INTRODUCTION.
SEEKING CLARITY, LEGITIMACY AND RESPECT: THE STRUGGLE TO IMPLEMENT SPECIAL RIGHTS

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In 2006, the Commission on Legal Pluralism hosted an International Symposium on 'Natural Resources, Property Theories and Legal Pluralism' in Depok, Indonesia. As part of this Symposium, a session was organized on 'Recent Developments in Local/Indigenous Resource Management', in which researchers and practitioners of community-based resource management presented papers that assessed their specific experiences in the devolution of management rights and roles. This special issue is based on that conference session and addresses two related problems faced by many nation states. The first problem is the demand for special status or rights in natural resources by minority or indigenous groups, demands that often include management rights as well as use rights (Schlager and Ostrom 1992). The second problem is the rising cost and increasing failure of command and control natural resource management systems. Many states have linked these two problems in a solution that devolves management responsibilities to community-level organizations and institutions, often on the basis of claims of special status. This has followed arguments that meaningful and direct involvement of the community in management decision-making will address some of the generic short-comings associated with command and control state management systems, including: the blatant disregard of state regulation by harvesters, legal claims by disenfranchised local users, over-exploitation of resources, failure to recognize and apply local knowledge systems, and the lack of fit between top-down management regimes and local production processes (Carlsson and Berkes 2005; Feit and Spaeder 2005; Jentoft, et al. 1998; Kearney 2005; Pinkerton 1992;

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Wilson 2003).

In many postcolonial states, an impetus for involving community-level groups in resource management has been the changing perception and recognition of indigenous rights. Agreements between indigenous peoples and the state, often resulting from settlement of outstanding treaties and land claims, has suggested new models for devolution. This in turn has brought into play many of the principles and characteristics of legal pluralism (Assier-Andrieu 1993; Carstens 2001; Chesterman 1998). In some cases, court decisions have forced the government to recognize some level of aboriginal management rights (Weinstein 2006; Wiber and Kennedy 2001). However, while aboriginal rights have been touted as an important source of and inspiration for devolution approaches (Davis and Bailey 1996; Pinkerton 1996), the resulting management arrangements often fail to live up to aboriginal expectations (Feit and Spaeder 2005; Kearney and Wiber 2006).

Further, in many contexts where management authority is devolved to local groups, it has often been attended by transition problems. While these are frequently exacerbated by the ambivalence of the state (Povinelli 2002) and/or of other powerful actors (F. and K. von Benda-Beckmann 2006), such problems have attracted sharp criticism of local management itself. One powerful criticism is that internal divisions within local communities have often resulted in the cooptation of new management structures, allowing the local elite to secure any benefits of the new regime (Potter 2002). Others have drawn attention to the lack of support for local capacity building so that new management structures fail before they are adequately tested (Wiber 2005). And local participants in new management regimes often argue that they have been given responsibility without being given the legal jurisdiction, capacity, or finances necessary to be effective (Kearney and Wiber 2006).

The 2006 conference session, then, was an opportunity to explore the changing landscape of natural resource management given a plural legal perspective, including an evaluation of those factors influencing devolution outcomes. Participants reported not only on the different experiences in management devolution and resulting structures, but also on various strategies that were constraining and channeling the resulting outcomes. Papers were based on case studies from North America, Africa, Europe, and Asia. The resulting diversity of papers published here address many resource stocks, including fisheries, forestry, wildlife, water, agrarian and peri-urban land. The papers allow for an examination of the differences in experiences between western and non-western states, different forms of authority, and between aboriginal

and non-aboriginal claimants for special status, as well as providing a valuable opportunity to identify a series of common themes and issues.

One dominant theme in the governance of natural resources, whether land, water, forests or fisheries, involves interaction between urban centers, where government and dominant corporate organizations are mostly located, and rural communities where the natural resources are located. The resulting dialogue on management priorities brings together two very distinct world views; those of the urban dweller, who is not directly affected by resource extraction but who is dependent on the exploitation of these resources, and those of the rural community, which is economically dependent upon the local natural resources and also intimately affected by resource harvesting activities (Wiber 2004). This discourse is shaped by the reality that urban centers, with their larger populations, usually have a stronger political voice, and more outlets for their opinions, than rural areas. Urban priorities dominate in the setting of management objectives for natural resource development and include a number of conflicting agendas such as environmental activism and economic maximization. Many common problems experienced by local management groups can be directly traced to this disconnect between the management objectives embedded in the nation-scale politics and diverging local priorities.

A second theme involves the continued dominance of neo-liberal economic development policies promoted by national postcolonial regimes, and the way these policies are forcing the transformation of the taskscapes of local (often indigenous) peoples who formerly adhered to more communal, subsistence approaches (on taskscapes, see Ingold 1983). Local skills and knowledge are often lost as traditional livelihood activities are banned or discouraged (Wiber 2006). A third theme is the level of competition over access rights that is fueled by higher levels of exploitation and global marketing of local resources, accelerated by the opening up of access to outside corporate interests in the name of economic development. In some cases the community groups are struggling to engage in management of the local resources upon which they traditionally depended and to reassert the importance of local resource use in the local economy – in other cases they are hoping to preserve the small resource stock that is left after years of overexploitation. In either case, the global advancement of neo-liberal economic policies into local arenas results in a further disconnect between the local resource users and the prevailing management priorities (Wiber 2005). The resulting command and control resource management systems largely address global economic issues and markets (and wealth generation) while the community-based

management systems focus on the needs of the local inhabitants (Kerans and Kearney 2006). The resulting conflict over global-focused policies and local management objectives results in social conflict and instability in rural resource-dependent communities. In many instances, the conflict has resulted in the erosion of local access, and subsequently of local values, local institutions and local knowledge.

Conflict, non-compliance and obstruction are the frequent result of the disconnection between those making resource management decisions and those most affected by these management decisions. We have identified three common issues that have emerged from the papers included in the 2006 session, namely, clarity, legitimacy, and respect. These terms provide both insights into the nature of the conflicts and into potential ways to resolve the conflicts.

Clarity of the management process has two important characteristics: a clear understanding of the underlying principles and values that inform decisions and a clear understanding of the decision-making structures. The rationale and reasons for management decisions must be understood by and subscribed to by all those affected by the decisions, as must the decision-making process. This issue is often simplified by characterizing the problem as one of 'transparency' in governance, or by promoting participatory governance structures (Fung and Wright 2001; Rhodes 1997). But the problem is more complicated than that, as the papers in this volume demonstrate. Not only must there be transparency in the decisions, so that those involved have a clear understanding of how the decision-making process works and who has responsibility for various parts of the process, but the principles informing decisions must also be agreed to. One example from North America is the spiritual aspect of resource use that the Mi'kmaq call *Netukulimk*, which has been difficult to incorporate in state fisheries management, as is discussed in Wiber and Milley. Furthermore, there must be agreement that the actions legitimated under management plans will lead to the desired outcomes. If local users feel that there are hidden objectives being pursued by government managers or other powerful actors, as in the van Rooij example from China, or if bureaucrats doubt that local resource managers value stated national management objectives, the result is likely to be a large level of mutual suspicion.

Lack of clarity on both the values and principles that guide decisions and in the decision making process exacerbates problems that arise from distributional issues. It is a prominent factor in the cases of land reform in Ghana (Ubink), in the evolution of new systems through the assertions of local user groups in Norway

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(Søreng), and in the land conflict in China (van Rooij). These cases highlight how distributional abuses result in well-justified distrust and ultimately to violence, in ways that cross-cut both north/south and indigenous/non-indigenous divides. In the Canadian case described by Wiber and Milley, aboriginal rights are enshrined in the constitution, while in the case of China as described by van Rooij, the rural proletariat also has protected status. In both cases, however, special status has proved to be poor protection for group interests.

Improved public dialogue may provide clarity in resource management systems. Ideally, such dialogue would further the level of understanding between local users and management bureaucrats, especially in relation to underlying values and how they are reflected in management decisions. However, this can be a slow process of building relationships, as is obvious from the difficulties attending the development of ancestral title in the Prill-Brett contribution from the Philippines. And this leads us to a second theme that emerges from the case studies of local/indigenous resource management, which is the perceived legitimacy of the management system.

How do managers justify the rationality of their decisions and the value system on which those decisions are based? Local users justify their principles on the basis of dependency on the resources and long-standing involvement in the management of such resources. State managers often justify their decisions by reference to a larger 'public good'(Saurin 2001). Both sides frequently dismiss the legitimacy of the other side, one side appealing to justice and equity and the other to efficiency and economic growth. The resulting debates about legitimacy tend to dominate the discourse, as McCarthy notes in his contribution from Indonesia, which in turn prevents moving forward on more concrete issues of power-sharing and institutional innovation.

There has been a great deal of literature published about recent trends towards decentralization or community-based management, which suggests that institutional innovation is taking place in both the north and the south. On the surface, there also appears to be a good match between indigenous or local communities asserting their role in resource management and governments attempting to divest management responsibility to local levels, through either the embedding of government agencies in local communities or the creation of non-traditional management institutions. Many communities have assumed that the state is at last seeking their input and authorization for land distribution or harvesting operations, only to find that these efforts remain focused on neoliberal management values and

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wealth generation. For many people, the resulting institutions are no more legitimate than those that predated them, and as McCarthy argues, can even be viewed as a new form of assimilation in which a favored few will benefit at the expense of the many. Such situations can exacerbate management problems including covert harvesting and corruption in decision-making, as discussed by Xuan Phuc in his case study on Vietnam.

Global forces are involved in promoting many of these innovative trends. While nation-states collaborate in the harmonization of global management priorities and global marketing protocols, many local communities are not directly engaged at this level. Even when outside forces are supportive of local values and rights, they may simply 'get it wrong' in new ways. This is the situation reported in the Zips and Zips-Mairitsch paper on community-based management in Southern Africa. In fact, the work of the Permanent Forum on Indigenous Issues referred to by Zips and Zips-Mairitsch, and the recent United Nations' Declaration of Indigenous Rights, are examples of outside recognition of the legitimacy of traditional resource governance systems that have not always translated into improved situations at the local level.

The perception of legitimacy can also be complicated by competing claims from different local groups for control of local resources, such as is the case in Norway (Søreng) and Atlantic Canada (Wiber and Milley) where indigenous and non-indigenous local communities both strive to be involved in resource management decision-making. In these cases, local non-indigenous communities who have a strong historical relationship with the natural resources often have as strong or stronger perceptions of the legitimacy of their role in management as do indigenous people. This competitive claim of legitimacy becomes all the more complicated in the African context, as Zips and Zips-Mairitsch point out.

The third theme, which we have labeled respect, emerges from those situations identified in the collected papers, where there is a serious breakdown in clarity or where competitive perceptions of legitimacy undermine the relationship between managers and users of natural resources. In these situations, peaceful resolution of potential conflicts requires establishing (or reestablishing) a certain level of trust and respect. This is unlikely to develop, as these papers illustrate, where a fundamental lack of respect empowers urban-based bureaucrats, developers or NGOs confronted with local resistance. This is a situation common to north and south, aboriginal and non-aboriginal contexts. When government bureaucrats and local community groups each have little respect and/or appreciation for the

respective values, knowledge and management roles of the other, workable solutions are slow to emerge. Subsequent problems can be significant - ranging from widespread non-compliance, as described by To Xuan Phuc, which results in more costly management efforts, to open conflict as described by Ubink and van Rooij, which has a greater impact on communities and management agencies.

Even in situations where there is widespread recognition of the legitimacy of local management regimes and/or clarity in decision-making principles and processes, there remains a fundamental need for respect between the parties involved in management of natural resources. Respect is a mutual condition and one that appears to be mutually lacking. Without open and respectful dialogue between the advocates of the government and the community there can be no effective and long-term resolution of the inconsistencies between the two approaches to management. The basis for this respect may be beyond the scope of the specific issues related to the management of resources, but without a foundation of mutual respect, the activities involved in making rationale and appropriate decisions will be plagued with uncertainty. As history has repeatedly demonstrated, the threat of violence or administrative sanction may result in participants being coerced over the short term into accepting decisions that they believe to be incorrect or unfair. But sooner or later this will lead to the collapse of the management process through legal opposition, patterns of everyday resistance, or open protest and violence.

The analytic themes that emerge from the collection of case studies contained in this volume can give insight into the ongoing discourse on local and indigenous rights to natural resources. They also provide a basis for a broader comparative analysis of resource management outcomes where community needs and values are ignored. While the general discussion on community-based natural resource management has focused on economic efficiency and the relationship between urban and rural political priorities, consideration of clarity, legitimacy and respect may illuminate the barriers to the successful evolution of new management regimes. Analysis of community management systems may be enhanced by examining the clarity of resources management decision-making processes, examining the legitimacy of decision making systems and institutions, and examining areas where lack of respect has developed between those involved with resource-use and resource management. These themes can be useful in the study of the role of legal pluralism in community-based resources management systems, particularly with respect to the re-emergence of indigenous/local values and priorities in resource management. Consideration of clarity, legitimacy and respect

can help us understand some of the barriers facing indigenous/local people in their ongoing efforts to change the global resource management paradigm.

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