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# A River's Pleasure:

## Essays in Honor of John Cronin

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# A River Beckons Home

*Alexandra Dapolito Dunn*

*"But I go with my friend to the shore of our little river, and with one stroke of the paddle, I leave the village politics and personalities, yes, and the world of villages and personalities behind, and pass into a delicate realm of sunset and moonlight..."*

*"Nature," Ralph Waldo Emerson (1844)*

Ralph Waldo Emerson was bewitched by nature and in particular, rivers and the magic and order of the hydrologic cycle. As I reflect upon my relationship with the Hudson River for this essay, I realize I understand his captivation. My earliest memories of the Hudson River are those of my child eyes peering out the window of my parents' green 1959 Chevrolet Bel Air with whitewall tires, as we drove many a weekend across the Tappan Zee Bridge from Valley Cottage, New York to visit my grandparents in the Bronx. It was the early 1970s, and from my relatively unconstrained position in the back seat (as compared to my own children today), I would look out across the river's grey water and let my gaze rest on the Castle in Tarrytown. I imagined the magical life of the royals inside, their joyful music, and the princesses' colorful gowns. The river spanned so far each way it could have been an ocean. I was too young to realize during these drives, which later continued after the passage of the Bel Air via a red 1970 Chevrolet Chevelle Malibu, that the Hudson was subtly weaving its own magic, searing into my subconscious a connection to it and even a promise to bring me friends and comfort. This connection and promise, however, would lay dormant for nearly three decades.

My later childhood years gave me wonderful opportunities to connect with other distinct bodies of water—a Great Lake and another great river. In 1977 we moved to Glencoe, Illinois, on

Chicago's North Shore and the spectacular Lake Michigan. This Lake has certainly captured the imagination and inspired many, particularly Pulitzer prize winning poet and Chicago resident for a time Carl Sandburg. Sandburg beautifully describes in his poem *The Harbor* Chicago's "blue burst of lake" and its "[l]ong lake waves breaking under the sun, [o]n a spray-flung curve of shore."

The midwest, however, did not keep its hold on my family, and college on the East Coast led me to Harrisonburg, Virginia—proximate to the lazy Shenandoah River. Referenced by John Denver in *Take Me Home, Country Roads*, this river was indeed a source of inspiration. I camped by its shores and slipped along its muddy banks, even floating on it in an anchored lawn chair, a bobbing cooler of refreshments on a short line.

A call to pursue environmental law led me after college to the political mecca of Washington, D.C. There I came to befriend the rocky and turbulent Potomac River, and its uniquely different Maryland and Virginia sides. Walt Whitman wrote prose referring to the "city of the wide Potomac, the queenly river, lined with softest, greenest hills and uplands" and in his poem *By Broad Potomac's Shores* he describes "Virginia's summer sky, pellucid blue and silver" and "the forenoon purple of the hills."[1] Law school study breaks were spent hiking along its banks with my boyfriend on Maryland's Billy Goat Trail. When that boyfriend became a fiancé years later, we took our engagement photographs in jeans overlooking the Potomac River Gorge in Virginia's Great Falls Park. When that fiancé became a husband, we later strolled with our two children to spot deer along the Potomac's verdant banks near our home in Potomac Falls, Virginia. As my work as an environmental attorney progressed, I cultivated a specialty in clean water law, and soon found myself navigating D.C.'s infamous rush hour in a hybrid vehicle bearing a *Treasure the Chesapeake* vanity tag of *H2OESQ* – water lawyer.

My legal cases focused on the most detailed nuances of the federal Clean Water Act (CWA). One case, *National Ass'n of*

1 Walt Whitman, "By Broad Potomac's Shore" in *Leaves of Grass: Noon to Starry Night* (1891-92).

*Home Builders v. Defenders of Wildlife*, 549 U.S. 1105 (2007), concerned whether the United States Environmental Protection Agency (EPA) improperly delegated the CWA's permitting program to the State of Arizona—the Supreme Court held that EPA did not. Another concerned whether the South Florida Water Management District's pumping of stormwater in the Everglades required permits—the Supreme Court held maybe (the battle still rages today) (*South Florida Water Management District v. Miccosukee Tribe of Indians*, 541 U.S. 95 (2004)). A third concerned a multi-year battle over whether the District of Columbia could express total maximum daily loads for key pollutants of concern in an annual or seasonal manner—the United States Court of Appeals for the District of Columbia Circuit held that it could not (*Friends of the Earth v. EPA*, 446 F.3d 140 (D.C. Cir. 2006)). A fourth evaluated whether EPA regional guidance documents being used as regulation in the field could be reviewed as final agency action—the United States District Court for the District of Columbia held that they could not (*Pennsylvania Municipal Authorities Ass'n v. Horinko*, 292 F. Supp.2d (D.D.C. 2003)). A final example looked at whether EPA properly approved West Virginia's antidegradation implementation procedures—the United States District Court for the Southern District of West Virginia held that some were properly approved, others were not (*Ohio Valley Environmental Coalition v. Horinko,* 279 F. Supp.2d 732 (S.D.W.Va. 2003)). This work was gratifying and exciting. I was shaping the nation's clean water future, parcing challenging issues accompanied by sharp-minded lawyers from all over the nation. The only application of my legal training and practice I thought I could enjoy more was one in which my responsibility would be to instill in a future generation a passion for clean water and a love of the law. Opportunity then knocked. In summer 2007, the chance to come to Pace Law School and become the Assistant Dean of its top ranked Environmental Law Program was mine. We left D.C. and here is where the Hudson River reenters this story.

With only one weekend to find a house, I instinctively narrowed our search to the Hudson River towns. I knew if we were going to live in New York, we had to be by the Hudson. I

now believe this sense of direction, a sense of wanting to be by the river, came both from the deep recesses of my mind—recalling those trips across the river as a young child—and my lifetime connections with various water bodies. Although I hadn't seen the river since 1977, something about being near it was as easy and comfortable as talking to an old friend after the passage of many years. The river felt like home. The river could ground and root us.

And so, we trekked in and out of homes along the river, and settled on a humble home in Croton-on-Hudson. Our new town is defined by the river, both in name and in geography. The Croton and Hudson Rivers meet to form Croton-on-Hudson's boundaries to the south, east and west. Croton-on-Hudson's topography includes low lying areas along the Hudson River, the Croton River Gorge, and a plateau to the north which reaches an elevation of 600 feet within only a mile of the Hudson River.

The Hudson River then began to deliver on its long ago promise to be something special in my life. Each morning, as I round the bend on Route 9 south, I am snapped out of my morning mental reverie as I glance to the right to see an ever-changing spectacular river show. Sometimes it is grey and nearly invisible; for months frozen solid; other times churned up and wavy with ocean worthy whitecaps. The river can be midnight blue and smooth as glass, with hardly a ripple; and on my favorite days, the sun high in the sky overlooks an azure blue river dotted with white-sailed boats, as enchanting as a carnival. When the moon is full, its reflection glances off the water while a multitude of stars blink in the sky. The Tappan Zee's green lights twinkle just off in the distance, reminding me of my childhood traverses. It is a bewitching sight.

I have the opportunity to teach dynamic and passionate students, and to work with a team of dedicated Hudson River enthusiasts at Pace Law School. My course in Environmental Justice draws students who are concerned about equity in society and providing effective vehicles for marginalized members of society to make themselves heard. We discuss the absolute importance of public participation in environmental decision making and the need for transparency and accessibility in

environmental information, particularly technical and scientific information. Our class uses the Hudson River as a living classroom. In Fall 2008, my students and I met with community activists from Yonkers on a rainy Saturday morning at the Beczak Environmental Education Center on the Hudson riverfront. We learned that without this Center and its engaging programs, many low income and minority children in the community would have no contact with the river, and never have a chance to connect with this glorious resource. We then walked up the hill into the surrounding neighborhood, described as blighted and dead by advocates of a very large upscale retail and residential complex. What we found was a lower income neighborhood, where adults of many ethnicities were pushing children in strollers, buying fruit and groceries at open air produce stands, and drinking coffee and laughing by the street side. While this neighborhood was certainly not upscale, it was without question a vibrant, affordable area for many marginalized members of the Hudson River Valley population, who without training to advocate for their interests, would soon find themselves pushed out by gentrification. The students began brainstorming solutions almost immediately—how could affordable housing be preserved; how could a connection to the river be promoted; were there "win-win" solutions for this community—economic prosperity and affordable living near one of the world's largest cities? The morning was more eye-opening than the strongest cup of espresso could ever be.

In a similar wake-up moment, as part of a class research project, one of my students attended a Tappan Zee Project public information meeting on a weekday evening. She was struck by the lack of public transportation options to reach the meeting, that all written materials were in English, and that little opportunity was provided for the public attendees to participate in the discussions. She reported to our class that she found the meeting, as a source of information, generally inaccessible. This meeting, which was designed to engage the "public," presented engagement barriers to an educated English speaker, comfortable with high-level and detailed environmental information, and naturally at ease in a public meeting setting. This experience

allows one to see easily how minority and low-income members of our community right here in the Hudson River Valley can become outsiders when environmental decisions impacting their lives and livelihoods are undertaken. By exposing my students to classroom dialogue and learning, complemented by hands-on field experience, I hope they will become the kind of future leaders who think broadly about the definition of community and take proactive steps to involve all members of society.

Not only does my classroom teaching draw on the Hudson, but also my own family life here is truly river-centric. My children, now six and nine, know the story of Storm King Mountain, told dramatically by me during rides exploring north. They have asked in stunned innocence why anyone would want to destroy a mountain. My daughter has camped with the Girl Scouts along the river in Croton Point Park, a former County landfill, today a beautiful park. We have ridden the Ferry-Go-Round from Tarrytown to Haverstraw and back, recalling how ferries were the primary mode of transportation across the river through the 1800s. Our family church and my children's school, St. Augustine, sits in Eagle Park, Ossining, on a bluff above the river. On Sunday mornings, we look out over the river as we pray for peace, health, and hope while church bells ring. We have learned that General George Washington and his troops are believed to have camped at Eagle Park, and that local historians suspect subterranean passages were built as possible escape routes for Washington's troops. We take the Hudson Line into the city, admiring the palisades, as the train almost floats on the river. We have spent lazy Saturday mornings trolling for beach glass along Croton Point's sandy shores. We even have dipped our toes in the water at Croton Point's beach, where many people splash and swim in the summer. And although not of perfect water quality by far, the Hudson is swimmable again.

In Summer 2008, I spent a week on the Sea Wolf R/V, a State University of New York at Stony Brook research vessel, with *River Summer*, traveling the Hudson from its mouth in the Long Island Sound to the Troy Dam near Albany. We then got into a van and drove further to observe one of the many tributary origins of the river north of Albany. A collaborative program of

the Environmental Consortium of Hudson Valley Colleges and Universities, *River Summer* brings together Hudson River based faculty to share their knowledge, experiment with new ideas, and learn from one another while transiting up the Hudson River. Supported by The Andrew F. Mellon Foundation, and coordinated by scientists and experts at Columbia's Lamont-Doherty Earth Observatory, *River Summer* is a dramatic and unforgettable immersion into the science, history, and policy of the Hudson River. *River Summer* participants are drawn from faculty of diverse higher education institutions in the Hudson River Valley. Through life on the Sea Wolf and non-stop discussions among the participants, *River Summer* fosters learning and experiences which can change how we all teach our students. One sultry July afternoon, fanning ourselves on Sea Wolf's forward deck, we were mesmerized by fifteen bald eagles perched high in the trees along the river's banks. We trolled for sturgeon, and measured and counted these "living fossils," among the most ancient of fishes. Is the Hudson still as magical as it was when I looked at the Castle? Oh yes indeed. And, although far from fully healthy, it is fishable.

In my short time as an adult resident of the Hudson River Valley, I have come to realize that the river is more than just a geographic icon. The Valley is inspiring because of the people working here to ensure the river's history and health. I have had the privilege of meeting and being inspired by passionate river experts. Top among these inspirational Hudson River individuals is the subject of this collection, John Cronin. I met John within weeks of coming to Pace, and our mutual respect for the environment and its waters and concern for the Clean Water Act's future has led to many wonderful conversations. As I told John of my work in Washington on water issues, he quickly and emphatically told me of the CWA's many failures and its underutilized provisions. John cited the Congressional Purpose of the law "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" and the "policy of Congress that the President . . . take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for

the prevention, reduction, and elimination of pollution in their waters . . ." 33 U.S.C. § 1251(a), (c). I am not sure I agree with John that Congress ever contemplated complete elimination of discharges of pollutants to U.S. waters, as the very statute which begins with such a lofty goal proceeds to create an extensive, state-delegated permitting program to authorize and control continued discharges. (*See* 33 U.S.C. § 1342(a)). Many of the cases I worked on in Washington focused on adding or removing sources from the scope of this very permitting program. The statute also addresses the allocation of "total maximum daily loads" of pollutants among dischargers (33 U.S.C. § 1313(d))—again recognizing continued, albeit controlled and reduced, pollutant presence. The CWA has been amended several times since its original passage, and none of the amendments focused on new programs or mandates to achieve a complete elimination of pollutants. As an example, a 1987 amendment added a needed program to manage, but not eliminate, stormwater. (*See* 33 U.S.C. § 1342(p)). Even EPA's 1990 combined sewer overflow policy, endorsed by a 2001 amendment (33. U.S.C. § 1342(q)(1)), anticipated residual overflows after massive infrastructure investment.

Despite the fact that the statute may fall short of John's desire, my work with city water and wastewater officials, and with the EPA, shed light on many tremendous successes due to the CWA, such as improved underground infrastructure, advanced treatment technologies, stormwater management, green infrastructure, and urban revitalization. However, I do concur with John in his assessment that provisions of the CWA loaded with potential and powerful language and important vision are underutilized. While John cites to the Congressional Purpose and Goals, I frequently look to provisions like the essentially dormant—but incredibly thoughtful—watershed-based Continuing Planning Process in 33 U.S.C. § 1288(b)). I absolutely believe that the statute is ill-suited to what is truly needed today—the management of water as a single resource. The statute by design separates clean water and drinking water management, segregates point and nonpoint sources, fails to promote water conservation and careful management of a

strained and limited resource, and essentially does not facilitate a watershed approach to water. I support John's call for reform of the CWA and for a new paradigm that challenges all of us to strive for better water quality and water management—both in the United States and worldwide.

I feel fortunate to have had this opportunity to reflect on the Hudson River, my relationship to it, and the legal system in which I play a part. I am confident that the river and its dynamic leaders like John Cronin will inspire and motivate me for years to come. I am honored to be among a group of individuals who are not afraid to let their passion for the Hudson lead them. I am thankful that this particular river has led me home, and reflect how true to me ring Emerson's words in his 1827 poem *The River*:

> *"And I behold once more*
> *My old familiar haunts; here the blue river,*
> *The same blue wonder that my infant eye*
> *Admired. . ."*