

Property Rights Regimes and Natural Resources: A Conceptual Analysis Revisited

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Summary. — More than two decades ago, Schlager and Ostrom (1992) developed ‘a conceptual schema for arraying property-rights regimes that distinguishes among diverse bundles of rights’. The conceptual framework has profoundly influenced research on natural resource governance, common property, and community resource management. However, currently natural resource governance has changed dramatically, challenging the applicability of the conceptual schema. There are now many more social actors involved in resource management than the local communities at the focus of original analysis. Additionally, resource management increasingly provides access to various kinds of benefits from outside the immediate context, including indirect benefits such as payments for environmental services and results-based payments for REDD+. These changes demand addition of new property rights to the original framework. This paper updates the conceptual schema in reaction to changes in natural resource governance, proposing three specific modifications on the focus of use rights, control rights and authoritative rights to come up with a framework that distinguishes eight types of property rights. We apply the framework to three purposefully selected governance interventions in China and Laos that include the provision of indirect benefits in addition to the direct benefits derived by local people from natural resources. The empirical application shows how contemporary governance changes may not lead to local people’s outright dispossession, since they continue to possess direct use rights to natural resources. However, local people may be excluded from control and authoritative rights, which are exercised exclusively by state agencies and international actors. The latter make available indirect benefits to local people, which may or may not translate into use rights in the sense of policy-based entitlements. The empirical insights suggest the possibility of a wider trend of ‘compensated exclusions’ in natural resource governance.

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1. INTRODUCTION

More than two decades ago, Schlager and Ostrom (1992) developed “a conceptual schema for arraying property-rights regimes that distinguishes among diverse bundles of rights” (249). The conceptual framework has profoundly influenced research on natural resource governance, common property, and community resource management. Many researchers have used the conceptual schema and the idea of property as bundles of rights to move beyond simplistic categories of state, private, and common property, and to distinguish different kinds of common property regimes (Benda-Beckmann, Benda-Beckmann, & Wiber, 2006). A prominent illustration is the comparison of four governance arrangements in India and Nepal in Agrawal and Ostrom (2001).

The conceptual schema has also informed practice in natural resource governance because its application yields direct implications for sustainable resource governance: Schlager and Ostrom (1992) suggest that “[d]ifferent bundles of property rights [...] affect the incentives individuals face, the types of actions they take, and the outcomes they achieve” (256). Natural resource management tends to be more sustainable if local people participate actively in resource governance, as demonstrated for forests (Andersson & Gibson, 2006; Baland *et al.*, 2010; Chhatre & Agrawal, 2009). Consequently, international donors, nongovernmental organizations (NGOs), and some governments have developed new forms of collaborative resource management that facilitate local communities’ participation in decisions about management

objectives and practices, going beyond the recognition of mere use rights (e.g., Edmunds & Wollenberg, 2003). Social and environmental activists have drawn upon the schema to lobby for the devolution of extensive bundles of natural resource rights to local people (Rights & Resources Initiative, 2012).

Yet, natural resource governance has changed dramatically over the past two decades, challenging the applicability of the conceptual schema. There are now many more social actors involved in resource management than the local communities at the focus of Schlager and Ostrom’s (1992) analysis. More often than not, local, national and/or international organizations of a private, non-governmental, or public nature engage in practices or make rules relevant to resource management in

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a particular site (Agrawal & Ribot, 1999). Additionally, neither local communities nor the state can be assumed to be homogenous or act as a single actor. Local communities are often divided internally, with the consequence that different bundles of rights apply to different community members (Agrawal & Gibson, 1999). Similarly, states include a variety of actors with different mandates, resources, and interests (Ribot, 2004).

Additionally, resource management increasingly creates access to various kinds of benefits provided from outside the immediate context. Indirect benefits such as payments for environmental services (PES) or shared tourism revenues complement directly derived benefits, such as timber or the spiritual value enjoyed by local people. The provision of payments and other kinds of external support is entering policy in many countries as natural resource degradation diminishes the available direct benefits, and increasingly affluent societies attribute rising importance to non-productive uses of natural resources (e.g., Bennett, 2008; McElwee, 2011). Indirect benefits are also gaining importance for local resource managers due to governments' reluctance to devolve natural resource management where it involves significant material and immaterial values (Ribot, Treue, & Lund, 2010).

Payments to local resource managers or other forms of external subsidy assistance may become a primary component of the global Reducing Emissions from Deforestation and Forest Degradation (REDD+) mechanism. The introduction of such policies and programs is different from the past emphasis on project-based support since they provide indirect benefits on a more permanent and institutionalized basis. Providing payments and compensations to local actors as a new mode of governance aimed at improving or maintaining ecosystem services transforms local decision-making and property right arrangements beyond the notion of "bundles of rights" (Phelps, Webb, & Agrawal, 2010).

Thus, there is a need to update the conceptual schema introduced by Schlager and Ostrom (1992), particularly by incorporating insights from the analysis of decentralization (Agrawal & Ribot, 1999)¹. The update requires a shift in the premises underlying the framework by recognizing the multiplicity of social actors and significance of indirect benefits, i.e., attention to a more comprehensive set of relationships among social actors with regard to direct and indirect benefits. Yet, it would benefit from retaining the simplicity of the original framework because simplicity allows comparisons and affords influence on practice. The update gains from maintaining property rights as the central concept, property rights being understood as all kinds of relationships among actors with respect to objects (Bromley, 1992; von Benda-Beckmann & von Benda-Beckmann, 1999). The focus on property rights, as they apply in practice, provides an important "bottom-up" perspective on natural resource governance that is complementary to analyses centered on the relationships between different governmental actors (Agrawal & Ribot, 1999).

We develop an updated version of Schlager and Ostrom's (1992) conceptual schema in this paper.² We propose three specific modifications to come up with a framework that distinguishes eight types of property rights. We apply the framework to three purposefully selected governance interventions in China and Laos that include the provision of indirect benefits in addition to the direct benefits derived by local people from natural resources. The empirical application shows how contemporary governance changes may not lead to local people's outright dispossession, since they continue to possess direct use rights to natural resources. However, empirical application also shows that local people are generally denied

higher order property rights, with control and authoritative rights to natural resource exercised exclusively by state agencies and international actors. The latter make available indirect benefits to local people, which may or may not translate into use rights in the sense of policy-based entitlements. Thus, international organizations and norms increasingly influence natural resource management on the ground while local communities' exclusion is compensated through indirect benefits.

The paper begins with the conceptual discussion on how Schlager and Ostrom's (1992) framework can be updated usefully. It then proceeds to apply the framework to the three cases before it compares and synthesizes key insights from the three cases. The paper concludes with a discussion of the theoretical and practical insights to be gained from applying the updated framework.

2. UPDATING THE CONCEPTUAL FRAMEWORK

Schlager and Ostrom's (1992) conceptual schema distinguishes five types of property rights: the rights of (physical) access, withdrawal, management, exclusion, and alienation.³ Underlying the distinction is the idea that rights are nested, i.e., that the first-order rights of access and withdrawal depend on the exercise of the second-order rights of management, exclusion, and alienation (Ostrom, 1994). The difference between first-order and second-order rights relates to "the difference between exercising a right and participating in the definition of future rights to be exercised" (Schlager & Ostrom, 1992: 251). In particular, management refers to the "right to regulate internal use patterns and transform the resource", thereby shaping the possibilities for withdrawal rights (Schlager & Ostrom, 1992: 251).

This framework has rightly been critiqued for its static nature, whereas property rights are often dynamic (e.g., Rocheleau & Ross, 1995). Property rights may be ambiguous in a particular setting, as different social actors claim rights to a resource through material and discursive means (Fortmann, 1995; Peluso, 1996). Moreover, many situations are characterized by the presence of multiple and overlapping legal systems, something commonly referred to as legal pluralism (Benda-Beckmann *et al.*, 2006). As people relate their claims on natural resources to multiple legal systems, property rights come to overlap, and claims sanctioned by different legal systems get to compete with each other (Sikor & Lund, 2009). Consequently, negotiations over access to and control over natural resources tend to make property rights a lot more dynamic than captured in Schlager and Ostrom's (1992) schema.

Nevertheless, the conceptual schema offers opportunities to take concise snapshots of natural resource governance at particular times and places and to compare different governance arrangements to each other. These advantages continue to hold even if one leaves the narrow confines of the original schema to develop a more comprehensive framework. The schema is able to accommodate a wider set of social actors that relate to the direct benefits derived from natural resources and indirect benefits associated with them. It can be adjusted to consider intra-community variation (Agrawal & Gibson, 1999), social factors differentiating villagers such as gender (Agrawal, 2001), and situations in which more than one "village community" holds rights to a resource (Tubtim & Hirsch, 2005). Similarly, it is open to consider the involvement of other kinds of social actors in resource governance, such as NGOs, private companies, and international organizations. Last but not least, the framework can accommodate a variety of state actors at the local and national level, thereby integrat-

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