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Measuring Success in Devolved Collaboration

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Abstract

In recent times, legislatures and domestic courts are increasingly requiring the use of "devolved collaboration" to manage and protect community resources.[1] As a result, a growing emphasis on participatory mechanisms of resource-based decision making emphasizing "place-based" collaborative processes has emerged in many countries. Such processes involve stakeholders from the public and private sectors who consult together in order to arrive at shared goals regarding resource use and planning. Such collaborative processes arise from a growing dissatisfaction with top-down centralized "announce and defend" decision making policies.[2] Yet, devolved collaboration is not without its challenges[3] Scholars have identified that devolved collaborative processes must not be indifferent to social, structural, institutional disparities in order for it to realize its potential for equitable decisions.[4] In response, this paper suggests structural improvements to the current process of unanimity-based devolved collaboration which includes the use of majority vote in cases where unanimity is not possible, and offers a set of principle-based measures or indicators that can be used at the community level to help assess whether benchmarks of equitable participation are being achieved at the local level.[5]

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[1] Sheila Foster, "Environmental Justice in an Era of Devolved Collaboration," 26 Harv. Envtl. L. Rev. 459 (2002).

[2] Anne Perrault, Kirk Herbertson, and Owen J. Lynch, "Partnerships for Success in Protected Areas: The Public Interest and Local Community Rights to Prior Informed Consent (PIC)" 19 Geo. Int'l Envtl. L. Rev. 475 (Spring, 2007).

[3] Including: the possible entrenchment of racial and economic procedural and distributional inequalities. See: Sheila Foster, "Environmental Justice in an Era of Devolved Collaboration," 26 Harv. Envtl. L. Rev. 459 (2002).

[4] Anne Perrault, Kirk Herbertson, and Owen J. Lynch, "Partnerships for Success in Protected Areas: The Public Interest and Local Community Rights to Prior Informed Consent (PIC)" 19 Geo. Int'l Envtl. L. Rev. 475 (Spring, 2007).

[5] Grounded in international rights-based principles echoed in the Comprehensive Development Framework dialogue conducted by the World Bank's Operations Evaluation Department (OED) in the Summer of 1999 and a document, "Valuing Spirituality in Development" prepared by the Baha'i International Community for a international development/interfaith dialogue held in 1998, a set of comprehensive capacity-based indicators are selected.

Introduction

Beginning in the early 1990's, international declarations have increasingly encouraged the use of "devolved collaboration" as a means of policy planning and regulation of public resources.[6] This encouragement largely arises from a view that public resource decision making is "best handled with the participation of all concerned citizens, at the relevant level."[7] In many respects, this emphasis on localized decision making reflects the aspirations voiced by proponents of "responsive law" in the 1970's that policy making be conceptualized as "a facilitator of response to social needs and aspirations".[8] To achieve this end, much depends on the capacity of legal practitioners and policy makers "to develop new institutional methods for gauging social needs and to devise sensible, politically feasible, and socially acceptable legal remedies."[9]

Like the responsive law movement, the recent support for devolved collaboration in public resource decision making has largely resulted from growing dissatisfaction with the inefficiencies of centralized top-down "announce and defend" policies.[10] In this paper, following a discussion in Part One of the movement toward greater devolved collaboration from a legal and policy perspective, Part Two explores the prospects and structural challenges associated with devolved collaboration in community decision

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[6] See: Rio Declaration on Environment and Development, 1992
[7] Id. Principle 10. Principle 10 states that: "Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."
[8] Philip Selznick, Law and Society in Transition: Toward Responsive Law. 1st ed. New Brunswick: Transaction Publishers, 1978.

[9] Id.
[10] Sheila Foster, "Environmental Justice in an Era of Devolved Collaboration," 26 Harv. Envtl. L. Rev. 459 (2002).

making and the need for clear measures or safeguards to assure that devolved

collaboration does not reinforce existing inequalities. When successful, devolved

community based resource management efforts respond to the aspiration for broad based

input into policies and decision making invoked originally by responsive law

proponents.[11] Yet, in practice, devolved collaboration is not without its challenges.

When implemented without regard to issues of universal representation and disparate

access to resources, the process has the potential of replicating and possibly exacerbating

existing representation problems.[12] Similar to the challenges facing responsive law[13],

such as the existence of subjectivity in rule-making, and the danger of getting the moral

question wrong through caving into power politics (as advanced through special interests, for

example), likewise devolved collaboration faces the potential danger of rendering

community resource problems "less visible or subject to scrutiny, because the farther the

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[11] See: Philip Selznick, Law and Society in Transition: Toward Responsive Law. 1st ed. New Brunswick: Transaction Publishers, 1978. "Responsive Law" is described in relation to both "Repressive Law" (law as servant of repressive power) and "Autonomous Law" (law as differentiated institution capable of taming repression and protecting its own integrity). Repressive Law generally takes little note of affected interests. A "common source of repression is the poverty of resources available to governing elites" in circumstances where "urgent tasks must be met under conditions of adequate power but scarce resources." Autonomous Law can be characterized by the Rule of law" born when legal institutions acquire enough independent authority to impose standards of restraint on the exercise of governmental power. Specialized legal institutions claim qualified supremacy within defined spheres of competence. Autonomous law reflects a transition from blanket certification of the source of power to a sustained justification of its use. "Legal institutions purchase procedural autonomy at the price of substantive subordination." The downside is that the application of rules ceases to be informed by a regard for purposes, needs, and consequences. (64)

[12] Foster at 485.
[13] Among the challenges noted by Nonet and Selznick include the fact that "responsive law is a precarious ideal whose achievement and desirability are historically contingent and depend especially on the urgencies to be met and the resources that can be tapped."   Specifically, there is the danger of subjectivity in rule making and "getting the moral question wrong." The achievement of responsive ideals depends a great deal on the development of "cognitive competence" [within the judiciary] to consider social conditions, gather relevant information from outside sources in order to search for a solution, rather than arbitrarily lay down a rule.

process is removed from a centralized decision-maker, the less accountability there will be…"[14]

In response to such challenges, Part Three of this paper suggests structural improvements to the current process of unanimity-based devolved collaboration, including the use of majority vote in circumstances where unanimity is not possible and the elimination of veto power, and offers a set of principle-based measures or indicators that can be used to assess the extent to which devolved collaborative resource decision making programs reflect equitable, inclusive and sustainable outcomes. This evaluation framework synthesizes recent learning in the field of principle-based evaluation with the aim of measuring a community's ability to reach fair and just decisions regarding the use of local resources that sustains and welcomes the participation of each of its members.[15]

I.   Legal and Policy Impetus for Devolved Collaboration

Recent support for devolved collaboration in public resource decision making has largely resulted from growing dissatisfaction with the inefficiencies of centralized "announce and defend" policy making.[16] The features of traditional resource policy

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[14] Id.

[15] The role of learning processes that aim to promote integrity, create new social meaning and thereby support institutional honesty will likely be of interest to those who expect to see just changes in the way public and private institutions operate. Indeed, following recent criminal prosecution of corporate dishonesty, widespread support for change has been embraced by the American public. Kurt Eichenwald of the New York Times quoting Leon E. Panetta, the chairman of the public policy and review committees of the New York Stock Exchange, writes "the public is concerned not just about the executive who commits a criminal violation. They are concerned about whether or not there is any sense of integrity or morality in the way they do business. And that means it extends beyond whether they are doing the minimum in meeting the law. It extends to whether they are behaving as a corporation with the highest standards."

[16] Sheila Foster, "Environmental Justice in an Era of Devolved Collaboration," 26 Harv. Envtl. L. Rev. 459 (2002).

making that have given rise to calls for reform include the following: 1) rigidity of

centralized regulatory structures; 2) limitations of utilitarian decision making processes;

and 3) public interest group "capture" resulting in inequitable policy outcomes as will be

described in greater detail below.[17]

First, regulatory inflexibility, characterized by command and control processes of

resource use decision making have been found to be ill-equiped to effectively address

increasingly complex and diffuse natural resource use problems.[18] Such centralized

processes have been found to be too rigid and fragmented to effectively deal with

emerging natural resource problems.[19] Furthermore, wasteful adversarial processes

resulting from the pitting of applicants against agencies have been well documented side

effects of centralized bureaucratic decision making.[20]

Second, the utilitarian cost/benefit analysis at the heart of centralized technocratic

decision making, has traditionally ignored surrounding socio-economic factors that

directly bear on resource allocation questions.[21] As observers point out, "even with

extensive modern public participation requirements, decision-makers maintain substantial

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[17] Id.

[18] Id.

[19] Id. Citing John Dewitt, Civic Environmentalism: Alternatives to Regulation in States and Communities 260 (1994)

[20] See e.g. Robert Kagan, Adversarial Legalism: The American Way of Law (Harvard University Press, 2001). In this book, Kagan describes the distinctive U.S. style "adversarial legalism" characterized by: formal legal contestation and litigant activism. Due to the fragmented nature of governmental authority and weak nature of hierarchical control the result is costliness and legal uncertainty. The features of adversarial legalism arise from a desire to be protected from harm [total justice] and limited government that is not always empowered to act. The process is responsive in nature but as a consequence carries the risk of unpredictability. Particularly because law is treated as malleable and open to parties novel legal arguments and extenuating circumstances, the process becomes more political and less uniform. Kagan gives the example of the Oakland, California port dredging case which underwent 8 years of contentious litigation. He observes that when access to the court is easy, compromise is unstable. This stands in stark contrast to more collaborative and efficient processes used in Rotterdam to its own harbor conflicts.

[21] Sheila Foster, "Environmental Justice in an Era of Devolved Collaboration," 26 Harv. Envtl. L. Rev. 459 (2002).

deference to the technocratic model by using public input to check the math rather than to question the structure of the underlying equations."[22] As a result, utilitarian processes fail to take into account the distributional impact of policy decisions as well as the ethical and value dimensions surrounding questions of resource use.[23] Given that such resource use questions are "inherently infused with value judgments"[24], the reduction of such question s to a single metric, implies "significant loss to those values."[25]

Third, public interest group politics associated with centralized decision making has traditionally resulted in a lack of meaningful participation by diverse members of the public as well as limitations on the ability of policy makers to exercise meaningful discretion.[26] Individuals seeking to participate in open public hearing processes must navigate through a complex maze of regulatory and bureaucratic channels, effectively limiting the quality of information collected by such processes.[27] Of additional concern, given the complexity of existing public hearing structures, individuals seeking to participate in such processes must have access to significant resources (whether economic or political) in order to effectively voice input or concerns.[28] Finally, the

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[22] Julia M. Wondolleck & Steven L. Yaffee, Making Collaboration Work: Lessons from Innovation in Natural Resource Management 3-21 (2000).

[23] Sheila Foster, "Environmental Justice in an Era of Devolved Collaboration," 26 Harv. Envtl. L. Rev. 459 (2002).

[24] Jim Rossi, Participation Run Amok: The Costs of Mass Participation for Deliberative Agency Decisionmaking, 92 NW. U. L. REV. 173, 198 (1997).

[25] Sheila Foster, "Environmental Justice in an Era of Devolved Collaboration," 26 Harv. Envtl. L. Rev. 459 (2002).

[26] Id.

[27] Id.

[28] Eileen Gauna, The Environmental Justice Misfit: Public Participation and the Paradigm Paradox, 17 STAN. ENVTL. L.J. 3, 25-28 (1998).

"capture" of agencies by particularly well-endowed interest groups inhibits the ability of administrators to effectively exercise discretion in resource decision making.[29]

As a result of growing dissatisfaction with existing centralized bureaucratic decision making and the limits on meaningful public participation, increasing attention has been directed toward the development of devolved decision making processes which will be discussed in greater detail below.

I.   Devolved Collaboration: Prospects and Challenges

Devolved collaboration can be described as a method of localized decision making that encourages "widespread, independent participation by local groups to craft comprehensive solutions to difficult [natural resource] concerns on a geographically-focused scale."[30] On the basis of this approach, "public and private stakeholders collaborate to identify concerns, establish priorities, and design and implement holistic solutions" to a broad spectrum of natural resource problems faced within a specific community or geographical region.[31]

When successful, devolved community based resource management efforts respond to the aspiration for broad based input into policies and decision making invoked originally by responsive law proponents. The aspirations of the devolved collaboration movement challenge traditional assumptions that "users are locked into a destructive pattern of competition that invariably leads to resource abuse"[32] and that individuals are

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[29] See Foster citing Richard B. Stewart, The Reformation of American Administrative Law, 88 HARV. L. REV. 1669, 1713 (1975).
[30] Id.
[31] Id.
[32] Terry L. Anderson & Donald R. Leal, Calling on Communities, in FREE MARKET ENVIRONMENTALISM (2001).

unable to think beyond self-interest without coercion from the state. [33] In addition,

successful collaborative efforts build upon "common interests and values, including

connectedness to a "place" and social capital (credibility, trust, and respect) among its

participants."[34]

In practice, devolved collaboration is not without its challenges. When practiced

without regard to issues of universal representation and disparate access to resources, the

process has the potential of replicating and possibly exacerbating existing representation

problems.[35] Similar to the challenges facing responsive law, such as the existence of

subjectivity in rule-making, and the danger of getting the moral question wrong through

caving into power politics (as advanced through special interests, etc), likewise devolved

collaboration faces the potential danger of rendering community resource problems "less

visible or subject to scrutiny, because the farther the process is removed from a

centralized decision-maker, the less accountability there will be…"[36]

Many of the reported challenges of unanimity-based devolved collaboration arise

out of some of its structural features including the requirement of strict unanimity, the use

of veto power and lack of attention to logistical requirements of inclusion. Such

processes, observers have noted, provide a potential "group incentive for limiting the

diversity of participants, particularly in a way that excludes minority interests."[37] Such

processes may be susceptible to disenfranchisement of underrepresented groups or

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[33] Douglas S. Kenney, ARGUING ABOUT CONSENSUS: EXAMINING THE CASE AGAINST
WESTERN WATERSHED INITIATEVES AND OTHER COLLABORATIVE GROUPS ACIVE IN
NATURAL RESOURCE MANAGEMENT (2000).
[34] Foster citing Stephen M. Nickelsburg, Note, Mere Volunteers? The Promise and Limits of Community-
Based Environmental Protection, 84 VA.L. REV. 1371 (1998).
[35] Foster at 485.
[36] Id.
[37] Foster at 486.

interests on the basis of prejudice.[38] For example, observers note that holding meetings

far away from affected areas, or without the aid of translators "create large barriers to

entry by making information inaccessible as well as creating an unwelcome climate for

many residents."[39] The use or threatened use of veto power may also give rise to

increased potential for coercion by forcing decisions that reflects the status quo or, at

worst, exacerbate existing distributional disparities.[40] Some also note the danger of

devolved decision making processes not taking into account a diversity of public values

representative of a local community and potentially entrenching structures of unequal

influence over economically vulnerable stakeholders, similar to patterns observed in

more conventional decision making structures.[41]

Lack of adequate attention to these potential challenges inhibits the ability of

devolved collaborative decision making to successfully contribute to sustainable natural

resource management efforts. Scholars have noted that if inadequate attention is given to

issues such as the representation of individuals involved in the process as well as the

"corresponding values, norms, and influence they bring with them" then such devolved

processes may even aggravate "disparities in the distribution of costs and benefits of

environmental regulation by race and class."[42] As Foster observes:

> The search for improved, legitimate, and equitable environmental
> decisions will require more than crafting a stronger participatory norm and

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[38] Id.

[39] Foster citing Catherine McCarthy, Testing the Tanner Act: Public Participation and the Reduction of Local Opposition in Siting Hazardous Waste Facilities in California 569 (1999) (unpublished Ph.D. dissertation, University of California, Davis) (discussing Kettleman City) (on file with the Harvard Environmental Law Review).

[40] Julia T. Wood, *Alternative Methods of Group Decision-making: A Comparative Examination of Consensus, Negotiation and Voting in* EMERGENT ISSUES IN HUMAN DECISION-MAKING, at 3, 11 (Gerald M. Phillips & Julia T. Wood eds., 1984).

[41] Id.

[42] Id.

shifting decision-making power to the local "people" affected by environmental decisions. Any decision-making process that hopes to improve participation must pay sufficient attention to the political economy and resulting social relations of constituencies in a participatory process.[43]

The response to such criticisms, most would agree, is not a return to traditional methods of top-down authoritarian decision making. Rather, the challenge at present is to examine ways in which collaborative decision making processes might be strengthened to address potential disparities. In exploring potential response to these concerns, the following section will examine suggested reforms to the existing model of unanimity-based devolved collaboration including the use of majority vote in cases where unanimity is not possible and the elimination of veto power. It will then suggest an approach to measuring success in devolved collaboration through the process of localized principle based evaluation. Methods of evaluation that integrate commonly agreed principles of decision making into standards of measurement are vital in providing guideposts of accountability and transparency informed by shared principles, experience and best practices.

Structural Reforms to Devolved Collaboration

As noted by the above findings, among the challenges at present facing devolved collaboration center around the requirement of strict unanimity and the existence of veto power in decision making. While unanimous decisions often represent the ideal outcome of a decision making process, and reflect a solution oriented approach,[44] such aspirations

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[43] Sheila Foster, "Environmental Justice in an Era of Devolved Collaboration," 26 Harv. Envtl. L. Rev. 459 (2002).
[44] See: Rob Sandelin. "Consensus Basics, Ingredients of successful consensus process". Northwest Intentional Communities Association guide to consensus. Northwest Intentional Communities Association. Retrieved 2007-01-17; and Dressler, L. (2006). Consensus Through Conversation How to Achieve High-Commitment decisions. Berkeley, CA:Berrett-Koehler.

are not inconsistent with a process which aims for consensus but allows for majority vote in the event that deadlock has been reached.

Recent studies in consultative processes has found that decision making processes which aim for consensus, but provide for the possibility of majority vote where consensus is not possible, are often more effective in increasing representation and diversity of views and breaking deadlock.[45] Similarly, the use of veto power is increasingly recognized as an outmoded mechanism which hampers equitable decision making.[46] On the basis of such observations, adjustments to the structure of devolved collaboration to provide for the possibility of majority vote when unanimity is impossible and the elimination of veto power, appear to be a positive step in enhancing representation in decision making groups.

The next section will consider principle-based factors that may be evaluated in order to measure and reinforce success in devolved collaboration.

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[45] See: Shahla Ali, "Enhancing Group Decisions: Beyond Strict Unanimity and Roberts Rules" ADR in Asia Working Paper Series, Vol. 1, January 2010; available at: http://adrinasia.wordpress.com/2010/01/18/new-hong-kong-study-breaking-through-impasse-beyond-strict-unanimity-and-roberts-rules-by-shahla-ali/
[46] See for example: James Paul and Celine Nahory, "Theses Toward a Democratic Reform of the UN Security Council," (July 13, 2005) http://www.globalpolicy.org/component/content/article/200/41131.html

III: Measuring Success in Devolved Collaboration

The aspirations giving rise to devolved collaboration indicate that communities and social organizations are increasingly challenged to facilitate fair and just decision-making processes regarding the use of natural resources that are freed from corruption, address issues of inequity and are oriented toward the promotion of environments of cooperation. Yet a systematic methodology is required to assist in evaluating whether the aims of devolved collaboration are being achieved in practice. The use of principle-based indicators to measure and assess localized decision making outcomes is an emerging means by which communities can help ensure that the goals of transparency and cooperation are not overlooked in the development process.[47]

The concept of principle based indicators is a relatively recent one. Traditional performance based indicators of local natural resource development programs have focused on assessing quantitative factors. For example, traditional indicators may measure the length of time to resolve a case or the total number and types of disputes reported.[48] Useful as these measures are in assessing the development of particular aspects of sustainable development, they are increasingly being recognized as inadequate tools to fully assess sustainable progress.[49] Quantitative indicators are often based on

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[47] See for example: Lawrence Susskind, William Moomaw, Kevin Gallagher, Transboundary Environmental Negotiation: New Approaches to Global Cooperation, Jossey Bass, 2002.
[48] See: Vera Institute of Justice, Justice Indicators, April 2005; Available at: http://www.undp.org/oslocentre/docs05/cross/Justice%20Indicators%20Background%20Paper.pdf
[49] See: AnneJanette Rosga and Margaret L. Satterhwaite, "The Trust in Indicators: Measuring Human Rights" Berkeley Journal of International Law, Vol 27:2 2009.

"administrative databases used to organize systems or manage resources, and such databases tend to say little about the quality or experience of justice."[50]

Because the concept of an indicator of progress helps "answer the question of how much, or whether progress is being made toward a certain objective,"[51] understanding and clarifying the objectives of devolved collaboration is critical in reflecting on the contemporary integration of sustainable values into the decision making process. Recent learning in the field of sustainable development has identified that the purpose of participation in grass roots decision making processes regarding resource use must be to take into account the diverse and multifaceted values associated with the use of community resources.[52] Mary Robinson, the former U.N. High Commissioner for Human Rights, in a statement to the World Bank, observed that "Land and culture, development, spiritual values and knowledge are as one. To fail to recognize one is to fail on all." Therefore, consideration of appropriate indicators that account for not only relevant scientific understanding but also shared values and principles in order to promote a long-term process of positive social change at the local level is necessary.[53]

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[50] Ibid

[51] This definition of an indicator comes from the Handbook of Democracy and Governance Program Indicators (Washington, DC: U.S. Agency for International Development, 1998). The World Bank defines an indicator as 'information [that] can be used…to assess performance and assist in planning for the future.' (Judicial Sector Indicators (JSI), a World Bank Information System available on the web at http://www4.worldbank.org/legal/legop_judicial/whatisjsi.html.)

[52] In "Bridging the Gap Between Human Rights and Development: From Normative Principles to Operational Relevance." Lecture by Mary Robinson, United Nations High Commissioner for Human Rights, World Bank, Washington D.C., Preston Auditorium, 3 December 2001.

[53] The Institute for Studies in Global Prosperity, in a document entitled "Science, Religion and Development: Some Initial Considerations" available at: http://www.globalprosperity.org/initial_considerations.html?SID=4 points out that, "Attention must be brought to a domain of issues that goes to the heart of human identity and motivation. More often than not, social and economic initiatives have neglected the values, traditions and perceptions of the central stakeholders in the development process—the people themselves. The international development agenda has for the most part ignored the fact that the great majority of the world's peoples do not view themselves simply as material beings responding to material exigencies and circumstances, but rather as moral

International treaties and declarations on civil, cultural, economic, political and social rights have similarly informed standards oriented to promoting equitable development at the local level.   Emerging consensus on such standards, according to the Office of the High Commissioner for Human Rights, include the principles of equality and equity, accountability, empowerment and participation, as well as non-discrimination and attention to vulnerable groups.[54] According to OHCHR, when these principles are incorporated into locally determined standards for measuring progress, the level of accountability in the development process is raised.[55]

In addition, an enhanced set of indicators which pays due attention to "practical issues such as training in the administration and enforcement of justice, equitable distribution of community resources, and the upliftment of persons and groups historically excluded from the benefits and opportunities offered by society"[56] is necessary in order to measure whether progress is being made toward objectives of representation and transparency.

Evaluation Framework

beings… It has thus become evident that the mainly economic and material criteria now guiding development activity must be broadened to include those spiritual aspirations that animate human nature."

Development initiatives that take account of both moral and scientific sources of knowledge "are in a position to contribute to lasting change and prosperity. However, "the manner in which spiritual perspectives are integrated into development activities must involve the same logical and rigorous methods employed by science. This will ensure that development efforts are anchored to tangible and objective outcomes. Indeed, if religion is to be the partner of science in the development arena, its specific contributions must be carefully scrutinized."

[54] "Rights-based approaches." Human Rights in Development. Office of the High Commissioner for Human Rights. 29 June 2009 <www.unhchr.ch/development/approaches-04.html
[55] Ibid.
[56] Institute for Studies in Global Prosperity, supra note 53. The document states that when such principles are fully integrated into community development activities the ideas, insights, and practical measures that emerge are likely to be those that promote self-reliance and preserve human honor, thereby avoiding habits of dependency and progressively eliminating conditions of gross economic disparity. An approach to development that incorporates moral and spiritual imperatives will more likely lead to enduring changes in both individual and collective behavior.

As an initial step in examining how the process of devolved collaboration may advance towards achieving its overarching aims of equity, accountability, fairness and transparency, the following elements of an evaluation framework are explored as an approach to examining the success of devolved collaborative efforts from a principle-based perspective.[57]

This evaluation is based on a framework that measures long-term progress toward sustainable prosperity through analyzing the development of consultative skills, group dynamics and attitudinal change based on a shared conception of rights and responsibilities.[58] This framework requires that "the seemingly antithetical processes of individual progress and social advancement, of globalization and decentralization, and of promoting universal standards and fostering cultural diversity, be harmonized."[59] The capacity based-indicators include[60]:

- *Local Participation and Consultation*
- *Respect for Unity in Diversity of Culture and Viewpoints*
- *Independent Investigation/ Fact-Finding*
- *Social and Environmental Stewardship*
- *Equity and Justice*
- *Women's Participation*
- *Sustainability*
- *Trust and Cooperation*

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[57] Principle based decision making is increasingly being found as the most effective form of practice. Evaluating decision making from a principle-based perspective then is increasingly consistent with best practice. See: Roger Fisher and William Ury, Getting to Yes: Negotiating Agreement without Giving In, Penguin 1981.

[58] See: "Valuing Spirituality in Development" prepared by the Baha'i International Community for the World Bank's international development/interfaith dialogue held in 1998.

[59] Bahá'í International Community, supra n. 5

[60] Many of these indicators arouse out of a global dialogue conducted in 1999 by the World Bank. These indicators are grounded in international rights-based principles echoed in the Comprehensive Development Framework dialogue conducted by the World Bank's Operations Evaluation Department (OED) in the Summer of 1999 and a document, "Valuing Spirituality in Development" prepared by the Baha'i International Community for the international development/interfaith dialogue.

From the perspective of this evaluation methodology, evaluation is conducted in a learning framework in which areas for further refinement are embraced as opportunities to reach higher standards of development. Progress is viewed "not [as] an event or a statistic, but a process – a trend made up of numerous factors."[61] Below we will examine each indicator in greater detail. Each evaluation section begins with a capacity-based measure, followed by insights from researchers in the field of community and natural resource mediation and a set of possible questions for evaluation.

Indicators of Progress

Local Participation and Consultation

While not sufficient by itself in achieving successful devolved collaboration, meaningful local participation in the "conceptualization, design, implementation and evaluation of the policies and programs" has been associated with long term sustainable development.[62] Recent research has found that such systems "maximize[e] the opportunity for effective… management and the successful creation, implementation, and management of organizational change."[63]

Direct participation by the members of a local community is among the necessary mechanisms to ensure that relevant pragmatic and principle based contributions are integrated in the development process. With regard to the nature of that participation,

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[61] Ibid.
[62] Ibid.
[63] Carter, Stephanie, "The Importance of Party Buy-In in Designing Organizational Conflict Management Systems" (in Mediation Quarterly, Volume 17, Number 1, Fall 1999, Jossey-Bass Publishers)

it must be, "substantive and creative; it must allow the people themselves access to knowledge and encourage them to apply it."[64]

Sustainable participation is ensured through "a process of joint diagnosis," which then leads to the generation of "appropriate remedies to fit the organization's unique needs." [65] Consequently this "[h]elps organizational members learn to diagnos[e] and remedy situations themselves and teaches them skills necessary to solve new problems as they arise" [66] and creates a "vested responsibility for the successful operation of the conflict management system."[67] Carter notes that long term change can occur "because

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[64] The Institute for Studies in Global Prosperity has identified a number of capabilities needed for effective participation. These include:

> the capacities to take initiative in a creative and disciplined manner; to think systematically in understanding problems and searching for solutions; to use methods of decision-making that are non-adversarial and inclusive; to deal efficiently and accurately with information rather than respond unwittingly to political and commercial propaganda; to make appropriate and informed technological choices and to develop the skills and commitment necessary to generate and apply technical knowledge; to organize and engage in ecologically sound production processes; to contribute to the effective design and management of community projects; to put into place and to participate in educational processes conducive to personal growth and life-long learning; to promote solidarity and unity of purpose, thought, and action among all members of a community; to replace relationships based on dominance and competition with relationships based on reciprocity, collaboration, and service to others; to interact with other cultures in a way that leads to the advancement of one's own culture and not to its degradation; to encourage recognition of the essential nobility of human beings; to maintain high standards of physical, emotional and mental health; to imbue social interaction with an acute sense of justice; and to manifest rectitude in private and public administration.
> According to the Institute, this "list is suggestive of the constellation of capacities necessary for building up the social, economic, and moral fabric of collective life. The list highlights the vital role of both scientific and religious resources in promoting development." In addition, this list alerts "us to the range of values and attitudes that enhance key capacities, as well as the concepts, information, skills, and methods to be employed in their systematic development." Significantly, "it also underscores the importance of structured learning in generating and sustaining an integrated set of social and economic activities."   The challenge to the individual, institutions and the community is to "learn to use material resources and intellectual and spiritual endowments to advance civilization."

[65] Schein, 1988 cited in Carter, Stephanie, "The Importance of Party Buy-In in Designing Organizational Conflict Management Systems" (in Mediation Quarterly, Volume 17, Number 1, Fall 1999, Jossey-Bass Publishers)

[66] Constantino and Merchant 1996, cited in Carter, Stephanie, "The Importance of Party Buy-In in Designing Organizational Conflict Management Systems" (in Mediation Quarterly, Volume 17, Number 1, Fall 1999, Jossey-Bass Publishers)

[67] Ibid.

stake-holders are involved in "shuffling the deck" rather than simply being dealt "a new hand.""[68]

Consultative decision making, which encourages drawing on the strength of a group, focuses on diagnosis of the underlying issues of the conflict. This includes how each individual thinks about the conflict, and how each perceives the underlying issues. Intervention is then based on a process of information gathering. If a unanimous decision is not possible, then the group will proceed on the basis of a majority vote.[69]

Beyond the traditional party-party conception of conflict, each individual is challenged to see him/herself as a member of a group seeking to find an appropriate solution.[70] This expands the circle of who is actually involved in the process.

Drawing from the above findings, it is suggested that an evaluation framework include the following questions for assessment of devolved collaboration focusing on sustainable natural resource use:

1. To what extent are participants involved in the identification of the aims of the consultation process?

2. How representative of the local community and interests is the group?

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[68] Ibid.

[69] Baha'i International Community, "Consultation," available at: info.bahai.org/article-1-3-6-3.html

[70] The first stage of the consultative process begins with seeking out a common point of unity. This could be either a point of commonality (wanting to resolve the issue) or a point of unity (created by the group). Second, each member of the group is encouraged to take time for personal and group preparation. Because this method of decision making "relies upon the empowerment and self-direction of the individuals in the consultative group, it requires that they constantly remind themselves, both before and during the process, about the essential requirements of the process…"70 Among the capacities the group is encouraged to focus on are: detachment, freedom from prejudice, cooperation, humility, and constant attention to the all important principles of unity, truth and justice. In addition the group is given its own time to prepare as a whole, keeping in mind that its purpose is to work together to find the best answers and solutions to the issues involved. Following this stage of preparation, the group decides if it would like to proceed with the process.
    Third, the group proceeds to systematically review and discuss the issues at hand. Each member is given the opportunity to share his/her ideas, thoughts and concerns. The group is encouraged to be open, honest and truthful and to regard the ideas presented to the group, as the property of the group as a whole. Finally, the group will come to a decision about the best course of action.

3. To what extent do the participants experience a sense of ownership in the process?

4. How accessible is the consultation venue to all participants?

5. Is the decision carried out?

6. What are the group's mechanisms for self-evaluation?

Trust and Cooperation

A challenging though important standard of measure of the success of a devolved decision making process is the level of trust and cooperation sustained by members of the group. Because the existence of a high level of trust creates an environment amenable to information sharing and cooperation, trust is a necessary prerequisite to successful group decision making, sustainability and progress. Questions to assess the level of trust and cooperation may include:

1. Do participants follow through with their commitments?

2. To what extent are members of the decision making group share and disclose relevant information?

3. To what extent was a collaborative tone maintained?

4. How explicitly are parties able to identify what they came to resolve?

Respect for Unity in Diversity of Culture and Viewpoints

Recent studies on cross-cultural decision making have pointed out the necessity of sensitivity to diversity in order to avoid "negotiation failure" "misperceptions" and "incorrect attribution of motive" particularly when "the cultural gap between the

negotiation parties is wide, when the actors just meet once and when highly symbolic issues are at hand."[71]   In particular, according to Glen Fisher, cultural misunderstanding can result in: "conditioning one's perception of reality, blocking out information that is inconsistent with culturally grounded assumptions, projecting meaning onto the other party's words and deeds, and impelling the observer to incorrect attribution of motive."[72]

The capability of operating within a framework that views "the advantage of the part in a world society is best served by promoting the advantage of the whole"[73] is critical for effective cross-cultural decision making. This perspective, it is suggested, is one which must be conscientiously nurtured, cultivated, and developed over time, and eventually integrated into the method of devolved decision making, information sharing, and planning. Drawing from the above findings, relevant questions for evaluation may include:

1. To what extent are diverse cultural forms of communication and decision making welcomed in the consultative process?
2. To what extent do participants view themselves and others as members of a collective decision making body?
3. What level of partnership exists between all counterparts?
4. To what extent are facilitators informed by a principle of respect for the unity and diversity of the cultures of the participants?
5. Does the language of the consultation reflect the diverse language abilities of the participants?

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[71] Berkcovitch, Jacob and Elgstrom, Ole, "Culture and International Mediation: Exploring Theoretical and Empirical Linkages" (in International Negotiation, Volume 6, No. 1, 2001)

[72] Ibid. citing Fisher.
[73] Bahá'í International Community, supra n. 5

6. Is the location accessible to a large majority of the participants?

Independent Investigation/ Fact-Finding

The ability to independently investigate the conditions within a given community and search for common solutions requires an effective process of joint fact-finding and investigation. Achieving this objective requires that "mechanisms be established and avenues be opened for community members to participate meaningfully in the conceptualization, design, implementation and evaluation of the policies and programs that affect them"[74] Scott T. McCreary, John K. Gamman, and Bennett Brooks in the Summer 2001 publication of Mediation Quarterly, have observed that, "Resolving a complex public policy dispute requires that interested parties share understanding of the technical dimensions of the problem they face…the very best scientific information must be collected and used."[75]

Drawing on the above findings, the achievements of joint investigation can be measured on the basis of a number of criteria, including:

1. How clearly is the question under investigation framed both from a scientific and principled perspective?

2. To what extent do participants pool relevant information?

3. How accessible and objective is information for all participants in the dialogue?

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[74] Bahá'í International Community, supra n. 5
[75] McCreary, Scott T., Gamman, John K. and Brooks, Bennett, "Refining and Testing Joint Fact-Finding for Environmental Dispute Resolution: Ten Years of Success" (Mediation Quarterly, vol. 18, no.4, Summer 2001)

4. What is the extent of community participation in all phases of consultation and implementation?

Social and Environmental Stewardship

The principle of social and environmental stewardship views each member of a community as stewards of the local resources and biological diversity. Use of the earth's natural resources, both renewable and non-renewable, aim for sustainability and equity and "require full consideration of the potential environmental consequences of all development activities"[76].

From the perspective of sustainability, the evaluation of the social and environmental impact of the consultation group is a "highly complex affair, and… is reflected in the evaluations made by the participants themselves."[77] Questions that may be explored include the following:

1. To what extent does each member of the community view him/herself as stewards of the local resources and biological diversity?
2. Are environmental consequences of activities examined in light of the goal of achieving sustainability and equity in the use of renewable and non-renewable resources?
3. In the course of the consultation, is a significant level of knowledge gained with respect to the social and environmental situation and resources in the community?

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[76] Bahá'í International Community, supra n. 5
[77] Holzinger, Katharina, "Evaluating Environmental Mediation: Results from a Waste Management Conflict in Germany" (in Mediation Quarterly, Volume 18, No. 4, Summer 2001)

4. What changes occurred with respect to improving the social, environmental and economic conditions in the community?

5. How will lessons learned be incorporated into future implementation?

Equity and Justice

The assessment of equity and justice in a decision making process, though extremely challenging as a measure, is nevertheless an important standard of evaluation. Equity can be understood as fairness, while justice is the <u>vehicle</u> through which "equity is applied"[78]. Han G. Gewurz in, "(Re)Designing Mediation to Address the Nuances of Power Imbalances", observes that depending on the nature of the power balance involved, and the style or approach of the mediator; particular approaches toward the facilitation process may be more or less effective in dealing with a type of power dynamic."[79] One of the main questions he offers is "whether there is likely to be an ongoing relationship in the future."[80] Drawing on the above findings, relevant questions may include:

1. What is the degree of participation by those community members typically excluded from the consultation process?

2. How is inequitable access to resources handled?

3. Are appropriate levels of government involved in the decision making process?

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[78] Bahá'í International Community, <u>supra</u> n. 5
[79] Gewurz, Han G, "(Re)Designing Mediation to Address the Nuances of Power Imbalances" in Conflict Resolution Quarterly, Vol. 19, Number 2, Winter 2001.
[80] Ibid.

Women's Participation

Women's equal participation in local decision making regarding community resources is critical to sustainable development.[81] Studies conducted during the UN Decade for Women have shown that "effective solutions to local problems, while often requiring resources from governments and outside agencies, need to be found in consultation with those to be served -- men and women. Women, therefore, must be included not only as implementers and beneficiaries of development projects, but as designers and planners."[82] Based on these findings, a relevant question for evaluation could include:

1.   To what extent are women and men, as partners, jointly involved in identifying the community's needs and responding creatively with appropriate solutions?

Suggested Research Approach/Methodology to Capture Learning on Sustainability

In order to examine the efficacy of devolved collaboration processes, community members are in the best position to reflect and observe consultative sessions. Recent findings have shown that in order to capture "evidence of participants both acting collaboratively… for community benefit and encouraging collaboration among their

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[81] See: Baha'i International Community, The Role of Women in Commerce in the Caribbean, 27-30 September 1988. It is common knowledge that systematic discrimination against women has not only made women the main victims of a spreading poverty, but has promoted unhealthy attitudes in men. Denied education and technical training, constrained by family, work, and social structures which give preference to men, and excluded from decision-making at all levels, women must often work in the non-formal sector of the economy as traders and walking food vendors, unprotected by legislation and not benefiting from general improvements in working conditions. Meanwhile, men develop attitudes of superiority and habits of oppression that they carry from the family, to the workplace, to political life and ultimately to international relations.

[82] Ibid

peers and constituents… research would be… served by examining exchanges between participants, not participants separately."[83]

Both qualitative and quantitative data can be collected to assist in the evaluation of devolved collaboration processes. Qualitative observations through interviews, case studies and examination of the documents and archives of organizations participating in the dialogue effort (memoranda, email, newsletters, meeting minutes, community media reports) can provide information on the nature of interactions among individuals and groups and the existence of collaboration to benefit the entire community.[84] Quantitative data can also be collected in the form of pre and post participation survey data examining the existence of selected principles in the decision making processes along a scale. Chi square analysis can be used to compare survey responses in order to test for the existence and significance of particular principles at work in the consultation process. Care must be given that such data is placed in a learning context, and that evaluation is oriented toward assisting groups to increasingly improve and refine the process of devolved collaboration.

Conclusion

Given the growing promise as well as challenges associated with devolved collaboration, evaluation tools measuring the existence of principle-based factors can contribute to increasing the success of collaboration efforts. With growing consensus regarding principles of consultative decision making, efforts to learn from, reflect on and evaluate programs according to shared standards provide an important measure of

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[83] Gwartney, Patricia A. Fessenden, Lynne and Landt, Gayle, "Measuring the Long-Term Impact of a Community Conflict Resolution Process: A case Study Using Content Analysis of Public Documents" in Negotiation Journal, Vol. 18, No. 1, January 2001.

[84] Ibid.

progress. They also provide a common language to communicate diverse experiences.

Further questions such as how feedback can be systematically integrated into the

refinement of local programs will need to be addressed. It is hoped that the above

discussion will contribute to this on-going effort to systematically improve the processes

of devolved collaboration.

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