The magisterial PAUL W. GATES, HISTORY OF PUBLIC LAND LAW DEVELOPMENT (1968) is a treasure trove of information on all the topics considered in this chapter. It builds on the prior definitive source, BENJAMIN H. HIBBARD, A HISTORY OF THE PUBLIC LAND POLICIES (1924). Another, even older source, is particularly valuable on acquisition and disposition: THOMAS DONALDSON, THE PUBLIC DOMAIN: ITS HISTORY WITH STATISTICS (1884). Other sources drawn upon by chapter 2 include ROY M. ROBBINS, OUR LANDED HERITAGE: THE PUBLIC DOMAIN 1776-1970 (1942), and VERNON CARSTENSEN (ED.), THE PUBLIC LANDS (1962).

A. Acquisition of the Public Domain

1. From the Original Colonies

2. From Foreign Nations

3. From Indian Tribes

Felix Cohen was the leading authority on Indian law in the twentieth century, and many of his original articles, such as *Original Indian Title*, 32 MINN. L.REV. 28 (1947), remain important sources of commentary. His HANDBOOK OF FEDERAL INDIAN LAW continues to be updated and is the best source for beginning research on any issue related to Indian title. For additional information on Johnson v. M'Intosh, see Eric Kades, *History and Interpretation of the Great Case of Johnson v. M'Intosh*, 19 LAW & HISTORY REV. 67 (2001).

On Indian natural resources management program, see e.g. *Del–Rio Drilling Programs, Inc. v. United States*, 146 F.3d 1358 (Fed. Cir. 1998). Michael Blumm, Elizabeth Ann Kronk, & Judith Royster have published a comprehensive treatment of the topic, NATIVE AMERICAN NATURAL RESOURCES LAW: CASES AND MATERIALS (3d ed. 2013).

Practical accommodations of Indian rights on federal lands is covered by Martin Nie, *The Use of Co-Management and Protected Land Use Designations to Protect Tribal Cultural Resources and Reserved Treaty Rights on Federal Lands*, 48 NAT. RES. J. 585 (2008).

B. Disposition of the Public Domain

1. Disposition

The standard text on the method of the public land survey system is LOWELL O. STEWARD, PUBLIC LAND SURVEYS (1935, reprinted Arno Press 1979). A popular treatment of the subject is ANDRO LINKLATER, MEASURING AMERICA: HOW AN UNTAMED WILDERNESS SHAPED THE UNITED STATES AND FULFILLED THE PROMISE OF DEMOCRACY (2002). A more scholarly source is MALCOLM ROHRBOUGH, THE LAND OFFICE BUSINESS: THE SETTLEMENT AND ADMINISTRATION OF AMERICAN PUBLIC LANDS 1789-1837 (1968).

2. State Lands and Trust Doctrines

On the sagebrush rebellion and states' rights, see John D. Leshy, *Unraveling the Sagebrush Rebellion: Law, Politics and Federal Lands*, 14 U.C. DAVIS L. REV. 317 (1980); Robert L. Fischman & Jeremiah Williamson, *The Story of* Kleppe v. New Mexico: *The Sagebrush Rebellion as Un-Cooperative Federalism*, 83 U. COLO. L. REV. 123 (2011).

Public Trust Doctrine:

The public trust doctrine is a favorite topic of discussion in law journals. At the dawn of modern environmental era, Professor Sax revived Illinois Central, identifying it as a taproot of resource protection law. Joseph L. Sax, *The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention*, 68 MICH. L.REV. 471 (1970). Sax emphasized the trust's utility as a mechanism for the courts to limit the discretion of executive branch agencies. Considerable scholarly debate followed.

Professor Huffman has been a persistent critic of the expansion of the public trust doctrine to include modern environmental concerns. He argues that the public trust doctrine is simply a run-of-the-mill easement under state property law to accommodate navigation and fishing. James L. Huffman, *A Fish Out of Water: The Public Trust Doctrine in a Constitutional Democracy*, 19 ENVTL. L. 527 (1989). Professor Pearson is skeptical that the public trust doctrine will ever be a viable part of federal public land litigation. He argues that the courts will not second-guess Congress's implementation of its trust responsibility for federal lands, and concludes that the public trust notion "empowers the political branches of government to implement substantive choices despite objections in the judicial branch." He contrasts this with the doctrine's operation in state law, where it "empowers the judicial branch to overturn substantive choices made by the political branches. …Night, meet day." Eric Pearson, *The Public Trust Doctrine in Federal Law*, 24 J. LAND, RESOURCES & ENVTL. L. 173, 176–77 (2004).

On the connection between Pollard and Illinois Central, see James R. Rasband, The Disregarded Common Parentage of the Equal Footing and Public Trust Doctrines, 32 LAND & WATER L.REV. 1 (1997).

In 1990, history seemed to repeat itself when a federal district court applied the public trust doctrine to void the conveyance by Illinois of submerged lands under Lake Michigan to a university for expansion of its campus. Lake Michigan Fed'n v. U.S. Army Corps of Engineers, 742 F. Supp. 441 (N.D. Ill. 1990). *Illinois Central* continues to spawn re-examination. Douglas L. Grant, *Underpinnings of the Public Trust Doctrine: Lessons from Illinois Central Railroad*, 33 ARIZ. ST. L.J. 849 (2001); Joseph D. Kearney & Thomas W. Merrill, *The Origins of the American Public Trust Doctrine: What Really Happened in Illinois Central*, 71 U. CHICAGO L. REV. 799 (2004). On the role of public land policies, railroads, and shipping in the rise of Chicago, see WILLIAM CRONON, NATURE'S METROPOLIS (1991).

Public Trust Doctrine Around the World: Several countries around the world have even extended the public trust doctrine to non-traditional resources that have little to do with channels of navigation and commerce. In India, for example, the public trust doctrine is not confined by the "navigable waters" limitations recognized in the United States; rather, it covers all natural resources including the general environment. See M.C. Mehta v. Kamal Nath, 1 SCC 388 (1997). And the decisions of the Indian Supreme Court reflect ecological and moral values – not just legal principles based on commercial production and property regimes. Likewise, in Oposa et. al. v. Fulgencio S. Factoran, Jr., et. al., (1993) 224 SCRA 792, the Supreme Court of the Philippines tethered the public trust doctrine to the fundamental constitutional right "to a balanced and healthful ecology in accordance with the rhythm and harmony of nature." It thus based the public trust doctrine on the moral and ecological values of the Filipino society, stating that preserving the "rhythm and harmony" of nature necessitate the "judicious disposition, utilization, management, renewal, and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, off-shore areas, and other natural resources" so that their "utilization be equitably accessible to the present as well as future generations." And in South Africa, the legislature enacted the National Environmental Management Act, which expressly incorporated the public trust doctrine by declaring that the State is a "custodian holding the environment in public trust for the people." Notably, all these evolutions stem from the same Roman law system that provided us with our own version of the public trust doctrine.

State Trust Lands:

The essential source on state trust lands is JON A. SOUDER & SALLY K. FAIRFAX, STATE TRUST LANDS: HISTORY, MANAGEMENT, AND SUSTAINABLE USE (1996).

Some statehood enabling acts not only set out detailed restrictions, but went further to require the new state to put identical restrictions in its state constitution. For an illustration of the politics behind this process, see John Leshy, *The Making of the Arizona Constitution*, 20 ARIZ. ST. L.J. 1, 7–27 (1988). See also Eric Biber, *The Price of Admission: Causes, Effects, and Patterns of Conditions Imposed on States Entering the Union*, 46 AM. J. LEGAL HIST. 119 (2004). The state constitutional restrictions lead to state

Supreme Court decisions also strictly enforcing the terms of the federal land grants, as a matter of federal law (the enabling acts) or of state law (similar restrictions expressed in the state constitution or statutes). *See, e.g.*, Oklahoma Educ. Ass'n, Inc. v. Nigh, 642 P.2d 230 (Okl. 1982).

Roger D. Billings, *The Homestead Act, Pacific Railroad Act and Morrill Act*, 39 N. KY. L. REV. 699 (2012), covers the history of all three of these important disposal programs.

3. Grants to Private Parties

Particularly useful sources include: BENJAMIN H. HIBBARD, A HISTORY OF PUBLIC LAND POLICIES (1924, U. Wis. ed., 1965); Jerry A. O'Callaghan, *The War Veteran And The Public Lands*, *in* THE PUBLIC LANDS 109–119 (V. Carstensen ed. 1968).

Grants for Reclamation

On Powell's campaign to reform public land law, see WALLACE STEGNER, BEYOND THE HUNDREDTH MERIDIAN (1954); WILLIAM DEBUYS, SEEING THINGS WHOLE: THE ESSENTIAL JOHN WESLEY POWELL (2001).

The reclamation program is critically examined in the late Marc Reisner's now-classic work, CADILLAC DESERT (1993).

Grants to Miners

The standard reference sources are RODMAN W. PAUL, MINING FRONTIERS OF THE FAR WEST, 1848-1880 (1963); and RODMAN W. PAUL, CALIFORNIA GOLD: THE BEGINNING OF MINING IN THE FAR WEST (1947)

Grants to Railroads

A popular treatment of the railroad grants is RICHARD WHITE, RAILROADED: THE TRANSCONTINENTALS AND THE MAKING OF MODERN AMERICA (2012). The particularly colorful history of the O & C railroad lands is covered in Michael C. Blumm & Tim Wigington, *The Oregon & California Railroad Grant Lands' Sordid Past, Contentious Present, and Uncertain Future*, 40 B.C. ENVTL. AFF. L. REV. 1 (2013).

C. Reservation, Withdrawal, and Reacquisition

Federal condemnation procedures are summarized in *Kirby Forest Industries, Inc. v. United States*, 467 U.S. 1 (1984), involving a Park Service acquisition to expand Big Thicket National Park in Texas.

William Baude, *Rethinking the Federal Eminent Domain Power*, 122 YALE L.J. 1738 (2013), describes the history of changing constitutional approaches to federal condemnation power.

1. The Emergence of Withdrawal and Reservation: Forests and Scenery

On the origins of the national forests and the conservation movement, see SAMUEL P. HAYS, CONSERVATION AND THE GOSPEL OF EFFICIENCY 47 (1959).

For a history of the National Park Service, see BARRY MACKINTOSH, INTERPRETATION IN THE NATIONAL PARK SERVICE: A HISTORICAL PERSPECTIVE, available at http://www.cr.nps.gov/history/online_books/mackintosh2/branching_inagurating.htm (link last accessed March 30, 2014).

On John Muir, see STEPHEN FOX, THE AMERICAN CONSERVATION MOVEMENT: JOHN MUIR AND HIS LEGACY (1981).

On national monuments, s*ee generally* HAL ROTHMAN, AMERICA'S NATIONAL MONUMENTS (1989), and Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 GA. L.REV. 473 (2003).

2. Mineral Resources

On mineral withdrawals, see GORDON MORRIS BAKKEN, THE MINING LAW OF 1872: PAST, POLITICS, AND PROSPECTS (2008), and JOHN D. LESHY, THE MINING LAW: A STUDY IN PERPETUAL MOTION (1987).

3. Range Resources

Similar state statutes to the one prohibiting ranchers from grazing sheep on land that had been grazed by cattle (the source of dispute in Omaechevarria v. Idaho) were adopted by Arizona and Oregon. For a brief history of those statutes, as well as a summary of the litigation that followed, see 70 A.L.R. 410 (Originally published in 1931). See also, John J. Hasko, *Cattle v. Sheep: The Idaho Experience*, 3 THE CRIT: CRITICAL STUD. J. 79 (2010).

An essential source is E. LOUISE PEFFER, THE CLOSING OF THE PUBLIC DOMAIN: DISPOSAL AND RESERVATION POLICIES 1900-50 (1951).