



Why the Need to “Rethink” Forest Regulations?

Overview and the example of Montana

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Global Issues in Governing Natural Resources

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- 1) Regulations: Problems, causes, history
- 2) Emerging new approaches and “principles”
- 3) The example of Montana

Primary sources:

- 1) *Hans Gregersen and Arnaldo Contreras, “Rethinking Forest Regulations”, RRI, 2010.*
- 2) *N.Gunningham and D. Sinclair, “Leaders and Laggards: Next-Generation Environmental Regulation”, 2002.*



Regulations: Problems, causes, history

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WHAT DO WE MEAN BY "REGULATION"?

- A legal term
 - General definition: “Specific rules to enable implementation and enforcement of a law, has legal weight”
 - Regulations differ from:
 - Laws: sometimes laws are passed and new regulations not developed
 - Policies: policies may be announced and treated as if laws or regulations – but they are not
- ➡ “Rethinking regulations” is largely about how to best use the powers of the state to achieve publicly beneficial outcomes (e.g. sustainable forestry, jobs, etc.)



Why “Rethink” Regulations?

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- ❖ Forestry’s record, in many places, is very disappointing, and clear that existing regulations are part of cause:
 - Continuing deforestation and degradation
 - Widespread illegal logging and trade of illegal products
 - Fostering corruption, ignoring local land rights, undermining governance and development
 - Unintended effects
 - Forestry is also one of the most socially regressive: e.g. rewarding large, penalizing the small – large/wealthy able to benefit **despite, or because of** regulations
 - Diminishing respect for law and judicial systems
- ❖ Forestry is also one of the most regulated; and some would say “over” regulated sectors:
 - Harvest regulations tend to be highly prescriptive
 - Management plans – detailed, difficult to implement
 - Implementation gap and local communities uninformed about their rights

Examples of Problems & Failures

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- Logging bans (e.g. Asia)
 - FLEGT – using trade to improve forest governance
 - REDD – global effort to stop deforestation
 - Latest ITTO Report: < 10% tropical forest managed sustainably – after 25 years of effort and hundreds of millions of dollars
 - Social unrest, protest and violent conflict
- ➔ **Of course, regulations (or the lack of them) in other sectors negatively affect forests (e.g. agriculture, mining, investment)**

- 1) Contradictions or **inconsistencies** between different laws, policies and regulations.
 - 2) Some regulations **cannot** be followed by forest owners, managers; **unrealistic**, too cumbersome (costly)
 - 3) Sometimes real purpose is to raise revenue for government - undermining sustainable forest management (SFM)
 - 4) **“Unjust”** regulations (e.g. ignoring traditional land and use rights – leads to resistance)
- ➔ Focus on enforcement often misplaced

- 5) Regulations sometimes inconsistent with property rights:
 - Public land (and different types of public land)
 - Private land
 - Indigenous peoples/ community land
- 6) Governments often don't have the capacity to monitor and enforce,
- 7) Often consider only the role of government and emphasize “command and control” (i.e. do not recognize, and take advantage of the rights, interests and incentives of each actor).

Historical Premises to Conventional Approach

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1. Forest land ownership:

- Public, usually by the **central government** (king, crown, country)

→ increasingly owned or administered by **private and communities**

2. Governance authority:

- Central **government** all powerful (and expert)

→ increasingly **decentralized to local** government authorities and **devolved to civil and private** sectors

3. Forest people/communities:

- **limited rights**, voice and political power

→ **increasing rights, voice** and capacity – with democratization

How This Has Played Out in the “Developed” World?

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Phases (Meidinger 2005):

- 1. 16th – 19th century:** state, industrial control of public and private forests
 - *Degradation, “elite capture”, corruption – economic growth*
 - 2. 20’s - ‘70’s:** focus on “enforcement” command and control – prescriptive regulations and management plans
 - *Gradual strengthening of civil society and rule of law*
 - 3. 80’s – now:**
 - *Public participation in governance (e.g. British Columbia)*
 - *Simpler rules, limited use of state power, educating stakeholders(e.g. Montana)*
 - *Market-based approaches (e.g. certification)*
- ➡ *Continued tension, learning, revision and reform, courts often the venue for setting direction*

How This Has Played Out in the “Developing” World?

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1. **Lots of laws, fewer regulations**
 2. **Regulation** - mostly of public forests, often industrial concessions
 3. **90’s – now:** some innovation:
 - *Independent certification (e.g. all over, but limited)*
 - *Independent monitoring and transparency (e.g. Global Witness)*
 - *New policy regulatory approaches:*
 - *Of private and community lands (Brazil, China, Mexico)*
 - *Of access to public land (Indonesia, Brazil)*
 - *Regulating chainsaw sawmilling (Liberia)*
- ➡ Yet, in many places, still focus on **enforcement** (FLEGT)



Emerging New Approaches

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THE FOUR PRINCIPLES

1. Recognize ***land rights*** and design *different systems for each type*
2. Carefully ***identify priority problems*** and then ***prioritize action***
3. Create ***favorable conditions*** for key rights holders and stakeholders to promote best practice and compliance
4. Governments only do what no other entity can do, and judiciously use power



1. Recognize tenure and design different regulation systems

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Must examine:

- Constitution, land laws, forest laws, customary rights
- Laws and treaties regarding Indigenous Peoples and other special groups
- Other sector laws (mining, transport, environment) (for overlaps)
- International commitments (e.g. ILO 169 UNDRIP)

2. Prioritize

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Focus on:

- most important values/resources
- most important and critical locations and habitats; demonstration effect considered
- most relevant operators – those with potential to cause most damage

3. Creation of Favorable Conditions

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- Build systems that reflect and take advantage of stakeholder rights, interests and incentives
- Ensure political will
- Develop an inclusive process that will involve all stakeholders in decision making, encourage adaptation and learning
- Transparency, so stakeholders monitor each other's behavior and encourage progress
- Find the adequate mix between regulations and voluntary guidelines

- Certification
- Voluntary “best management practices” (BMPs for timber harvesting and management).
- Independent, non-government monitoring and verification
- Transparency – of forest use, monitoring, impacts
- Education and dissemination of standards, positions, issues, impacts;
- Stakeholder interactions: conferences, committees, boards and other interactions to reach consensus.
- Corporate codes of conduct – self-policing
- Joint management and partnerships between government and non-governmental organizations

4. Governments Do What Only Governments Can Do...

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1. Catalyze and facilitate process to identify priority problems and new standards
 2. Ensure transparent processes -- encourage action by civil society and private sector
 3. Ensure respect of property and civil rights,
 4. Limit, and judiciously use coercion (regulations)
 5. Facilitate processes to compensate for “market failures” (e.g. ecosystem services)
 6. Ensure education of all key stakeholders (on standards, costs, benefits)
- ➔ **Don't have to “DO” all of these things, just need to make sure that they are done.**



The Example of Montana

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FOREST BEST MANAGEMENT PRACTICES (BMPS)

MONTANA FOREST STATISTICS

Total Area: 381,000 sq. km.

- 4th largest state in U.S.

Population: 1 million

Total Forest: 22 million ac (9 million ha.)

- 60% National Forest
- 24% Private Family
- 8% Corporate
- 8% State or Tribal

Average Timber Harvest: 1.0 million cubic meters

Forest Products Industry:

- 14 wood products mills
- 10 log home / post-rail plants
- 600 logging professionals

Annual Value of Wood/Paper Products: \$750 million US



Why it happened: 1989 - Forestry at a Crossroads:

- Federal Clean Water Act
- Potential of Federal Enforcement
- Pressure for Forest Practices Act in Montana

Non-regulatory approach chosen focusing on:

- **Montana Best Management Practices (BMP) Law:** Emphasis on road construction, timber harvesting, stream crossings, hazardous substances, streamside management zones. Compliance to BMPs is now 97%!
- **Landowner Education:** creation of a Forest Stewardship Program, individual on-site advice
- **Logger Education:** creation of an Accredited Logger Professional Program and a Stewardship Education for Loggers
- **Monitoring:** field audits every 2 years, report to state legislature, additional regulation when justified by audits



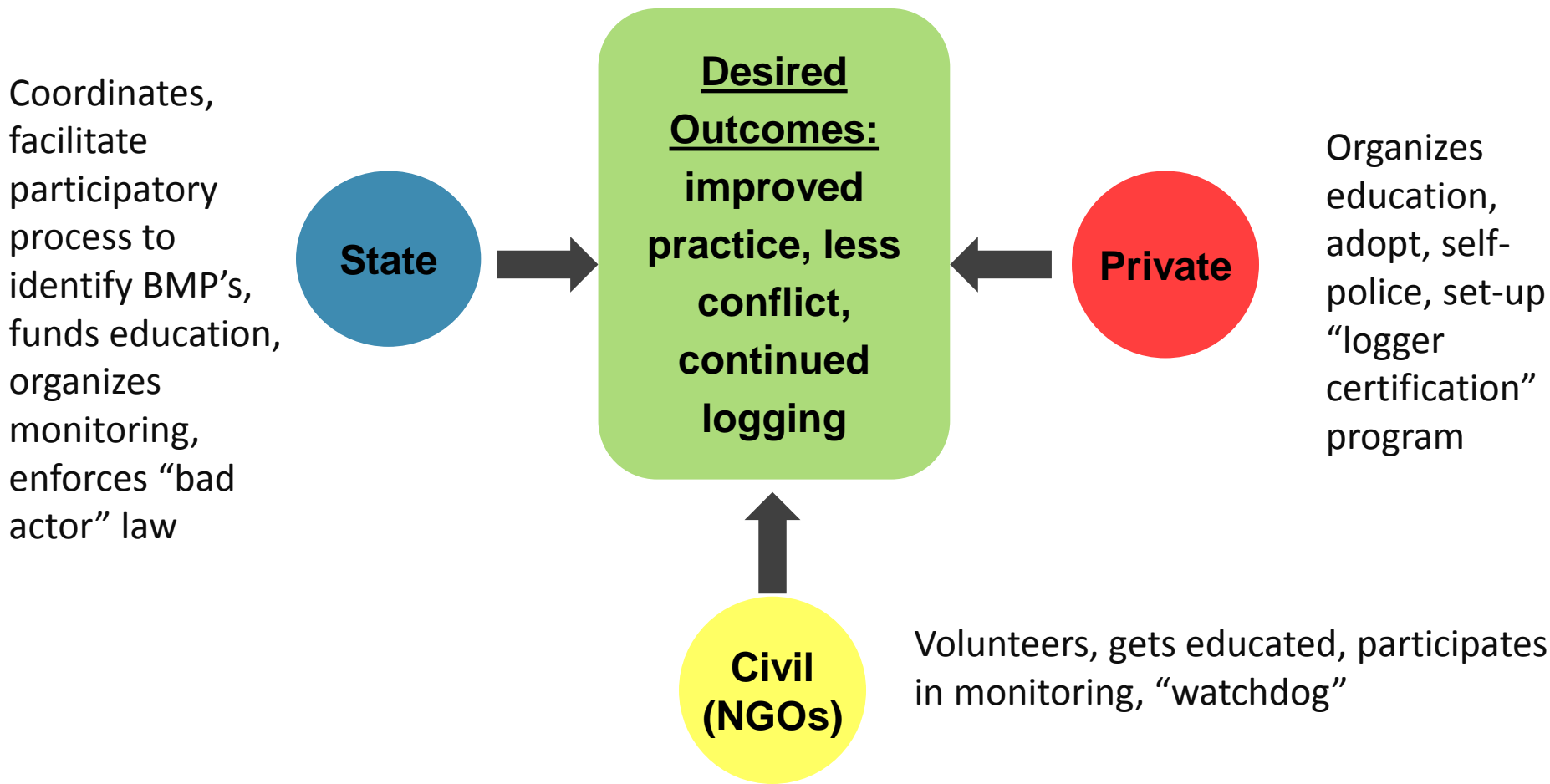


The Montana System for State and Private Forests

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A “system to promote best practice and compliance”

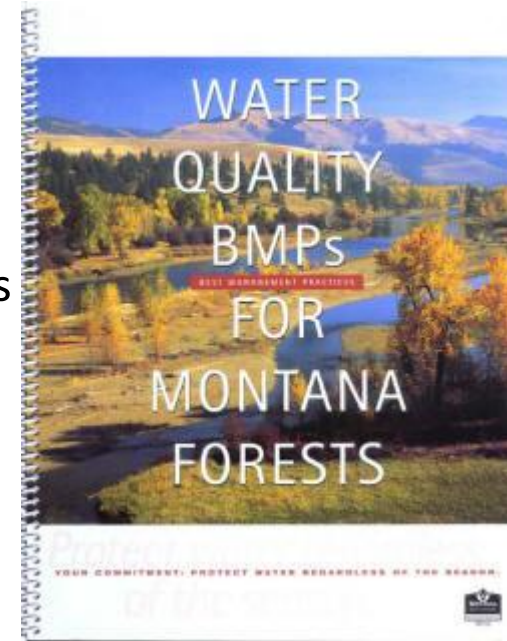


The Montana Case: Interpretations

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1. Reasons why it seems to work:
 - respects private rights, reflects public responsibilities
 - simple, low cost to administer
 - transparent and inclusive;
 - focuses on most critical externalities (public goods),
 - empowering, minimal infringement on property rights
 - builds on individual incentives and interest for social inclusion,
 - state judiciously uses coercion “bad actor law”
 - a credible threat of imposition of high-cost, enforced, regulations – and the high costs of social conflict
2. Reasons why it does NOT work: It does NOT regulate silviculture
3. Some reasons why it might not travel:
 - “credible threat of regulation” often not present
 - Clarity over land rights often not present
 - Requires strong civil society and court systems



Some Challenges and Opportunities

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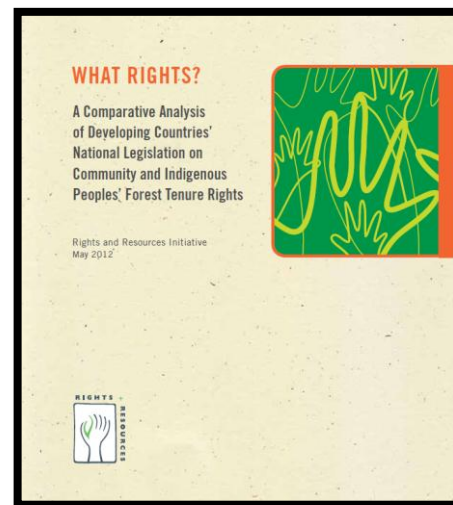
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1. How must political will to revise regulations despite resistance and perceived risks?
 - Within agencies: Overcoming internal resistance/vested interests in current system
 - Across the government: developing constituencies for reform
 - Across stakeholder groups: building understanding and relationships
2. How to make use of current global attention to “illegal logging” and REDD?

What Rights?

A Comparative Analysis of Developing Countries' National Legislation on Community and Indigenous Peoples' Forest Tenure Rights

Respecting Rights, Delivering Development Forest Tenure Reform Since Rio 1992



1. What is the distribution of ownership and the tenure situation in your country?
2. What regulatory framework do you have?
 - “Public” lands?
 - Community lands?
 - Private lands?
3. What opportunities and positive developments do you foresee?
4. What problems/issues do you identify or foresee?