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Wolves, Courts, and Public Policy: The Children of the Night Return to the Northern Rocky Mountains

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Wolves, Courts, and Public Policy: The Children of the Night Return to the Northern Rocky Mountains by Edward A. Fitzgerald (Lexington Books; 242 pages; 2015)

Wolves, Courts, and Public Policy: The Children of the Night Return to the Northern Rocky Mountains is a study of America's handling of the wolf, detailing the efficacy of public law litigation. Professor Fitzgerald tells the history of wolf eradication, the subsequent return of wolves, and recent efforts to delist wolves from federal protection in the Northern Rocky Mountains. He presents this analysis within the larger political context of the battle between interest groups and environmental groups. While it may be unfair to characterize this battle as one between money and the public interest, it can be understood in the particular theoretical framework of public choice theory versus civic republicanism. What the book communicates is a familiar theme: pluralism is alive and well in America.

Professor Fitzgerald uses two political theories to conceptualize the public's response to wolves. Both public choice theory and civic republicanism are political theory terms of art, each characterizing our American political process in a particular sense. Public choice theory "views the goal of the legislative process as satisfying private interest." On the other hand, civic republicanism "envisions the legislative process as realizing the public interest." Professor Fitzgerald uses these theories to understand industry and environmental groups' actions. Livestock, farming, and hunting industries have played a significant role in the eradication of wolves, and have used Congress to satisfy their private interests. Alternatively, citizen-brought lawsuits allowed by the Endangered Species Act (ESA) have enabled public interest litigation, illustrating the potential for civic republicanism when the courts interpret the statute as focusing on the public interest.

Amidst these theoretical frameworks, Professor Fitzgerald presents the history of wolves in America. He concisely details how wolves were shot, poisoned and pushed to the West from the East in pursuit of resources and development. A similar story unfolded in the West, where wolves were first killed for pelts and then killed for the danger they posed to livestock. While many killings were performed by private citizens, the government—on the federal, state and local levels—supported the killings. This is the history of wolf eradication, one that sets the stage for understanding the hold industry had on Congress, which existed even through an environmental awakening. Through Professor Fitzgerald's presentation of wolf eradication, the reader sees the beginnings of a partnership between industry and Congress.

It can be easy to latch onto the discussion of the relationship between industry interests and Congress. The influence of the private sector in our government is of great concern to the public, evidenced by the outrage when *Citizens United* was decided. Moreover, it feels appropriate when criticizing American politics to highlight where money goes, and what interests it advances. But viewing Professor Fitzgerald's study only as an illustration of the effects private industry may have on environmental policy misses an important point—namely, the potential of litigation.

Professor Fitzgerald views the reintroduction of wolves to the Northern Rocky Mountains as a success of public law litigation. Public law litigation is the

mechanism by which environmental groups like Defenders of Wildlife, Earthjustice, and Natural Resources Defense Council have pursued their interests when Congress has not enacted the laws the environmental groups desired, or executive agencies have not acted in a manner the groups would prefer. The litigation has taken place through citizen suits allowed under the ESA. To be clear, both industry and environmental groups have pursued litigation, each attempting to secure the result they respectively seek. For example, in 1994, the Wyoming Farm Bureau Federation, a farming industry group, attempted to stop the Fish and Wildlife Service from releasing wolves into Yellowstone National Park and Central Idaho. Ultimately, the environmental groups were successful in the case. Similar success has occurred in *Defenders of Wildlife v. Interior*, *Defenders of Wildlife v. Hall*, and *Defenders of Wildlife v. Salazar*.

Professor Fitzgerald's highlighting of these litigation battles can be of particular use for the environmentalist. Essentially, he presents five detailed case studies. With each case, Professor Fitzgerald provides historical context, a brief and effective description of the legal issues, and thorough analysis of the arguments that environmental groups made; he walks the reader through the nuances of each case. For the law student or the lawyer, these case studies are rewarding, illustrating the relationship between the judiciary, the executive branch, and the legislature. Amidst a story of private interests securing one branch of government, the case studies highlight the potential for public interest success in the judiciary.

Unfortunately, the complexity and difficulty of litigation limit this potential. One point Professor Fitzgerald fails to address is that litigation is not as easy as filing a case or knowing the applicable law under the ESA. Each case represents a huge feat by a team of concerned individuals, whether on the industry side or environmental group side. Additionally, these cases are litigated in federal courts and are typically in response to agency actions (or in the instance of the last case, an appropriation bill), which means that each case has a significant historical and political context. Despite this gap in Professor Fitzgerald's study, and perhaps most significant about his work, is the attention he pays to the context. Professor Fitzgerald does not let the reader forget the historical or political importance of an agency action, a court decision, or a congressman's comment.

Professor Fitzgerald's book is not likely to be read by wolf lovers, either because of its academic nature or the unlikelihood of popular appeal. Hopefully that is not the case, not only because the book speaks to the beauty and biological necessity of wolves, but also because it may allow those concerned about the animal to understand the historical and political context of their return. The value of understanding this context is not only for the successful return of wolves, but for anybody concerned with the enforcement of the ESA.

As Professor Fitzgerald notes in the last two chapters of his book, wolves have been delisted in the Northern Rocky Mountains, meaning they are stripped of federal protection under the ESA, and efforts have been made to amend the ESA to make it a more industry-friendly act. While public law litigation was, and can be, effective, it does not exist in a vacuum. *Wolves, Courts, and Public Policy* demonstrates that Newton's Third Law of Motion exists in American environmental politics: with a series of successful court decisions, congressmen react proportionately.

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