

# MOUNTAIN RESORTS: ECOLOGY, ECONOMICS AND THE LAW

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When it adopted Agenda 21 in 1992, the Rio Earth Summit officially elevated the global awareness of both the importance of mountains and the risks they face:

Mountains are an important source of water, energy and biological diversity. Furthermore, they are a source of such key resources as minerals, forest products and agricultural products and of recreation. As a major ecosystem representing the complex and interrelated ecology of our planet, mountain environments are essential to the survival of the global ecosystem. Mountain ecosystems are, however, rapidly changing. They are susceptible to accelerated soil erosion, landslides and rapid loss of habitat and genetic diversity.<sup>1</sup>

By recognizing the significant role that mountains play in maintaining the world's ecological integrity, its economic resources and its sources of human pleasure, however, these words implicitly establish potentially competing goals. For example, using the mountain landscapes to harvest natural resources or to provide recreational opportunities can impact the quantity and quality of water that flows down from the mountains or the biological diversity on their slopes.

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1. United Nations Conference on Environment and Development, Agenda 21, at 13.1, U.N. Doc A/Conf.151/26 (1992), available at <http://www.un.org/esa/sustdev/agenda21.htm>.

This symposium issue of the *Vermont Law Review* explores the ways in which the law addresses human impacts on mountain ecosystems as it attempts to reconcile society's competing interests in the mountain landscape. In the following few paragraphs, this Introduction briefly describes the bounds of this inquiry.

This volume approaches law from the perspective of ecology, not environment. When we look at the natural world and law from a traditional environmental perspective, we often tend to focus on the individual components of the environment. For example, we look at land and regulate its uses; we look at water and regulate inputs that may affect its quality; and we look at air and set standards for pollutant emissions. When we look at the world from an ecological perspective, however, we examine how the many components of the natural world work together and how each one affects and relies on the other. As Ernest Callenbach wrote, ecology is "the science that studies the marvelously complex interrelationships of life forms on planet Earth."<sup>2</sup> Thus, the ecological perspective focuses on the interrelationships among the components of the natural world rather than each individual component.<sup>3</sup>

Why do we care which perspective we use as we examine the law? Because life in all forms is sustained by this marvelous, intricate web of extraordinarily complex interrelationships, and we should know how the law copes with these relationships. Is protecting this web of interrelationships part of the rationale for our current environmental laws? Do the terms of our laws adequately acknowledge complex ecological relationships, explicitly or implicitly? Do current laws unintentionally weaken parts of mountain ecosystems while attempting to protect other parts? These are only some of the relevant questions that readers will explore in the articles that follow.

The Papers in this volume focus this ecology-and-the-law lens on three mountain regions of northeastern North America in order to try to achieve greater clarity and depth of analysis. Unlike one assessment that stated, "See one promontory (said Socrates of old), one mountain, one sea, one river, and see all,"<sup>4</sup> this symposium issue does not treat all mountains as fungible. The ecological characteristics of mountains, the human activities

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2. ERNEST CALLENBACH, *ECOLOGY: A POCKET GUIDE* 1 (1998).

3. The authors recognize that this distinction between environmental and ecological perspectives may be overly simplistic. For example, the focus on any one component may be motivated by concerns about that component's place in an ecosystem and hence reflect an ecological approach. Nevertheless, a difference in perspective often remains in the degree of emphasis on individual components versus the larger web of interrelationships.

4. JOHN BURTON, *THE ANATOMY OF MELANCHOLY*, Part i, Sect. 2, Memb. 4, Subsect. 7, at 366-67 (J.M. Dent & Sons 1932) (1621).

occurring on the mountains, and the ways the law balances the two may vary significantly from one mountain region to another and even from mountain to mountain within a region.

Consequently, this volume focuses on three specific mountain resorts in New England and Quebec as case studies—Killington in the Green Mountains of Vermont, Whiteface near Lake Placid in the Adirondack Mountains of New York, and Mt. Tremblant in the Laurentians of Quebec. These three case studies provide the opportunity for readers to compare the ways in which laws in different jurisdictions respond to the challenges of accommodating ecological and human concerns in situations where resorts operated with different management models generate a relatively high degree of human activity throughout four seasons of the year.

For example, the three case studies provide contrasts between governmentally-owned and privately-owned resort operations, between American and Canadian state and provincial regulatory mechanisms, between constitutional and statutory environmental protections, and differing municipal approaches to managing economic development. The introductory Papers on the ecology of the mountain environment provide a framework for establishing the “ecological” interconnectedness and interdependence of different traditional “environmental” law endpoints such as water quantity and quality and the preservation of special plant and animal habitats. While ecology, economics, and the law affect different mountains in different ways, we hope that the analysis in the Papers in this symposium issue will provide insights that are relevant to other mountain systems around the world as people consider the intersection between law and ecosystems.

Even when focusing on only three mountain resorts, one must somewhat artificially establish the geographic boundaries of the ecology-and-the-law inquiry. Because mountain resorts are connected ecologically and economically to systems beyond the mountains, the analysis, if not truncated, would expand the case studies beyond their mountain focus and beyond a manageable scope. Thus, the Papers in this volume examine the ecology of the mountains and areas just below the mountains, and they analyze the impact of human activities on the mountain ecosystems and on ecosystems in the communities at the base of the mountains that often exist because of the mountains. The Papers generally do not attempt to consider portions of the ecosystem beyond the mountains and their bases, or human activities beyond the mountains’ bases that, most admittedly, may have a significant effect on the mountains themselves.

Finally, this volume approaches the question of how the law addresses the ecological impacts of mountain resorts from an interdisciplinary

perspective. In order to assess the extent to which the law recognizes the ecological value of the mountains, one must understand the ecology of mountains and the ecological risks created by mountain resorts. In order to understand why those risks exist, the inquiry must also turn to economics. The mountains' extraordinary natural features make them magnets for certain types of human activity, creating a special relationship between the mountain and its human economy. This economy can be both private in nature, when looking at entrepreneurial activities, and public in nature, when considering the resort communities' concerns for jobs and tax base.

The third component of this interdisciplinary inquiry is the law, which plays a significant but not exclusive role in influencing the relationship between public *or private* goals for protecting the ecology of mountain environments and public or private economic forces at play in mountain resort areas. The legal analyses in this volume evaluate a range of very different legal regimes at work in these three mountain resorts. They assess the ecological sensitivity of laws operating at different levels of government (local, state, provincial, federal) and laws that operate in very different ways (such as by using regulatory standards, mandated information gathering processes, or management plans). This volume also considers other, non-legal mechanisms that can influence the interactions between ecology and economics, such as voluntary programs like the resort industry's Sustainable Slopes program.

There is no pre-ordained relationship among ecology, economics, and the law. Through our market place, political discourse, and laws, our societies establish priorities either explicitly or implicitly, and we can choose many different ways to define and decide our priorities, depending on which factors we choose to deem most important. This inquiry into how these priorities are set in mountain resort areas is an ongoing inquiry that will continue beyond the publication of this volume. This symposium issue will lead to a subsequent book that will be published by Ashgate Publishing Ltd. as part of a series on ecology and the law. That volume will add a fourth case study focusing on a mountain resort in the White Mountains of New Hampshire, as well as vignettes involving mountain resorts in other parts of the United States. As this inquiry proceeds, the authors of this introduction invite comments on these articles and the topic in general as we all continue to consider the relationship between the law and the ecology of the mountains:

- To what extent does the law currently accommodate the complex interrelationships within the mountain ecology?
- How much should the law address the ecological interrelationships, not just the specific environmental endpoints?
- Given the current limitations on scientific knowledge and economic analysis, political realities, and structure of the legal system, to what extent can the law successfully accommodate ecological interrelationships?

In this year that the United Nations' General Assembly has proclaimed to be the International Year of Mountains,<sup>5</sup> we hope that this undertaking can contribute to the national and international body of knowledge and debate about the ecology, economics and law of the mountains.

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5. United Nations General Assembly, Press Release GA/9499 (Nov. 10, 1998).

