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Governance Stream - Governance and the Law

‘Globalisation and decentralisation: the role of legal frameworks’

Reflections on the Experience in New York State and the USA

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The distinguished French microbiologist, René Dubos, urged those attending the United Nations’ Stockholm Conference on the Human Environment in 1972, to “Think globally, act locally.” His call to persons all over the world was to envision what international measures are needed in order to sustain a high quality of life on earth, and then to apply those measures in their own spheres of local activity. Lawyers would recognize the normative premise for his maxim in the law of good neighborly relations – *droit de voisinage*. When societies understand that all of us are co-stewards of the natural systems of the Earth, then we can learn to behave as neighbors, even with societies living on the other side of the globe. We all live in the same biosphere, and we are indeed all neighbors in it.

General Observations on Globalization & Decentralization

In light of all people’s relationships within Earth’s biosphere, contemporary issues, such as globalization or decentralization, should be viewed from the normative perspective of what is expected of good neighbors. Despite this desired norm, in the urgency of the present, too often such trends seem to take on the appearance of an over whelming force. In fact, they are but the latest of many other social forces that have affected how humans interact with nature. Park and protected area managers, and the environmental lawyers who support them, have had to cope with these sorts of social forces before, and doubtless will have to do so again. Before considering how these forces are perceived currently in the State of New York, and at the federal level in the United States of America, it may be helpful to make some general observations about what we mean by globalization, or decentralization.

The discipline of Environmental Law has advanced a framework that furthers global good neighborly relations through both international and national means. The multilateral environment agreements, such as the Convention on Biological Diversity or the UN Framework Convention on Climate Change provide a worldwide system by which nations harmonize and integrate their “local” steps to sustain global, shared interests in essential environmental systems such as

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biodiversity or climate. While these are international systems working from the inter-national plane through to the nations, the world's systems of protected areas works concurrently, from the national plane through to shape an international system.

Protected areas are not established globally, but rather locally; they are the creation of local and national authorities and exist all across the world. Parks and protected areas provide a wide range of environmental values to people everywhere, and are a truly international legal framework although not created by any treaty. IUCN, and its World Commission on Protected Areas, has been instrumental in nurturing this framework, providing it with standards and a common "language" or nomenclature, and stimulating cooperation so essential to strengthening protected areas in all parts of the Earth. IUCN's Commission on Environmental Law has reinforced the WCPA's leadership by providing comparative legal analysis and capacity building toward these ends.

IUCN's World Parks Congress in 2003 affords a welcome opportunity to reflect on the gains and setbacks that protected area managers have encountered since the last Congress held a decade ago in Caracas, Venezuela. While most contemporary challenges appear to be comparable to those confronted before, there are some new worldwide developments that do impact on protected areas. The theme of this governance stream for the World Parks Congress in Durban, South Africa, addresses how emergent patters of *globalization* and *decentralization* affect protected area management.

Globalization – the impacts locally, everywhere, generated from global sources - is characterized by conflicting tendencies. On the one hand, it is a phenomenon fueled by new technologies, such as the global positioning systems, the satellite based infrastructure that now provides navigation and services to identify map locations for protected areas even in the most report locations of the planet. The GPS developed by the U.S.A. is now to be complemented by the Galileo satellite constellation proposed by the European Union. Remote sensing satellites now provide real time photographs of events in protected areas anywhere in the world, as the NASA photos of the forest fires in Indonesia graphically demonstrated during the Southeast Asian "Haze" episodes in 1997-99, or for other recent fires over the past months,¹ or as shown in photographs over time documenting the migrant intrusions of housing along new roads cut into Brazilian rainforests. Similarly, telecommunications reach even the most remote parts of the Earth, and along with them the Internet, which permits access to knowledge databases and the compilation of information on a scale never imagined at the last World Parks Congress. Even remote protected areas can now have electricity, through distributed energy systems, such as local photovoltaic cells, hydrogen fuel cells, wind generators, or small head hydro-electric generators.

Through the new technologies of globalization events or conditions in protected areas in one nation can be instantly known in all nations. While today there are no areas remote from knowledge databases on the Internet, the physical access to parks by land remains problematic. Wealthy eco-tourist can access these areas, and globalization of marketing means that all parts of Earth experience the pressures of eco-tourism. In some places, rare plant prospectors or animal poachers can access remote areas as well. In both instance, the financial and physical infrastructure for park managers and park police may be far outclassed by those who come into protected areas for tourism or economic exploration. Even when adequate economic resources are allocated to protected area managers, as by appropriations from the central government's budget or designated revenues from eco-tourism, a second generation of problems emerges. The local populations living near protected areas do not always have comparable services in energy, communications, or other infrastructure. Enhanced park management services need to be complemented by sustainable development measures that provide such services also to local

¹ See <<http://activefiremaps.fs.fed.us/index.html>> and <<http://rapidfire.sci.gsfc.nasa.gov/>>.

authorities and local communities. Parks are a part of the human economy, as well as the ecology, of their area.

Other globalization trends, such as the negotiation of “free trade agreements” for liberalized trade, also may impact on parklands. If, for instance, the current draft of the Free Trade Agreement of the Americas (FTAA) were to be accepted as a treaty, some serious problems could emerge. For example, under such a treaty a participating nation’s environmental laws may not prevent direct foreign investment for a development on privately owned lands next to park, in order to protect the park. If the nation were to invoke its environmental laws to prevent the development, in order to protect the park, the project might be halted but then the investor could claim compensation before a proposed international trade tribunal. If the tribunal held in favor of the investor, the taxpayers of the nation could have to pay the foreign investor his lost expectation profits. Comparable situations have already arisen under the North American Free Trade Agreement (NAFTA), when Mexico had to pay compensation to an investor from the USA because Mexican environmental laws prevented operation of a hazardous waste facility that the investor had expected to build and operate.

It will be important to prevent free trade agreements from frustrating legitimate environmental laws. Those laws necessarily – like all police power measures enacted to protect the public welfare - establish the foundation for trade and commerce, and other economic and social endeavors. Rather than use the FTAA approach, a far more sensible approach is contained in the recently agreed Singapore-USA Free Trade Agreement, which in Article 18 provides for a joint environment committee of each nation to work out details for sensible protection of legitimate environmental interests that might be affected because of the FTA. Since liberalized trade systems influence agricultural, silvacultural, aquacultural and other economic activities involving natural resources, including business services such as eco-tourism, trade agreements must respect policies and laws enacted to ensure sustainable development. Globalization of trade should respect decisions to protect natural areas. World trade agreements, as a globalizing force, so far have been negotiated largely in disregard of the environmental laws that underpin all economic activity. In trade terms, it is time to recognize that the human economy is wholly dependent on the “economy of nature,” or ecology.

Globalization of trade through world trade agreements has also raised perceptions that the global trading systems tend to enrich developed nations, while affording little or no immediate benefits for developing nations. This perception may not immediately affect park managers, but the perceptions of injustice color attitudes toward the other aspects of globalization that can benefit parks, such as the new technologies.

Amidst these various globalization trends, there is also a counter-tendency. *Decentralization* is the increasing assertion of decision-making by local authorities, without mandate or much influence from the global or even national levels. Contemporary tendencies toward decentralization tend to emphasize strengthened local decision-making. Enhanced access to information and communications over the Internet enhances capacity for local communities to exercise informed choice on a wide range of topics. Distributed energy systems bring opportunities for rural electrification, without the necessity of major power generating plants or transmission lines. International cooperation through both governmental and non-governmental organizations links local communities, including local parks associations, with support systems and resources from abroad. Since the necessary and sufficient element of effective stewardship of protected areas is local leadership and commitment, these decentralization tendencies can work to benefit protected areas.

In the European Union, the concept of subsidiarity encourages decisions to be made at the level most appropriate for subject of the decision-making. Park management may be coordinated

nationally, but local conditions will often determine how best to protect the park's natural systems. In the USA, a comparable illustration of this principle is often referred to as "home rule," and local authorities are encouraged to make as many decisions as needed to guide local life. New York State, for instance, has a "home rule" section of its State Constitution, ensuring local authorities rights and duties. Most land use and many natural resource decisions are made locally, pursuant to statewide standards. The federal government is not authorized to make local decisions on land uses, education, or other activities that are reserved to state governments.

Conversely, if the federal government, or a central government, taxes local areas excessively, or incurs large budget deficits, as is currently the case in the USA under President George W. Bush, the power to tax and spend has the practical effect of undermining home rule and the principle of subsidiarity, by denying the local authorities the funds needed for their programs. Protected area managers may have the authority and duty to act, but may be denied the financing needed because of cutbacks in resources from central governments. In addition, when statewide standards are lacking, or not enforced, local authorities using local powers to stimulate new developments that are inimical to the interests of protected areas, then decentralization can build negative pressures on protected areas.

Protected Areas in the Wake of Globalization & Decentralization

These generalized trends can be illustrated with reference to governance arrangements for natural areas in protected area management in the federation of states, the United States of America, and in one of its constituent states, New York. When surveying trends in the USA, it is important to consider States, because under the US Constitution, it is the states that have the authority over land use and protected areas within their boundaries. The "property clause" of the US Constitution allows Congress to establish laws for federal property, and this includes the national parks and monuments (National Parks Service), national wildlife refuges (Fish & Wildlife Service), national recreation areas (National Parks Service), and national forests (US Forest Service), and national wilderness areas. All these designated protected areas are located on public domain lands held by the federal government. States designate state park systems, state forest preserves or wildlife refuges, and state monuments, and authorize the local authorities established within states to designate local parks and wildlife areas and historic sites. Some states, such as California or New York, have very extensive state parks systems, rivaling those of the federal government for federal lands. Other states have rather more modest systems.

In the USA today, the trends in globalization on balance may offer some benefits for protected area management. In remote park sites, solar panels provide electricity to facilitate telecommunications. Park rangers have access to and use GPO technology, which is useful in search and rescue, in forest fire protection, in mapping species habitats, and the like. The National Park Service, an agency member of IUCN, actively cooperates with and supports capacity building for protected area managers around the world. There is a robust eco-tourism to national parks, and that is growing.

An important management tool used throughout the federal protected areas is environmental impact assessment (EIA), required of all federal agencies by the National Environmental Policy Act (NEPA). NEPA requires all agencies to actively consult with state and local officials and the public, and all major federal actions significantly affecting the quality of the human environment. This means, for instance, that when the Department of Army closed the Presidio, which was established by the Spanish as a military base in San Francisco, and continued as a federal army base ever since becoming property of the USA, and turned the site over the National Park Service to become a protected area, a unit of the Golden Gate National Recreation Area, the EIA procedures under NEPA provided the complete legal framework for transfer of the site and changes in its uses. The EIA process facilitated roles for the state and local authorities, local

citizens and neighborhood groups, environmental and recreation nongovernmental organizations (NGOs), and the general public. The National Park Service has used the EIA process to ensure wide public participation in the revisions to the Master Plan for Yosemite National Parks, as it has with other sites across its system.

An important principle for maintaining environmental protection of protected areas at a consistently high level across the nation – countering any negative influence from either globalization or decentralization, is that all federal laws, such as NEPA, and the legislation for air or water quality, pesticides, endangered species, or other topics apply fully to all activities in protected areas. These rules can be enforced either by federal or state governments, or by citizens through the authority of citizen suit. There are no exemptions to these environmental laws. When the USA established the world’s first national parks, there were those who resisted the designations, and sought to continue exploitation of natural resources within park boundaries. The US Army provided units to serve as the first park managers. Even after the National Park Service was established, it ultimately has required court orders and other federal enforcement measures to ensure that protected areas rules are observed. The national parks now have police officers, provide federal magistrates courts in the parks with highest attendance, and enjoy public support through natural science associations and other NGOs that exist just to support a specific park. Nearly every unit in the system of federal parks has the benefit of a “friends of the park” NGO. These NGOs have the right to know all about park management decisions, through the federal Freedom of Information Act (FOIA), and under NEPA have the right to participate in decisions affecting the park.

On the level of the States, New York is an appropriate example because in 1911 its legislature created the first protected area with the Niagara Fall Reservation, and then the establishment of the first dedicated park service, now the New York State Office of Parks, Recreation & Historic Preservation. The State now has parks designated in all its regions, with regional offices, a system of park police and staff for recreational management. In 1984, New York established the first wilderness area in law, with the designation of the Adirondack and Forest Preserve as “forever wild forest land,” in Article 14 of the Constitution of the State of New York. The Adirondack Forest Preserve is now over a century old, and is managed by the NYS Department of Environmental Conservation (DEC). It has a complement of Park Rangers, trained in preventing and combating forest fires and in search and rescue, as well as a complement of Environmental Conservation police officers. Half the lands in the park are managed by the State DEC, through unit management plans, each designed to document and sustain the ecosystems and natural features of the discrete area within the plan. The public, as well as local authorities, are consulted in the preparation of the unit management plans through the State’s EIA process, required by the NY State Environmental Quality Review Act (SEQRA). The other half of the lands are privately held, or held by local governments. There are stringent land use controls, to ensure protection of the parks forests, lakes, rives and streams; the Adirondack Park Agency (APA) supervises the regulatory controls on these non-state owned lands and waters. APA decisions are reviewed in the State court system, and the land use rules may be enforced by court order. The State’s wildlife laws apply throughout both the public and private lands equally. New York affords the public the right to access government documents about protected area management, and all other subjects, through the NYS Freedom of Information Law (FOIL). Currently, a wide variety of NGOs use their rights under SEQRA and FOIL to work closely with the State in enhancing stewardship of the Adirondack Mountain region, such a the Adirondack Council, the Adirondack Conservancy, the Atlantic Chapter of the Sierra Club, the Adirondack Mountain Club, and the Association for the Protection of the Adirondacks, among others.

The Association for the Protection of the Adirondacks has just completed its own centenary (see www.protectadks.org). As one of the oldest NGOs dedicated to the protection of a protected area anywhere in the world, the Association has an extraordinary record of support for the wilderness

ecology of the Adirondack Mountains, a region larger than the Yosemite or Yellowstone national parks. The Association maintains a research library (now the Center for the Forest Preserve, at the home of Paul Schaefer, a lifelong citizen protector of the Adirondacks, regular programs for public education to acquaint all (including the next generation, the youth) about the importance of a continuing campaign to preserve wilderness in New York, an “Advocates for Wilderness Stewardship” program with a naturalist doing field inspections throughout the Park, providing informed comments on State unit management plans, and a program of legal action to protect wilderness. The Association has used its legal rights to win court decisions to prevent the erection of dams in wilderness areas, to halt incursions into protected areas for the Lake Placid Winter Olympics, and to ensure that protected nature enjoys the benefits of the rule of law, and does not yield to those who seek short term profits from exploiting natural resources, or from other expedient incursions into protected lands.

The Association has an affinity with wild areas else where in the world. Its centennial edition of its Journal, “*The Forest Preserve*,” (vol. 18. no. 1), features a set of articles on the protection of the alpine mountain wilderness areas of the Altai, situated where China, Russia, Kazakhstan and Mongolia intersect, written by Association Trustee Daniel R. Plumley. Adirondackers, including Association members and others, have raised over \$(US) 200,000 to help support the creation of a new 500,000 acre nature preserve in the Altai, the Sailugemskiy Zapovednik (see www.siblarus.ru). This is a good example of “acting globally while thinking locally.” The Association members illustrate the teaching of René Dubois come full circle.

How the USA manages with Trends

Globalization forces confound public life in the USA just as they do in other regions. The street demonstrations in Seattle, Washington, effectively closed down an international meeting of the World Trade Organization. The US Trade Representative’s Office promotes the development of new free trade agreements, and while the Office has environmental lawyers working with it, it still does not reflect environmental factors as a prerequisite to commerce. Advances in Internet uses and computer software continue to emerge, advancing knowledge networks and communications, while intellectual property rights advocates seek to extend patents and tie knowledge to private property systems. All these, and other countervailing trends, coexist within the USA, but few impact directly on park and protected area management.

What is evident in the USA is that there has not yet been the integration of development, as represented by liberalized trade, and environment, that was called for – and agreed to – in 1992 at the UN Conference on Environment and Development. Trade and commerce are in one sector, agriculture is in another sector, and environmental protection in still another sector. While NEPA mandated an integration of environmental values into all sectors in 1969, successive administrations of both political parties, democrats and republicans alike, largely have failed to make much progress in achieving this integration. Park management continues to exist as a stable, but isolated sector of its own. Patterns of sustainable development can be discerned, but are not yet the dominant theme in the USA at either federal or state levels of government.

At both federal and state levels of government, the management of protected areas is impacted most immediately by the current budget deficits that confront most governments. In trying economic conditions, government budget managers often cut park budgets early in the process. The protected areas seem a luxury to these financial officials who have little to do with environmental issues most of the time.

The patterns of protected area management otherwise are fairly well established, and prevail despite the buffets of globalization or decentralization.

Prospects for the Next Decade

It is likely that the number of protected areas, and their size in both absolute terms and as a percentage of lands and waters on Earth, will grow. Societies will need to allocate more resources to managing species habitats and environmental resources such as watersheds (e.g. as sources for freshwater and flood control). Climate change will alter how natural systems in protected areas function. Distant air pollution, such as acid rain, will degrade natural systems whether they are protected or not.

If the global scientific community is to understand how to respond to climate change, it must measure the “pristine” areas and the natural systems of Earth. These become the sources of baseline data from which change is measured, and methods of adaptation to change can be formulated, tested, and found to be either effective or not. In the USA, and a State like New York, significant resources are allocated today to the study of protected areas. Even in times of scarce financial resources, this work must continue and be strengthened.

More protected areas need to be designated. New York continues to add lands to the Adirondack Forest Preserve every year. Governor George Pataki, a Republican, has added more lands that did Governor Mario Cuomo, a Democratic, but both are determined to preserve the wild lands of New York’s Adirondack mountains. Citizens continue to press for effective management and protection of the Adirondack Forest Preserve, and the State’s other parks lands.

At the federal level, despite the skepticism of President George W. Bush’s administration with respect to some aspects of environmental protection, President Bush has allocated significant funds for the work of the National Park Service. It is recognized that park management requires adequate funding, and the federal budget allocations for infrastructure in National Parks has been increased over the amount that the prior president, William J. Clinton, has chosen to allocate. It is fair to say that there is a national and bipartisan consensus in favor of maintaining the existing protected areas as a national, natural, heritage that government has a duty to sustain. What the government does not now do well is manage buffer areas, near national parks. A movement by citizens NGOs and some local authorities to structure “The Greater Yellowstone” as a carefully managed zone around the Yellowstone National Park, has grown in influence, yet remains to be embraced by federal authorities. The model of the Adirondack Park Agency, for managing the private lands around and within the Adirondack Forest Preserve, should be pursued around Yellowstone, and around all other protected areas. It is likely that pressure for establishing such buffer zone management will grow.

Pressure to enhance the effectiveness of protected area management is a decentralized force. It is likely that IUCN, and other international conservation organizations, can lend support from a global perspective to such local initiatives. This support comes in the form of Member Resolutions at each IUCN World Conservation Congress. In the case of the USA, there has been a resolution, repeated often, for the USA and the Russian Federation (and formerly the USSR) to establish the Beringian International Park across the Bering Straits between Alaska and Chukotka (Siberia). Both nations have agreed to establish the park, but have not yet implemented the agreement. The pressure to safeguard this area, essential for the Pacific bird and mammal migrations, will continue to grow, from the “bottom up.” The growth in the number and size of protected areas inevitably emerged from such local, “decentralized” pressures, where the local people are thinking globally, and acting locally. If both sides of Beringia do not safeguard the habitats for the species that inhabit the region during parks of the year, other parks of the globe will not be effective in safeguarding those species, and *vice versa*.

As Globalization trends continue, the importance of protected area management in the USA will continue to grow commensurately.