The Constitutionality Approach: Conditions, Opportunities, and Challenges for Bottom-Up Institution Building

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The following seven articles address the constitutionality approach for analyzing bottom-up institution building processes (Haller *et al.* 2016). The concept of constitutionality was conceived to better understand local actors' own active formulation and implementation of actions to manage common pool resources for their own collective benefit. It emerged from critiques of natural resource management and conservation programs that were labeled “participatory” and “community”-based but were not in actuality about democratization, decentralization, or even meaningful participation. While it is recognized that there is a need to discuss if powerful state ideologies might create environmental subjects, less attention has been paid to local actors' conscious and reflexive processes of collective action leading to institution crafting under conditions of power asymmetries. The original discussion of constitutionality entailed case studies from Zambia, Mali, Indonesia, and Bolivia and highlighted six elements as key: (a) internal or emic perception for the need to create new institutions, (b) capacity for engaging participatory processes that address and not ignore power asymmetries, (c) preexisting institutions for collective action, (d) outside catalyzing agents, (e) recognition of local knowledge and innovations, and (f) higher-level state recognition and support (Haller *et al.* 2016).

The case studies included here are from Zambia, Senegal, Israel, Bolivia, Mexico, USA (Montana) and Switzerland, and they illustrate and extend the initial six key elements of

constitutionality. They highlight how local fishers, farmers, ranchers, and other resource users and managers experience competing resource interests and countervailing ideologies and discourses, and the ways they engage in collective action to pursue their own interests by gaining bargaining power, demonstrating that elements of constitutionality often rise from the manifold failures of state actors and policies to adequately manage resources. The authors describe how actors create effective partnerships and alliances, often arising from unexpected sources – heterogeneous communities, employees in state, (federal) government, and non-governmental organizations, and embracing wide ranging ideologies and discourses. Many of the cases demonstrate an important role for “outsiders” in supplying discussion-platforms, catalyzing, and providing “bridging” services useful to local collective action, in addition to a creative array of strategies of local actors to stake resource claims and develop new rules and institutions to boost collective bargaining power with clear recognition of the symbolic and material forces working against them. The cases illuminate how participants in these collective activities are able to develop and share a sense of ownership in what they create together.

In the first paper, Haller and Merten detail how the concept of constitutionality began to develop from their research on fisheries in the Kafue Flats in Zambia. Next, Faye, Haller, and Ribot highlight the process of developing local conventions for regulating forest uses in the eastern part of Senegal, where intensive charcoal making has reduced some of the forests.

The next three papers expand on issues of strategic recombination of traditional and new institutions in the constitutionality process. The first two address areas designated as UNESCO Biosphere in Israel and Indigenous Territories and protected areas in Bolivia. Eid and Haller describe how bottom-up institution building emerged from subordination of the Druz ethnic group in Israel by various state actors. Gambon and Rist describe how pivotal constitutionality processes expressed the world views of lowland indigenous groups of the Mosetene and the in-migrated indigenous people from the highlands in the

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UNESCO Biosphere Reserve “Pilon Lajas,” Bolivia. Ochoa-García and Rist discuss four water conflicts in Jalisco State, Mexico to demonstrate how constitutionality involves a bottom-up institution building process resulting in recognition by the state of self-created institutions. By addressing principles of water justice, local actors were able to gain recognition by the state as part of its own Integrated Water Resources Management (IWRM) policy, and thus positioned themselves to influence state water policy. Their analysis provided the basis for the formulation of a conceptual framework that integrates water conflicts, water justice, and IWRM into the concept of constitutionality.

Belsky and Barton examine a local partnership in the Blackfoot watershed in Montana (USA) and its efforts to forestall increasing social and ecological fragmentation by conveying former corporate timberlands into various conservation ownerships including a locally-owned community conservation area. They analyze a decade of governing the area and highlight strategies of deliberate and incremental processes of participation, accommodation, experimentation, adaptation, and rule-modification to find compromises for social and ecological benefits.

Gerber focuses on landscape management in Switzerland entailing the institution known as Regional National Parks (RNPs) to show that since their introduction as a new instrument of national legislation, the Swiss Federal Government has enabled bottom-up forms of landscape management.

The insights described in these case studies encourage us to re-think the role of local perceptions of crises in triggering collective action. Furthermore, they lead to an enlarged appreciation that even where there is significant heterogeneity at the local level, there is tremendous capacity to forge effective partnerships. Given the range of actors engaged in these collective actions, the authors necessarily grapple with the definition of “local” and what defines “local success.” The cases suggest considerable compromise and conflict continue to characterize these efforts, despite many social and ecological achievements. Accordingly, the authors acknowledge they cannot predict what additional conflicts may emerge under conditions of constitutionality, and whether new conflict management strategies and institutions will be needed to deal with them. Recognizing and explaining the political forces and conditions under which local people, communities, and their allies engage in collective action and institution building on their own and for their own (and their environment’s) wellbeing and empowerment remain deeply challenging. We hope the collection of papers provided here help to move this understanding forward.

Reference

- Haller T., Acciaioli G., and Rist S. (2016). Constitutionality: Conditions for crafting local ownership of institution-building processes. *Society and Natural Resources* 29(1): 68–87.