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Putting the “And” Back in the Culture-Nature Debate: Integrated Cultural and Natural Heritage Protection

*Cinnamon Carlarne**

I.	INTRODUCTION	154
II.	CULTURAL & NATURAL HERITAGE: AN OVERVIEW .	155
	A. Cultural Heritage	155
	B. Natural Heritages	161
	C. Nature Conservation Strategies Worldwide	164
	D. The Links Between Cultural and Natural Heritage	168
	E. Characteristics of Sites of Overlapping Cultural & Natural Heritage	172
III.	The Present and Future of Integrated Cultural & Natural Heritage Management.....	174
	A. Challenges Posed to Protecting Cultural and Natural Heritage	175
	B. Existing Legal/Regulatory Efforts to Protect Cultural and Natural Heritage	176
	1. Developed Countries	176
	a. The United States	176
	b. The European Union	184
	(1) England	189
	(a) National Parks.....	190
	(b) Areas of Outstanding Natural Beauty	191
	(c) Conservation Areas.....	191
	(2) Dartmoor National Park.....	192
	(a) The Dartmoor Local Plan	194

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	(b) Local Plan Aims	195
	(c) Local Plan Landscapes	198
	c. Canada	203
2.	Developing Countries	208
	a. China	208
	b. Brazil	213
IV.	CONCLUSION	221
	A. Why Integrate Cultural and Natural Heritage Protection?	221
	B. Bridging Boundaries for Mutual Gain	222

I.

INTRODUCTION

Formal legal efforts to protect cultural and natural heritage are not a modern phenomenon. In the developed and developing worlds, regional, state, and local governments undertake efforts to protect their cultural heritage and their natural resources. Most cultural and natural resource protection regimes, however, have evolved independently of one another. This is only recently beginning to change. As scholars, regulators, and activists increasingly recognize the links and overlap between areas of cultural and natural heritage, they are beginning to come together to develop new regimes for joint cultural and environmental protection.

These early efforts jointly to protect cultural and natural heritage vary significantly in character and success. These variations reflect a still vague and evolving understanding of the interplay between culture and nature, the relationship between public and private land ownership, and significant regional differences in existing legal regimes, economic development, and environmental agendas.

Further, there is currently very little comprehensive research examining global efforts to develop heritage protection areas that integrate both cultural and natural resource conservation. There is even less research analyzing how relationships between land ownership and social conceptions of culture and nature impact the development of future cultural and natural heritage programs.

The goal of this paper is to contribute to and encourage the development of innovative, interdisciplinary approaches for the protection, preservation, and enhancement of natural and cultural heritage areas. The second section of this paper examines

traditional notions and regulatory regimes for cultural and natural heritage protection, and delves into the links between cultural and natural heritage. Section three analyzes existing cultural heritage and environmental/natural protection laws, and provides examples of joint cultural and natural heritage preservation efforts. In particular, section three considers how current and prospective joint cultural and natural heritage protection efforts in developed and developing countries contribute to the social and economic development of communities and regions, and advance the principles of sustainable development by strengthening the historical continuity of a place and its people, and by guiding development in ways consistent with the characteristics of these cultural and natural resources. Additionally, section three examines case studies in the United States, Europe, Canada, Brazil, and China to demonstrate the challenges and critical elements integral to developing innovative and sustainable cultural and natural heritage preservation schemes. Finally, in section four, this paper proposes ways to improve and expand upon existing cultural and natural heritage preservation techniques, and suggests that recognizing the links between cultural heritage and natural heritage is necessary to promoting sustainable development in both developed and developing countries.

II.

CULTURAL & NATURAL HERITAGE: AN OVERVIEW

A. *Cultural Heritage*

The concept of cultural heritage in international law dates back to the turn of the 20th century. The concept is, thus, thoroughly engrained in academic debate and regulatory systems worldwide. The terms "cultural heritage" and "cultural resources," however, defy singular definition and are understood differently across time and cultures.¹ At the international level,

1. Various terms are used in the context of cultural heritage protection, including cultural landscape and cultural property. For example, The International Union for Conservation of Nature and Natural Resources (IUCN):

uses the term cultural landscape to structure its cultural heritage protection system. The IUCN has structured a system in which cultural landscapes fall into three main categories. The first category, which is also the most easily identifiable, is the "clearly defined landscape designed and created intentionally by human beings." The second is the organically evolved landscape, "a landscape that results from an initial social, economic, administrative, and/or religious imperative and has developed in its present form by association with and in response to its natural environment." This category is further subdivided into two groups: the relic landscape,

the United Nations Educational, Scientific, and Cultural Organization (UNESCO) is responsible for developing the core body of international treaties and soft law for cultural heritage protection. UNESCO defines heritage as “the product and witness of the different traditions and of the spiritual achievements of the past and . . . thus an essential element in the personality of peoples.”² Culture was identified and defined as early as 1871 by the eminent anthropologist E.B. Tylor as including “knowledge, belief, art, morals law, custom, and any other capabilities and habits acquired by man as a member of society.”³ Defining heritage and cultural heritage, thus, inevitably involves subjectively defining what tangible and intangible things from the past humans value and want to protect and preserve.⁴ Therefore, definitions of cultural heritage evolve over time and vary from state to state and across international institutions.⁵

Early protection efforts to define and protect cultural heritage were born out of threats posed to cultural heritage during times of war. For example, the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict of UNESCO (the “Hague Convention”)⁶ “was the earliest of these modern international texts and was developed in great part in response to the destruction and looting of monuments and works of art dur-

where the evolutionary process has come to an end although its distinguishing features are still visible, and the living landscape, a progressing landscape which “retains an active social role in contemporary society closely associated with the traditional way of life.” The last category is the associative cultural landscape, identified through “powerful religious, artistic, or cultural associations of the natural element.

See David S. Sampson, *Maintaining the Cultural Landscape of the Hudson River Valley: What Grade would the Hudson River School Give us Today?*, 8 ALB. L. ENVTL. OUTLOOK 213, 217 (2004) (quoting United Nations Educational, Scientific and Cultural Organization (UNESCO), Melina Mercouri International Prize for the Safeguarding and Management of Cultural Landscapes, available at <http://www.unesco.org/culture/heritage/prize/html> <uscore>eng/index<uscore>en.shtml).

2. See Graeme Davison 1991, *The Meaning of Heritage*, in A HERITAGE HANDBOOK (Graeme Davison and Chris McConville eds.) 1-13.

3. EDWARD B. TYLOR, *PRIMITIVE CULTURE* (Harpers 1871).

4. See generally *id.*

5. See, e.g., Lauryne Wright, *Cultural Resource Preservation Law: The Enhanced Focus on American Indians*, 54 A.F. L. REV. 131, 131 n.5 (2004). For example, the U.S. National Environmental Policy Act of 1969 provides that environmental resources properly include historic, cultural, and natural resources and provides that the federal government shall “preserve important historic, cultural and natural aspects of our national heritage.” Pub. L. No. 91-190, 83 Stat. 852 (1970), *codified at* 42 U.S.C. § 4321 (b)(4) (1970).

6. Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 215 [hereinafter 1954 Hague Convention].

ing the Second World War.”⁷ The Hague Convention affirmed the international community’s commitment to protecting cultural heritage both in peacetime and in times of war. The Hague Convention enunciates one of the earliest statements of the international community’s general concern for cultural heritage, stating that “damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world.”⁸ The Hague Convention marks the beginning of the international community’s acceptance of the concept that cultural heritage protection is a common responsibility and provides a mechanism for improving interstate communication and relations.

The Hague Convention was closely followed by two further UNESCO Conventions in 1970 and 1972. The 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property focuses on protecting cultural property from illegal trade,⁹ and the 1972 World Heritage Convention creates an international regime for designating and protecting areas of outstanding world cultural and natural heritage.¹⁰ These two seminal UNESCO Conventions paved the way for five subsequent UNESCO Recommendations on the protection of cultural heritage.¹¹ The final and most recent addition to the family of cultural heritage treaties is the International Institute for the Unification of Private Law (UNIDROIT) Convention on the International Return of Stolen or Illegally Exported Cultural Objects, which, as its name implies, focuses on limiting illegal trade in items of cultural importance.¹² As the increasing number of international agreements and meetings reveals, beginning in the early 1900s and peaking in

7. Janet Blake, *On Defining the Cultural Heritage*, 49 *THE INT’L AND COMPARATIVE L.Q.* 61-85 (2000).

8. The Hague Convention, *supra* note 6, at pmb1.

9. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231 [hereinafter 1970 UNESCO Convention].

10. Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, 27 U.S.T. 37, 1037 U.N.T.S. 151. [hereinafter World Heritage Convention].

11. *See generally* Blake, *supra* note 7.

12. International Institute for the Unification of Private Law (UNIDROIT) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, June 24, 1995, 34 I.L.M. 1322 (1995), available at <http://www.unidroit.org/english/conventions/c-cult.htm>.

the 1970s, cultural heritage protection has become a core concern of international law. The esteemed academic, Professor Francioni,¹³ affirms the importance of cultural heritage in international law claiming that it has emerged:

[A]s part of the shared interest of humanity, with the consequent need for international law to safeguard it in its material and living manifestations, including the cultural communities that create, perform and maintain it [T]he exponential growth of international cultural property law in the past fifty years bears witness to the emergence of a new principle according to which parts of cultural heritage of international relevance are to be protected as the common heritage of humanity.¹⁴

Francioni's comments are a testament to the fact that cultural heritage protection has achieved widespread acceptance as a core principle within the realm of international law. The UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (hereinafter World Heritage Convention, or WHC) is particularly relevant to this paper and aptly demonstrates the international regulatory strategy for protecting cultural heritage. Adopted in 1972, the WHC came into force in 1975, and claims wide State (State Parties to the Convention) participation; as of May 3, 2007 184 States had ratified the treaty.¹⁵ The World Heritage Convention specifies that "[f]or the purposes of this Convention, international protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international cooperation and assistance designed to support States Parties to the Convention in their efforts to conserve and identify that heritage."¹⁶ The underlying purpose of the World Heritage Convention is recognizing that certain sites of "cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole."¹⁷ The WHC reflects increasing acceptance of the concept of "cultural interna-

13. Francesco Francioni is Professor of International Law and Human Rights at the European University Institute, Firenze, and the University of Siena. He has written widely in the field of public international law, with particular emphasis on international human rights law, international environmental law, and cultural heritage.

14. Francesco Francioni, *Beyond State Sovereignty: The Protection of Cultural Heritage as a Shared Interest of Humanity*, 25 MICH. J. INT'L L. 1209, 1214 (2004).

15. UNESCO, World Heritage, State Parties, Status of Ratification, available at <http://whc.unesco.org/en/statesparties/> (last modified June 7, 2007) (last visited June 7, 2007).

16. World Heritage Convention, *supra* note 10, Art. 7.

17. *Id.*

tionalism," which "views cultural property as belonging to the world's peoples and not limited to the citizens of the state where the property is located."¹⁸

The central feature of the World Heritage Convention is the creation of a list of critically important sites of cultural and natural heritage, known as the World Heritage List. The World Heritage List creates a "means of recognizing that some sites, both cultural and natural, are important enough to be recognized by and be the responsibility of the International Community, and as sites to be the target of preservation/conservation efforts."¹⁹ The World Heritage Convention focuses on identifying and creating mechanisms for protecting cultural, natural and/or mixed cultural and natural heritage sites worldwide. In total, the World Heritage List includes 830 sites: 644 Cultural Sites,²⁰ 162 Natural Sites,²¹ and 24 Mixed Sites, located in 137 States.

Participation in the World Heritage Convention commits States first to identify and nominate potential sites,²² and, second to care for any World Heritage Sites designated within their sovereign territories.²³ As members of the World Heritage Convention, State parties also commit to "adopt policies, set up services, undertake scientific and technical research, take appropriate legal, scientific, technical, administrative and financial measures necessary to identify, protect, conserve, present and rehabilitate heritage sites and foster establishment of regional training centers."²⁴ Therefore, the designation of World Heritage Sites car-

18. See Mehmet Komurcu, *Cultural Heritage Endangered by Large Dams and Its Protection Under International Law*, 20 WIS. INT'L L.J. 233, 284 (2002).

19. See UNESCO: World Heritage, *World Heritage List*, available at <http://whc.unesco.org/pg.cfm?CID=31&l=EN> (last modified Oct. 2, 2006) (last visited Oct. 2, 2006).

20. *World Heritage Convention*, *supra* note 10, Art 1. Cultural sites include monuments, buildings, human made sites etc.

21. *Id.* Art 2. Natural sites include natural features, geological, and physiographical features.

22. *Id.* Art 3 (obligating each State party to "identify and delineate the different properties situated on its territory").

23. *Id.* Art 4. Article 4 creates the "duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage . . . situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain."

24. *Id.* Art 5.

ries prestige and economic potential (e.g., cultural tourism) as well as caretaking responsibilities for nominated States.²⁵

The World Heritage Convention is singular in its creation of an international listing mechanism for protecting areas of both cultural and natural heritage and for creating a regime that allows for sharing of power and responsibility between State governments and the international community. In addition to creating a formal international protection regime, the World Heritage Convention has done much to raise societal awareness of the importance of protecting cultural and natural heritage.

Despite the prominence of the World Heritage Convention and its mission, the body of international law relating to cultural heritage and the related concept of cultural property is ill-defined and fraught with confusion over the meaning and scope of cultural heritage. As one commentator notes, “[i]nternational cultural heritage law has developed with an uncertainty at its centre over the exact nature of its subject matter and based on a set of principles which are not always coherent. Indeed . . . applying these principles may at times lead to contradictory positions and unintended outcomes.”²⁶ As the term is interpreted and applied by increasing numbers of international instruments and organizations, the need for a comprehensive, unambiguous definition increases. As this paper demonstrates, the evolution of the term cultural heritage should reflect the interrelationship of areas of cultural and natural/environmental importance.

In addition, the current international cultural heritage protection regime is outdated, or lacking, in one critical way. While existing international agreements, such as the Hague Convention and the WHC, provide for international cooperation and protection of cultural heritage as a common goal of the international community, these agreements fall short of adequately protecting cultural heritage in one important area. These regimes do not address the problem of sovereign states destroying cultural heritage within their own boundaries. State sovereign powers extend to items and sites of cultural heritage located within their territory.²⁷ States, therefore, have considerable influence over what

25. It is important to note, however, that designation of a site as a World Heritage Site requires consent by the State party. *Id.* Art. 11.

26. Blake, *supra* note 7, at 85.

27. See Komurcu, *supra* note 18, at 254-56, 268 (discussing the idea of ‘cultural nationalism’, as a state-centric perspective that views “cultural property [as] a part of a national cultural heritage” and suggests that “sovereignty over these properties should remain with the state.”). Supporters of cultural nationalism argue that sover-

is designated as cultural heritage, how that heritage is exploited or protected, and whether the state chooses to participate in and/or comply with international cultural heritage agreements.

In the early years of cultural heritage protection the focus was on protecting cultural heritage in times of war and from external forces and illegal trade. Thus, the Hague Convention, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the WHC and the UNIDROIT Convention were all designed such that they focus on external threats to cultural heritage and neglect to address threats posed to items and sites of cultural heritage by the sovereign state in which they occur. Similar to international environmental law, international cultural heritage law struggles to create regimes that both ensure international cooperation between states as well as protection of systems within sovereign states.²⁸ The experience of the cultural heritage conventions demonstrates the fundamental difficulties international law faces in creating comprehensive and enforceable instruments for protecting resources –both cultural and natural – that are valuable to many but controlled by few.

B. *Natural Heritages*

Natural heritage conservation efforts have existed in various forms since the late 1700s. During this era, Europe and the East enacted laws for the protection of wildlife and game animals. Modern natural heritage preservation efforts, commonly referred to as environmental protection or nature conservation programs, however, only began in earnest in the late 1960s and early 1970s.

eignty and possession remain with the state for the following reasons: (1) because cultural property is an expression of a civilization that existed or is currently existing within a state, its citizens thus have a stronger claim based on identification and national pride; (2) retention of sovereignty provides the context of cultural property; and (3) cultural property usually has utilitarian qualities, including market value, that may be harnessed by the state and its people. *Id.* In contrast, supporters of cultural internationalism “reason that because sovereign powers of a state are never absolute, foreign retention of cultural property may be permitted when state conditions threaten cultural property (e.g., because of political instability, the lack of resources for restoration and protection, or a state’s inattention and neglect),” because “as part of the common culture of mankind, cultural property plays an invaluable role in ‘improving understanding between nations’ and must be made available to a global audience for study and deliberation; anything less would be a ‘cultural impoverishment of people in other parts of the world.’” *Id.* at 284.

28. See, e.g., Kanchana Wangkeo, *Monumental Challenges: The Lawfulness of Destroying Cultural Heritage During Peacetime*, 28 YALE J. INT’L L. 183 (2003).

The U.S. led the global community during the early years of the environmental protection/natural heritage conservation movement in the 1960s and '70s. Thus, the development of U.S. law and policy provides a good lens through which to view the development of natural heritage conservation law and policy internationally.

During the late 1800s, the United States Congress initiated the first era of formal nature conservation. Responding to years of imtemperate use and destruction of natural resources, American writers, artists, poets and academics such as Henry David Thoreau, George Perkins Marsh, John Muir, William Cullen Bryant, Albert Bierstadt, James Fenimore Cooper, and Thomas Cole began to publicly condemn the negative impacts of human exploitation of the natural world. The efforts of these early advocates encouraged a shift in human attitudes towards nature. That is, the writings of Thoreau and Cooper, the speeches of Marsh, and the inspiring art of Beirstadt and Cole facilitated a change in attitude whereby the American public moved away from thinking of nature as the uncivilized and dangerous wild that existed solely to be colonized and tamed to viewing the wilderness as a thing of beauty, inspiration and value deserving to be nurtured and preserved.²⁹

The shifting attitudes of the late 1800s culminated in the U.S. Congress enacting a swath of nature conservation laws. In 1872, Congress passed legislation making Yellowstone the world's first official National Park. This noteworthy step instigated subsequent efforts to establish National Parks both within the United States and internationally. By 1890, the U.S. Congress had passed legislation establishing three more National Parks – Sequoia, Yosemite, and General Grant. By the mid-twentieth century, the U.S. Congress had designated over 58 areas as National Parks, and allocated some level of protected status to over 390 different sites nationwide.

Worldwide, other nations adopted a similar trend: in 1879, Australia established the Royal National Park; in 1885, Canada created Banff National Park; in 1887, New Zealand set up its first national park; and, in 1909, Sweden led the way in Europe by

29. See, e.g., RODERICK NASH, *WILDERNESS AND THE AMERICAN MIND* (2001); Loren Baritz, *The Idea of the West*, 66 *THE AM. HISTORICAL R.* 618-40 (1961); EDWIN FUSSELL, *FRONTIER: AMERICAN LITERATURE AND THE AMERICAN WEST* (1966) (for descriptions on how literature and art have influenced changing notions of wilderness).

establishing a set of nine national parks. During the late 19th and early 20th centuries, developed countries designated the majority of new national parks. Following World War II, developed and developing countries all over the world began designating sections of the natural landscape as protected areas. There are now over 44,000 protected areas worldwide, covering 13,630,616 square kilometers.³⁰

Worldwide, protected areas include National Parks, National Forests, Nature Reserves, and other formal designations that accord varying levels of legal protection depending on the country and the type of protected landscape. Some systems, such as the U.S. National Park System, disallow most types of economic activity within the boundaries of the protected area. By contrast, other systems, such as the U.S. National Forest System,³¹ allow limited and controlled economic activities, such as logging, within the boundaries of the designated area. Meanwhile, nature reserves often focus on protecting and managing landscapes for the good of specific species of flora or fauna, and create different types of legal management structures – both public and private – to govern the use and conservation of the protected areas.

These varying designations reflect compromises stemming from the longstanding philosophical debate between conservationists and preservationists. Conservationists, starting with Gifford Pinchot, the first chief of the U.S. Forest Service, advocate managing land and resources on the basis of ecological sustainability. Conservationists adopt an inherently anthropocentric perspective toward natural resource protection. That is, conservationists support the wise use, rather than the non-use, of natural resources, focusing on promoting the instrumental value of nature and natural resources to humans. For example, conservationists might support policies that promote protection of natural areas while still permitting sustainable economic activity, such as allowing controlled logging within National Forests or damming of rivers for hydroelectric power or the creation of lakes for human recreation.

30. IUCN The World Conservation Union, *Protected Areas*, Media Brief, 2006-03-08, available at http://www.iucn.org/en/news/archive/2001_2005/pambrief.pdf. In total, the area of protected areas designated worldwide is equal in size to the areas of China and India combined. *Id.* at 1.

31. The U.S. Congress passed the Forest Reserve Act in 1891, which empowered the President to designate areas as "forest reserves," creating the legislative foundation for what is now known as the National Forest System.

Unlike conservationists, preservationists do not approach nature from an instrumentalist or anthropocentric perspective. Rather, preservationists believe that the role of the human species is to protect nature. In the late 1800s, the preservation movement in the United States pressured the government to establish protected areas to preserve nature in its purest form for present and future generations. Preservationists such as John Muir, the founder of the Sierra Club, and Aldo Leopold, author of *A Sand County Almanac*, pushed the U.S. government to create National Parks as a place to preserve nature undisturbed by human economic activity, and to offer humans a place to retreat to and be revived by the beauty of nature.

Since the late 1800s, conservationists and preservationists have vied for supremacy and legitimacy through the medium of environmental legislation. Preservationists achieved early victories with the creation of National Parks. In the long run, however, conservationist perspectives have dominated domestic and international environmental lawmaking, with the majority of state and international laws adopting an anthropocentric attitude towards environmental protection that focuses on sustainable use, rather than non-use, of natural resources.³² As discussed below, nature conservation projects have evolved over time to reflect increasing considerations for balancing human needs with environmental protection.

C. *Nature Conservation Strategies Worldwide*

The philosophy and structure of modern nature conservation efforts have changed dramatically since the dawning of the movement in the late nineteenth century. As discussed, early preservation projects promoted strict nature protection, but the notion of preservation soon gave way to the general concept of conservation, which is now used as a generic term for efforts to protect nature. Until the 1970s, most conservation efforts focused on creating national parks and wildlife sanctuaries, solving environmental dilemmas with technical and financial inputs, and keeping

32. See, e.g., Convention on Biological Diversity, 31 ILM (1992) (creating a framework for the *sustainable use* of biodiversity) Convention on the International Trade in Endangered Species of Wild Fauna and Flora, *opened for signature* Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243 (creating a regime for controlled trade in endangered and threatened species); International Convention for the Regulation of Whaling, Dec. 2, 1946, 62 Stat. 1716, 161 U.N.T.S. 72, (1946) (created the international legal regime for whaling based on the sustainable use of whales).

environmental projects separate from social development efforts.³³ This "preservation-oriented" approach emphasized centralized, top-down planning, and generally excluded local people from the planning and management processes.³⁴ During this era, people living around conservation areas and their cultural heritage and property were generally viewed as obstacles to conservation. Their interests and priorities were assumed to conflict directly with conservation goals.

These early approaches alienated people who depended on natural resources to supplement subsistence-based lifestyles. Eventually, this strict dichotomy between people and environmental protection led to a myriad of park-versus-people conflicts.³⁵ Increasingly, conservation projects garnered criticism for neglecting the social dimensions of environmental protection, and thus for undermining social development as well as the sustainability of conservation efforts.³⁶

Philosophical and practical problems culminated in a growing belief that centralized, exclusionary conservation strategies were neither ethical nor effective.³⁷ Many conservationists, disillusioned with early strategies, began emphasizing the importance of integrating human and cultural concerns into conservation planning.³⁸

In 1980, the World Conservation Union's (IUCN) *World Conservation Strategy* initiated a new era in conservation planning by emphasizing the "importance of linking protected-area manage-

33. See Jai N. Mehta & Stephen R. Kellert, *Local Attitudes Toward Community-Based Conservation Policy and Programmes in Nepal: A Case Study in the Makalu-Barun Conservation Area*, 25 ENVTL. CONSERVATION 4, 320-33 (1998); Thomas Perreault, *Nature Preserves and Community Conflict: A Case Study in Highland Ecuador*, 16 MOUNTAIN RES. & DEV. 2, 167-75 (1996).

34. See Mehta & Kellert, *supra* note 33; see also RODERICK P. NEUMANN, IMPOSING WILDERNESS: STRUGGLES OVER LIVELIHOOD AND NATURE PRESERVATION IN AFRICA (2002); Katrina Brown, *Innovations for Conservation and Development*, 168 THE GEOGRAPHICAL J. 6 (2002).

35. See *id.*; see also Arun Agrawal, *Enchantment and Disenchantment: The Role of Community in Natural Resource Conservation*, 27 WORLD DEVELOPMENT 4, 629-49 (1998).

36. See William H. Durham, *Political Ecology and Environmental Destruction in Latin America*, in THE SOCIAL CAUSES OF ENVIRONMENTAL DESTRUCTION IN LATIN AMERICA (Michael Painter & William H. Durham eds., 1995).

37. See Michael Soule, *Does Sustainable Development Help Nature?*, WILD EARTH 56-65 (Winter 2000-2001).

38. See Mehta & Kellert, *supra* note 33; see also Patty Larson et al., *Lessons from the Field: A Review of the World Wildlife Fund's Experience with Integrated Conservation and Development Projects 1985-1996*, 5-59 (1997).

ment with the economic activities of local communities.”³⁹ In 1982, the World Congress on National Parks followed suit, calling for increased support for local populations living in and around parks and protected areas. The Parks Commission supported community development through education, revenue sharing, and participation in decision making where such activities would be compatible with conservation priorities.⁴⁰ Increasingly, international environmental organizations stressed the importance of including community participation in the conservation process, thus recognizing the importance of local peoples and cultures in creating sustainable and equitable conservation regimes. This heightened emphasis on “meeting local resource needs and development objectives” gradually became a central objective for organizations such as IUCN, World Wildlife Fund, and UNESCO (e.g. Man and the Biosphere Program), as well as a central tenant in international agreements, including the Convention on Wetlands, and the Convention on Biological Diversity.⁴¹

Around the same time, the concept of “sustainable development”⁴² began to dominate the conservation debate. Sustainable development carries connotations of inter and intra-generational equity, as well as balancing environmental objectives with cultural and economic needs. Thus, it added a human dimension to environmental conservation, complementing the conservation current of the time.

By the early 1990s, most international environmental organizations viewed public participation and social development as prerequisites to the conservation process.⁴³ One result of this shift in attitude was the inception and growth of Integrated Conservation and Development Projects (ICDPs). The birth of ICDPs

39. See Larson, *supra* note 38.

40. See *id.*

41. See Perreault, *supra* note 33; D.F. Calheiros et al., *Participatory Research Methods in Environmental Science: Local and Scientific Knowledge of a Limnological Phenomenon in the Pantanal Wetland of Brazil*, 37 J. OF APPLIED ECOLOGY 684-96 (2000); Amar Inamdar et al., *Capitalizing on Nature & Protected Area Management*, 23 SCIENCE 540, 856-62 (1999); Igor Vojnovic, *Intergenerational and Intragenerational Equity Requirements for Sustainability*, 22 ENV'T'L CONSERVATION 3, 223-28 (1995).

42. Defined by The Bruntland Report as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” See *Intergenerational and Intragenerational Equity Requirements for Sustainability, supra*.

43. See E.A. Fiallo & S.K. Jacobson, *Local Communities and Protected Areas: Attitudes of Rural Residents Toward Conservation and Machalilla National Park, Ecuador*, 22 ENVIRONMENTAL CONSERVATION 3, 241-49 (1995).

"consummated a gradual convergence of interest between two camps [conservation and development] that ha[d] traditionally viewed the world from opposite points of view."⁴⁴

To appreciate ICDPs, it is important to understand the concept of community-based conservation (CBC). CBC is a "people-centered" approach. It emphasizes that environmental conservation should be achieved by, for, and with local populations. CBC approaches attempt to "reverse[] top-down, center-driven conservation by focusing on the people who bear the cost of conservation."⁴⁵ CBC, like ICDPs, seeks to reconcile conservation and development goals.⁴⁶ CBC creates the groundwork for integrating environmental and cultural conservation objectives.

CBC projects are based on the underlying assumption that "biodiversity conservation will succeed only if local communities receive sufficient benefits, participate in management, and, therefore, have a stake in conserving the resource."⁴⁷ Accordingly, they focus on: (1) establishing dialogue with communities; (2) promoting environmental education; (3) ensuring joint funding of community-initiated microdevelopment projects; (4) facilitating access to resources; (5) supporting community institutions; and (6) assessing the biological and human impacts of conservation.⁴⁸

As this paper demonstrates, however, neither the conservationist and preservationist philosophies dominating early nature conservation debate nor the ICDP and CBC projects of the 1990s adequately contemplate or account for the reality that areas of natural beauty frequently overlap with areas of rich cultural heritage. Increasing realization of this overlap challenges environmentalists, planners, anthropologists and legislators to work together to develop a more holistic framework for thinking about long-term preservation of areas and articles of simultaneous environmental and human value. The question is whether conservation projects can absorb the lessons learned from the early

44. Peter Alpert, *Integrated Conservation and Development Projects: Examples from Africa*, 46 *BIOSCIENCE* 11, 845-71 (1996).

45. See David Western & R. Michael Wright, *The Background to Community-based Conservation*, in *NATURAL CONNECTIONS: PERSPECTIVES IN COMMUNITY-BASED CONSERVATION* (David Western & R. Michael Wright eds., 1994).

46. See *id.*; see also Mehta & Kellert, *supra* note 33.

47. See Mehta & Kellert, *supra* note 33.

48. Mark Infield, *Attitudes of a Rural Community Towards Conservation and a Local Conservation Area in Natal, South Africa*, 45 *BIOLOGICAL CONSERVATION* 21-46 (1998).

fortress-based conservation projects and the subsequent community-based projects of the past twenty years, and continue to evolve and improve upon these models by creating frameworks for new environment-cultural heritage protection projects.

Before analyzing the intersection of cultural and natural heritage preservation efforts, it is worth exploring the key problems that have plagued ICDPs. These problems shape both current ICDPs and the dialogue on the development of new mixed cultural and natural heritage preservation efforts.

ICDPs began as an alternative to centralized, exclusionary conservation efforts. They employed techniques such as community participation and rapid socioeconomic analysis. Their progressive nature initiated a new era in conservation. Their goals of joining conservation and development objectives, however, also instigated a new set of philosophical and practical problems. Four main problems characterize past ICDPs: (1) tension between conservation and development objectives; (2) dependence on external organizations for expertise and funding; (3) a tendency to view communities in oversimplified terms; and (4) a failure to define clear project objectives and evaluation indicators. These problems are relevant to the discussion because they demonstrate how bringing experts, experience, and theory together from distinct disciplines, i.e., environmental conservation, development, and anthropology, creates whole new sets of theoretical and practical problems in already complicated areas of law. This is especially true when planners and legislators attempt to identify areas of joint cultural and natural heritage, prioritize the importance of these sites and their components, and create legal structures and management regimes that give equal weight and protection to the intrinsically human and environmental elements they comprise.

D. *The Links Between Cultural and Natural Heritage*

Up to this point, this paper has discussed the meaning and evolution of the distinct fields of cultural heritage and natural heritage protection. But, what is the connection between the two fields, if any?

The connections are numerous and varied. To begin, many people concerned with conservation believe that "conservation of cultural and biological diversity together holds the key to en-

suring resilience in both social and ecological systems.”⁴⁹ In particular, natural and cultural conservationists alike note that “sacred natural sites, cultural landscapes and traditional agricultural systems cannot be understood, conserved and managed without taking into account the cultures that have shaped them and continue to shape them today.”⁵⁰ Similarly, “there is an aspect of ‘natural heritage’ which forms a part of the cultural heritage given the importance of certain landscapes and natural features to particular groups and cultures.”⁵¹ That is, in our modern world, the lines between the natural and human environment are often blurred and best understood in reference to one another. This has prompted well-known international environmental law academics to re-conceptualize the environment in a more expansive capacity as something that includes “human life, health, and social wellbeing; flora, fauna, and all other components of ecosystems; landscape and cultural heritage; and natural resources.”⁵²

In practice, many states are beginning to create a new category of protected area known as biosphere reserves. UNESCO originated the concept of biosphere reserves as a way of protecting terrestrial and coastal ecosystems. The term “biosphere reserve” is used to designate lands that include one or more protected areas and the surrounding lands that are managed to combine both conservation and sustainable use of natural resources. To be designated as a biosphere reserve under the UNESCO criteria, the area must be “of cultural and ecological significance” and must have legal structures put in place to ensure its protection.⁵³ Thus, in theory and in practice, our traditional notions of separating the distinctly human from the distinctly natural environment are being replaced by definitions, theories, and practices that reflect a notion of synergy and interdependence between the two.

49. Declaration on the Role of Sacred Natural Sites and Cultural Landscapes in the Conservation of Biological and Cultural Diversity, International Symposium “Conserving Cultural and Biological Diversity: The Role of Sacred Natural Sites and Cultural Landscapes,” Tokyo, Japan, May 30, 2005 to June 2, 2005.

50. *Id.* at 1.

51. Blake, *supra* note 7, at 67.

52. See Gerhard Hafner & Holly L. Pearson, *Environmental Issues in the Work of the International Law Commission*, 11 Y.B. OF INT’L ENVTL. L. 3, 5-6 (2000) (quoting PHILIPPE SANDS, *FRAMEWORKS, STANDARDS AND IMPLEMENTATION* 17 (1995)) (from *Work of IL Commission*).

53. James D. Brown, *The Integration of Man and the Biosphere*, 14 GEO. INT’L ENVTL. L. REV. 741, 748 (2002).

The links between cultural and natural heritage are not merely theoretical or definitional. In Europe, for example, much of the landscape has been densely populated and intensely used by humans for hundreds of years, resulting in the creation of landscapes that are largely manmade. That is, “people have lived within, used and shaped the nature of Europe for many millenniums.”⁵⁴ This close interaction of man and nature has resulted in overlapping areas of natural beauty and cultural richness throughout the Continent. As a result of this interaction, in Europe, “the protection of nature is indeed often interwoven with the protection of cultural heritage . . .” and “[n]ature and culture can both be seen as common goods. They belong to everyone and everyone benefits from them. This is reflected in the fact that governments – national, regional and local – play an active role in their protection.”⁵⁵ This is true of developing countries as well. For example, in many places in South America, indigenous people live in and around some of the world’s biodiversity “hot spots,”⁵⁶ e.g., the Chachi in Ecuador⁵⁷ and the Kayapó in Brazil,⁵⁸ creating areas where the tangible and intangible cultural heritage resulting from hundreds of years of human traditions is intricately linked with ecosystems rich in flora and fauna that are considered some of the world’s most valued natural heritage.

Areas rich in cultural and natural heritage abound. In existing cultural heritage and environmental conservation literature, these areas are often referred to as “landscapes” or “cultural landscapes.” In the United States, the National Park Service defines a cultural landscape as a “geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, or person or exhibiting other cultural or aesthetic values.”⁵⁹ Similarly, the

54. Peter Bos, *Awareness to Environmental Questions in Relation to the Cultural Heritage*, p. 18 in *Awareness to the Landscape: From Perception to Protection: Proceedings, ENVIRONMENTAL ENCOUNTERS*, No. 52 April 6-7, 2000.

55. *Id.*

56. Russell A Mittermeier et al., *Biodiversity Hotspots and Major Tropical Wilderness Areas: Approaches to Setting Conservation Priorities*, 12 *CONSERVATION BIOLOGY* 3 (1998).

57. See Tom Cohen, *Chachi Choose Conservation Over Timber Concessions in Ecuador*, FEATURE STORIES: CONSERVATION INTERNATIONAL (Aug. 22, 2006), available at <http://www.conservation.org/xp/frontlines/people/08220601.xml>

58. See Russell A. Mittermeier, *Kayapó Defend Amazon Homeland and Earth's Unspoiled Nature*, FEATURE STORIES: CONSERVATION INTERNATIONAL (Aug. 9, 2006), available at <http://www.conservation.org/xp/frontlines/people/08090602.xml>.

59. Charles A Birnbaum, *Protecting Cultural Landscapes: Planning, Treatment and Management of Historical Landscapes*, U.S. National Park Service Preservation

Harvard Institute defines a cultural landscape as one that "people have created, used, modified, or protected – from historic gardens and urban parks to conservation reserves, from neighborhood streetscapes to working farms and forests."⁶⁰

The concept of cultural landscape exemplifies existing efforts to examine and, in some cases, to protect geographic areas that humans have created and/or influenced. Cultural landscape studies emphasize human interaction with and influence over nature and the importance of human-influenced landscapes as part of cultural and individual identities. The concept of cultural landscapes is vital to understanding both how humans have shaped their surrounding environment and how human modified environments have, in turn, affected human "cultural, emotional, intellectual, ethical and spiritual"⁶¹ development. Cultural landscape studies provide invaluable insights to understanding the "interaction between human beings and nature over time."⁶² Currently, however, cultural landscape studies and regulatory regimes continue to prioritize landscapes that have been heavily influenced by humans, e.g., agricultural and peri-urban landscapes,⁶³ and struggle to define and envisage how to protect broader categories of landscapes that are wilder and more "natural," that is, less influenced by humans.⁶⁴

Briefs, available at <http://www.cr.nps.gov/hps/tps/briefs/brief36.htm>. The National Park Service divides cultural landscapes into four general categories, not mutually exclusive: historic sites, historic designed landscapes, historic vernacular landscapes, and ethnographic landscapes. *Id.*

60. David S. Sampson, *Maintaining the Cultural Landscape of the Hudson River Valley: What Grade Would the Hudson River School Give Us Today?*, 8 ALB. L. ENVTL. OUTLOOK 213 (2004) (quoting Alice E. Ingerson, *What are Cultural Landscapes?*, <http://www.icls.harvard.edu/language/whatare.html>).

61. Eladio Fernandez-Galianon, *Conclusions*, 56 in Proceedings: Awareness to the Landscape: From Perception to Protection, in La Granja, Segovia, Spain, 6-7 April 2000, ENVIRONMENTAL ENCOUNTERS, No. 52 / RENCONTRES ENVIRONNEMENT n°52, Council of Europe Publishing (2001).

62. Alice E. Ingerson, *What are Cultural Landscapes?*, The Arnold Arboretum of Harvard University Institute for Cultural Landscape Studies, available at <http://www.icls.harvard.edu/language/whatare.html> (last modified June 29, 2000) (last visited Sept. 25, 2006).

63. See Eladio Fernandez-Galianon, *Conclusions*, 56 in Proceedings: Awareness to the Landscape: From Perception to Protection, in La Granja, Segovia, Spain, 6-7 April 2000, ENVIRONMENTAL ENCOUNTERS, No. 52 / RENCONTRES ENVIRONNEMENT n°52, Council of Europe Publishing (2001).

64. See, e.g., Robert Cook, *Is Landscape Preservation an Oxymoron?*, The Arnold Arboretum of Harvard University Institute for Cultural Landscape Studies (last updated Aug. 30, 2000), available at <http://www.icls.harvard.edu/ecology/cook2.html> (last visited Sept. 25, 2006) (paper was first presented to a 1995 conference on Balancing Natural and Cultural Issues in the Preservation of Historic Landscapes, spon-

Thus, cultural landscape studies offer a starting point for examining how humans interact with, influence, and are influenced by the natural environment. Cultural landscape studies help us recognize the value of ecological and cultural heritage as part of the social and economic development of communities. The study of cultural landscapes is an increasingly valuable tool in understanding the relationships between cultural heritage and the natural environment.⁶⁵

There is considerable room to broaden the perspective of cultural landscape studies to improve understanding and recognition of the nuanced and subtle links between humans and ecological systems. In addition, there are still gaps in the cultural landscape literature in regards to creating legal management regimes for integrated cultural and ecological protection. In particular, there is very little literature addressing the issue of land management, that is, how to create effective and equitable legal regimes for protecting cultural and natural heritage in both the public and private sectors.

Thus, while cultural landscape studies have initiated a new and progressive era in how academics and professionals conceptualize humans and their environment, there are still gaps in both the literature and the practice. As a next step, the focus must be on developing the legal, economic, planning and political tools necessary to identify and protect areas of overlapping cultural and natural heritage riches. In this way, we can devise systems for protecting nature and culture effectively with minimal disruption of economic and social functions.

E. *Characteristics of Sites of Overlapping Cultural & Natural Heritage*

Areas of overlapping natural and cultural heritage are potentially indefinite. It is necessary to define the characteristics that can be used to identify and delimit sites calling for integrated cultural and natural heritage management regimes. In the early phases of testing methods for cultural and natural heritage pro-

sored by the National Association for Olmsted Parks, the National Park Service, and the U.S. Forest Service (subsequently published by the George Wright Society)).

65. See, e.g., Adrian Phillips, *The Nature of Cultural Landscapes—A Nature Conservation Perspective*, 23 *LANDSCAPE RES.* 21 (1998); Adrian Phillips, *Working Landscapes as Protected Areas*, in SUE STOLTON AND NIGEL DUDLEY, *PARTNERSHIPS FOR PROTECTION—NEW STRATEGIES FOR PROTECTED AREA PLANNING AND MANAGEMENT* (1999).

tection, it is especially important to choose sites that are representative of common challenges faced in different regions of the world. There are three main factors that should be considered when choosing case studies and project sites for testing integrated management systems: (1) characteristics of the location; (2) characteristics of current human processes; (3) characteristics of protection schemes.

First, when considering characteristics of the location, project managers should consider the following elements: (1) whether the site occurs on a regional scale and contain both human present/past settlements and countryside; (2) whether the site demonstrates clear and identifiable cultural identity; (3) whether the landscape demonstrates in either visible or subtle ways that it has been impacted by human activity; (4) whether there are indigenous or traditional populations present in the area; and (5) whether the area contains both public and private land. While it is not necessary to satisfy all of these elements, the presence of the first three factors with either of the two final factors suggests that the site demonstrates strong overlap of cultural and natural heritage.

Second, if the characteristics of the location suggest that there are strong elements of cultural and natural heritage present, the project manager should consider the following questions considering existing human processes: (1) whether there are people living in the area and carrying out economic activities; (2) whether there are human growth pressures present; and (3) whether there are existing environmental resources, biodiversity, and/or cultural resources threatened by growth or development pressures. If there are humans living in the area undertaking modern economic activities with the concomitant result that there are growth and development pressures stressing the region, then it is likely that new measures need to be put in place to ensure the long-term protection and preservation of cultural and natural heritage.

Third, once it has been determined that the characteristics of the location and the human processes present in the area suggest that the site is appropriate for an integrated management regime, the project manager must analyze the characteristics of the existing and/or proposed protection schemes. When examining the protection scheme, the following elements should be considered: (1) the potential for effective and equitable government intervention – ideally at multiple levels, that is, local, regional, and

national; (2) the potential for multiple stakeholders to be actively involved in the project, e.g., Non-governmental organizations (NGOs), private business, citizens, government, and/or international organizations; (3) potential sources of funding for the project in the short and long-term; (4) institutional structures in place that would support the implementation and continuation of a formal management scheme, e.g., legal instruments, institutions and/or personnel; and (5) the presence of existing or proposed legal and/or regulatory structures that enable and/or support the integration of environmental and cultural conservation objectives. Integrated cultural and natural heritage protection proposes a new class of conservation and regulation. Therefore, it is not expected that all of the institutional, legal and regulatory tools will immediately be in place to implement and enforce the programs. At this phase in the proposal, the objective is to evaluate whether there exists the possibility to develop and maintain the necessary framework for a sustainable cultural and natural heritage protection project.

Worldwide, there are numerous sites appropriate for integrated cultural and natural heritage management. In the next section, this paper analyzes existing attempts to develop integrated cultural and natural heritage management regimes in developed and developing countries.

III.

THE PRESENT AND FUTURE OF INTEGRATED CULTURAL & NATURAL HERITAGE MANAGEMENT

Environmental law and policy is particularly interesting because it speaks directly to the systemic relationship between human cultural, legal and environmental sustainability. It is now widely recognized that environmental changes are nearly always, in cause and consequence, tightly bound to everyday human existence.⁶⁶ Moreover, environmental change is both global and systemic in its own right, with even the most localized activities having global consequences, and vice versa.⁶⁷ Thus, in seeking to regulate human impacts on the environment, policymakers are confronted with the task of developing legal and regulatory

66. See, e.g., IPCC, *Climate Change Synthesis Report 2001* at 12, available at <http://www.ipcc.ch/SPM2feb07.pdf> (last visited May 10, 2007) (discussing the anthropogenic causes of climate change and the global causes and consequences of climate change).

67. *Id.*

frameworks that encompass environmental laws that can address the systemic nature of environmental change along the full spectrum from the local to the global level. And, in order to be effective, these laws and policies must also reflect and respect the cultural realities of local and global communities. Consequently, virtually all of our current environmental laws adopt, at least in part, an anthropocentric perspective towards environmental protection. This further reflects the fact that, from a human perspective, virtually all environmental change is ultimately social in consequence, and all policy seeking to ameliorate environmental impact should be sensitive to social consequences at multiple levels. Thus, at a basic level the groundwork exists to develop laws and policies addressing the intersection of cultural and natural heritage.

This section examines some of the basic challenges posed to protecting cultural and natural heritage and then looks at existing and potential projects and legal structures in the developed and developing world and the lessons and opportunities they offer for future integrated conservation efforts.

A. *Challenges Posed to Protecting Cultural and Natural Heritage*

Early institutional and governmental efforts to develop integrated cultural and natural protection schemes have revealed a number of critical challenges. This section analyzes specific examples of early integrated culture and nature protection in light of these key issues. As background, these projects face three basic challenges. First, cultural heritage and environment protection have historically been addressed in isolation from each other despite recognition of symbiotic links between cultural and natural heritage resources that suggest that they should be addressed in an integrated fashion.⁶⁸ Second, cultural and ecological resources are location specific, and their physical area – land – is often subject to private ownership and control, leading to conflicts between the private and public use of land, especially in relation to protection of the cultural and ecological resources.⁶⁹ These relationships result in a complex set of issues of private-

68. See David Lowenthal, *Natural and Cultural Heritage*, 11 INT'L J. OF HERITAGE STUD. 1: 81-92 (2005); Michael Turnpenny, *Cultural Heritage, an Ill-Defined Concept? A Call for Joined-up Policy*, 10 INT'L J. OF HERITAGE STUD. 3, 295-307 (2004).

69. See Almo Farina, *The Cultural Landscape as a Model for the Integration of Ecology and Economics*, 50 BIOSCIENCE 4, 313-20 (2000).

public land use and access management, the resolution of which is still in its infancy.⁷⁰ Third, even when the land containing the cultural and ecological heritage resources is in the public domain, conflicts may exist between the need to protect the cultural and natural heritage and the necessity of safeguarding the livelihoods and the ways of life of populations inhabiting the area (use rights), especially when local and/or indigenous peoples live in the area.⁷¹ This is a critical economic and social development issue because the long-term sustainability of an area depends on the continuing survival and advancement of these populations as well as the long-term protection of the ecological and cultural resources on which these populations rely.⁷²

B. *Existing Legal/Regulatory Efforts to Protect Cultural and Natural Heritage*

1. Developed Countries

a. *The United States*

The United States has an established legal system, perhaps the most globally progressive environmental and historical preservation laws, and well-developed land ownership and use regimes. As a federalist system, it has both national and state regimes that represent diverse models of environmental and cultural protection. In addition, grassroots organizations and pressure are prevalent, making the United States a hotbed for progressive cultural and environmental preservation models. Finally, the United States was the first country in the world to establish National Parks and National Forests. Thus, the United States has a history of leading preservation efforts. It also has room to shift from an approach focused on creating separate natural heritage and cultural heritage protection projects, to one focused on integrated cultural and natural heritage conservation efforts that incorporate economic, cultural and environmental considerations. Currently, the United States has examples of integrated cultural and

70. Dennis Frenchman, *International Examples of the United States Heritage Area Concept*, Memo. MIT, Cambridge MA (2004).

71. See Lauryne Wright, Lauryne, *Cultural Resource Preservation Law: The Enhanced Focus on American Indians*, 54 A.F. L. REV. 131 (2004). We refer here to indigenous populations, traditional agricultural societies, natural-resource dependent communities, and arts-and-crafts dependent groups.

72. Benjamin Richardson, *Indigenous Peoples, International Law and Sustainability*, 10 RECIEL 1, 1-2, 10-12 (2001) (discussing the relationship between indigenous people, self-determination, environmental law and international standards).

natural heritage conservation at the federal and state level that merit examination. One in particular, National Heritage Areas, will be examined.

In 2006,⁷³ the U.S. Congress created a new system of "National Heritage Areas," defined as areas in which:

natural, cultural, historic and recreational resources combine to form a cohesive, nationally distinctive landscape arising from patterns of human activity shaped by geography. A heritage area is a region in which residents, businesses, and governments join together to preserve, promote and celebrate their heritage, culture, and natural resources for the benefit of current and future generations.⁷⁴

These areas are managed by partnerships between federal, state, and local governments, citizens, NGOs, and the private sector. Congress uses ten criteria to determine Natural Heritage Area designation. These criteria focus on the presence of a combination of natural, historical, and cultural resources; the ability of the area to offer opportunities for conservation and human use and enjoyment of the area; the presence of private and public entities willing to participate in the management of the area; and the existence of a proposed management entity.⁷⁵ Congress has

73. 109th Congress, *Bill to Establish Criteria for and to Create a National Heritage Areas System in the United States* (2006). While this law created the National Heritage Area Systems, designated National Heritage Corridors and National Heritage Areas have been individually designated, by decision of Congress, since 1984. *See, e.g.,* Pub. L. No. 98-398, *Illinois and Michigan Canal Heritage Corridor* (Aug. 24, 1984).

74. *What is a National Heritage Area?*, National Park Service: U.S. Department of Interior, available at <http://www.cr.nps.gov/heritageareas/FAQ/INDEX.HTM> (last visited Sept. 26, 2006).

75. The criteria the National Park uses include:

1. The area has an assemblage of natural, historic, or cultural resources that together represent distinctive aspects of American heritage worthy of recognition, conservation, interpretation, and continuing use, and are best managed as such an assemblage through partnerships among public and private entities, and by combining diverse and sometimes noncontiguous resources and active communities;
2. The area reflects traditions, customs, beliefs, and folk life that are a valuable part of the national story;
3. The area provides outstanding opportunities to conserve natural, cultural, historic, and/ or scenic features;
4. The area provides outstanding recreational and educational opportunities;
5. Resources that are important to the identified theme or themes of the area retain a degree of integrity capable of supporting interpretation;
6. Residents, business interests, non-profit organizations, and governments within the proposed area that are involved in the planning, have developed a conceptual financial plan that outlines the roles for all participants including the federal government, and have demonstrated support for designation of the area;
7. The proposed management entity and units of government supporting the designation are willing to commit to working in partnership to develop the

designated 24 National Heritage Areas, including the Hudson River Valley, Shenandoah Valley Battlefields National Historic District, the Blue Ridge National Heritage Area, the Mississippi Gulf National Heritage Area, and the Illinois and Michigan National Heritage Area.⁷⁶ National Heritage Areas primarily focus on areas that are heavily influenced by humans, and where human growth and economic pressures place intense stress on efforts to preserve existing cultural, natural or historical resources.

National Heritage Areas are controlled by a “management entity,” which implements the “management plan” for the area. The management entity and the management plan are detailed in the legislation creating the specific area. Each area’s management plan:

describes the ways the management entity and its partners can work together toward the fulfillment of their common vision. Short and long-term actions listed in a management plan might include developing and implementing an interpretation plan, assisting in the rehabilitation of a number of historic sites, working with partners to open regional visitors’ centers, or creating a network of recreational trails.⁷⁷

According to the terms of the legislation, the management entity may be “a State or local agency, a commission, or a private nonprofit corporation. The management entity is empowered to create a management plan for the heritage area, and is authorized to receive federal funds on the area’s behalf.”⁷⁸ Thus, the focus of most National Heritage Area management plans is on cultural, historical, and recreational preservation rather than on ecological preservation, though there may be room to address ecological preservation depending on the terms of the specific management plan. In addition, the majority of National Heritage Areas cover wide swaths of land. Accordingly, the scope of the

heritage area; 8. The proposal is consistent with continued economic activity in the area; 9. A conceptual boundary map is supported by the public; and 10. The management entity proposed to plan and implement the project is described.

Id.

76. For a full list of National Heritage Areas, see *Visit the National Heritage Areas*, National Heritage Areas, National Park Service: Department of Interior, <http://www.cr.nps.gov/heritageareas/VST/INDEX.HTM#list> (last visited Sept. 26, 2006).

77. See *What is a National Heritage Area?*, National Heritage Areas, National Park Service: Department of Interior, available at <http://www.cr.nps.gov/heritageareas/FAQ/INDEX.HTM> (last visited Sept. 26, 2006).

78. See *id.*

projects is very broad in nature, rather than focusing on specific land use or ecological problems.

The true innovation in the National Heritage Area regime lies in its designation of mixed public and private management teams. In the early days of environmental and cultural heritage conservation, responsibility and authority rested primarily, if not exclusively, with federal, state and local government. National Heritage Areas, however, allow the sharing of power and accountability between the public and the private and civil society spheres. In the public realm, the National Park Service is the federal entity that supports local management entities. The National Park Service "partners with local community activists in planning and implementing heritage area activities," and "enters into a compact or cooperative agreement with local parties" that provides a "statement of assent to mutually shared goals, and also serves the legal vehicle through which Federal funds can be passed to non-governmental management entities."⁷⁹ In this way, the National Heritage Areas can be locally managed with the benefit of federal advice and financial assistance.

By moving away from government command and control style legislation to decentralized mixed-management regimes, the National Heritage Area scheme creates incentives for local peoples to encourage and participate in the management and preservation of culture, history and nature in their region. Furthermore, by encouraging public-private partnerships, National Heritage Areas can include private lands that might otherwise be outside the domain of traditional governmental control. In these ways, the designation of a National Heritage Area expands the scope of participation and coverage of cultural, historical and natural conservation projects.

A particular example, the Hudson River Valley National Heritage Area (Area), exemplifies how federal, state and local government and citizenry can work together to promote effective management of cultural, historical and natural heritage. Congress designated the Hudson River Valley as a National Heritage Area on November 12, 1996.⁸⁰ The Hudson River Valley National Heritage Area covers "ten counties, four million acres and

79. *Id.*

80. See Hudson River Valley National Heritage Area Act of 1996, Pub. L. No. 104-333 904(b), 110 Stat. 4275, 4276 (codified at 16 U.S.C. § 461 (2000)).

over two and a half million people.”⁸¹ The Hudson River Valley National Heritage Area management plan was adopted on April 17, 2002 after years of planning and review.⁸² The management plan represents a new generation of conservation administration because it was not created through traditional governmental processes, e.g., a federal agency drafting a regulatory proposal or environmental impact statement followed by public notice and comment and revision. Rather, the Hudson River Valley National Heritage Area management plan was drafted using “extensive public participation through public meetings and individual interviews involving private citizens; community and business leaders; federal, state, regional, and local organizations, agencies and elected officials; heritage professionals; and others with an interest in the future of the National Heritage Area.”⁸³

The stated goal of the management plan for the Area is to “increase access to and interpretation of the nationally significant cultural and natural resources” in the area.⁸⁴ The management plan focuses on promoting the development of “heritage area trails” that link heritage sites and unite “communities, and a variety of public and private agencies to create partnerships to meet the legislative mandate to conserve and interpret the Heritage Area.”⁸⁵ The management plan focuses on promoting the triadic framework of: (1) freedom and dignity, celebrating the part of the Hudson River Valley in American history, such as its role in

81. See *Hudson River Valley National Heritage Area Management Plan* approved (April 17, 2002), available at <http://www.hudsongreenway.state.ny.us/heritage/NHAl legis.pdf> (last visited Sept. 26, 2006). “This area is approximately three million acres of Hudson Highlands, Catskill Mountains, rolling farmland and compact villages, small cities and hamlets. The region extends from the confluence of the Mohawk and Hudson Rivers, south to the northern border of New York City.” *Hudson River Valley National Heritage Area*, New York State Hudson River Valley Greenway, available at <http://www.hudsongreenway.state.ny.us/heritage/overview.htm> (last visited Sept. 26, 2006). The Area includes the “counties of Albany, Rensselaer, Columbia, Greene, Ulster, Dutchess, Orange, Putnam, Westchester, and Rockland and the Village of Waterford in Saratoga County, except for those portions of Columbia, Greene, Dutchess and Rensselaer counties lying within the 22nd Congressional District. Any city, town, or village located within the 22nd Congressional District may join the National Heritage Area by passing a resolution opting to be included.” *Hudson River Valley National Heritage Area Boundaries*, New York State Hudson River Valley Greenway, available at <http://www.hudsongreenway.state.ny.us/heritage/bound.htm> (last visited Sept. 27, 2006).

82. See *Hudson River Valley National Heritage Area Management Plan*, *supra* note 81.

83. *Id.* at Executive Summary.

84. *Id.*

85. *Id.*

the American Revolution and the abolition of slavery; (2) nature and culture, emphasizing the role of the Valley in inspiring artists, writers and architects; and (3) corridors of commerce, commemorating the role that the area played in "the early settlement and economic development of our nation."⁸⁶

This framework reflects a strong emphasis on protecting areas of historical and cultural significance. It also reveals, however, that pure nature conservation is not a stated priority. That is, the nature conservation that takes place is largely anthropocentric in nature, revolving around the protection and preservation of sites that are either inspiring to or central to human social wellbeing. This is exemplified by the terms of the management plan, which states that it will be the goal of the plan to "safeguard and enhance the Hudson River Valley's natural and cultural heritage through conservation and interpretation of its Heritage Sites," thus choosing locations and strategies for natural heritage protection based on sites of particular human importance rather than based on ecosystem analysis. This does not indicate that environmental preservation is not a priority for the area, simply that there will likely be tensions between ecological and historical/cultural priorities in regional agenda setting.⁸⁷ Such tensions between ecological and human wellbeing will be a common theme throughout integrated cultural and natural heritage protection projects worldwide.

The Area is managed by two entities, the Greenway Conservancy for the Hudson River Valley, a "public benefit corporation,"⁸⁸ and the Hudson River Valley Greenway Communities

86. *Id.* at 12.

87. These tensions are exemplified by regional tensions that already exist in the Hudson River Valley National Heritage Area. For example, "in 2001 the Columbia County Planning Department Director, Roland Vosburgh, wrote a letter to an undisclosed party in which he stated, 'I am afraid that some local government officials and public might view even generic county plans as unwanted and hostile and part of a push for regionalization.' Vosburgh continued, 'I have long been concerned that a narrow interpretation of economic development constrained to be compatible with Greenway principles, might impede the development of a diversified and balanced economy in the Hudson River Valley.' Vosburgh also noted that the Greenway economic development thrust emphasizes agriculture, tourism and downtown revitalization, which could block projects that might benefit the county economically." Janet Kealy, *The Hudson River Valley: A Natural Resource Threatened by Sprawl*, 7 ALB. L. ENVTL. OUTLOOK 154, 177 (2002).

88. New York State Hudson River Valley Greenway, available at <http://www.hudsongreenway.state.ny.us/funding/funding.htm> (last visited Sept. 26, 2006). The Greenway Conservancy "works with local governments, organizations and individuals to establish a Hudson River Valley Trail system, promote the Hudson River

Council, "an innovative state agency created to facilitate the development of a voluntary regional strategy for preserving scenic, natural, historic, cultural and recreational resources while encouraging compatible economic development."⁸⁹ Both of these entities were established by the Greenway Act of 1991.⁹⁰

The unique combination of public-private management creates room for innovative and progressive conservation measures. In particular, the Greenway Council has been granted the power "to conduct scientific, environmental, economic, tourism and cultural studies within the valley that are germane to the greenway," and to "prepare objectives to advance each of the five greenway criteria: natural and cultural resources protection, regional planning, economic development including agriculture and urban redevelopment, public access and heritage education."⁹¹ The breadth of the Area's mandate and the management authorities' powers, thus, move beyond the limits of traditional legislation and regulation and include interdisciplinary, multi-level, multi-party planning. The management plan for the Area emphasizes the importance of this new, decentralized style of conservation planning, stating:

[T]hroughout New York State and the nation, public-private partnerships are recognized as the key to sustainable development. Coordination, collaboration, and communication among all levels of government, local communities, foundations, not-for-profits, and other organizations are necessary for the Heritage Area to achieve its goals. The scale of proposed Heritage Area facility improvements, preservation, and program initiatives, even at minimal levels, is beyond the scope of any individual agency or entity.⁹²

The management plan for the Hudson River Valley Natural Heritage Area has been in place for just over four years and success has been mixed. On the positive side, all but two of the

Valley as a single tourism destination area, assist in the preservation of agriculture and, with the Council, works with communities to strengthen state agency cooperation with local governments." See *Greenway Conservancy for the Hudson River Valley*, New York State Hudson River Valley Greenway, available at <http://www.hudsongreenway.state.ny.us/conserv/conserv.htm> (last visited Sept. 27, 2006).

89. *Id.*

90. The Hudson River Valley Greenway Act of 1991, N.Y. ENVTL. CONSERV. LAW § 44-0101 – 44-0121 (Dec. 31, 1991).

91. See Thomas A. Birkland, *Environmental Successes and Continued Challenges in the Hudson Valley*, 8 ALB. L. ENVTL. OUTLOOK 187, 204 (2004), quoting N.Y. ENVTL. CONSERV. LAW 44-0107 (McKinney 1997).

92. *Hudson River Valley National Heritage Area Management Plan*, *supra* note 81, at 35.

regional counties have become official greenway communities, signifying their intention to participate in city/regional planning that comports with the planning criteria established by the management plan, including planning for natural and cultural resource protection.⁹³ In addition, the management entities for the Area have developed partnerships with governmental agencies and private groups to successfully advance awareness of the historical, cultural and natural attributes of the Hudson River Valley among local community members and governmental authorities. Increasing awareness has prompted over sixty-five percent of the municipalities within the Hudson River Valley to develop "written comprehensive plans and some system of zoning and planning."⁹⁴ Thus, designation as a Natural Heritage Area has prompted increased awareness of conservation issues among the general public and encouraged local and regional governments to focus on improving planning and "smart growth."⁹⁵ Despite these successes, there continues to be considerable tension between local, regional and national governments over division of authority. There are also continual tensions between economic, environmental and cultural priorities. Overall, the pace of implementation of the management plan has been slow and patchy and local and regional entities have struggled to consistently coordinate cultural heritage planning and environmental protection to achieve tangible results.

The Hudson River Valley Natural Heritage Area meets the criteria this paper suggests planners should use to choose sites for integrated cultural and natural heritage conservation projects. First, the site occurs on a regional scale, contains human settlements and countryside, demonstrates a clear cultural identity, reveals clear human influence on the landscape and contains both public and private lands. Second, the Hudson Valley is densely populated, faces significant growth pressures and is a prime example of a region where environmental, cultural and historical resources face significant threat due to pollution and sprawl. Third, existing environmental and cultural heritage preservation efforts reveal that: (1) local, regional, and national gov-

93. See Birkland, *supra* note 91, at 204.

94. Kealy, *supra* note 87, at 168-69.

95. *Id.* at 177-87. For an explanation of 'smart growth' and a description of 'smart growth' efforts in New York, see Patricia E. Salkin, *Sorting Out New York's Smart Growth Initiatives: More Proposals and More Recommendations*, 8 ALB. L. ENVTL. OUTLOOK 1 (2002).

ernmental agencies, as well as varied non-governmental stakeholders, are eager to develop management plans; (2) multiple sources of funding are available for conservation efforts; (3) environmental, historical and cultural heritage preservation laws exist; and (4) agencies and non-governmental institutions are in place to support the development of a formal integrated management scheme. For all of these reasons, the Hudson River Valley represents an appropriate test site for integrated cultural and natural heritage preservation and exemplifies many of the benefits and challenges to jointly addressing these distinct yet intersecting problems.

After ten years, the Hudson River Valley National Heritage Area is still in the early stages of planning. The slow pace and uneven success of early planning efforts highlights difficulties inherent to such complex management schemes: balancing cultural, economic and environmental priorities; coordinating local and regional plans that are highly location specific; resolving conflicts over the use and management of resources that cross public-private land boundaries; and settling debates between governmental authorities over the proper distribution of power. The experience of the Hudson River Valley National Heritage Area also demonstrates that integrated conservation is possible. The Hudson River Valley case study shows that in endeavoring to achieve integrated conservation schemes, it is necessary to be patient, to involve multiple stakeholders, and to be willing to move outside of traditional regulatory boundaries in order to develop new regulatory strategies for ownership, access and control of land that bridge private-public divides.

b. The European Union

The European Union, like the United States, has established legal systems and land use regimes. The countries of the European Union (EU) also enjoy immense cultural pride that manifests itself through strict historical and cultural protection regulation. Unlike the United States, the policies of the EU reflect the fact that much of Europe has long been densely populated, exerting extreme development pressures on green spaces and historical/cultural sites. Furthermore, the European Union has the most comprehensive set of cultural heritage laws of any developed or developing country/region, consisting of four primary agreements: (1) the European Cultural Convention

(1954);⁹⁶ (2) the European Convention on the Protection of the Archaeological Heritage (1969);⁹⁷ (3) the European Convention on Offences Relating to Cultural Property (1985);⁹⁸ and (4) the Convention for the Protection of the Archaeological Heritage (Revised) (1992).⁹⁹ Similarly, the EU has an extensive environmental law framework, equal to and, arguably, at times beginning to exceed the scope of U.S. environmental law.¹⁰⁰ Thus, the European Union is an appropriate site for examining how both the European Union and its constituent states work to protect cultural and natural heritage in a developed country facing competing development and conservation pressures.

At the regional level, one of the most important developments is the European Union's adoption of the EU Landscape Convention 2000 (Landscape Convention).¹⁰¹ The Landscape Conven-

96. European Cultural Convention, Dec. 19, 1954, 218 U.N.T.S. 139 (1955).

97. European Convention on the Protection of the Archaeological Heritage, May 6, 1969, 66 E.T.S., available at <http://conventions.coe.int/Treaty/en/Treaties/Word/066.doc> (last visited Sept. 27, 2006).

98. European Convention on Offences Relating to Cultural Property, June 23, 1985, 119 E.T.S., available at <http://conventions.coe.int/Treaty/en/Treaties/Word/119.doc> (last visited Sept. 27, 2006).

99. European Convention on the Protection of the Archaeological Heritage, Jan. 16, 1992, 143 E.T.S., available at <http://conventions.coe.int/Treaty/en/Treaties/Word/143.doc> [hereinafter Revised Convention]. See generally Kanchana Wangkeo, *Monumental Challenges: The Lawfulness of Destroying Cultural Heritage During Peacetime*, 28 YALE J. INT'L L. 183 (2003). In addition, the European Union has recently proposed a new treaty, the Convention on Heritage and Society, which attempts to move the cultural heritage dialogue away from the question of "How and by what procedure can we preserve the heritage?" to the question "Why should we enhance its value, and for whom?" The proposed convention "is based on the idea that knowledge and use of heritage form part of the citizen's right to participate in cultural life as defined in the Universal Declaration of Human Rights. The text presents heritage both as a resource for human development, the enhancement of cultural diversity and the promotion of intercultural dialogue, and as part of an economic development model based on the principles of sustainable resource use. In this respect it falls within the scope of the Council of Europe's priorities as set by the 3rd Summit of Heads of State and Government in May 2005." Council of Europe Framework Convention on the Value of Cultural Heritage for Society, CETS no. 199, available at <http://conventions.coe.int/Treaty/EN/Summaries/Html/199.htm> (last visited Sept. 27, 2006).

100. See, e.g., European Greenhouse Gas Emissions Trading System, Commission Decision of 29/01 2004 O.J. (C 2004) 130 final; Commission Directive 2004/101 2004 O.J.; Commission Directive 2003/87/EU 2003 O.J.

101. Council of Europe, European Landscape Convention, *European Treaty Series - No. 176* (Oct. 20, 2000). The Landscape Convention is designed to complement the World Heritage Convention. The Landscape Convention, however differs in scope from the World Heritage Convention; it is both broader and more limited in scope. It is broader because applies to ALL landscapes, rather than only those of outstanding universal value; it is narrower because it only applies to landscapes and

tion seeks to protect, manage and plan for the protection of European landscapes, including historic monuments as well as the health of natural landscapes.¹⁰² The Landscape Convention encourages regional cooperation and prompts member states “to recognize the importance and value of landscapes and to reconcile commercial considerations with the right to wellbeing, health, aesthetics and beauty.”¹⁰³

The European Landscape Convention is complimented by the Pan-European Biological and Landscape Diversity Strategy (PEBLDS).¹⁰⁴ The PEBLDS was drafted in 1993 and endorsed in October, 1995, and has been signed by ministers from 55 European countries. The underlying objective of the PEBLDS is to preserve and protect Europe’s biological and landscape diversity and “to actively promote the landscape concept as an opportunity to address all those pressing landscape issues which are complimentary to, but – at the European level – not sufficiently affected by, classical nature conservation approaches.”¹⁰⁵ The PEBLDS seeks to assure that threats to Europe’s biological and landscape diversity are reduced substantially, the resilience of Europe’s biological and landscape diversity is increased, the ecological coherence of Europe as a whole is strengthened, and that full public involvement in the conservation of biological and landscape diversity is assured.¹⁰⁶

Central to the PEBLDS is how it defines biological diversity and landscape diversity, which are the two terms central to its interpretation and implementation. The PEBLDS uses the Convention on Biological Diversity’s definition of biological diversity: “the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosys-

not to historic monuments. In addition, the Landscape Convention is more focused on developing strict regulations concerning landscape management.

102. *Id.*, Art. 11.

103. Council of Europe, Cultural Cooperation – Conclusion, available at http://www.coe.int/t/e/cultural_co-operation/environment/landscape/presentation/8_Conclusion/ (last visited Oct. 8, 2006).

104. See *Text of Biological and Landscape Diversity Strategy: Pan-European Biological and Landscape Diversity Strategy*, The Strategy Guide, The Clearing-House for the Pan-European Biological and Landscape Diversity Strategy, available at <http://www.strategyguide.org/fulltext.html> (last visited Sept. 28, 2006).

105. See *Pan-European Biological and Landscape Diversity Strategy*, Landscape Europe, available at <http://www.landscape-europe.net/pebls.html> (last visited Sept. 28, 2006).

106. See *Text of Biological and Landscape Diversity Strategy: Pan-European Biological and Landscape Diversity Strategy*, *supra* note 104, Overview: 1.4 Vision for the Future of Pan-European Biological and Landscape Diversity.

tems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems (Article 2 of the Convention on Biological Diversity)."¹⁰⁷ While this is a standard definition of biological diversity, how PEBLDS defines landscape diversity is more progressive and supportive of a broader understanding of conservation.

The PEBLDS defines landscape diversity as "the formal expression of the numerous relations existing in a given period between the individual or a society and a topographically defined territory, the appearance of which is the result of the action, over time, of natural and human factors and a combination of both (Council of Europe Draft Recommendation on the Integrated Conservation of Cultural Landscape Areas as part of Landscape Policies)."¹⁰⁸ By using landscape as a central component of its strategy, the PEBLDS expands the scope of conservation to include both traditional protection of natural resources and ecological systems as well as protection of cultural and historical heritage.

The United Nations Environmental Programme describes the PEBLDS as innovative and proactive, "[i]nnovative, because it addresses all biological and landscape initiatives under one European approach. It is proactive, because it promotes the integration of biological and landscape diversity considerations into social and economic sectors."¹⁰⁹ The PEBLDS was initially drafted as a European effort to facilitate the implementation of the Convention on Biological Diversity. However, it goes further than being an implementation document. The PEBLDS creates a framework that European countries can use to integrate and improve existing efforts to integrate natural heritage – with a strong focus on ecological based analysis – and cultural/landscape conservation efforts.

The European Union has also created the European Heritage Network. The European Heritage Network is essentially an information gathering and sharing tool; it creates a database for information on heritage projects, as well as a process for designating "Council of Europe Cultural Routes" that encour-

107. *See id.*, Summary.

108. *Id.*

109. UNEP, *Pan-European Biological and Landscape Diversity Strategy*, available at <http://svs-uneplibmdb.net/?q=mode/1460&PHPSESSID=3b4110e2b392332a713704ead912c3b2> (last visited Sept. 28, 2006).

ages cooperative protection of “shared cultural heritage,” again focusing on both land and monuments.¹¹⁰

Similarly, in 1987, the Council of Europe launched The Cultural Routes Programme.¹¹¹ The Cultural Routes Programme is designed to highlight the shared cultural heritage of European member states. Although the focus of the Cultural Routes Programme is on historical heritage, it also attempts to promote sustainable development, thus bringing in elements of concern for cultural and natural heritage.¹¹²

At the non-governmental level, in 1997, organizations from EU member states created the European Greenways Association, with a more explicit focus on the overlap of cultural and natural heritage. Through this project, the non-governmental organizations (NGOs) support EU member states’ designations of European Greenways, which comprise “trails or natural corridors used in accordance with their environmental function and potential for sport, tourism and recreation,”¹¹³ Indeed, the formal “advantages” of Greenways include “contribution to natural and cultural heritage conservation, improving the traffic situation, provide opportunities for recreation and tourism, provide a stimulus for adopting a healthier lifestyle, the sustainable use of local resources.”¹¹⁴

The Greenways project is coordinated by the European Greenways Association. The goal of the European Greenways Association is to encourage the preservation of existing infrastructures – railway corridors, paths, historic routes; support the

110. See Council of Europe, European Heritage Network, available at <http://www.european-heritage.net/sdx/herein/> (last visited Sept. 27, 2006); see also Frenchman, *supra* note 70, at 1.

111. The European Greenway Association was set up in May 1997, when it was decided within the framework of the First European Conference on Soft Traffic and Railways Paths (Val-Dieu, Belgium) to set up the European Greenways Association. The association’s constituent assembly was held in Namur, Belgium, on January 8th, 1998. A statute was signed by 17 representatives of institutions and associations from many European countries. See *Presentation*, European Greenways Association, available at <http://www.aevv-egwa.org/site/1Template1.asp?DocID=176&vIID=&RevID=&namePage=&pageParent=> (last visited Sept. 27, 2006).

112. See Council of Europe, The Europe of Cultural Cooperation, *Council of Europe Cultural Routes*, available at http://www.coe.int/T/E/Cultural_Cooperation/Heritage/European_Cultural_Routes/Summary.asp#TopOfPage (last visited Sept. 27, 2006). Examples of Cultural Routes include, the Santiago de Compostela Pilgrim Routes, the Viking Routes and the Jewish Routes. *Id.*

113. See European Greenway Association, available at http://www.nadacepartnerstvi.cz/english/programy/zelene_stezky.html (last visited Sept. 27, 2006)

114. *Id.*

use of non-motorized transport; encourage the exchange of information and expertise; counsel local, regional and national bodies on how to encourage non-motorized movement routes; and work with European bodies facilitate the development and implementation of environmental and sustainable development policies.¹¹⁵ Thus, regionally, at both the governmental and non-governmental level, European member states are developing innovative strategies for recognizing the overlap of cultural and natural heritage.

The European Union does not provide centralized funding for the creation of heritage areas. Instead the EU provides a central framework for coordination that encourages member states to work independently and cooperatively to protect cultural and natural resources.¹¹⁶ For example, the United Kingdom employs a multi-part approach to preserving its cultural and natural resources, including designations for "Areas of Outstanding National Beauty," "National Parks," and "Conservation Areas," all of which – to some degree – reflect concern for protecting both natural landscapes and elements of human culture. Similarly, France, Germany, Spain and the Scandinavian States have all established independent and collaborative cultural heritage projects. Having examined the regional European mechanisms that are in place that promote integrated cultural and natural heritage protection, this paper will now look at how one EU member state, England, is protecting historic landscapes characterized by intersecting areas of cultural and natural heritage riches.

(1) *England*

England uses a multi-part system to protect its historical, cultural, and natural heritage. The key categories England uses to protect both cultural and natural heritage, National Parks, Areas of Outstanding Natural Beauty, and Conservation Areas will be briefly described and then one particular example of integrated cultural and natural heritage protection, Dartmoor National Park, will be examined.

115. See *Presentation*, European Greenways Association, available at <http://www.aevv-egwa.org/site/1Template1.asp?DocID=176&v1ID=&RevID&namePage=&pageParent=> (last visited Sept. 28, 2006); see also *International Trails and Greenways Partners*, Trail Link, available at http://www.traillink.com/TL_Active_Pages/world/partners.asp (last visited Sept. 28, 2006).

116. See Frenchman, *supra* note 70, at 1-2.

(a) *National Parks*

England is famous for its beautiful, wild, and extensive National Parks. National Parks in England differ significantly from National Parks in the United States in that they are “living and working communities with many of the characteristic qualities that give them their appeal being as much the result of human activity as of natural forces.”¹¹⁷ Thus, unlike the U.S. National Park system, which focus on fortress style environmental preservation, in the United Kingdom, National Parks represent one of the earliest and, arguably, most successful examples of integrated cultural and natural heritage preservation. In addition, unlike U.S. National Parks, English National Parks are *not* owned by the state. Rather, ownership is spread between private and public landowners, including local, regional and state entities.

The National Park system in England, established in 1949 by the National Parks and Access to the Countryside Act (Act), was later amended by the Environment Act of 1995.¹¹⁸ The objectives of the National Park system are “to conserve and enhance the natural beauty, wildlife and cultural heritage; and to promote opportunities for the understanding and enjoyment of the special qualities (of the National Parks) by the public.”¹¹⁹ There are eight National Parks in England, the last of which – the New Forest National Park – was created in March 2005, plus the Norfolk and Suffolk Broads, which have the same status as a National Park. Each National Park is managed by an independent authority, known as the National Park Authority. In total, the eight National Parks and Broads cover over eight percent of land area in England. Currently, the government is in the midst of reviewing the proposed designation of the South Downs as the ninth National Park.

The Environment Act of 1995 supplemented the 1949 Act by clarifying the roles of National Park Authorities in protecting and preserving the Parks. The Environment Act specified that the

117. See Dartmoor National Park Local Plan First Review 1995-2011 Adopted Version, 8 (Oct. 2004), available at <http://www.dartmoor-npa.gov.uk/pl-adoptedlocalplan> (last visited Oct. 6, 2006) [hereinafter *Dartmoor Local Plan First Review*]; see also The Countryside Agency: Landscape Access Recreation, *National Parks*, available at http://www.countryside.gov.uk/LAR/Landscape/DL/national_parks/index.asp (last visited Sept. 28, 2006) for a discussion of National Parks in England.

118. UK Environment Act (1995).

119. Dartmoor National Park Management Plan at 5 (May 2001), available at <http://www.dartmoor-npa.gov.uk/index/planning/pl-forwardplanning/pl-dnpgmt-plan.htm> (last visited Oct. 8, 2006).

role of the National Park Authorities is to "seek to foster the economic and social wellbeing of local communities (within the National Park) by working closely with the agencies and local authorities responsible for these matters, but without incurring significant expenditures." In addition, the 1995 Act requires National Park Authorities to prepare and publish National Park Management Plans.

(b) *Areas of Outstanding Natural Beauty*

Areas of Outstanding Natural Beauty (AONBs) are "designated solely for their landscape qualities for the purpose of conserving and enhancing their natural beauty (which includes landform and geology, plants and animals, landscape features and the rich history of human settlement over the centuries)."¹²⁰ There are currently 36 designated AONBs, covering about fifteen percent of England.¹²¹ AONBs are often less dramatic landscapes than the National Parks; they are areas of countryside offering beautiful scenery but lacking ample opportunities for outdoor recreation—one of the requirements for designation as a National Park in England. Similar to the National Park system, AONBs are designated with the principal objective of conserving areas of natural beauty, but with secondary obligations including preserving economic, social and cultural qualities, e.g., agriculture, forestry, rural industries, community structures.¹²² Thus, the National Park and AONB systems share similar goals and differ primarily in the type of landscape that they encompass.

(c) *Conservation Areas*

In 1967, the Civic Amenities Act gave local councils the authority to establish Conservation Areas as "areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance."¹²³ Conservation areas focus primarily on historic preservation of buildings. Despite this architectural focus:

120. See The Landscape Agency: Landscape Access Recreation, *Areas of Outstanding Natural Beauty*, available at <http://www.countryside.gov.uk/LAR/Landscape/DL/aonbs/index.asp> (last visited Sept. 28, 2006).

121. *Id.* "The smallest is the Isles of Scilly, a mere 16 sq km, the largest the Cotswolds totalling 2,038 sq km. The South Hampshire Coast AONB was de-designated in March 2005 as the majority of it now lies within the New Forest National Park." *Id.*

122. See, e.g., *Areas of Outstanding Natural Beauty*, *supra* note 120.

123. Civic Amenities Act 1967.

[t]he special character of these areas does not come from the quality of their buildings alone. The historic layout of roads, paths and boundaries; characteristic building and paving materials; a particular 'mix' of building uses; public and private spaces, such as gardens, parks and greens; and trees and street furniture, which contribute to particular views – all these and more make up the familiar local scene.¹²⁴

In this way, Conservation Areas move beyond traditional cultural and historical heritage laws – that often list single buildings for protection – to focus on preserving the cultural, historical and natural character of entire areas. There are currently over 8,000 designated Conservation Areas in England.¹²⁵

(2) *Dartmoor National Park*

Dartmoor National Park (Dartmoor) covers 368 square miles and is the “largest and wildest area of open country in the south of England.”¹²⁶ Following the 1949 enabling legislation, in 1951, Dartmoor became the fourth area in England and Wales to be designated as a National Park. Between 1951-1997, Dartmoor was administered by the Devon County Council. Since 1997, Dartmoor has been managed by a free-standing National Park Authority.¹²⁷

The Dartmoor National Park Authority (Authority) is an independent authority, i.e., independent from the National Government, and is “responsible for all development planning functions – strategic planning, local planning, minerals planning & waste planning – within the boundaries of the Park.”¹²⁸ The new Authority includes 26 members,¹²⁹ seven from the Devon County Council, seven from the local District Councils, and twelve gov-

124. See English Heritage, *What is a Conservation Area?*, available at <http://www.english-heritage.org.uk/server/show/conWebDoc.2440> (last visited Sept. 29, 2006).

125. See *id.*

126. Dartmoor National Park Authority, *Dartmoor General Information: Fact Sheet* (March 2004), available at <http://www.dartmoor-npa.gov.uk/index/learning-about/lab-factsheetshome/lab-generalfactsheet.htm> (last visited Oct. 8, 2006).

127. See *Dartmoor Local Plan First Review*, *supra* note 117, at 4.

128. See *id.*

129. Authority members are appointed for three year periods; the mix of representatives is designed to provide a balance between local and national interests in order to properly manage the National Park. In addition to the Management Authority, the day-to-day operations of Dartmoor are administered by a permanent staff of 85. See *id.*

ernmental appointees representing parish council interests and local persons with expertise in the National Park.¹³⁰

In addition to the 1949 National Parks Act and the 1995 Environment Act, there is a collection of legislation influencing the management of Dartmoor. For example, the Dartmoor Commons Act of 1985 established the legal right to walk and ride horses on registered common lands in Dartmoor. In the same year, the Wildlife and Countryside Act, mandated the development of a Conservation Map for the moorland, including the moors within Dartmoor. Similarly, the Countryside and Rights and Way Act of 2000 designated new areas of Dartmoor with open access rights – when areas are designated as having full open access, it allows the public to cross all lands, without having to follow specific rights of ways or paths.¹³¹ In addition, the 1990 Town and Country Planning Act established authority for the Dartmoor National Park Local Plan, creating guidelines for a detailed management plan for the Park.¹³² Other national and regional legislation and/or strategies applying to Dartmoor include the National Biodiversity Action Plan, the National Sustainable Development Strategy,¹³³ the European Habitats Directive,¹³⁴ and rules for designating Sites of Special Scientific Interest, Special Areas of Conservation, and National Nature Reserves. In addition to the national legislation, Dartmoor has a separate set of documents shaping its management to include, a Biodiversity Action Plan,¹³⁵ and multiple Habitat Action Plans.¹³⁶

130. *See id.* at 4.

131. UK Countryside & Rights of Way Act, § 2 (2000).

132. UK Town and Country Planning Act, Part I, § 4 (1990).

133. The objective of the National Sustainable Development Strategy is “to ensure a better quality of life for everyone, now and for generations to come”, including promoting: “social progress which recognizes the need of everyone, effective protection for the environment, and prudent use of natural resources, and maintenance of high and stable levels of economic growth and employment.”

134. *See* European Habitats Directive, 92/43/EEC, available at http://ec.europa.eu/environment/nature/nature_conservation/eu_nature_legislation/habitats_directive/index_en.htm (last visited Oct. 8, 2006) requiring “identification and classification of sites of international importance;” under the directive Special Protected Areas and Special Areas of Conservation are designated to protect the habitats of threatened species of wildlife.

135. *See Dartmoor Biodiversity Action Plan: Table of Contents*, available in part at <http://www.dartmoor-npa.gov.uk/index/aboutus/au-theauthority/au-whatwedo/au-publications/au-strategiesactionplans/au-baptoc.htm> (last visited Oct. 8, 2006).

136. *See, e.g.*, Dartmoor Biodiversity Steering Group, Dartmoor Habitat Action Plan for Moorland, available at <http://www.dartmoor-npa.gov.uk/au-baptoc> (last visited June 7, 2007); Dartmoor Biodiversity Steering Group, Dartmoor Habitat Action

(a) *The Dartmoor Local Plan*

In May 2001, the new Dartmoor National Park Management Plan (Management Plan) was released.¹³⁷ The Management Plan establishes the broad goals and priorities for the proper management of the Park by the Management Authority and other parties who are involved in Park management. The 2001 Management Plan is the most recent management document in a series of varied park plans and reviews. The first Dartmoor National Park Plan was issued in 1977, followed by a First Review of that Plan in 1983, a Second Review in 1991, and the release of the first Dartmoor National Park Local Plan (Local Plan) in 1995.¹³⁸ The Dartmoor National Park Local Plan and the Dartmoor National Park Local Plan First Review, issued in 2004, are particularly instructive to the discussion here and will be discussed in detail below.

The 1995 Dartmoor National Park Local Plan establishes the “overarching vision for the future of the Dartmoor National Park,”¹³⁹ “sets the context for the Local Plan aims which in turn provides a basis for the establishment of a sustainability framework,”¹⁴⁰ and “sets the scene for formulating sustainability appraisal criteria and monitoring indicators.”¹⁴¹ The Local Plan is the result of a long process whereby information was gathered and analyzed using issue papers, public consultations, questionnaires distributed to every household in and around Dartmoor National Park, and independent sustainability consultants.

The core of the Local Plan is its “Vision Statement”¹⁴² for Dartmoor. The Vision Statement promotes the preservation and restoration of Dartmoor’s special qualities of peace and quiet, remoteness, solitude, unspoilt natural beauty, wide open spaces, wildness and wildlife habitats, the freedom to roam, archaeologi-

Plan for Woodland, available at <http://www.dartmoor-npa.gov.uk/au-baptoc> (last visited June 7, 2007).

137. Dartmoor National Park Management Plan (May 2001), available at <http://www.dartmoor-npa.gov.uk/index/planning/pl-forwardplanning/pl-dnmgmtplan.htm> (last visited Oct. 8, 2006).

138. The Local Plan “reviews and rolls forward the subject policies, settlement inset policies, and waste policies to cover the period up to 2011.” The Plan was prepared according to the mandate of the *Town and Country Planning Act 1990*. See *Dartmoor Local Plan First Review*, *supra* note 117.

139. *Dartmoor Local Plan First Review*, *supra* note 117, at 6.

140. *Id.*

141. *Id.* at 7.

142. *Id.* at 9.

cal qualities, and sense of history.¹⁴³ The Vision Plan thus focuses on a combination of natural and cultural heritage goals, including:

- Wildness of remote moorland remains undiminished and past physical and ecological damage has been repaired;
- Farming remains the principal land use, and is always maintaining and enhancing the character and wildlife interest of the landscape;
- All broadleaved woodland is being actively conserved and conifer plantations are better integrated into the landscape;
- The air, soils and river are unpolluted and diverse wildlife thrives;
- The archaeological and historic character of buildings, settlements and landscapes are being actively conserved;
- Residents and visitors still find peace, solitude and enjoyment, in harmony with the landscape with each other;
- The impact of the motor vehicle is reduced and attractive viable alternatives to car travel exist;
- Services, amenities, housing and employment opportunities are meeting the needs of a thriving local community;
- Everyone shares a deeper understanding and appreciation of National Park values and is working together to sustain and enhance Dartmoor's distinctive high quality environment.¹⁴⁴

(b) *Local Plan Aims*

After establishing the broad vision for the Park through the Vision Statement, the Local Plan details the more precise aims of the plan. These aims reveal the intrinsic links between nature and culture within English National Parks and the long-standing recognition and protection of these qualities. The aims of the Local Plan are broken down into fifteen categories.¹⁴⁵

The first aim of the Local Plan is to integrate all policies affecting the National Park with the objective of advancing the economic and social wellbeing of the local communities.¹⁴⁶ The second aim focuses on Dartmoor's unique landscape.¹⁴⁷ Specifi-

143. *Id.*

144. *Id.*

145. *See id.* at 9 & 18.

146. *Dartmoor Local Plan First Review*, *supra* note 117, at 10.

147. *Id.*

cally, the Local Plan seeks to promote landscape evolution "to conserve and enhance Dartmoor as a living, working, evolving landscape that continues to offer special qualities of peace and quiet, remoteness, solitude, unspoilt natural beauty, wide open spaces, wildness and wildlife habitats, the freedom to roam, and archaeological qualities/sense of history."¹⁴⁸ This aim aptly demonstrates how culture and nature are treated as inseparable and potentially mutually supportive.

The third aim of the Local Plan promotes nature conservation in Dartmoor.¹⁴⁹ Returning to a largely ecological focus, this aim emphasizes the importance of protecting and maximizing biological diversity and the importance of Dartmoor's unique ecosystems at regional, national and global level.

Moving away from a purely ecological focus, the fourth aim of the Local Plan is to protect the integrity of Dartmoor's historical landscape, a key component of traditional cultural heritage protection.¹⁵⁰ The fifth through twelfth aims of the Local Plan again focus primarily on human concerns and human interaction with their natural environment, emphasizing the objective of protecting Dartmoor's existing and future built environment; controlling recreational use, tourism, farming and employment within the Park; as well as, providing affordable housing, local services, and managing traffic within the boundaries of the Park.¹⁵¹

Aim five seeks to ensure that the existing built environment of Dartmoor is protected and that all future building that takes place within the boundaries of the Park meet the "highest practical quality standards."¹⁵² Aim six endeavors to promote recreational use of the park while ensuring that these activities do not diminish the natural or cultural environment of the park.¹⁵³ Similarly, aim seven promotes tourism within the park in a manner that is environmentally and economically sustainable.¹⁵⁴ Aim eight and nine focus on economic activities. Aim eight seeks to advance sustainable farming systems within the Park so that farming is both economically viable and promotes the larger goals of the Park plan.¹⁵⁵ Aim nine proposes to improve local

148. *Id.*

149. *See id.* at 10-11.

150. *See id.* at 11.

151. *See id.* at 11-13.

152. *Id.* at 11.

153. *See id.* at 11-12.

154. *See id.* at 12.

155. *Id.* at 12.

employment and business opportunities and to diversify the rural environment in ways that promote the wider goals of the National Park.¹⁵⁶ Continuing with the focus on improving social conditions within the park, aims ten and eleven, respectively, encourage the provision of affordable housing and local services and facilities to meet local needs and to promote "community wellbeing without harm to the local environment."¹⁵⁷ Finally, aim twelve of the Local Plan seeks to improve traffic and transport in Dartmoor, with the goals of expanding access to local facilities as well as minimizing the need for both locals and tourists to travel by automobile within the Park boundaries.¹⁵⁸

Aim thirteen of the Local Plan is to avoid approving any major developments within the National Park barring a "proven overriding national need and no reasonable alternative ways of meeting the need outside the National Park."¹⁵⁹

In aim fourteen, the Local Plan returns to an ecological perspective, this time focusing on the global environment. Here, the goal of the Plan is "to encourage those proposals offering long-term benefits to the National Park environment" and "to encourage developments providing benefits to the global environment where these are not in conflict with the purposes of [National Park] designation."¹⁶⁰ Aim fourteen reveals the Authority's commitment to adopting a long-term and multi-level – i.e., local, national and global – perspective towards environmental protection and sustainability. The Local Plan re-emphasizes this point later in its Subject Policies, where the plan specifies that:

[i]n designated National Parks, the conservation and enhancement of the natural beauty, wildlife and cultural heritage will be given priority over other considerations in the determination of development proposals. Development will only be provided for where it would: (1) conserve and enhance the natural beauty, wildlife and cultural heritage of the National Parks; or (2) promote the understanding and enjoyment of the special qualities of the National Parks; or (3) fostering the social and economic wellbeing of the communities within the National Parks provided that such devel-

156. *See id.* at 12.

157. *Id.* at 13.

158. *See id.* at 13-14.

159. *Id.* at 14.

160. *Id.* at 14.

opment is compatible with the pursuit of the National Park purposes.¹⁶¹

Continuing this long-term, multi-level perspective, aim fifteen promotes the use of a sustainable development framework for Park planning. This framework includes four key components: (1) protection of the environment; (2) economic prosperity for communities; (3) meeting society's needs and aspirations; (4) conservation and prudent use of natural resources.¹⁶²

Through these fifteen aims, the Local Plan reveals that environmental, cultural and social needs are intrinsically intertwined in Park planning; hence, Dartmoor exemplifies one of the earliest examples of integrated natural and cultural heritage management.

(c) *Local Plan Landscapes*

After specifying the overall aims, the Dartmoor Local Plan elaborates management strategies for specific landscapes within the park, including moorland, woodland, farmland, archaeological heritage, the built environment, and the natural environment generally.¹⁶³ It is not necessary to undertake a detailed analysis of each of these plans; however, specific aspects of the management strategies merit attention. First, the landscape plans are generally prefaced by a statement emphasizing that the overarching aim is "to conserve and enhance Dartmoor as a living, working, evolving landscape that continues to offer special qualities of peace and quiet, remoteness, solitude, unspoilt natural beauty, wide open spaces, wildness and wildlife habitats, the freedom to roam, and archaeological qualities/sense of history"¹⁶⁴ to maximize biodiversity,¹⁶⁵ to protect Dartmoor's cultural and historical integrity,¹⁶⁶ or to otherwise protect a mixture of the natural and cultural heritage occurring within the Park.

Second, and of particular importance to this discussion, within the detailed landscape management sections, the Local Plan describes different categories of protected areas that exist within Dartmoor's boundaries. For example, within Dartmoor's moorland, which accounts for fifty percent of the total area of the

161. *Id.* at 20.

162. *Id.* at chart pp. 18-19.

163. *See id.* at 58-80.

164. *Id.* at 60, 62.

165. *Id.* at 64.

166. *Id.* at 69.

park,¹⁶⁷ great portions of the landscape are designated as English “Sites of Special Scientific Interest”¹⁶⁸ – so designated because of their unique wildlife habitat and geological formations—and are proposed candidates for European “Special Areas of Conservation.”¹⁶⁹ In addition, as mentioned, Dartmoor has its own “Biodiversity Action Plan”¹⁷⁰ and many areas within the Park are designated as “Environmentally Sensitive Areas.”¹⁷¹ These state and regional designations create layers of protection for Dartmoor’s natural heritage.

One of the most unique aspects of the management of Dartmoor National Park is how land is owned and how access to land is controlled. As previously mentioned, unlike U.S. National Parks which are owned by the federal government, land ownership of Dartmoor commons¹⁷² – as with other English National Parks – is shared between numerous public and private entities. Thus, landowners, both large¹⁷³ and small,¹⁷⁴ as well as local and

167. Or 46,000 hectares. *Id.* at 58.

168. SSSIs indicate that a site is special for wildlife or geological reasons. The first SSSIs were designated as early as 1949. English Heritage is responsible for identifying and protecting SSSIs under the Wildlife and Countryside Act 1981, as amended by the Countryside and Rights of Way Act 2000. See *Wildlife and Countryside Act (1981) & Countryside and Rights of Way Act (2000)*, Part III(75).

169. See *European Habitats Directive*, *supra* note 134. The Habitats Directive requires regional entities to identify and classify sites of international importance. Under the Habitats Directive, English Heritage is required to designate Special Protected Areas and Special Areas of Conservation to protect the habitats of threatened species of wildlife. In Dartmoor, proposed candidate SACs cover almost 40% of the Park. *Dartmoor Local Plan First Review*, *supra* note 117, at 64-68.

170. See *Dartmoor Biodiversity Action Plan: Table of Contents*, available in part at <http://www.dartmoor-npa.gov.uk/index/aboutus/au-theauthority/au-whatwedo/au-publications/au-strategiesactionplans/au-baptoc.htm> (last visited Oct. 8, 2006).

171. “The Environmentally Sensitive Areas Scheme was introduced in 1987 to offer incentives to encourage farmers to adopt agricultural practices which would safeguard and enhance parts of the country of particularly high landscape, wildlife or historic value.” There are currently 22 ESAs in England covering over 1.1 million hectares. *UK DEFRA, Environmentally Sensitive Areas (ESA)*, available at <http://www.defra.gov.uk/erdp/schemes/esas/default.htm> (last visited Oct. 1, 2006); see also *DEFRA, England Rural Development Program: Environmentally Sensitive Area Scheme*, available at <http://www.defra.gov.uk/corporate/regulat/forms/erdp/generic/esa.pdf> (last visited Oct. 1, 2006).

172. “The *Commons Registration Act* of 1965 required the registration of common land nationally, its ownership, and the extent and nature of the rights held.” See Dartmoor National Park Authority, *Dartmoor Commons Fact Sheet* (2006), available at <http://www.dartmoor-npa.gov.uk/index/learningabout/lab-factsheet-home/lab-dartmoorcommons.htm> (last visited Oct. 1, 2006).

173. One of the largest property owners within Dartmoor National Park is the Dutch of Cornwall. See Dartmoor National Park Authority, *Farming on Dartmoor: Prehistoric Times to the Present Day* (2005), available at http://www.dartmoor-npa.gov.uk/index/learningabout/lab-factsheet-home/lab-farming_history.htm (last

state level government,¹⁷⁵ maintain legal ownership of different portions of the Park.

While portions of privately owned land can be closed off to public use, most of the open moorland¹⁷⁶ in the Park is designated as common land (over 37% of the Park), primarily used as extensive grazing ground for cattle, sheep and ponies.¹⁷⁷ Activities on common land are controlled by the Dartmoor Commoners' Council Regulations.¹⁷⁸

Prior to 1985, the unrecorded rule was that public access to Common Land was permitted. This was legally confirmed in 1985, by the Dartmoor Commons Act, which conferred a public "right of access to the commons on foot and horseback."¹⁷⁹ These rights were further supplemented by the Countryside and Rights of Way Act 2000,¹⁸⁰ which added new areas of common

visited Oct. 1, 2006); *see also* Dartmoor National Park Authority, *Land Use Issues* (2004), available at <http://www.dartmoor-npa.gov.uk/index/learningabout/lab-factsheet/home/lab-factsheets/landuseissues.htm> (last visited Oct. 1, 2006).

174. For example, there are currently 54 owners of the Dartmoor Common Land. *See* Dartmoor National Park Authority, *Dartmoor Commons* (2006), available at <http://www.dartmoor-npa.gov.uk/index/learningabout/lab-factsheet/home/lab-dartmoorcommons.htm> (last visited Oct. 1, 2006).

175. *E.g.*, the Forestry Commission and the Ministry of Defense. *See* Dartmoor National Park Authority, *Land Use Issues* (2004), available at <http://www.dartmoor-npa.gov.uk/index/learningabout/lab-factsheet/home/lab-factsheets/landuseissues.htm> (last visited Oct. 1, 2006).

176. The moorland includes the Forest of Dartmoor (11,178 ha, 27,622 acres), surrounded by the Commons of Devon and a scattering of manorial commons, amounting in total to 35,882 ha (88,525 acres). *See id.*

177. In addition to grazing rights, other rights associated with common lands include: (1) turbarry – the right to take turf for fuel for domestic use; (2) estovers – the right to take underwood or branches for fuel or repairs; (3) pannage – the right to allow pigs to eat acorns and beech mast; and (4) the right to take sand, gravel or stone for use on the commoner's holding. *See Dartmoor Commons Fact Sheet, supra* note 172.

178. These regulations specify that: (i) animals are properly hefted or leared (getting cattle and sheep accustomed to a specific area) in accordance with the custom and practice of Dartmoor; (ii) animals are permanently marked for the identification of ownership; (iii) diseased or unthrifty stock (weak or old animals) are not kept on the commons; (iv) stock are not kept on the commons during prohibited periods, for example when it is necessary to control outbreaks of disease; (v) there are no bulls over the age of six months on the commons; (vi) there are no shod horses or ponies on the commons; (vii) there are no rams on the commons from the end of July until 10 November; (viii) dead livestock are removed promptly; (ix) motorized vehicles are not driven onto the commons except in the course of proper management or stock care; (x) heather, grass and gorse can only be burned (swaled) in the correct way. *See id.*

179. The Dartmoor Commons Act of 1985, Part IIIB(10).

180. UK Countryside and Rights of Way Act 2000, Ch. 37, available at <http://www.opsi.gov.uk/acts/acts2000/20000037.htm> (last visited Oct. 8, 2006).

lands to those open to public access. Access to common lands on Dartmoor is controlled by the Dartmoor Commons Byelaws, which specify what types of activities are allowed.¹⁸¹ The Byelaws are enforced by National Park Rangers, who are able to access fines for violations. The common lands and open access schemes have been operating in Dartmoor for many years with much success. At any point when visiting Dartmoor, tourists can simultaneously enjoy the natural and cultural richness of the area. For example, visitors might take a hike on the common land, where they view local ponies and farmland, followed by tea in a Dartmoor village where they can enjoy its protected buildings and rich cultural heritage.

Dartmoor National Park satisfies the suggested criteria for choosing sites for integrated cultural and natural heritage conservation projects. First, as with the Hudson River Valley, the site occurs on a regional scale, contains human settlements and countryside, demonstrates a clear cultural identity, reveals clear human influence on the landscape and contains both public and private lands. Second, the Dartmoor National Park has human populations living within its boundaries. Thus, it must cope with constant growth pressures from local populations, tourism and national pollution. Third, the park management structure demonstrates that both public and private organizations and citizens from local, regional and national levels actively contribute to the development, review and implementation of Park management plans. Furthermore, existing management structures demonstrates the availability of funding. Finally, England has environmental and cultural heritage protection laws that create a backdrop for Park management and conservation efforts. Accordingly, Dartmoor, like the Hudson River Valley, aptly meets the criteria as a suitable site for examining integrated cultural and natural heritage preservation.

Dartmoor is particularly important as a case study because its land ownership, management and access regime stand in direct opposition to the structure of U.S. National Parks. With diversified ownership, shared management and broad areas of open-access, Dartmoor serves not only as a successful example of how to manage National Parks worldwide, but also demonstrates how to create management regimes for areas of cultural and natural heritage that cross traditional public-private boundaries. Dartmoor

181. See *Dartmoor Commons Fact Sheet*, *supra* note 172.

and the Hudson River Valley Natural Heritage Area both demonstrate that it is possible to cross traditional public-private ownership boundaries and overcome land-management struggles. The Hudson River Valley Natural Heritage Area is a more recent attempt to integrate cultural and natural heritage protection and, as it is developed, may prove more useful as a guidance tool for how to overcome modern conflicts between economic development and environmental or cultural heritage protection. Dartmoor, on the other hand, is a working example of how to manage human influenced landscapes for sustainable human and natural purposes.

England is, of course, not the only European country using innovative measures to protect its cultural and natural heritage. In addition to the regional efforts discussed previously, many individual countries contain examples of mixed cultural and natural conservation efforts. Italy, for example, boasts a successful model for protecting environmental and cultural heritage at Cinque Terre National Park in the province of La Spezia. Cinque Terre is a designated World Heritage Site, based on its "cultural landscape of great scenic and cultural value."¹⁸² Although it was listed as a World Heritage Site based on its cultural features, it is also renowned and prized for its environmental qualities.¹⁸³ The Cinque Terre National Park was established to preserve the cultural and environmental amenities of the human influenced landscape. The main responsibility for the Park rests with the Ministry for Cultural and Environmental Property, which works with the Provencal Administrator of La Spezia and other local and regional management, with the added protection of existing cultural and environmental protection laws.¹⁸⁴ The management

182. UNESCO, World Heritage Convention, *The List: Portovenere, Cinque Terre, and the Islands (Parmaria, Ino and Tinetto)*, available at <http://whc.unesco.org/en/list/826> (last visited Oct. 1, 2006).

183. Cinque Terre's environmental and cultural features include: "overhanging coasts over the sea with bays and small beaches, thousands of kilometers of dry-stone walls enclosing the terraces where vineyards are cultivated, the characteristic rustics, the medieval quarters, the sanctuaries, the panoramic paths over the sea and the slopes." See Parco Nazionale delle Cinque Terre, *A Nature Sanctuary, UNESCO World Environmental and Cultural Heritage*, available at <http://www.parks.it/parco.nazionale.cinque.terre/Eindex.html> (last visited Oct. 1, 2006).

184. Cultural laws include: Cultural Protection Law No 1089 of 1939, Basic Law No 1497 of 1939 on the protection of natural and panoramic beauty, Regional Law No 120985 regarding the, protection of areas of natural environmental interest, Regional Law No 120995, designating Cinque Terre as a National Park, and Law No 394/1991 governing the control of protected areas. See *World Heritage List*, *supra* note 19, Cinque Terre No. 826 (28 June 1996).

plans for the Park are still in their relative infancy, but the focus is clearly on moving beyond traditional cultural, historical or environmental concerns, to a conservation strategy that is more holistic in nature.

Dartmoor and Cinque Terre are two of many areas in Europe that suggest models and techniques for integrating cultural and natural heritage management. Opportunities to unite cultural and natural heritage protection abound in Europe; nowhere else in the world offers such a breathtaking variety of landscapes rich in cultural and natural heritage.

c. *Canada*

Canadian policy provides another example of a developed country integrating cultural and natural heritage preservation. Canada's conservation classifications include National Parks, National Historic Sites, National Marine Conservation Areas, ecological reserves, provincial parks, managed wildlife areas, cultural heritage sites and protected landscapes, including over 2,945 conservation sites accounting for over 70.8 million hectares nationwide, or 7.1% of Canada's total area and 12.5% of the protected areas worldwide.¹⁸⁵ In addition to the 70.8 million hectares of land protected by the Canadian government, another 3.2 million hectares are protected by private individuals and non-governmental organizations for conservation practices.¹⁸⁶

The National Park System serves as the crowning jewel of Canada's environmental and cultural heritage management system. Canada boasts 42 national parks as well as extensive migratory bird sanctuaries, national wildlife areas, and wildlife management and protection areas. Canadian National Parks and wildlife areas, however, exist largely to "protect and present outstanding representative examples of natural landscapes and natural phenomena that occur in Canada's 39 natural regions."¹⁸⁷ Due to the vast expanses of wilderness in Canada, National Parks are used largely as an environmental protection measure (with the exception of designated historic areas in some National Parks). Other tools, such as World Heritage Sites are more commonly

185. See UNEP: Protected Areas Programme, *1992 Protected Areas of the World: A Review of National Systems – Canada*, available at http://lycosa.unep-wcmc.org/cgi-bin/pa_paisquery.p (last visited Oct. 1, 2006).

186. See *id.*

187. See Parks Canada, *National Parks of Canada* (April 03, 2006), available at http://www.pc.gc.ca/progs/np-pn/intro/index_e.asp (last visited Oct. 2, 2006).

used to protect areas where man and nature intersect to shape the landscape. Canada has a separate agency, the Department of Canadian Heritage, which “is responsible for national policies and programs that promote Canadian content, foster cultural participation, active citizenship and participation in Canada’s civic life, and strengthen connections among Canadians.”¹⁸⁸

At the national level, Canadian efforts to protect natural and cultural resources have been largely segregated until recently. In recent years, the Department of Canadian Heritage’s mission has expanded to focus more on the relationship between areas of natural and cultural significance.¹⁸⁹ Further examples of overlapping efforts to protect cultural and natural heritage include Canada’s designated World Heritage Sites,¹⁹⁰ the Canada Heritage Rivers System (CHRS) program, and its burgeoning efforts to protect aboriginal peoples’ heritage.

The CHRS is a keystone element in Canada’s efforts to integrate cultural and natural heritage protection. The CHRS program was founded as a way of recognizing the natural and cultural value of rivers to the Canadian population. The program recognizes not only the ecological value of rivers but also explicitly highlights that “[e]very river named to the CHRS strengthens our identity as Canadians, and enables us to better understand, appreciate and celebrate our rich river heritage.”¹⁹¹ In this way, this pioneering program begins to highlight the links between cultural and natural heritage riches.

The CHRS “promotes, protects and enhances Canada’s river heritage, and ensures that Canada’s leading rivers are managed in a sustainable manner. Responsible river stewardship is the ethic it engenders. Cooperation and public support are the strengths it builds upon.”¹⁹² The CHRS was created in 1984 as a multi-level governmental effort “to conserve and protect the best examples of Canada’s river heritage, to give them national recog-

188. See Canadian Heritage Website, available at http://www.pch.gc.ca/index_e.cfm (last visited Oct. 5, 2006).

189. See The Honourable Liza Frulla, P.C., M.P., Minister for Canadian Heritage, Minister Responsible for Status of Women, *Canadian Heritage Performance Report* (March 31, 2005), available at http://www.pch.gc.ca/pc-ch/pubs/mindep_e.cfm (last visited Oct. 2, 2006); The Honourable Sheila Copps, P.C., M.P., Minister for Canadian Heritage, *Canadian Heritage Performance Report* (March 31, 1998).

190. Canada currently has eight natural and five cultural sites inscribed on the World Heritage List. See *World Heritage List*, *supra* note 19.

191. *Id.*

192. See Canadian Heritage Rivers System, *About Us*, available at http://www.chrs.ca/About_e.htm (last visited Oct. 2, 2006).

dition, and to encourage the public to enjoy and appreciate them."¹⁹³ The program brings together governmental and private entities from all ten of Canada's provinces and from its three territories and is administered by a 15-member national board that consists of both private citizens and senior officials from relevant government departments.¹⁹⁴

Although the CHRS is national in scope, it is not directed by a traditional national agency, and it has no official legislative authority. In fact, the CHRS is officially a public trust that is organized and run by local, grass roots organizations. Governmental entities at the local, regional and national s are available to assist with advice and permitting/ approval but do not otherwise manage the program. In this way, the CHRS seeks to protect river systems that are of national importance, but to do so in a way that respects local culture and needs.

In 1986, two years after the founding of the program, the first CHRS river was designated and the program has thrived ever since that time. There are currently forty designated Heritage rivers, with more rivers being nominated and listed every year. Ultimately, the CHRS seeks to create a system of protected rivers that "reflects the diversity of Canada's river environments and celebrates the role of rivers in Canada's history and society."¹⁹⁵

In order to be designated as a CHRS river, the entity that nominates the river must make certain that a management plan or heritage strategy that "ensures the river will be managed to conserve its outstanding natural, cultural and/or recreational values"¹⁹⁶ is drafted and lodged with the CHRS Board. Each management plan and heritage strategy must be created by a public process, in accordance with existing laws, based on open consultation and consensus.

As a sample integrated cultural and natural heritage protection program, the CHRS meets many of the recommended criteria. First, the CHRS programs operates on a regional scale; the rivers pass through human settlements and countryside; the focus of the program is on protecting rivers that represent a clear connection to Canadian cultural identify; and, many of the river basins in question reveals clear human influence on the landscape and

193. *See id.*

194. *Id.*

195. *See id.*

196. *Id.*

contain public and private lands. Second, the CHRS includes rivers that pass through populous areas, where natural and human environments are threatened by environmental and growth pressures. Third, as discussed earlier in this section, Canada implemented environmental and cultural heritage laws that support the development of this program. Both existing laws and the grassroots led development of this program show that Canadian civil society and governmental authorities support the development, management and funding of the CHRS. Therefore, CHRS offers an important opportunity to examine early efforts to integrate cultural and natural heritage protection.

In addition to the CHRS program, concern for cultural and natural heritage conservation is beginning to intersect in Canadian dialogue concerning increasing national recognition for the history of Canada's aboriginal peoples.¹⁹⁷ The particular question that has been posed is:

Can the Historic Sites and Monuments Board of Canada develop a commemorative approach to Aboriginal history in Canada in ways that are meaningful to Aboriginal people while at the same time upholding the rigor of its own evaluative process?¹⁹⁸

This question has sparked a discourse between anthropologists, historians, sociologists, ecologists and others. As a result of this discourse, the term 'cultural landscape' has developed as a potential way to inclusively protect and promote aboriginal culture and history.¹⁹⁹ The term landscape has been chosen because it is believed that it "can provide a conceptual bridge between Aboriginal world views and heritage conservation theory." That is, as this paper previously discussed in Section II, c., concepts of landscape can help us understand how humans have interacted with, influenced and been influenced by the natural environment. In the context of aboriginal peoples in Canada, using cultural landscape as a term of reference better enables conservation efforts to reflect the historic importance of aboriginal people's existence as well as the cultural, emotional, and spiritual values associated with their relationship with the natural environment. In this way, efforts to promote aboriginal history are playing a

197. See Parks Canada, *An Approach to Aboriginal Cultural Landscapes*, available at http://www.pc.gc.ca/docs/r/pca-acl/index_E.asp (last modified May, 26, 2004) (last visited Oct. 2, 2006).

198. See *id.*

199. See *id.*

key role in bridging existing conceptual and regulatory gaps between cultural and natural heritage protection in Canada.

In addition to the CHRS program and its campaign to promote and protect aboriginal culture, Canada has recently focused on improving "heritage tourism." Heritage tourism is designed to "increase collaboration between cultural and tourism organizations,"²⁰⁰ and "focuses on the experience of visiting a place with genuine historic, cultural or natural significance."²⁰¹ Heritage tourism attempts to increase levels of tourism and the concomitant economic benefits and to improve cultural and natural heritage protection through the development of a new industry. Through heritage tourism programs, Canada hopes to create a sustainable economic activity that is enjoyable for tourists and provides an avenue for sharing Canada's rich cultural, natural and historic heritage with both Canadian and international tourists. Heritage tourism suggests a viable way to bridge gaps between economic activities and environmental and cultural heritage preservation – domains that have traditionally been viewed as advancing conflicting priorities. Heritage tourism creates an instructive model for integrated cultural and natural heritage protection in developing countries, whereby conservation efforts are linked to some form of economic activity in order to maximize available resources.²⁰²

On initial investigation there appears to be a marked division between natural and cultural heritage protection in Canada. However, deeper analysis of its environmental, cultural, and historic heritage conservation agenda reveals that many of Canada's conservation programs are beginning to reflect the intersection between cultural and natural heritage.

200. See Canadian Heritage, *Cultural and Natural Heritage Tourism in Canada: Packaging the Potential*, available at http://www.canadatourism.com/ctx/app/en/ca/publication.do?catId=home.catalog.publications.productDevelopment&path=templatedata\ctx\publication\data\en_ca\product_development\cultural_tourism_brochure\cultural_tourism_brochure_eng (last visited Oct. 2, 2006).

201. See Parks Canada, *Prince Edward National Park of Canada: Activities, Heritage Tourism Partners, What is Heritage Tourism?*, available at http://www.pc.gc.ca/pn-np/sk/princealbert/activ/activ13_e.asp (last modified Nov. 17, 2004) (last visited Oct. 2, 2006).

202. In fact, many developing countries already rely heavily on cultural tourism and environmental tourism – heritage tourism represents a model for bridging existing culture-nature gaps.

2. Developing Countries

Unlike the United States, the European Union, and Canada, most developing countries in Asia and Latin America cannot afford to implement complex legal regimes for environmental and cultural protection. As a general matter, developing countries prioritize economic development and improving standards of living. Further, conservation efforts are complicated by debates over immature and often unclear land ownership regimes and controversy over the cultural and environmental claims of indigenous peoples. Despite these challenges, developing countries in Asia and Latin America contain numerous cultural “hotspots” that are at the center of local and global conservation concerns. Moreover, even though developing countries often lack mature legal and political conservation infrastructure, they are the birthplace of many innovative conservation techniques, including early attempts to create cultural heritage corridors. In the following sections, this paper will explore case studies on China and Brazil.

a. China

Prompted both by international and domestic concerns, China is actively seeking to improve its cultural and environmental protection systems. China has been heavily criticized by the international community for its environmental record and for posing one of the greatest long-term threats to the environment due to its burgeoning population, growing industry, and increasing use of automobiles. However, Chinese law contains the seeds to develop an effective environmental law framework. To begin, the Chinese Constitution specifically provides for environmental protection, standing in direct contrast to the United States Constitution, which is silent on the environment. Further, China is party to over 80 regional and international environmental treaties and has enacted more than sixteen environmental, health, and safety (“EHS”) statutes. Additionally, it has issued several hundred EHS regulations and has promulgated more than one thousand EHS standards.²⁰³

203. See Richard J. Ferris Jr. & Hongjun Zhang, *The Challenges of Reforming an Environmental Legal Culture: Assessing the Status Quo and Looking at Post-WTO Admission Challenges for the People's Republic of China*, 14 GEO. INT'L ENVTL. L. REV. 429, 430 (2002).

While China has had environmental laws in place since 1979, it only began legislating for environmental protection, in earnest in the late 1980s, when it established a national environmental agency, the National Environmental Protection Bureau,²⁰⁴ and enacted major legislation vesting local and national government authorities with responsibility for environmental protection. China's environmental law heyday took place between the mid-1980s and the 1990s, when it enacted in excess of twenty environmental laws addressing specific environmental problems such as water and air pollution.²⁰⁵

In China, the legislature – the National People's Congress (NPC) – is the primary unit of national governmental power. The NPC consists of roughly 3000 members and only meets one time each year, making it difficult for the NPC to effectively legislate on anything but primary state concerns. Thus, much of the day-to-day legislative decision-making in China is done by the NPC's Standing Committee.²⁰⁶ In the specific realm of environmental law, the Standing Committee is China's primarily law-making body. Because Chinese law-making is top-heavy, the laws – including environmental laws – are often drafted by the Standing Committee using very ambiguous language, thus providing local agencies with considerable breadth in how they interpret and implement the laws.²⁰⁷ Therefore, there is considerable variation in how environmental law is interpreted and applied at the sub-national law. Also, there are comparable difficulties in accessing and interpreting these laws.

In addition to coping with interpretation and implementation challenges, Chinese law – including environmental law – is fundamentally non-participatory. That is, citizen participation is neither included in the law-making process nor welcome in the implementation and enforcement stages. As a result, Chinese environmental law is largely non-responsive to citizens' wishes

204. In 1998, the National Environmental Protection Bureau was re-christened the State Environmental Protection Administration and given full ministerial rank. See Pamela Howlett, *Striking the Right Balance: The Contrasting Ways in Which the United States and China Implement National Projects Affecting the Environment*, 12 MO. ENVTL. L. & POL'Y REV. 17, 26 (2004).

205. See *id.*

206. "The NPC's Standing Committee, a permanent sitting body comprised of the highest-ranking members of the NPC." *Id.* at 33.

207. *Id.* at 34.

and complaints and is more likely to evolve in response to international pressures than to domestic pressures.²⁰⁸

While international pressure is prompting China to strengthen its system of environmental law, both internal and external forces are driving a renaissance in cultural heritage protection in China. Prompted by the realization that it was quickly losing its precious antiquities and articles of its tangible cultural and architectural heritage to legal and illegal international trade, China began exploring ways to tighten and enforce its cultural heritage laws. China was particularly concerned with devising ways to protect its cultural property.²⁰⁹ Two laws form the core of China's legal regime for protecting cultural property – the 2002 Revised Law on the Protection of Cultural Relics and the 1997 Criminal Law, which created a regime for the strict enforcement and punishment of violations of cultural property laws.²¹⁰ Unfortunately, these laws, like much of Chinese environmental law, are peppered with inconsistencies and loopholes, and have proved difficult to implement and enforce, as a result of ambiguous drafting.²¹¹ In addition, the cultural property laws are written very narrowly and do not protect the wider category of tangible and intangible amenities that this paper has discussed under the category of cultural heritage.

Cultural heritage, in its wider capacity, is protected by a separate set of laws, most prominently the 1982 Law on the Conservation of Cultural Heritage²¹² and the 2002 revision of the same

208. See Meixian Li, *China's Compliance with WTO Requirements will Improve the Efficiency and Effective Implementation of Environmental Laws in China*, 18 TEMP. INT'L & COMP. L.J. 155, 163-164 (2004). For example, China's desire to become a member of the World Trade Organization and the World Trade Organization's insistence that China improve its environmental legislation has influenced the development of environmental law in China far more than any internal pressures from citizens or NGOs. See generally *id.*

209. See generally Michael L. Dutra, *Sir, How Much is that Ming Vase in the Window?: Protecting Cultural Relics in the People's Republic of China*, 5 ASIAN-PACIFIC L. & POL'Y J. 62 (2004).

210. *Id.* at 79-80 (citing People's Republic of China, Law on the Protection of Cultural Relics (adopted at the 30th Meeting of the Standing Committee of the 9th National People's Congress, Oct. 28, 2002), available at LEXIS PRCLEG 2506 & People's Republic of China, Criminal Law (adopted at the 5th session of the 8th National People's Congress, Mar. 14, 1997)).

211. See *id.*

212. Specifying that "that no additional construction project may be undertaken within the protective zone of a protected cultural heritage site, and for the first time that a certain area should be delimited around the site as buffer zone for construction control on the basis of the actual needs for conservation practices. Construction of new buildings or other structures shall not deform the environmental features of

law, which expanded protection for cultural heritage sites. The Chinese Ministry of Culture has recently been publicly affirming China's commitment to protection of its cultural heritage. In a recent press release, the Ministry of Culture stated that, "[t]he Chinese Government has a clear policy to conserve and protect its rich cultural heritage, including its archaeological sites, historic buildings and cultural relics."²¹³

One area where China has demonstrated a clear commitment to cultural heritage is in nominating sites for inclusion on the World Heritage List. China only joined the World Heritage Convention in 1985. Since that time, however, China has successfully nominated 31 sites for inclusion on the World Heritage List, including four natural heritage, four mixed, and 23 cultural heritage sites.²¹⁴ China continues to push for more World Heritage Sites by encouraging its historic canal towns, port cities, and villages along ancient tea routes and silk roads to work together to adopt "strateg[ies] of preservation, education, and economic development to conserve and re-use its historic urban fabric and countryside,"²¹⁵ and to "promote culture, conservation, sustainable development, and international tourism."²¹⁶ China has had mixed success in managing and restoring many of its listed sites. Nevertheless, the continuing desire to expand and improve upon its existing sites attests to China's public commitment to improving the country's record of cultural heritage protection.

In addition to traditional cultural heritage law, Chinese environmental law attests to prioritize the conservation of cultural heritage sites. For example, the 1989 Chinese Law on Environmental Protection specifies that "it is the responsibility of people's government of all levels to take measures to protect representative 'cultural heritage sites.'"²¹⁷ Further, the 2000 Law

the site. This has formed the legal basis for the protection of the environment of monuments and sites." Li Xiaodong, *Legal System for the Protection of the Environment of Monuments and Sites in China*, 1, available at <http://www.international.icomos.org/xian2005/papers/2-20.pdf#search=%222002%20China%20Law%20on%20Cultural%20Heritage%20Protection%22> (last visited Oct. 2, 2006).

213. See Ministry of Culture, *Protection of Cultural Heritage in China*, part of ICOMOS Series: Monuments and Sites in their Setting – Conserving Cultural Heritage in Changing Townscapes and Landscapes, available at <http://www.chinagate.com.cn/english/reports/48279.htm> (last visited Oct. 2, 2006) & <http://www.china.org.cn/e-news/news/060525-2.htm> (last visited Oct. 2, 2006).

214. See *id.*; see also World Heritage List, *supra* note 19.

215. Frenchman, *supra* note 70, at 7.

216. *Id.* at 7-8.

217. *Id.* at 2.

on Air Pollution Prevention outlawed the construction of polluting facilities near cultural heritage sites and mandated that existing sites either be removed or modified to minimize damage to cultural heritage.²¹⁸

Existing cultural and environmental laws – both individually and together – fall far short of according Chinese natural and cultural heritage requisite levels of protection. Currently, “there is a gap between national policies and practice. Insufficient public awareness, inadequate training of officials and enforcement authorities, and weaknesses in the judicial system are contributing factors in the continuing loss of cultural heritage.”²¹⁹ Even the Chinese ministry of culture has made improving the cultural heritage legal system a formal governmental priority.²²⁰ Unfortunately, Chinese environmental and cultural heritage laws are drafted so as to communicate that economic development is the overriding State priority. Accordingly, both cultural and environmental laws consistently take second place to economic priorities. This is not uncommon in developing countries; however, it does highlight the importance of finding ways to use traditional conservation methods as well as developing new economically beneficial models for natural, cultural, and integrated conservation.

Although cultural heritage and environmental protection are directly linked in Chinese environmental law, it is harder to find working examples of ongoing integrated cultural and natural heritage projects. But, there are many sites that meet the criteria for being chosen as potential project sites. However, new efforts to protect the Chinese Tea Road reflect appreciation for the fact that this famous human-influenced and human-threatened landscape represents an intricate intermingling of culture, history, and nature. By recognizing the cultural value of the Tea Road, the Chinese are hoping to have this site added to the World Heritage List. In the process, as previously mentioned, China is attempting to develop new strategies for protecting and promoting one of its most valued landscapes. To this end, Chinese academics and planners are beginning to advocate the creation of management plans that are more inclusive and that reflect the environmental and cultural values of this site and of others simi-

218. *Id.*

219. See Beijing Cultural Heritage Protection Center, *Who We Are*, available at <http://www.bjchp.org/english/jgjs.asp> (last visited Oct. 2, 2006).

220. See *Protection of Cultural Heritage in China*, *supra* note 213, at 4.

larly situated. They suggest that the protected areas "should be expanded to . . . the environment of the buildings, the natural environment, historical environment etc."²²¹

As China develops its environmental and cultural heritage laws and improves upon existing cultural and natural heritage protection programs, it has the potential to lead the way in integrating cultural and natural heritage protection. Whether it chooses to do so, however, largely depends on government initiative, external pressure, and the ability of academics, citizens and NGOs to influence the shape and success of government conservation strategies.

China is not the only Asian country attempting to improve, and possibly, integrate its environmental and cultural heritage laws. Many other countries are turning their attention to protecting their unique landscapes. Cambodia, for example, has taken numerous measures to protect and manage the cultural and natural riches of Angkor. Cambodia has enacted a new Zoning and Environmental Management Plan for Angkor, and it has adopted new cultural property laws to avoid the pillaging and trading of cultural artifacts. This is merely one further case exemplifying both the importance and the opportunities to develop effective and sustainable cultural and natural heritage systems in Asia, which houses some of the world's most treasured cultural heritage and most threatened ecosystems.

b. *Brazil*

Like Asia, South America boasts globally important cultural and environmental resources. From the world renowned cultural sites of Machu Picchu and the Mayan city of Copan to the globally treasured environmental jewels of the Amazon forest and the Galapagos Islands, to the lesser known pockets of cultural and environmental riches that occur throughout the continent, South America is a hotspot for cultural and natural heritage. In the following section, this paper provides a brief overview of environmental protection and cultural heritage laws in Brazil and examines one particular ongoing project as an example of inte-

221. See Li Biaho et al., *One Cultural Route Span the Millenary: Chinese Tea Road*, part of ICOMOS Series: Monuments and Sites in their Setting – Conserving Cultural Heritage in Changing Townscapes and Landscapes, available at <http://www.international.icomos.org/xian2005/papers/4-25.pdf#search=%22Chinese%20Tea%20Route%20and%20Southern%20Silk%20Road%20Heritage%20Areas%22> (last visited Oct. 2, 2006).

grated cultural and natural heritage protection that is emerging in South America. As the sixth largest country in the world – it is roughly the same size as the United States and China – and home to three-fifths of the Amazon Basin, Brazil is one of the world's richest nations in terms of natural resources.²²² It is also one of the countries facing the most severe environmental threats.²²³

Brazil enacted its first environmental laws as early as the 1970s. Following the United Nations Stockholm Conference on the Human Environment in 1972, which highlighted global environmental damage, the federal government and the state government of Sao Paulo formed environmental agencies²²⁴ to combat environmental problems in Brazil. In addition, the Brazilian federal government, as well as many of its state governments, began enacting environmental laws that emulated those adopted by the United States in the 1970s (e.g. air and water pollution control).

In 1981, Brazil took its environmental protection scheme one step further by enacting the National Environmental Policy Law.²²⁵ This law establishes an inclusive framework for environmental protection in Brazil, promoting “preservation, improvement, and recovery of environmental quality favorable to life, with due protection of socio-economic development, national security interests, and the dignity of human life.”²²⁶ The 1981 law laid the groundwork for a comprehensive environmental protection system by creating a National Environmental Policy,²²⁷ a National Environmental Council, and the Federal Technical Register of Environmental Defense Means and Activities.²²⁸

222. See David Allen Reisman, *Debt for Nature Swaps in Brazil: Response to World Pressure to Protect the Amazon*, 8 J. NAT. RESOURCES & ENVTL L. 397, 398 (1992/1993).

223. See generally Janelle E. Kellman, *The Brazilian Legal Tradition and Environmental Protection: Friend or Foe*, 25 HASTINGS INT'L & COMP. L. REV. 145 (2002).

224. The Federal Agency is the Special Secretariat of the Environment. See Robert W. Findley, *Pollution Control in Brazil*, 15 ECOLOGY L. Q. 1, 6-7 (1988).

225. Law No. 6.938 (Aug. 31, 1981).

226. See Findley, *supra* note 224, at 18 (quoting Law No. 6.938, Art 1 (Aug. 31, 1981)).

227. The key objectives of the 1981 law included: 1. achieving sustainable development consistent with environmental consciousness; 2. defining and protecting priority areas; 3. establishing quality criteria and standards and creating regulations under them; 4. carrying out research and development; 5. supporting education on the environment and safe technologies; 6. preserving resources and maintaining ecological equilibrium; and 7. preventing pollution through enforcement. Felipe Páez, *Environmental Framework Laws in Latin America*, 13 Pace Env'tl. L. Rev. 625, 626 (1995/1996).

228. See *id.*

The National Environmental Policy Law functions similarly to U.S. environmental laws, vesting primary authority for law and standard setting with the national government and allocating subsidiary enactment and enforcement authorities to the states and municipalities.²²⁹

Despite Brazil's early efforts to develop environmental laws, it has consistently struggled to enforce its environmental law regime. Efforts to implement and enforce environmental laws have been hampered by significant barriers including: inconsistencies and ambiguities in the laws;²³⁰ the lack of adequate human and financial resources; power struggles and lack of coordination among levels of government;²³¹ and prioritization of economic concerns above all else.²³² In addition, Brazil has struggled to overcome common challenges facing environmental law in South America generally, including:

- (1) lack of, or aged and inefficient infrastructure;
- (2) heavy concentration and migration of populations to urban centers;
- (3) centralization of decision making—often removed from the directly affected areas;
- (4) weak and fractured institutions;
- (5) lack of public awareness of environmental dimensions and consequences of human actions and decisions; and
- (6) lack of human financial resources to develop and implement adequate management structures at a country wide level.²³³

In addition to these challenges, Brazil faced the unique difficulty of transitioning from military to civilian rule in 1985, causing temporary turmoil and upheaval of governmental priorities and agenda setting. Nevertheless, as a result of the governmental transition, the Brazilian government drafted a new constitution

229. *Id.* at 18-19.

230. See Lila Katz de Barrera-Hernandez & Alastair R. Luca, *Environmental Law in Latin America and the Caribbean: Overview and Assessment*, 12 GEO. INT'L ENV. L. REV. 207, 210-12 (1999/2000) (describing challenges common to implementing environmental law throughout Latin America, including Brazil). See also Edesio Fernandez, *Law, Politics and Environmental Protection in Brazil*, 4 J. ENVTL. L. 41 (1992) (providing an analysis of the evolution and the successes and failures of Brazilian environmental law).

231. Brazil is a federal government and tensions between power-sharing between the national, state and municipal governments has always hindered smooth environmental protection. See *id.* at 215.

232. Findley, *supra* note 224, at 6.

233. See Barrera-Hernandez & Luca, *supra* note 230, at 209 (numbering added) (describing problems common to many Latin American countries in implementing environmental law regimes).

that places more emphasis on social and cultural rights and environmental protection.²³⁴

Despite the laws of the 1970s and 1980s, and the increased prioritization of environmental protection in the late 1980s and 1990s, many of Brazil's population centers continue to suffer from severe air and water pollution (including buildups of hazardous waste, toxic dumps, and deadly atmospheric inversions).²³⁵ Similarly, Brazil's natural ecosystems and the cultural heritage of communities living in and around these areas have experienced dramatic devastation due to population explosion, land conversion, and mineral exploration.

In contrast to China, however, Brazil's environmental law framework is more similar to that in the United States. That is, the laws emulate the language and structure of U.S. environmental laws and they provide more room for public access to information²³⁶ and participation in the rule-making process. In addition, unlike China, Brazil has faced considerable internal pressure – from citizens and NGOs – to improve its environmental protection regime.

Brazil and China, however, also have much in common. Both countries are heavily influenced by international pressure to protect their environmental resources and cultural resources (like the "Save the Rainforest/Amazon" campaigns). Further, in both China and Brazil, the main impediments to national attempts to develop successful environmental protection legal regimes are ineffective enforcement, prioritization of economic development over environmental protection, and disorder and power struggles among governmental authorities.

One of the primary challenges that Brazil, along with many Asian and South American countries, faces is the need to develop comprehensive environmental laws and regulations that

234. For example, the draft constitution included the following provisions: Article 36: every person has a right to a healthy and ecologically balanced environment; Article 74: included within the shared competence of the Federal Union, the States and the Municipalities are the following powers: VII – to protect the environment and combat pollution in all of its forms; VIII – to preserve the forests, fauna and flora; Article 407: Every person, and especially the State, has a duty to protect the environment and improve the quality of life; Article 411: The Amazon forest is a National Patrimony. Its use shall be in the manner provided by law under conditions which assure the preservation of its forest riches and its environment. Prior to the drafting of this convention in 1986, environmental protection was not a priority in Brazilian law, consistently playing second fiddle to economic concerns. *Id.* at 5.

235. See generally Findley, *supra* note 224.

236. See *id.* at 232.

address environmental problems holistically. That is, despite its National Environmental Policy Law, Brazil still utilizes a fractured approach to addressing environmental problems, e.g., separate regimes for air, water, and land issues.²³⁷ This is especially true in the case of land management. Brazil's National Environmental Policy Law briefly touches on land use, focusing on the "need to utilize land use planning to ensure the achievement of their goals."²³⁸ In large part, however, land use controls are still spread through various environment and energy laws, and the primary land use controls are associated with agricultural policies and resource management rather than integrated ecosystem protection.²³⁹ Thus, the challenge in Brazil is not only to find ways to integrate the different streams of environmental protection, but to then develop methods for integrating environmental protection generally with cultural heritage protection.

Brazil's environmental protection regime has garnered considerable international attention due to global concern over the Amazon. Its cultural heritage laws, with one key exception, have not attracted similar international interest. The area where cultural heritage is most prominent in Brazilian law and in the international agenda is in the context of indigenous peoples. In particular, in the 1980s, Brazil faced international censure for allowing Yanomami ancestral lands to be overrun and misused by non-indigenous peoples attempting to capitalize on the area's natural resources. The case was taken to the Inter-American Commission on Human Rights, which issued a decision in 1985, finding that "Brazil's failure to protect the Yanomami from incursions by miners and others into their ancestral lands threatened the Indians' physical well being, culture, and traditions."²⁴⁰ As a result of the Commission's decision, Brazil established a Yanomami Reserve and, in 1988, amended its constitution to recognize "the social organization, customs, languages, beliefs, and traditions of the indigenous peoples and their ancestral rights to lands they have traditionally occupied"²⁴¹ and

237. See Barrera-Hernandez & Luca, *supra* note 230, at 219-20.

238. See Páez, *supra* note 227, at 681.

239. See *id.* at 221-22.

240. S. James Anaya & Robert A. Williams, Jr., *The Protection of Indigenous Peoples' Rights over Lands and Natural Resources Under the Inter-American Human Rights System*, 14 HARV. HUM. RTS. J. 33, 52 (2001).

241. *Id.* at 60.

to provide more legally enforceable protections for Indians' culture and lands.²⁴²

Outside the realm of indigenous peoples' protection, Brazilian law also includes protection for cultural property. Specifically, Brazil has enacted national legislation that creates categories of protected cultural property and prioritizes the creation of a national inventory of protected property.²⁴³ In addition, since the 1920s, Brazilians have actively sought to develop legal mechanisms for protecting the country's artistic and historic heritage.²⁴⁴ Attesting to this fact, the 1934 Constitution, and Decree Law 25 of 1937, expressly recognized Brazil's historic and artistic patrimony as including "those items whose conservation was in the public interest, by virtue of their association with major events in Brazilian history or their exceptional archaeological, ethnographic, bibliographic or artistic value," including "notable natural phenomena, places and landscapes."²⁴⁵ Once these sites are identified and recorded, they may not be damaged or destroyed.²⁴⁶ The agency responsible for identifying and maintaining listed sites is the Serviço do Patrimônio Histórico e Artístico (SPHAN). SPHAN is now responsible for in excess of one thousand sites, the main categories of which are religious buildings, dwellings and public buildings.

Specifically, one of the most significant designations SPHAN recognizes is the conjuntos, which are "analogous to European conservation areas."²⁴⁷ In Brazil, conjuntos encompass "large tracts of urban areas or in some cases whole towns, which incorporate some of the most significant elements and finest components of Brazil's cultural heritage." Thus far, more than fifty conjuntos have been recorded as protected sites.²⁴⁸ Currently

242. *See id.*

243. *See* Ann P. Prunty, *Toward Establishing an International Tribunal for the Settlement of Cultural Property Disputes: How to Keep Greece from Losing Its Marble*, 72 GEO. L.J. 1155 (1984).

244. John Dickenson, *The Future of the Past in the Latin American City: The Case of Brazil*, 13 BULLETIN OF LATIN AMERICAN RESEARCH 1, Special Issue: The Latin American City as Contested Space (Jan. 1994), pp. 13-25.

245. *Id.* at 17.

246. *See id.*

247. *Id.*

248. Examples of conjuntos include: the eighteenth-century mining towns of Minas Gerais, Goiás and Bahia, some of the earliest coastal settlements and parts of two capital cities, Salvador and Rio de Janeiro. Other settlements with conjuntos protecting large urban tracts include Porto Seguro, Lençóis, Cachoeira, Alcântara and Olinda in the Northeast, Ouro Preto, Mañana, Diamantina and Congonhas in

SPHAN sites, including conjuntos, are disproportionately located in urban areas and have received uneven levels of management and protection.²⁴⁹ Nevertheless, the SPHAN system and the Brazilian conjuntos designation, while focusing primarily on cultural heritage, provide the ideal breeding ground for integrated cultural and natural heritage programs.

In addition to the SPHAN program, many of Brazil's most important cultural and natural heritage sites are included on the World Heritage List and managed according to the terms of the World Heritage Convention. The World Heritage List currently includes seventeen Brazilian sites. Of the seventeen sites, ten are cultural heritage sites, seven are natural heritage sites, and none are mixed sites.²⁵⁰ This is a significant number of world heritage sites. The absence of any mixed sites, however, is surprising given the breadth of the overlap between Brazil's cultural and natural riches.

Brazil is actively attempting to increase the number of sites on the World Heritage List. One of the programs that Brazil is hoping to use to improve management of its current sites and promote the listing of further sites in the future is the National Program for Biological Diversity.²⁵¹ The goal of this program is to encourage the government, civil society, and the private sector to work together to conserve biodiversity. Ultimately, the government hopes to develop a national program of protected area management.²⁵²

During the first phase, the objective of the National Program for Biological Diversity is to develop an innovative management system for five of Brazil's World Heritage Sites, including 39 protected areas.²⁵³ The first phase will focus primarily on improving

Minas Gerais, Paratí and Angra dos Reis in Estado do Rio, and Belém and Goiás in the interior. *Id.*

249. *See id.* at 23.

250. *See* World Heritage List, *supra* note 19.

251. The project was launched in December 2003 for an initial period of four years. It will be funded by the United Nations Foundation, the Government of Brazil, WWF-US, Conservation International and The Nature Conservancy, for a total budget of over US\$4.5 million. *See* The World Heritage Newsletter, No. 43 (Feb-March 2004)

252. *See generally* Biodiversity Partnerships: United Nations Foundation, *Brazilian World Heritage Biodiversity Programme*, available at http://portal.unesco.org/culture/en/file_download.php/81fc179bad093ecdf83d9447c421d21abrazil.pdf#search=%22%20Brazilian%20World%20Heritage%20Biodiversity%20Programme%2C%22 (last visited Oct. 4, 2006).

253. *See* UNESCO, *Brazilian World Heritage Biodiversity Programme*, available at http://portal.unesco.org/culture/en/ev.php-URL_ID=12096&URL_DO=DO_

“species and ecosystem protection, public awareness, environmental education, staff training, and incentives for sustainable ecotourism and other activities.”²⁵⁴ In the second phase, the Program will expand to cover two further World Heritage Sites and to enlarge the breadth of covered activities to include ecosystem restoration and improving understanding of the “relationship between the environment and culture and health.”²⁵⁵ In this way the Program potentially changes an overtly natural heritage protection program into one that includes concern and protection for the overlap of culture and nature.

Brazil is on the brink of expanding both its cultural heritage protection programs and its environmental protection programs via the SPHAN listing and management process and the National Biodiversity Program, respectively. Inevitably, they will meet in the middle. Currently, however, culture and nature protection are still largely perceived and approached through different legal avenues. Nevertheless, there are many sites and proposed conservation projects in Brazil that would meet the criteria for model integrated cultural and natural heritage conservation projects. Both literally and figuratively, Brazil offers fertile ground for integrating cultural and natural heritage protection to the benefit of present and future generations.

This section has demonstrated that cultural and natural heritage protection, whether in the developed or developing world, inevitably shares common ground. Equally, it has shown how addressing cultural and environmental protection alone frequently results in unsustainable conservation approaches. Throughout this discussion, this paper has emphasized that cultural heritage, ecological and natural resource conservation, and the legal dimensions of land ownership are intrinsically linked. Each of the country case studies discussed in this section demonstrates how cultural heritage and environmental/natural heritage protection policies have evolved independently of one another and yet are beginning to meet in diverse ways and places. The debate that must take place now is less about whether links between cultural heritage and natural heritage exist and more about how to identify the links and use their existence to create innovative, in-

TOPIC&URL_SECTION=201.html (last modified May 9, 2003) (last visited Oct. 4, 2006).

254. *Id.*

255. *Id.*

tegrated management strategies that benefit both cultural heritage and natural resource protection.

IV.

CONCLUSION

A. *Why Integrate Cultural and Natural Heritage Protection?*

In many developed countries, cultural and environmental conservation is in a rut. Increasingly complex and expensive problems, outdated regulatory strategies and economic priorities mean that environment and culture are not high on governmental agendas. In developing countries, intense competition over human and financial resources, legal uncertainties, and fragmented policies frequently result in ineffective cultural heritage and environmental protection policies. The realities of the 21st century require policymakers to develop innovative conservation schemes. Environmentalists must find ways to balance conservation goals with cultural heritage protection and vice versa. In this context, environmental and cultural conservationists are beginning to recognize the potential compatibility of their two fields. Accordingly, integrated cultural and natural heritage protection stands to become the next "essential and primary conservation tool."²⁵⁶ Integrated cultural and natural heritage conservation efforts respect the reality that in many parts of the world the line between human culture and the natural world is blurred.

Developing new strategies that combine cultural and natural heritage protection will help planners and policymakers balance social and ecological needs. The experience of ongoing projects in the United States, England, and Canada show that integrated conservation projects can provide tangible benefits to communities and promote community participation in conservation. Integrated cultural and natural heritage conservation projects can help planners in a number of ways. Planners will be better able to set conservation priorities in collaboration with local communities, understand local socioeconomic contexts, determine rights and responsibilities for cultural heritage and natural resource management, develop sustainable development practices, and build the management skills of NGOs and community organizations to ensure the long-term sustainability of the project.

It is also evident, however, that integrating cultural and natural heritage conservation involves inevitable trade-offs, land use

256. Larson, *supra* note 38.

conflicts, and economic challenges. For example, in many cases it will be challenging for environmentalists to understand the dynamic processes linking humans to their natural resource base, and for anthropologists to understand the ecological processes underpinning the functioning of an ecosystem. It will be even more difficult for local business owners to understand why either of these issues should take priority over economic activity.

Despite potential limitations, integrated cultural and natural heritage protection offers invaluable tools to conservation efforts in developed and developing countries. Integrated conservation projects respond to two important realities: (1) the fate of human cultural heritage and environmental conservation are intricately intertwined and; (2) despite challenges and limitations, proactive efforts to promote conservation and sustainable development are preferable to inaction. Accordingly, policymakers and planners should: continue to refine and utilize integrated cultural and natural heritage protection projects; focusing on incorporating robust community participation and development concerns into the planning process; involve local, regional and national governmental entities, empowering communities through training and education, and encouraging a sense of community investment in and responsibility for the project.

B. *Bridging Boundaries for Mutual Gain*

One of the dominant themes throughout the discussion of the laws and exemplar projects in both the developed and developing world is the need to bridge traditional boundaries – boundaries between cultural heritage and environmental protection, between layers of government, between public and private citizenry, and between public and private land. That is, truly sustainable integrated cultural and natural heritage protection projects necessarily must move beyond the traditional governmental regulatory sphere; they must involve multiple levels of government working with civil society in all of its many forms. This is increasingly true of environmental protection generally, and even more true of integrated conservation projects where the cultural and natural riches to be protected defy traditional regulatory tools.

Over the past two decades, environmental law has gradually been moving beyond traditional command and control laws and fortress style conservation. It has evolved to include business, civil society and local peoples in the planning and management

stages of law and project development. This evolution reflects the reality that, in the early stages of regulation, whether in the environmental or cultural heritage field, national governments can lead the way by creating framework laws and by "picking the low hanging fruit." With time, however, progress slows down, costs increase, and problems become more complex. When this occurs, policymakers must think laterally to develop new solutions. Each field must work independently to develop new strategies. Currently, we are at this juncture in natural and cultural heritage protection. It is critical that there is a marriage between cultural heritage and natural heritage conservation so that as each field moves forward in developing new approaches they are able to find new ways to be mutually supportive. The possibilities for common benefits abound, but the potential for conflict also exists.

Integrated protection of cultural and natural heritage is at the heart of sustainable development. It is about solidarity and promoting the value of our shared resources, both tangible and intangible, for present and future generations.

