Rethinking Forest Regulations

Overview and Introduction

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Rethinking Forest Regulations
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1) Rethinking regulations in the world

2) History and overview of the different types of land ownerships in the USA

3) Why Montana?
RETHINKING REGULATIONS IN THE WORLD

1) Regulations: Problems, causes, history

2) Emerging new approaches and "principles"
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.)
1) 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, conflict, 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

2) Many regulatory frameworks do not respect customary or statutory land, civil or political rights, are unjust and lead to resistance.
Direct & Indirect Reasons for Failure (1)

1) Sometimes real purpose is to raise revenue or control land for government— not to promote sustainable forest management

2) Contradictions or inconsistencies between different laws, policies and regulations.

3) Often regulations are unrealistic, too cumbersome (costly), or difficult

Focus on enforcement often misplaced
4) Regulations often inconsistent with property rights:
   • Public land (and different types of public land)
   • Private land
   • Indigenous peoples/ community land

5) Governments often don’t have the capacity to monitor and enforce,

6) 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).
National & International Responses to Failure

• 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

Of course, regulations (or the lack of them) in other sectors negatively affect forests (e.g. agriculture, mining, investment)
How This Has Played Out in the “Developed” World?

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
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 (e.g. FLEGT)
Historical Premises to Conventional Approach

1. Forest land ownership:
   • Public, usually by the central government (king, crown, country)
   → increasingly owned or administered by private households, communities or Indigenous Peoples

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
Some Promising Trends in Forest Tenure

- Owned by communities & Indigenous Peoples: 9% (2002), 12% (2012)
- Owned by individuals & firms: 11% (2002), 12% (2012)

Note: The countries included here cover 85 percent of the world’s forests. For full details see: www.rightsandresources/tenuredata.
Emerging New Approaches

THE FOUR PRINCIPLES

1. Recognize **land rights** and design different systems for each type

2. Carefully **identify priority problems** and then **prioritize** action

3. Governments create **favorable conditions** for key rights holders and **only do what no other entity can do**

4. Focus on **desired outcomes**
1. Recognize tenure and design different regulation systems

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

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
Create Favorable Conditions:

• Build systems that reflect and take advantage of stakeholder rights, interests and incentives. This will ensure political support across key constituencies.

• Find the adequate mix between regulations and voluntary guidelines

• Develop an inclusive process that will involve all stakeholders in decision making, encourage adaptation and learning

• Ensure full transparency, and education of all key stakeholders (on standards, costs, benefits)

• Catalyze and facilitate process to identify priority problems and new standards

➔ Don’t have to “DO” all of these things, just need to make sure that they are done.
Regulations that describe *desired outcomes* or results – as opposed to prescriptive *how to’s* -- can be more effective and often less expensive.

Show a picture, literally, or paint it with words:

Provide steamside buffers where needed to provide breeding habitat for migratory birds
VS
Provide 50 foot buffers on all class 3 streams

Maintain a stand density to enable restorative fires to burn and enough sunlight and nutrients to support a healthy stand
VS
Cut only trees under 28 inches and only lodge pole or white fir.
Promising Emerging Tools

- 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
OWNERSHIP TYPES AND HISTORY

• TRIBAL LANDS <3%
• PUBLIC LANDS (Federal, State, Local) 34%
• PRIVATE (Industrial, Small Woodlots) 66%
Major Themes of US Tenure History

1. Tenure policy emerged from our history as a nation, has evolved over centuries.

2. A National Forest System (70 M h) formed 100 years ago out of public outrage over land degradation; management from industrial to community model.

3. State forests formed to generate revenue for education/infrastructure; managed differently by each State’s unique regulations.

4. Private forests (170 M h) have produced wealth for the individuals and the nation. Each state in US has different regulations for private lands management.

5. While small, tribal forests today are well-managed, using innovative ideas, and key sources of wealth for tribes and the country.
Who Owns and How Much

Distribution of Forest Land Ownership in the United States, 2006

- **Public**: 34%
  - Federal 33%
  - State 9%
  - Local 1%
- **Private**: 66%
  - Family 36%
  - Corporate 18%
  - Other Private* 3%

*Includes nongovernmental conservation organizations, unincorporated partnerships, and Native American lands.
The US Forest Estate Today

Forest Ownership of the Coterminous United States

LEGEND
Forest Ownership
- Non-Forest
- Private
- Public

SCALE
1:18000000
1. Different types of tenure - public, private, tribal – have all played critical, often complementary roles

2. The overall success is best measured by the stable forest land base for the past 100 years

3. National Forest management today is focused not on revenue generation but on restoration and protection of ecosystem services, like source water protection, wildlife, recreation

4. Both the Indian lands and private lands have been largely well-managed and contributed to the ecological and financial wealth of the nation

5. Management of state lands, in several US states like Montana, may be a good model for emerging economies
WHY MONTANA

Embodies the 4 Principles

Main characteristics:

- One regulatory system for each ownership type
- Stimulated collaboration across landscapes and ownerships
- => Transparence and inclusion
- Federated stakeholders around a shared goal
- Federal and state governments created favorable conditions and incentives
Voluntary approach to regulate Private Lands

- Non-Regulatory Approach: set of voluntary practices to improve Forest Practices and minimize impacts to water, soil and other forest resources.
- Establishment of Water Quality Best Management Practices for Montana Forests with specific guidelines related to road for timber harvesting, steam crossings, etc.
- Focus on Landowner and Logger Education programs.
- Monitoring of the state through biannual field audits.
- Proof of Success: a 97% compliance rate!
- Reason for success: credible threat of imposition of high-cost, enforced regulations
Land Ownership in Montana

59% of Private Land
29% of Federal Land
6% of State Land
5% of Tribal Land
1% of Water