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Vantage Point

Boundaries, borders, barriers, fences, walls, dividers, lines, partitions. They are ubiquitous. They can be natural, like rivers, mountains, deserts. They can define political entities—nations, states, cities, towns, counties, precincts. They can be personal. They can be legal constructs—jurisdictional or limits on behavior. They can be fenced and well-protected or open and invisible. We have walls between church and state, between neighbors, and between governments and the people. In all their forms, they define some level of separation. Yet, every border that separates simultaneously shares, and in each sharing resides the possibility of conflict when the lines are crossed. To paraphrase Benjamin Cardozo, when “conduct . . . touches the border land, the penumbra, . . . controversy begins.”

As the world becomes smaller, and more populated, boundaries become more noticeable, important, and problematic. The Internet barely recognizes traditional national boundaries. International trade and finance move capital around the world in an instant. Nature creates natural boundaries but wind and water carry pollutants across thousands of miles without regard to national borders. For instance, wind carries mercury from China’s coal-fired power plants to the United States; in 2004, 30 percent or more of U.S. mercury pollution may have originated in China. If China doubles its coal burning by 2020, what conflict will accompany its increased transboundary mercury pollution? Do present controversies teach any lessons that could help us resolve or, even better, avoid future disputes?

This issue of *Natural Resources & Environment* explores the range and complexity of current boundary conflicts over pollution, natural resources, and energy. Many of the disputes written about have no easy answers, challenging the law to develop new rules. There is no exact formula or equation to calculate the solution to each problem. Rather, neighbors must learn to both respect and share boundaries, to establish and enforce rules that are reasonable and fair. As Oliver Wendell Holmes long ago noted, “standing on extreme rights” can be disastrous to others and do more harm than good to oneself, *Georgia v. Tennessee Copper Co.*, 206 U.S. 230 (1907).

The first two articles, *Environmental Enforcement Across National Borders* by Gerald George and *CERCLA and Transboundary Contamination in the Columbia River* by Richard Du Bey et al., address an updated version of a legendary transboundary dispute, the Trail Smelter litigation over sulfur dioxide pollution emitted from a smelter in Trail, British Columbia, which damaged orchards in Washington State. The current battle is the water pollution sequel: does CERCLA apply to the smelter’s Canadian discharges that contaminated U.S. waters. Mr. George, who represents the smelter’s owner, Teck Cominco, and Mr. Du Bey et al., who represent the tribes pursuing the litigation, examine, from their opposite perspectives, the important legal and policy issues this case raise.

North American transboundary disputes over river resources, pollution, and Canadian lumber resources are examined in the next three articles. Mary Kelly’s article

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looks at the challenges to protecting vital watersheds and rivers shared by the United States and Mexico. Noah Hall examines a variety of pollution disputes between the United States and Canada. His article describes a disturbing trend toward unilateral actions in response to pollution and an abandonment of long-standing bilateral approaches to solving pollution problems that have marked the successful relationship between the United States and Canada. John Bohn's article guides us through a long simmering trade dispute between U.S. and Canada over natural resources—softwood lumber.

Transboundary disputes within the United States are addressed by three authors. Kenneth Kristl explains the fascinating story of how the terms of a 1692 land grant from the King of England to William Penn requires, more than four hundred years later, BP to obtain a coastal zone permit from Delaware to build a liquid natural gas terminal in New Jersey. The article by Richard Ricci et al. examines the newest locus of boundary battles over water resources—the eastern United States. Susan Taylor's article shows how jurisdictional boundaries within the nation's electric and gas regulatory schemes can create legal havoc when an emergency occurs in our interconnected national energy system.

This issue also explores transboundary disputes beyond U.S. borders. Laurie Beale and Jeffrey Leppo, look at the long-line sword fishing industry as a case study in understanding the tension between the Endangered Species Act and international trade when trying to preserve an important fishery. Finally, Hilary Stone assesses the failure of law to control transfrontier shipment of hazardous waste across Europe.

The lesson in these articles: transboundary conflict inheres in the human condition, and there are no easy solutions. We need law to help us to be good neighbors.

David R. Hodas
Issue Editor

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