

The Colorado Doctrine – Water Rights, Corporations and Distributive Justice on the American Frontier; David Schorr (reviewed by Ty Notestine)

What did you get out of book?

I developed better appreciation of why Colorado's water law (the Colorado doctrine of priority appropriation or simply "Colorado doctrine") is considered iconic by legal scholars around the world, particularly in the field of property law (note that author David Schorr is a prominent legal scholar of environmental law; Tel Aviv University, Israel).

Would you recommend?

I would for those interested in a comprehensive review of the history giving rise to Colorado water law based on extensive research into historic/archival materials, legislative records and court cases (and all the research is meticulously referenced in a notes section that comprises nearly as many pages as the main text of book!). It is further noted the book's main premise (see first Key Point below) is considered ground breaking by many legal theorists and practitioners.

Disclosure > The book was daunting for this time-bound reader due to author's exhaustive approach in elaborating vast amounts of source material (as mentioned) and in using multiple examples to underscore key points. As result I completed perhaps 2/3 of book before bogging down; however, I happily found a number of published legal reviews that proved (for me) more effective - in their focused brevity - in presenting book's key elements. The following meta-source was particularly helpful >

Anti-Monopoly and the Radical Lockean Origins of Western Water Law (Michael C. Blumm)

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2302848

Key points:

The book challenges the widespread conventional view of Colorado's prior appropriation law (namely that it reflects an ideological aversion to the inefficiencies associated with common property) instead asserting that the overarching principles of its founding were actually equity and justice (i.e. that the principal concern of the doctrine's architects was that water law encourage widespread use of the resource)

The founding of the Colorado doctrine is anchored in radical Lockean thought – one of its basic tenets being antipathy toward concentrated property ownership (*John Locke was Enlightenment Age thinker who argued property is a natural right, and that individual ownership of property is justified by the labor exerted in its utilization to produce goods beneficial to human society*).

The anti-monopoly sentiment underlying the Colorado doctrine resulted in the rejection of riparianism to promote the fundamental notion of widespread distribution ("Coffin v. Left Hand Ditch").

Sufficiency not priority was the basis for the Colorado doctrine. The principle of sufficiency – as primary rule – is each party entitled to proportionate share of the water. But sufficiency, in a water short environment, must also incorporate temporal priority (as a supplementary principle) or else riparian sharing would exhaust the resource to the detriment of all (i.e. temporal priority was incorporated as a kind of tie-breaker).

Public ownership of water. The Colorado Constitution declared water the property of the state (a rejection of riparianism in which water rights were ancillary to land ownership).

The centerpiece of Colorado doctrine was not temporal priority but instead beneficial use (along with the rejection of riparianism and the pursuit of widespread use). Priority was merely an auxiliary to the equal opportunity offered by beneficial use: temporal priority served to break ties among beneficial users, but priority was not determinative without a beneficial use.

Beneficial use is also the measure of the scope of the right (the framers of the Colorado doctrine chose to define the scope of the right in terms of beneficial use and its attendant inefficiencies). Diversion without use is subject to forfeiture making speculation under such a system impossible.