

that water be put to beneficial use. The emergence of this novel form of legal governance of water is usually treated as the result of miners and farmers wanting to capture substantial efficiency gains by diverting water from streams for sluicing in mining and raising crops in agriculture.

David Schorr finds the efficiency explanation unconvincing and offers a different rationale for appropriative rights. He focuses on the development of the doctrine of prior appropriation in Colorado, since it is there that the doctrine finds its most complete expression. Schorr argues that distributive justice is the primary force in the move away from the riparian doctrine. There are several measurement and enforcement mechanisms in the appropriation doctrine, and he argues that those also were in place for equity, not efficiency reasons. Schorr is a careful and thorough scholar, drawing on legal opinions, contemporary writings, and late nineteenth-century political forces in making his argument.

As seen through Schorr's equity lens, riparian or stream bank rights represent strong monopoly power in the water-scarce West. Thus, the development of the right to divert water beyond riparian boundaries and to have that diversion enforced legally should not be seen as an expansion of more complete property rights but rather as an effort to enfranchise small-scale farmers: in other words, to spread the wealth around. And the specific rules of prior appropriation, particularly the doctrines of beneficial use and first in time-first in right, were designed to counter the threat of domination by owners of large-scale irrigation works.

Schorr provides a useful alternative story line to the usual perspective of prior appropriation as the development of efficient property rights in response to scarcity. Nevertheless, the author tends to overplay his hand. Standard accounts have undoubtedly paid too little attention to equity issues in their explanation of the evolution of water rights in the West. But Schorr's attempt to see the entire episode as a "morality play," in which legal institutions were effectively aimed at advancing ideals of justice" (p. 138), is unconvincing. A more realistic explanation sees the desire to increase productivity in mining and agriculture as a strong motive force in the move from riparian rights to the prior appropriation doctrine. The simple fact that prior appropriation dominates in the most arid parts of the West lends strong support to the notion that potential gains in productivity were very much involved in the change. Once it became evident that a change in the rights structure would lead to substantial wealth increases, the issue of the allocation of the new rights was clearly influenced by Schorr's distributive justice claims. And, it is also clear that, during the last quarter of the nineteenth century, populist arguments about protecting small-scale farmers had considerable traction.

The beneficial use doctrine did prevent early appropriators from claiming large amounts of water for which they had no immediate use. More than other methods

of acquisition, enforcing rights to water that was "put to productive use" probably led to a wider distribution of the initial allocation. After that initial allocation, however, land with water rights attached could be sold at will. Additionally, the original owners had secure rights that were rarely subject to any redistributive activity. Therefore one could claim some influence for distributive justice in the initial allocation, but after that, it seems equity concerns pale in comparison to the importance of security of rights.

Schorr claims to see in some of the operational rules of prior appropriation a desire to make transfers difficult and to keep water in the hands of the original claimants. But since water rights were generally attached to land, and since land was readily transferable, this argument is not convincing. It is true that in the contemporary era transferring water from agriculture to municipal and industrial uses is difficult. But when the original rules were put into place, there was no thought of the likelihood of water ever being used outside of agriculture and mining. Hence rules that now are major impediments to transfers are more the accident of history and legal inertia than the result of explicit efforts to achieve distributive norms.

Although *The Colorado Doctrine* fails to convince that distributive justice was the primary motive force in the evolution of water doctrine, it still merits a careful read. Schorr presents an alternative to standard explanations that is interesting and worth considering.

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MICHAEL W. CHILDERS. *Colorado Powder Keg: Ski Resorts and the Environmental Movement*. Lawrence: University Press of Kansas. 2012. Pp. xi, 234. \$34.95.

Michael W. Childers's *Colorado Powder Keg* adds a critically important perspective to the historical scholarship on recreational skiing, especially in its Colorado context. Hal Rothman's *Devil's Bargains: Tourism in the Twentieth Century American West* (1998), Annie Gilbert Coleman's *Ski Style: Sport and Culture in the Rockies* (2004), and William Philpott's *Vacationland: Tourism and Environment in the Colorado High Country* (2013) have limned the sport's cultural and economic contours. We know how skiing became an industry and how it reshaped local and regional geography. Childers, in turn, illuminates the ski industry's dependence on the federal government because—and this is key—the vast majority of recreational skiing occurs on Forest Service lands. Childers's important contribution is in tracing for the ski industry what historian Richard White called in *The Organic Machine* (1995) the "boring" (p. 64) but largely public processes by which conservation agencies made crucial decisions about how natural resources were managed for public and private gain.

Framed around the infamous 1998 arson of Two Elk Lodge and five other buildings across the sprawling Vail Ski Resort, *Colorado Powder Keg* explores the evolving,

always volatile debate about ski resort development on federal lands. Contest was the only constant. There were always disputes among skiers over who should have access to slopes; among developers and communities over the proper level of development; and among managers and environmental advocates over how much land should be set aside for recreation. In practice, though, there were asymmetries of power in these debates. Postwar mobilizations of transnational capital ensured that some investors had more fiscal and social capital than others to sway policy, while a few Forest Service personnel controlled policy decisions for an astonishingly long period. The result was a tottering process in which managers tried to balance skier demands for acreage with developer concerns about competition and investments. Environmental issues often drew less attention, and the default position was less a question of whether than when to approve further development.

Over time many people criticized the Forest Service's opaque relations with developers, but they shared no consensus about problems. Some viewed the agency as overly credulous of industry boosterism, while others chastised personnel for being too sympathetic toward environmentalists. By the end of the 1960s many yearned for a more transparent management process. The National Environmental Policy Act of 1969 led many Coloradans to hope that a new regulatory regime would broaden participation and the criteria for assessing development. Instead, in practice, permitting remained non-democratic. As Childers notes, "environmental impact statements merely ensure compliance with the law." Lawyers became the new dominant voice in a process that still did not require federal agencies "to alter or cancel proposals based on the majority view" (p. 137). Local concerns about economic and cultural issues remained outside the scope of narrow ecological assessments.

Childers succeeds where critics have failed. His use of government archival records, private correspondence, and oral interviews casts light on the federal government's long-standing but poorly understood stewardship of public lands, a relationship that was at once material *and* cultural, ecological *and* economic. Childers embeds his tale in the familiar historiography of western and environmental history and draws on a broad literature to show how Colorado's ski industry speaks to the history of recreational gentrification. His key insight, however, comes in a brief observation that ski areas, while spatially tiny in comparison to the national forests, represent "a much more valuable commodity than either timber or grazing" (p. ix). Thus while beauty is in the eye of the beholder—a skier gazing down a clear-cut sees something radically different from the Environmental Liberation Front member who torched Vail—skiing's revenue stream usually looks like gold to taxpayers and elected officials. The problem is that this part of Childers's analysis is mostly implied. Thus while *Colorado Powder Keg* bares the ecological and cultural stakes of resort development for Coloradans (whose mounting skepticism led to a 1972 vote

that disinvented the Winter Olympics), we need Rothman's *Devil's Bargains* and Philpott's *Vacationland* to understand how resorts shaped local economic and social geography.

We have reached some sort of critical mass in the historiography of the ski industry. Childers explains how entrepreneurs gained access to terrain and melded sport, tourism, and real estate speculation into a powerful force in the mid-to late twentieth century. *Colorado Powder Keg* ably complements the existing ski historiography. There is supreme irony, however, in that for all our attention to the industry, we have scant historical sense of what nature meant to those who actually strapped on skis at any given moment. We know a lot about how outdoor recreation developed but little about the people who pursued those sports. In other words, we have the big picture; now we must focus on individual skiers, backpackers, kayakers, rafters, and surfers.

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ALEXANDRA MINNA STERN. *Telling Genes: The Story of Genetic Counseling in America*. Baltimore: Johns Hopkins University Press. 2012. Pp. ix, 238. Cloth \$60.00, paper \$25.00.

Telling Genes provides a timely and in-depth history of the field of genetic counseling from its origins in the 1940s until the present. Alexandra Minna Stern has conducted archival research along with a series of in-depth interviews with founders of genetic counseling programs and selected practitioners. She explores the personal and political motivations of an eclectic group of individuals that led to the establishment of genetic counseling master's degree programs at twenty-eight universities in North America. Stern concludes that the hereditarian thinking embedded in the eugenics movement of the early twentieth century not only promoted the establishment of genetic counseling programs, but also continues to shape the advice that genetic counselors now give prospective parents. The outcome is a vigorous critique of the field.

Prior to the 1970s, genetics counseling was performed mainly by physicians, often pediatricians, who were employed by "heredity clinics" and medical genetics departments (p. 24). Thereafter, a growing awareness about how genetic risks could affect familial and individual well-being led to the establishment of certified master's degree programs in genetic counseling. These programs recruited primarily lay people, not M.D.s, and mainly women. However, neither changing recruitment patterns nor curricula that included bioethics altered the advice prospective parents received. Even those genetic counselors who "strongly endorsed patient autonomy and informed consent," Stern argues, "nonetheless tended to present genetic conditions likely to produce a physical or mental disability as biological errors to be avoided for medical, psychological, and economic reasons" (p. 3). So too, despite changing