

Book Review

Karl Boyd Brooks.

Before Earth Day: The Origins of American Environmental Law, 1945-1970.

Lawrence: University of Kansas Press, 2009.

Reviewed by Howard A. Doughty, Book Reviews Editor

In his State of the Union address in 1970, Richard M. Nixon famously affirmed that “no single goal will be more important in our future efforts to pursue the public happiness than that of improving our environment.”

Ken Burns is an American national treasure. His films cover a great range of topics from Thomas Jefferson to Huey Long, from jazz to baseball, from the journey of Lewis and Clark to the Civil War, and from the development of radio to the creation of the national park system in the United States. The latter, subtitled “America’s Best Idea” is a magnificent look at one of the world’s most ambitious and effective efforts both to celebrate and to preserve nature.

Burns’ six-part documentary series, “The National Parks,” aired on the US Public Broadcasting System in the same year as Karl Boyd Brooks’ book, *Before Earth Day*, was published. It was a small-scale triumph. Compared to so-called “reality TV,” its market share was modest, but for those who saw it, the experience was magnificent.

Even given the limited audience of PBS, however, Burns’ film has had a greater cultural influence than Brooks’ book *Before Earth Day* can seriously expect. The book certainly lacks the mass appeal of Burns’ brilliant images and the biographical dramas in his story. Brooks, after all, is writing for a knowledgeable readership—ecologists, conservationists, public servants and students of public policy. His project has a different, more encapsulated and more focussed aim, which is mainly to instruct and much less to entertain. Still, *Before Earth Day* speaks with its own kind of authority, and its message is important to anyone interested in the environment and the influence of social movements on public sector innovation.

It is important to understand the history of environmental legislation for two reasons. First, it provides an understanding to understand the fact that activists and dedicated public servants can combine to bring important issues to the attention of the public and politicians, and also that both amateur and professional experts can help frame progressive legislation and regulation. This awareness is essential if current and future social and ecological challenges are successfully to be met.

The comparison of Burns and Brooks can be taken farther. The PBS home page describes Burns’ achievement well. It tells the tale of citizen activists, of people “rich and poor; famous and unknown; soldiers and scientists; natives and newcomers; idealists, artists and entrepreneurs; people who were willing to devote themselves to saving some precious portion of the land they loved, and in doing so reminded their fellow citizens of the full meaning of democracy.” Inspiring stuff!

Ken Burns' project, however, is mainly historical and mostly celebratory. It chronicles the imagination and spirit of the builders. Only at the end are there intimations of the extent and the depth of enduring problems, and implicit warnings for the future. In the last half of the twentieth century, the National Parks were in danger of being victims of their own success as upwards of one hundred million park visitors stepped heavily upon the landscape, threatening to turn raw nature into an unintended recreational facility. So, in the face of the vacationing multitudes, Burns does his best to speak for the spirit of the originators of the scheme. He highlights President Jimmy Carter's dedication of an impressive 56 million acres for preservation, the efforts to improve park infrastructure (making them more "user-friendly"?) and the worthy gesture of reestablishing wolves in Yellowstone Park, thus "making the world's first national park a little more like what it once was." It is not enough.

Brooks, in the alternative, probes beneath the acts of occasional heroism and "human interest" stories that form the pearls on Burns' cinematic necklace to explore the nitty-gritty of policy making and implementation, the political and economic tensions that frame the day-to-day grind of administration, as well as the sometimes explosive successes and sinkholes of failure in this vital domain of public interest and public law. The domain, in its fashion, is no less engaging than the personalities of American citizens smitten by the aesthetics of the wilderness. And, in the end, thoughtful people may gain more of lasting importance from Brooks than from Ken Burns' uncontested cinematic achievement.

In a time in which we are beset and besotted by relentless crises, it is well to be reminded of an era in which it was possible for public activism to be *for* something. From the mid-nineteenth to the mid-twentieth century, American conservationists saw clearly the dangers of indifference to natural environments and the threat to the land, the fauna and the flora from the urban-industrial holocaust in all its forms. At the same time, they exuded enthusiasm and displayed a comely innocence as they conjured up their visionary ambitions, established their practical goals and set about achieving much of what they felt crucial to the maintenance of their republic. This personalized and largely populist critical mass of enthusiasm is compellingly portrayed by Ken Burns. It is from that base that Karl Boyd Brooks begins.

Those of us of a certain age who remember 1970, the year in which Brooks concludes his study, are apt to think of events such as the US invasion of Cambodia and the killings at Kent State University, the capitulation of Biafra and the end of the Nigerian Civil War, the trial of the Chicago Seven and the My Lai massacre. It was also the year of the Isle of Wight Festival (bigger than Woodstock), the Nuclear Non-Proliferation Treaty, Apollo XIII and Superbowl IV, Canada's "October Crisis," the introduction of the Ford Pinto and Diana Ross and the Supremes farewell tour. Shortly afterward, a yeasty rebelliousness about the anticipated end of the biosphere led to the beginning of operations for the US Environmental Protection Agency and its North American variant, Environment Canada, which chugs along in its own fashion today.

The distinguishing feature of the year 1970 was, as far as questions of conservation and environmental protection are concerned, the fact that there was a genuine consensus among publics around the world that the world was worth preserving, that the struggle against pollution

was winnable and that the reduction of human population growth was possible (the world then supported less than 3.7 billion people; it now supports over 7.2 billion).

In the United States, there was bipartisan backing for regulation of toxic industries, toxic products and practices that were toxic for the environment. True, Greenpeace had not yet been founded (that would be in 1971). Donella and Daniel Meadows had not yet published *The Limits to Growth* (that would come in 1972). But Paul Ehrlich had already written his best-selling *The Population Bomb* (1968), which brought Thomas Malthus thoroughly into the late twentieth century. The stage had been well and truly set.

In his State of the Union address in 1970, Richard M. Nixon famously affirmed that “no single goal will be more important in our future efforts to pursue the public happiness than that of improving our environment.” Burns provides a convincing narrative of the main symbol of the main success of environmentalism in the form of the creation of America’s National Parks. Brooks broadens the theme and attends to the creation of the regulatory framework that permitted environmentalism to shift from sentimental and the aesthetic feelings to formal, legal and state-sponsored control.

Brooks does an excellent job of outlining the importance of the *Fish and Wildlife Coordination Act* and the *Administrative Procedure Act*, both of which were passed in 1946 and both of which helped democratize administrative law by bringing to the public the opportunity to participate more fully through open hearings prior to legislation and judicial initiatives afterward. He delves deeply into important aspects of legal history, knowledge of which is essential to anyone—American or not—who wishes to transform a vague sense of malaise about environmental sustainability into concrete and practical change.

By reshaping the rule-making, rule-enforcement and rule-adjudication process, new opportunities for engagement by means of the production of expert witnesses and a solidification of jurisdictional issues made for a relatively clear and well-established process of federal, state and municipal authorities, each with responsibilities to protect public health and safety in terms of air and water management. So, when Karen Silkwood, a whistleblower employee of the Kerr-McGee nuclear plant near Crescent, Oklahoma, who revealed many unsafe practices, died (was murdered) in 1974, when the officially declared emergency at the Love Canal in Niagara Falls, New York, was literally unearthed in the late 1970s, and when the potential devastation at the nuclear plant at Three Mile Island near Middleton, Pennsylvania in 1979 was revealed, there was at least a framework within which some steps toward justice could sometimes be taken, and at least partial accountability could be compelled.

Of special importance is Brooks’ emphasis on the centralization of environmental standards and enforcement mechanisms. It has been dramatically brought home to us that corporations can play governments off against one another and thereby take advantage of tax concessions, weak regulatory environments, cheap wages and other profit-enhancing tactics when they consider locating in different countries. Angling for the most business-friendly “environment,” it is now commonplace for refining and manufacturing concerns to negotiate the best possible financial deal when deciding where to locate a labour-intensive facility. Absent common laws and processes, this international game can be played on the domestic level as states or regions

desperate for employment vie with one another to present the most attractive opportunities for investment. At both levels, actions to come to grips with the relentless crises mentioned above, can be turned into a cynical set of corporate calculations and trade-offs designed to maximize profits at public expense and with political connivance arising out of economic desperation.

There is, of course, still plenty of space for states to compete by suppressing wages, making union organization next to impossible and offering tax holidays to substantial investors; however, environmentalists have come some way toward ensuring that environmental law could be applied equally regardless of state borders.

Once again, however, the story does not have a completely happy ending. While creative and courageous individuals in the environmental movement and the legal profession are credited with moving the political process along, the power of corporate structures and their political supporters to dilute or reverse legislation, eviscerate regulatory agencies and divert public opinion has resulted in an atrophy of organizational imagination, where collusion between government authorities and the industries they have been established to control combine to frustrate the initial efforts of active citizens and dedicated public servants. No longer responsive to public demands for ecological sanity, too often regulators have seen their task as regulating public discontent rather than the institutions that are responsible for environmental degradation.

As Liane C. Casten testified before the United States' Environmental Protection Agency about the ongoing problem of dioxin: "The EPA has been part of the problem, not part of the solution." This toxic chemical, known chiefly as a contaminant in Agent Orange, the defoliant used in the Vietnam conflict, continued to be used in manufacturing processes and its effects were effectively suppressed. In the interest of protecting firms against claims for compensation by military veterans, the EPA was persuasively accused of collusion. As Casten said: "EPA's big goal has been to protect industry."

Though firm in his recognition that the origin of effective environmental laws was the part played by active citizens, Brooks is despondent about the future. Among other things, leaders of the contemporary political economy have been able to create a false dichotomy between the environment and the economy. Failing even to consider some of the more exciting innovations undertaken in Europe, for example, they have persuaded vast numbers of people that there is a zero-sum game to be played. Every victory for the environment costs jobs; every victory for investors means merely incidental damage to some insignificant insects or salamanders or birds or ... mountains, lakes and oceans.

At the base of Brooks's analysis is the apparent dominance of the Western belief in nature as a passive source of human wealth, not as an ecosystem in which our species is one component among many. His perception—widely shared by those with the wit and the will to pay attention to the obvious—is that today's citizens, through a dearth of scientific understanding, an excess of unreflective self-indulgence, or a good deal of both have jettisoned the 1970 consensus, chosen to embrace the market rather than the common weal, and are prepared to act only in their *unenlightened* self-interest.

Brooks is pessimistic about the potential of ordinary people and even legal and scientific women and men of genius to address the problems we collectively face. This may be a little unfair, but it

is also understandable. The cohesion of the short-term interests of the private sector has allowed a common front of market-dominated ideology to define environmental issues. Working people, fearful of unemployment and lacking resourceful political leadership have retreated into the idiocy of private life. “Twenty-first-century citizens,” he says, “seem unable to perceive their culpability in causing dangerous environmental changes.” This, however, may be a conclusion to be reached in North America, but not necessarily elsewhere. This, too, is understandable because Brooks has taken the American situation as his subject.

There are, however, at least three alternatives. First, and perhaps least likely, is that the apparent success of other nations and continents in at least marginally controlling their ecological degradation may serve as important models for reform-minded Americans and allow them to persuade others to do right by themselves and their planet. Second, and most likely, is the fact that the consequences of living by the illusions of market economics and environmental indifference will result in such calamities that they simply cannot be ignored. Third, and most optimistic, is the possibility that sensible citizens will reinvigorate the progressive populism that once made America’s best idea at least a temporary reality. Currently, of course, the mantle of “populism” is worn with swagger by millionaires and the enablers of millionaires who complain about pesky “elites” and enthusiasts of the “nanny state,” who have somehow emasculated men, defeminized women and infantilized us all.

Whether or not Brooks is correct in thinking that the best of times for environmental law and legal constraints on what can best be called “ecocide” are behind us is, of course, up to the public and its servants. There have been mass extinctions before, and new forms of life have emerged and prospered. Unless we attend quickly to the problems we have produced for ourselves, we are unlikely to be among them.

Karl Boyd Brooks has presented us with a sober volume, just as Ken Burns gave us inspirational images and wonderful stories of human ingenuity and gallantry. It is replete with good history and public policy analysis, but it is required of us that we do not content ourselves to luxuriate in nostalgia. The stakes are simply too high.

President Nixon’s expression of concern, while perhaps poignant (even for those of us who are sceptical of its sincerity), was wrong on one point. He spoke about “improving our environment.” There is, in that phrase, more than a hint of the monumental *hubris* that landed us in this mess in the first place. The environment, of course, needs very little improvement, at least not from us. It was fine as it was and most likely will be again. What was needed at the apex of environmental awareness was effective stewardship, which meant then and means today that we, as a species, call an immediate halt to the indiscriminate devastation that we visit upon the Earth. Failing that, when we are gone—perhaps sooner than necessary—“Gaia” will breath a sign of relief, adjust and recover. The Earth will surely have its day.

About the Author:

Howard A. Doughty teaches in the B.Sc. Nursing program in the Faculty of Applied Arts and Health Sciences at Seneca College and York University in Toronto, Canada.