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Scholars of US environmental history must take a long, good look at the Progressive Era. This is when the modern apparatus of government resource agencies and environmental regulations took shape, setting the stage for a successive wave of essential environmental laws in the 1960s and 70s. Shelves groan under the weight of monographs that investigate the legal battles, implementation, and social dynamics of Progressive-Era conservation. Nonetheless, political scientist Kimberly K. Smith gestures toward a yet-missing piece of the story, asking how, exactly, the United States legal establishment ever came to agree that the government ought to have a major role in environmental management. After all, mid-nineteenth century concepts of constitutionality upheld private property and states’ rights—priorities seemingly at odds with top-down environmental management. Furthermore, the US Constitution grants no explicit authority to the federal government to protect natural resources. Smith’s *The Conservation Constitution: The Conservation Movement and Constitutional Change, 1870-1930* offers a methodical, clear-eyed examination of how and why judges increasingly came to side with the notion that conservation measures embodied several legitimate state interests, thus helping create what Smith calls the “green state.”

The “Conservation Constitution” is that unwritten set of interpretations expressed in case law that solidified federal- and state-level authority to manage natural resources. According to Smith, this momentous doctrinal shift unfolded over about sixty years—a time span that easily exceeds most definitions of the Progressive Era yet illustrates the quite gradually changing nature of perspective emanating from the bench. In the courts, Smith shows, conservationists distinguished themselves from other reformers of the age: while activists advocating welfare reform and business regulation also challenged property rights and states’ rights, the courts provided far more support to conservation measures than other Progressive-Era campaigns. Despite their reasonably consistent success, conservationists themselves did not comprise a unified, cohesive effort.
Not surprisingly, their legal triumphs were disparate, and it would be “misleading to claim that any single doctrine was decisive in explaining the source of conservation policy in the courts” (p. 254). Rather, a whole raft of judicial decisions buoyed the Conservation Constitution. The history sweeps through a diverse series of efforts by lawyers, administrators, and politicians to change the government’s relationship to nature. Smith organizes the narrative into ten chapters, successively dealing with the evolving legal status of wildlife, forests, and pollution control. She addresses each of these three topics first at the state level—typically, the earliest site of management—and then at the federal level. Along the way, Smith introduces and explains important legal concepts, enabling nonspecialists to follow the ins and outs of judicial rationale.

This political-environmental history takes a long view. Smith’s story contains court cases that played out in the early nineteenth century, even though the doctrinal shift really began soon after the Civil War; by 1930, it had become “common sense” to assign environmental management to the federal government. Smith credits the transition to the rise in the perceived authority of science, particularly ecology and ecological understandings of natural systems. Agencies that demonstrated their bureaucratic and scientific competency won the deference of judges. On this score, the United States Department of Agriculture (USDA) proved itself particularly adept while the Department of the Interior merited a mixed score and remained under closer supervision of Congress. For example, in the 1911 decision United States v. Grimaud, the Supreme Court ruled to support USDA efforts to enforce grazing permits—the fruit of endeavors by chief forester Gifford Pinchot and his legal team to redefine regulation as an administrative, not legislative power. Previous attempts by the Department of the Interior to prosecute permit violators had proved less innovative and, subsequently, less successful. In writing the court opinion for Grimaud, Justice Lamar noted the USDA’s particularly persuasive science underpinning its environmental regulations: adequately protected forests represented complex systems that were central to maintaining water flow, clearly a public good.

As a synthetic narrative of pivotal environmental cases and their collective meaning during the Progressive Era, The Conservation Constitution materially contributes to both legal and environmental history. Smith locates the book squarely in a scholarly genealogy that descends from Samuel Hays’s 1959 Conservation and the Gospel of Efficiency. Although some readers will notice the relative absence of titles from the last twenty years or so, Smith’s undertaking handily complements environmental historians’ recent attention to the “environmental management state”—a subject that, argues historian Adam Rome, “deserves to join the national-security state and the welfare state as a central concern of political historians.”[1] Smith acknowledges the most significant hole in the story: the appropriation of Native American lands in the name of conservation. Also missing is the impact of the criminalization of traditional land uses like hunting, fishing, and timber cutting upon local peoples. Works like Louis Warren’s The Hunter’s Game: Poachers and Conservationists in Twentieth-Century America (1999) and Karl Jacoby’s Crimes Against Nature: Squatters, Poachers, Thieves and the Hidden History of American Conservation (2001) shed light upon a different set of actors in the political struggle around conservation—suggesting other ways to investigate why judges increasingly vested prosecutorial powers in the hands of agency administrators.

The Conservation Constitution maintains crystal clear prose and careful presentation—this makes for an approachable, sensitive, and very useful resource for anyone interested in the legal tactics of the conservation movement or the judicial underpinnings of the environmental management state.
Note


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