



Attorneys at Law

Consortium Standards Bulletin

A ConsortiumInfo.org publication

MAY 2007
Vol VI, No. 5

EDITORIAL

THE "LANDLORD'S MAN" AND THE CONSERVATION OF NATURAL RESOURCES

Andrew Updegrove

The most intimidating and intractable issue the leaders of the Group of 8 will face when they meet in Heiligandamm, Germany this week may well be global warming, a reality that even the United States government no longer disputes. Absent from the meeting room will be China, which this year may surpass the United States as the world's most prolific emitter of greenhouse gases.

In the days immediately preceding the meeting both the United States and China made significant statements on the issue: the Bush administration proposed a remedial plan that would lie outside the Kyoto Protocol framework already agreed to by virtually every nation in the world except the United States. And China has adamantly rejected the ability of other nations to demand caps on the emissions of developing countries, including itself.

China, of course, is not even a member of the Group of 8. But the elephant in the meeting room will not so much be the inadequacy of the "first step" targets of the Kyoto protocol, or the refusal of the United States to ratify its participation in that accord, or even the absence of China at the table. The real issue is the lack of any legal structure within which the nations of the world can address global resource issues with the authority and certainty that global warming demands.

The problem is two fold: structurally, there is no existing mechanism that can force any nation to constrain itself except through voluntarily entering into a treaty. Nor is there usually a way to enforce treaty obligations that are not met. Since the First World War and the subsequent failure of the League of Nations, governments consistently refused to compromise their sovereignty in favor of anticipatory, binding joint decision-making, instead of traditionally retroactive, elective ratification.

The second leg of the problem has been recognized at least since the days of Aristotle, who recognized the following sad truth in his *Politics*: "that which is common to the greatest number has the least care bestowed upon it. Every one thinks chiefly of his own, hardly at all of the common interest, and only when he is himself concerned as an individual."

Today, we refer to the manifestation of this human characteristic as the "tragedy of the commons." Or, more starkly stated, the impulse to get it while you can, before the other guy takes it first.

These two issues are inextricably linked, because by definition the tragedy of the commons cannot exist unless there are at least "two guys" that have the opportunity to exploit the same resource. But if a resource with multiple, non-custodial owners is subject to the control of a single governing body, then there is hope. Existing governmental dynamics, while imperfect, can be brought to bear to prevent over exploitation by multiple citizens. If the competing resource exploiters are nations, however, then the common resource is placed at great risk.

Consider, for example, the history of domestic environmental protection laws in the United States, in contrast to progress on global warming. Air, water, and endangered species, among other commonly shared resources, are all now protected by strict laws, backed by severe (and often criminal) penalties. What allowed effective action to follow public recognition of the gravity of these problems was the feasibility of collective action through a single guardian of the commons.

It is true that progress has already been made on global warming through traditional mechanisms, both international (Kyoto) as well as private (many corporations are now adopting "green" policies independent of government requirements). These efforts will likely continue and even increase. But the urgent question remains whether such necessary actions will be sufficient. In the fullness of time, if not our individual lifetimes, the output of green house gases must decrease on an absolute basis, rather than merely slow in growth on a relative basis. Otherwise, dire consequences will only be delayed, rather than avoided. In such an event, the "the other guys" that we beat to the commons will simply be our children, rather than ourselves.

When referring to natural resources, it is fashionable to speak of ourselves as "holding them in trust" for future generations. But this concept has been demonstrably inadequate to protect resources from abuse, just as unsupervised trustees are too-often discovered in the real world to have violated their trust.

One way to envision a solution is to consider ourselves to be not the owners, but simply the tenants, of the land we possess and the climate we share. Tenants are required to maintain the leased premises in good condition, and may exercise only those rights that are expressly granted in the lease. In the case of property with commercially valuable renewable resources, the lease terms invariably either bar the usage of such resources entirely, or prohibit their utilization in excess of sustainable levels.

John Locke suggested that a similar approach should apply to natural resources held in common, recognizing an obligation to maintain "enough, and as good, left in common for others" after extracting one's own share of the common pie.

The problem is not, of course, that the moral obligation proposed by Locke is disputed in principle. What is lacking is the means – and the common will - to abide by it in practice. Perhaps what is needed is the presence of another incident of the example of tenantry: that unpopular figure of the agrarian past, often referred to in history and literature simply as: "the landlord's man."

The landlord's man functions as the eyes and ears of the often-distant landlord. The landlord of literature, of course, is the plutocrat that neither reaps nor sows, but nonetheless harvests a piece of the value created by the sweat of the farmer's brow. The heartless absentee landowner cares not a whit for the welfare of the tenant, but only about the preservation of the value of his land. The role of the landlord's man is not only to collect the rent, but also to preserve the intrinsic value of the landlord's land, cottages, hedgerows and, should the landlord be a sportsman, his foxes and fish as well.

Perhaps what is needed today is an international landlord's man with the authority and (even) the coldness of the crofter's nemesis of yore. Indeed, we would be better served if such an authority existed, and if that authority came from a global authority in which we were represented, but from which we could not withdraw. Otherwise, the wastage of precious resources and the acceleration of global warming will go unchecked, and the property of the landlord will suffer great harm.

That would be a common tragedy indeed. Because after all, we have met the landlord – and he is us.

Comments? updegrove@consortiuminfo.org

Copyright 2007 Andrew Updegrove