and its application—and offers recommendations for a more collaborative, flexible, and performance-based alternative.

Traditional environmental regulation was based on the increasingly outdated assumption that environmental protection and business are irreversibly at odds. The new environmental regulation Fiorino describes is based on performance rather than on a narrow definition of compliance, and uses such policy instruments as market incentives and performance measurement. It takes into consideration differences in the willingness and capabilities of different firms to meet their environmental obligations, and it encourages innovation by allowing regulated industries, especially the better performers, more flexibility in how they achieve environmental goals. Fiorino points to specific programs—including the 33/50 Program, innovative permitting, and the use of covenants as environmental policy instruments in the Netherlands—that have successfully pioneered these new strategies. By bringing together such a wide range of research and real world examples, Fiorino has created an invaluable resource for practitioners and scholars and an engaging text for environmental policy courses.

Daniel J. Fiorino teaches environmental and public policy at American University and Johns Hopkins University and has extensive experience in federal regulation and innovation programs.

#### THE SNAIL DARTER CASE: TVA VERSUS THE ENDANGERED SPECIES ACT

Kenneth M. Murchison. 2502 Westbrooke Circle, Lawrence, KS 66045-4444: University Press of Kansas, March 2007. (785) 864-4155. <http://www.kansaspress.ku.edu>. ISBN: 978-0-7006-1505-6, 240 pages. \$15.95 Paperback, \$35.00 Hardback.

With the discovery of a tiny fish in a soon-to-be-flooded stretch of the Little Tennessee River, construction on a dam that had already cost taxpayers \$100 million came crashing to a halt. Thanks to the Endangered Species Act of 1974, the snail darter was instantly transformed into both an icon for species preservation and a despised symbol of the environmental movement's alleged excess.

In the new book *The Snail Darter Case: TVA Versus the Endangered Species Act*, author Kenneth M. Murchison expertly examines the intense legal battle that resulted in the first true test of the Endangered Species Act, following the case all the way to the Supreme Court.

The 1978 decision in *TVA v. Hill* remains one of the most instructive cases in American environmental law. Affirming an injunction that prohibited the Tennessee Valley Authority from completing the Tellico Dam because it would eliminate the snail darter's only known habitat, the Supreme Court resolved an intragovernmental dispute between the TVA and the Interior Department as well as the claims of the local opponents of the dam.

Murchison reveals that the snail darter case was just one part of a long struggle over whether the TVA should build the Tellico Dam. He traces

disputes over the TVA's mission back to the 1930s and intertwines this with the emergence of federal environmental law in the 1960s and 1970s, culminating in the National Environmental Policy Act and the Endangered Species Act, both of which provide a statutory basis for litigating against the dam builders. He continues with an exhaustive analysis of the arguments, deliberations, and decision of the Supreme Court, based largely on original sources, before concluding with a summary of the subsequent congressional actions and administrative proceedings that ultimately allowed the dam's completion. By plumbing the Court's deliberations, the politics behind the law, and the way that law spurred political responses, Murchison clarifies how the story of darter and dam came to exemplify the tensions and conflict between legislative and judicial action.

Even though its players were left with only partial victories, *TVA v. Hill* helped define the modern role of the TVA and remains an important chapter in the development of federal environmental law. Murchison helps us better understand this landmark decision, which drew the battle lines for current debates over the environment and the policies that protect or regulate its use.

Kenneth M. Murchison is James E. and Betty M. Phillips Professor of Law at Louisiana State University where he teaches environmental and constitutional law.

BUSINESS AND ENVIRONMENTAL POLICY: CORPORATE INTERESTS IN THE AMERICAN  
POLITICAL SYSTEM

Edited by Michael E. Kraft and Sheldon Kamieniecki. 55 Hayward Street, Cambridge, MA 02142: MIT Press, April 2007. (800) 405-1619. <http://mitpress.mit.edu>. ISBN: 0-262-61218-6, 358 pages. \$25.00 Paperback.

It is well known that American businesses make an effort to influence environmental policy by attempting to set the political agenda and to influence regulations and legislation. This book examines what is not so well known: the extent to which business succeeds in its policy interventions. In *Business and Environmental Policy*, a team of distinguished scholars systematically analyzes corporate influence at all stages of the policy process, focusing on the factors that determine the success or failure of business lobbying in Congress, state legislatures, local governments, federal and state agencies, and the courts. These experts consider whether business influence is effectively counterbalanced by the efforts of environmental groups, public opinion, and other forces.

The book also examines the use of the media to influence public opinion—as in the battle over drilling in the Arctic National Wildlife Refuge—and corporations' efforts to sway elections by making campaign contributions. Because the book goes well beyond the existing literature—much of which is narrow, descriptive, and anecdotal—to provide broad-based empirical evidence of corporate influence on environmental policy, it makes an original and important contribution and is appropriate for a variety of undergraduate and graduate courses.

Michael E. Kraft is a professor of political science and public policy and Herbert Fisk Johnson Professor of Environmental Studies at the University of Wisconsin-Green Bay.

Sheldon Kamieniecki is Dean of the Division of Social Sciences at the University of California, Santa Cruz.

THE GREENING OF THE U.S. MILITARY: ENVIRONMENTAL POLICY, NATIONAL SECURITY, AND ORGANIZATIONAL CHANGE

Robert F. Durant. 3240 Prospect Street NW, Washington, DC 20007: Georgetown University Press, May 2007. (202) 687-5889. <http://www.press.georgetown.edu>. ISBN: 978-1-58901-153-3, 298 pages. \$29.95 Paperback.

In *The Greening of the U.S. Military*, Robert F. Durant delves into the world of defense environmental policy to uncover the epic and ongoing struggle to build an environmentally sensitive culture within the post-Cold War military. Through more than 100 interviews and thousands of pages of documents, reports, and trade newsletter accounts, he offers a telling tale of political, bureaucratic, and intergovernmental combat over the pace, scope, and methods of applying environmental and natural resource laws while ensuring military readiness. He then discerns from these clashes over principle, competing values, and narrow self-interest a framework for studying and understanding organizational change in public organizations.

From Dick Cheney's days as defense secretary under President George H. W. Bush to William Cohen's Clinton-era-tenure and on to Donald Rumsfeld's Pentagon, the battle over "greening" the military has been one with high-stakes consequences for national defense, public health, safety, and the environment. Durant's polity-centered perspective and arguments will evoke needed scrutiny, debate, and dialogue over these issues in environmental, military, policymaking, and academic circles.

Robert F. Durant is a professor of public administration and policy at American University.

IPSE DIXIT: HOW THE WORLD LOOKS TO A FEDERAL JUDGE

William L. Dwyer. P.O. Box 50096, Seattle, WA 98145-5096: University of Washington Press, July 2007. (206) 543-4050. <http://www.washington.edu/uwpress>. ISBN: 978-0-295-98704-0, 176 pages. \$25.00 Hardback.

During William L. Dwyer's fifteen-year tenure as a U.S. District Court Judge, he presided over many complex and groundbreaking cases. In one of his most controversial rulings, he engaged environmentalists and the timber industry in a heavily publicized and emotionally fraught battle over the territory of the northern spotted owl, ultimately approving the bird for "threatened species" status and forcing the Forest Service to substantially reduce logging in owl-habitat areas.

2007]

## BOOKS RECEIVED

1247

Before his appointment to the district court in 1987, Dwyer had spent more than thirty years as a trial lawyer, never shying away from the most difficult cases. He argued the libel suit of accused Communist sympathizer John Goldmark, he represented newspaper employees in the contested proposal for a joint-operating agreement between the *Seattle Times* and *Seattle Post-Intelligencer*; and he brought a suit against baseball's American League that resulted in the return of the Mariners to Seattle.

The fifteen speeches collected in this volume cover a span from 1978 to 2002 and reveal the breadth of Dwyer's legal wisdom. He championed libraries as keepers of our language, ideas, and history; he taught students the history and philosophy of litigation; and he challenged members of the legal profession to do more pro bono work. His respect for the rule of law comes through clearly, whether he was speaking to the American Library Association, the Federal Bar Association, or first-year law students. The volume includes several speeches that express Dwyer's hopes for the American legal system. "If we use our heads," Dwyer avers, "we have the collective ability to survive and to let the rest of life survive with us." *Ipse dixit*, "it's true because I say it's true."

William L. Dwyer (1929–2002) served as U.S. District Court Judge for the Western District of Washington from 1987 to 2002.

## RIVERTOWN: RETHINKING URBAN RIVERS

Edited by Paul Stanton Kibel. 55 Hayward Street, Cambridge, MA 02142: MIT Press, September 2007. (800) 405-1619. <http://mitpress.mit.edu>. ISBN: 0-262-61219-4, 216 pages. \$22.00 Paperback.

Today's urban riverfronts are changing. The decline of river commerce and riverside industry has made riverfront land once used for warehouses, factories, and loading docks available for open space, parks, housing, and nonindustrial uses. Urban rivers, which once functioned as open sewers for cities, are now seen as part of larger watershed ecosystems. *Rivertown* examines urban river restoration efforts across the United States, presenting case studies from Los Angeles, Washington D.C., Chicago, Salt Lake City, and San Jose. It also analyzes the roles of the federal government (in particular, the U.S. Army Corps of Engineers) and citizen activism in urban river politics. A postscript places New Orleans's experience with Hurricane Katrina in the broader context of the national riverside land-use debate.

Each case study in *Rivertown* considers the critical questions of who makes decisions about our urban rivers, who pays to implement these decisions, and who ultimately benefits or suffers from these decisions. In Los Angeles, for example, local nonprofit and academic research groups played crucial roles, whereas Chicago relied on a series of engineering interventions. Some cases—such as the innovative cooperative framework adopted to address problems in the Guadalupe River watershed—offer models for other areas. In each case, authors evaluate the ecological issues and consider urban river restoration projects in relation to other urban

economic and environmental initiatives in the region. *Rivertown* is a valuable resource for urban planners and citizen groups as well as for scholars.

Paul Stanton Kibel is Director of Policy West, a public policy consultancy, and an environmental and water rights attorney with Fitzgerald Abbott & Beardsley. He is also an adjunct professor at Golden Gate University School of Law.

THE PUBLIC'S WATER RESOURCE: ARTICLES ON WATER LAW, HISTORY, AND  
CULTURE

Justice Greg Hobbs. 1900 Grant Street, #300, Denver, CO 80203; Continuing Legal Education in Colorado, Inc., 2007. (888) 860-2531. <http://www.cobar.org/cle>. ISBN 978-1-930993-55-6, 395 pages. \$19.95 Paperback.

*The Public's Water Resource* is an invaluable compilation of articles and speeches written by Justice Hobbs on a variety of topics. Justice Hobbs explores how the ancient people of Mesa Verde and the Peruvian highlands coped with cyclical drought and flood through water works construction from 200 B.C. to the 1500s, how the climate of the Colorado River Basin has shaped the Colorado River Compact and its 85 years of implementation, how the great river runner John Wesley Powell continues to influence western water law and policy, how Colorado water law has changed and adapted from irrigation, municipal, and industrial use to instream flows and kayak courses over a period of 145 years, how 2000 years of water law, history, and culture in the Americas suggests twenty basic elements of a good water policy, how water education has become a central feature of civic education in the Americas, and how water quality law protects water use rights. The book also includes new water poems by Justice Hobbs, plus photographs and diagrams of ancient and contemporary waterworks, landscapes, and hydrographs.

Justice Greg Hobbs has been a justice of the Colorado Supreme Court for eleven years and had twenty-three— years of experience as a water and environmental attorney before joining the court.