

It is no coincidence that the most successful Democratic presidential candidate of the post-Nixon era was the one who could most plausibly claim to have risen from their midst. Liberals will have to offer something more than money to win back the working class—not just “values,” but a conception of the country that elevates Americans above their mediocre circumstances. Hodgson may be right to dismiss American exceptionalism, but even he concedes that we are exceptional for thinking that we are exceptional. We may have become a crassly commercial society of consumers, but we remain a nation of believers.

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The Making of Environmental Law by *Richard J. Lazarus*. Chicago, IL, University of Chicago Press, 2004. 318 pp. \$35.00.

Late last year, two thirty-something political strategists caused a great deal of consternation and angst among the environmental community by releasing an essay boldly titled “The Death of Environmentalism” (available at <http://www.grist.org/news/maindish/2005/01/13/doe-reprint/>). In it, the progressive upstarts argued that mainstream American environmentalism suffers from a narrow obsession with technocratic policy approaches to environmental problems, an inability to articulate a compelling, affirmative moral vision of environmental progress, and a professional insularism that discourages effective coalition building. Not long after this essay appeared, Georgetown law professor Richard Lazarus, a leading participant in and observer of developments in environmental law over the last twenty-five years, released a book in which he sought to explain the rise of modern American environmental law, document its accomplishments and failures, and assess its potential for reinvention in the face of new and profound challenges.

The near-concurrent release of these two publications was unfortunate, because the former authors could have learned much from the latter. In just over 250 pages of text, Lazarus introduces the uniquely challenging scientific nature of environmental problems, the daunting political, economic, and legal obstacles that further confound their resolution, and the accumulated wisdom that has been gained from three and a half decades of modern environmental regulation, despite such monumental difficulties. Given his own eminence within the field of environmental law, one would expect to glean fascinating “insider” moments from Lazarus’s telling of its history, and the author does not disappoint. What might not be expected by those unfamiliar with his scholarship, however, is the great skill with which Lazarus plumbs insights from disciplines outside of law. In two exhilarating passages, for instance, the author provides a cultural history of the public’s dramatically evolving conceptions of time and space over the previous century, demonstrating both the changes that have helped to generate modern environmental law and those that ultimately may undermine it (pp. 54–66, 208–218).

Similarly adept sections of the book introduce the reader to contemporary ecology and the workings of complex, dynamic biological systems (pp. 1–15), to the political economy of legislation and regulation in the federal system (pp. 29–42), to the peculiar disaggregated governance structures found in international environmental law (pp. 145–149), and to the various scientific and economic issues at stake in the choice of regulatory instruments (pp. 185–207). In part because of this sheer breadth of coverage, Lazarus’s highly accessible and enjoyable book should be considered by anyone seeking an introduction to environmental law and policy for classroom use.

Two additional elements of *The Making of Environmental Law* deserve mention. First, Lazarus notes that although “environmental law’s obituary in the United States has been written repeatedly during the past three decades,” the field has proven “surprisingly persistent” (p. xii). In fact, Lazarus notes that some high-profile reform efforts, such as the Reagan administration’s desire to “bring EPA to its knees” (p. 101) or the Gingrich Republican Congress’s promise to offer the business community “regulatory relief” (p. 129), actually may have led to stronger support for environmentalism and more stringent environmental laws than existed before the attempted dismantlings.

Second, Lazarus also documents the founding and rise of a professional movement to support conservative intellectualism and to promote conservative ideals within public discourse, including ideals that are strongly at odds with the goals of environmental law (pp. 94–97). This movement can be traced to a memorandum written to the leadership of the U.S. Chamber of Commerce by soon-to-be Supreme Court Justice Lewis Powell in 1971. In this now-legendary memorandum, Powell urged the founding of conservative think tanks, research centers, endowed professorships, scholarly journals, student groups, media organizations, and other tools for promoting the ideology of “American Free Enterprise.” As Lazarus notes, Powell’s call for long-term intellectual investment was answered by several prominent, wealthy conservatives, such as Richard Scaife and the leaders of the John M. Olin Foundation. Their efforts to consolidate conservative power and to reshape American politics were so successful that, by the mid-1990s, “[f]or the first time in the three-decade-long history of modern environmental law, consensus legislation was no longer a politically viable option” (p. 153).

Lazarus concludes his book by openly questioning whether environmental law—despite its demonstrated historical resilience—will be able to withstand the “intellectual, scientific, and economic counterweight to environmentalism” (p. 250) that conservatives have funded and nurtured over the past three decades. Which brings us back to “The Death of Environmentalism.” The authors of this essay correctly recognize the cohesiveness and clout of the forces aligned against progressive causes, but they simultaneously fail to appreciate the factors that render environmental law distinct from, and difficult to fuse with, other elements of the social democratic platform. A common enemy might easily produce a common defense, but forging a common offense generally requires much

greater alignment of interests, values, and methods. By offering such an extraordinary interdisciplinary account of the unique challenges of environmental law and politics, *The Making of Environmental Law* also provides a humbling but necessary guidebook for those who seek to re-situate environmentalism within the changing American political landscape.

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