

**GLOBAL LEGAL REGIMES
TO PROTECT
THE WORLD'S GRASSLANDS**

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Preface and Acknowledgments

Why This Book?

I was raised on a farm in the isolated and provincial northeast corner of Missouri, in the heartland of the United States. The farm lay in two tracts—one on the east edge and one on the west edge of a farm-based community of about three thousand people—and it formed part of a large patchwork of farms carved out of native woodland and grassland that rose up from the Mississippi River valley and extended west along the glacial plain of north Missouri. My parents and my brother and I called the west part of our farm “the Prairie”, a label probably given to it by my father’s father after he and my grandmother acquired it from other members of our extended family, which had settled in the region in the early 1800s as part of the earliest wave of what became permanent European encroachment on Native American lands.

I found “the Prairie” a dull place. It had no trees, except in fencerows dividing it into fields. It had no ponds, except in a boggy spot we tried to drain. It had no life that my eye could see, but for birds and snakes and bugs.

And so I scarcely thought of “the Prairie” once I left home for the state university and then on to undertake graduate studies overseas. My interests took me into law, particularly international law. I embarked on a career that found me living in Manila, Washington, London, Beijing, and other cities. The path led into an academic appointment, and it is from that perspective that, for the past twenty years, I have continued to explore topics in the areas of my legal practice that intrigue me most. These are, in a nutshell, the international legal aspects of (i) economic development, (ii) environmental protection, and (iii) legal history, with a side interest in Chinese law.

To my great good fortune, the academic appointment I have held throughout this part of my career has been in Lawrence, Kansas. Besides its intriguing political and cultural history, Lawrence enjoys a remarkable natural history as well—sitting as it does at the edge of the vast Great Plains of North America. When University of Kansas basketball fans “wave the wheat” in support of their team, they recreate in human form the same patterns of undulating grass moving with the breezes and winds that caress what remains of the great grasslands that formerly graced much of Oklahoma, Kansas, Nebraska, and states and provinces further north.

Thus did I find myself back in touch with the prairie, a small portion of which I had known as a boy in the form of “the Prairie” on our family farm. That Missouri farm is still in our family, and now my wife and I own a Kansas farm as well. We have recently completed a prairie restoration project on part of that farm, to reclaim about 50 acres of land, once native prairie, from a degraded condition visited on it by farming, species invasion, erosion, and other abuse. Fortunately, one corner of the 50 acres could serve as a model and inspiration for the project, as that one corner remained in unspoiled,

never-plowed, non-contoured elegance: a Kansas University biological survey from a few years ago identified in that corner of the property some 72 species of grasses, forbs, and other plants, several of them rarely found here now.

Why do I tell this personal story? Because it sets the stage for an explanation of why I wrote this book. Having worked for most of my career with issues of international economic development, I have come to see that sustainable global economic improvement, or even survival, depends crucially on environmental consciousness and husbandry; we must protect the natural environment from human degradation if we are to have any hope of avoiding economic degradation in coming years, as human populations increase in size and appetite. This perspective, gained from about thirty years of legal practice and study, now complements my own personal connection to grasslands—both today and from my childhood—to fuel an interest in the preservation of those grasslands, not just in the Great Plains of North America but elsewhere in the world as well.

As I have pursued this interest in grasslands, I have found that my earlier impressions were almost entirely false. Contrary to my impression that “the Prairie” of my childhood was a dull and rather lifeless place, I have now gained an appreciation for the extraordinary complexity, durability, diversity, and subtlety of the prairies. As I shall try to convey in this book, the prairies—or “grasslands”; or “savannas”; or “shrublands”; all terms that are more or less interchangeably descriptive depending on circumstances¹—constitute a part of the Earth’s natural ecology (and therefore of our human environment) that is of enormous importance in keeping the entire natural system in balance.

Structure and Approach of This Book

But they are in peril. One of the main points of this book is to draw attention to the damage already done to Earth’s grasslands—emphasizing that in many regions of the world the degradation and disappearance of this part of our natural system is nearly complete. Through urbanization, species encroachment, land conversion, genetic pollution, fragmentation, and climate change, the grasslands have withered and contracted all over the world. These are topics addressed in Chapter 2.

Another main point of this book is that we have done almost nothing to counteract this trend by employing the legal and institutional instruments at our disposal—national and state protective regulations, international treaty regimes, and so forth. Chapters 3, 4, and 5, in presenting a survey of the current legal regimes pertaining to prairies and grasslands, conclude with a depressing assessment indeed. While a few protective measures have been taken in a few countries, grasslands have gotten dramatically less attention as a legal and institutional matter than most other parts of the natural environment.²

1. As discussed in Chapter 1, and particularly in the definitional explorations of section IB of that chapter, I take the position that for purposes of this book these various terms (and a few others such as veldt, pampas, and steppe) can be substituted one for another without creating difficulties. For reasons also explained there, the terms I usually use to encompass the ecoregions most directly at issue here are “grassland” and “prairie”, even though the latter of these terms is less familiar outside North America than some of the other terms.

2. This has come as a surprise to me. Indeed, an earlier title for this book started with the phrase “*Improving Global Legal Regimes*”. My findings have prompted me to remove the first word, since so little has been done to “improve” upon thus far.

In Chapter 6 I discuss why this has happened—that is, what key underlying causes might explain why grasslands around the world have been allowed to disappear and collapse with so little effort at protection. I identify two such underlying causes: (1) population trends, both worldwide and in grasslands regions, and (2) traditional agriculture. For both of these, I offer some observations about recent trends that have the capacity to bring unprecedented injury to the Earth if humans fail to arrest them.

I close the book in Chapter 7 by sketching out a possible “program of action” to restore and preserve grasslands around the world. That program of action involves the rapid expansion of scientific research to develop new forms of food production in lieu of traditional extractive agriculture, the strengthening of existing legal rules and institutions, the creation of new legal and institutional mechanisms, a commitment of substantial financial resources to support these scientific, legal, and institutional initiatives, and a call for leadership that will energize what I think (and hope) is a deep sympathetic connection that humans have with the natural world that we share with all other species.

I hasten to emphasize, however, that my concluding observations offer only a sketch, and a preliminary one at that. The story of the world’s grasslands is an extremely complex and depressing one, and I see very little hope that the momentum of degradation can be reversed or even slowed unless some truly extraordinary event (perhaps an unfortunate one) triggers fundamental shifts in our society’s values. Realistically, the best we can expect to do is to lay the groundwork—scientific, legal, institutional, financial, and political—for the long-term health of the world’s grasslands once such shifts occur.

I would offer a further introductory observation about the structure and character of this book, and of the extended research project from which it emerged. The particular cluster of disciplines and issues that this book examines has posed a very large challenge for me. The science of grasses, the classification of the Earth’s ecological regions, the interplay of national and local legal authorities and regulatory agencies, the rapidly growing corpus of international environmental law, the projection of population growth and climate change, the role of agriculture both in feeding that growing population and in contributing to that climate change, and the design of multilateral rules and institutions to address global environmental and economic crises—all these issues and more have presented themselves as I have studied the world’s grasslands and written this book. I have not found any other books that have juggled this particular set of subjects, and more than once I considered the project to be too big (partly because of its apparent uniqueness) for me to complete.

In the end, what I have settled on is a volume that identifies, as clearly as I can, the main contours of these subjects as they bear on this crucial question: *Given the current status of the world’s grasslands—their character, their significance, their state of degradation—what can and should be done of a legal and institutional nature, particularly at the international level, to protect them for the future, bearing in mind that “the future” should encompass not only the future of human beings but also the future of the larger community of life in which we exist?* I do not pretend to have answered that question satisfactorily in this book, but perhaps what I have provided is a useful introductory framework for it to be addressed more effectively later—whether by me or by someone else.

Acknowledgments

I wish to thank numerous people for their help in my work on this book. Perhaps I should begin with certain members of my extended family who set the stage over the course of several generations for me to grow up on a farm, where I first encountered “the Prairie”. These include in particular J. Warren Head (1910–2009), John Wallace Head (1871–1955), Joseph Warren Mackey (1839–1915), and John B. White (1793–1889). These fathers of mine acquired and consolidated the farm of which “the Prairie” forms a part, and their wives supported them in managing the farm operations and raising their families.

More recently—and particularly in the last two years—my work has been sustained and enriched by the contributions of several research assistants. These include Sarah Briley, Kate Gleeson, Maria Neal, Amanda Sisney, Dana Watts, Scott Wheeler, and Lijuan Xing. Valuable assistance also came from legal and scientific experts in various countries and institutions, including Turkey, China, the World Bank, and the UN Environment Programme. (These experts’ contributions will be more specifically identified in pertinent portions of the text below.) As always, my wife Lucia has brought both order and spark to the text by her critical review of it. Support from the University of Kansas General Research Fund is also gratefully acknowledged—as is the technical assistance provided by Rhonda Houser of the University of Kansas library system in the preparation of some of the maps included in the following pages.

Dedication

I have not included a “Dedication” in other books I have written. For this one, however, I would like to single out three individuals whose books and careers have inspired me to pursue my studies of grasslands. They are George Coggins, Wes Jackson, and Don Worster.

George Coggins, who recently retired from the KU Law faculty after a career that made him the preeminent authority on the law regarding public lands in the USA, has summarized his views about reforming that legal regime in a small volume titled *Restoration*. In characteristically blunt and disarming language, George urges that this concept—restoration—guide and energize a comprehensive restructuring and modernization of US ownership and regulation of public lands. George also did me the favor of inviting me to join him in my first co-authored law journal article, immediately after my arrival on our law faculty. I admire the breadth of his knowledge and his devotion to making a difference.

Whereas George’s writing is blunt and disarming, Wes Jackson’s writing is poetic and inspiring. He brings a cheerful, homespun intensity to the most ambitious life agenda of anyone I have ever known, and he conveys his enthusiasm about it with a genius for elegance. The sweep of his scientific, historical, and cultural fluency has put many people in his thrall, and I am one of them. Like George’s most recent book, the project that Wes has captained and championed at The Land Institute for over 30 years also involves restoration—of the soil and the soul—and many of his themes have found their way into this book, especially in Chapter 6.

It is Don Worster, though, who has woven into his books and his career such an impressive fabric of cultural and environmental history as to affect me with his deep

feelings for the Great Plains and their bounty. I suspect Don agrees with my view that we can hardly know anything important without studying its history. Don's calm and shimmering prose urges those of us who read it to understand the historical context of the rich physical environment we share, to appreciate the value and grace that this environment can bring to our own lives, and then to restore that environment—and, in the process, to restore ourselves.

I draw, then, from the work of George, Wes, and Don a common theme: restoration. Although the specific topics that I address in this book only partially coincide with the topics that those three individuals have focused their attention on, I believe the same theme of restoration lies at the core of my work as well.

My concern about including this dedication, now that I have written it, is that I will have included so many mistakes of fact, policy, law, science, and history in this book as to make George or Wes or Don wince if they happen to see their names here. So this Dedication should perhaps be construed as a signal of *my own* dedication to learn more and understand it better, as I continue the work that their example has inspired me to undertake.

Notes on Spellings, Usages, Citations, and Other Conventions

In this book I have followed certain conventions on spelling, punctuation, and usage that might be unfamiliar to some readers. These conventions include the following:

- *Citations in general.* Citations to books, articles, and other legal materials appear in a less abbreviated style than that used by many US law journals and books. I believe the heavily abbreviated style used in US legal texts can be so unfamiliar to a general audience as to create confusion or uncertainty. Moreover, in the case of books, I have departed from the practice of putting the authors' names in all capital letters. Instead, authors' names for all works—books and articles and other items—appear in regular upper case and lower case letters; then titles of books appear in large and small capitals and titles of other works appear in italics or, in a few cases depending on the nature of the work, in regular font with quotation marks.
- *Internet citations.* In the case of citations to sources found on the internet, I have not included details of “last updated” and “last visited”, on grounds that such information is likely to be of little use. Most of the citations to such sources were operational as of early 2012. However, it is not uncommon for a document on a website to change from one location to another within the website, so a reader wishing to retrieve such a document might wish to use the “search” function within that website in order to find the new location—bearing in mind that sometimes documents are in fact removed from the internet entirely.
- *Internal citations.* Many of the passages that I have quoted from other authors included, in their original publication, citations to authority in the form of footnotes or endnotes. Throughout this book, unless noted otherwise, I have omitted these citations without expressly indicating “(citations omitted)” or “(footnote omitted)”.
- *Wikipedia.* I also have omitted (in nearly all cases) citation to the authorities that support the factual accounts and explanations that I have occasionally drawn from Wikipedia. Although I am fully aware of the shortcomings of relying on Wikipedia for many types of research and analysis, I have felt comfortable drawing on such accounts and explanations if (i) they cite sources that, in my judgment, warrant confidence and (ii) they relate to general information that I am confident can easily be substantiated elsewhere if curiosity prompts someone to pursue the issue further.
- *Specific usages.*
 - Throughout this book, the term “state” typically carries the meaning it has in international law—that is, as a nation-state and not as a subsidiary political unit such as the individual domestic states that make up federal nation-states such as India or the USA or Mexico.

- The acronym noun “USA” is often used in this book in preference to the commonly-used noun “United States”, inasmuch as there are other countries (such as Mexico) with the title “United States” in their official names. However, the term “US” has been retained for use as an adjective referring to something of or from the USA, such as “US legislation” or “US states”.
- I have opted for the use of “US” and “USA” without periods, as this seems to be the more modern trend and also follows the usage found in acronyms for other political entities such as the United Nations (UN) and the People’s Republic of China (PRC). Naturally, I have not changed “U.S.” to “US” in any quoted material or official citations.
- The possessive form of words ending in the letter “s” have not had another letter “s” added to them. I have referred, for instance, to “the Great Plains’ environment” rather than to “the Great Plains’s environment”.
- I have used the abbreviation “CE”, for Current Era (or Common Era), to carry the same meaning as the more outdated abbreviation “AD”, for *Anno Domini*; and I have used the corresponding abbreviation “BCE”, for “before Current Era”, instead of “BC”, for Before Christ.
- *Punctuation with quotation marks.* I have followed the less-used but more logical convention of placing quotation marks inside all punctuation (unless of course the punctuation itself appeared in the material being quoted). Doing so allows the text to reflect more faithfully how the original material reads.¹
- *Italicization.* I have used italicization in four circumstances: (i) where I wish to add emphasis (or where emphasis was already inserted in material being quoted from other authors); (ii) in textual references to titles of books (this explains italicization in the case of Julian Simon’s book *The Ultimate Resource*); (iii) to signify words or terms from languages other than English (mainly Latin, French, and Chinese); and (iv) in certain “levels” of subsection headings, as a navigational aid to the reader. I assume the context will allow easy distinction between (i), (ii), and (iii).

1. In defense of my decision to use this approach, I would refer readers to H. W. Fowler, A DICTIONARY OF MODERN ENGLISH USAGE 591–92 (2d ed., 1965):

Questions of order between inverted commas [quotation marks] and stops [periods] are much debated. . . . There are two schools of thought, which might be called the conventional and the logical. The conventional prefers to put stops within the inverted commas, if it can be done without ambiguity, on the ground that this has a more pleasing appearance. The logical punctuates according to sense, and puts them outside except when they actually form part of the quotation. . . . The conventional system is more favored by editors’ and publishers’ rules. But there are important exceptions, and it is to be hoped that these will make their influence felt. The conventional system flouts common sense, and it is not easy for the plain man to see what merit it is supposed to have to outweigh that defect; even the more pleasing appearance claimed for it is not likely to go unquestioned.