A COMMONS PERSPECTIVE ON THE RESOURCE MANAGEMENT ACT: A TURNING POINT FOR RESOURCE MANAGEMENT IN NEW ZEALAND?

Professor Ali Memon
Environmental Management Group
Environmental Management & Design Division
Lincoln University
P.O. Box 84
Canterbury, New Zealand
tel +64-3-325-2811 x7868
fax +64-3-325-3845
memona@kea.lincoln.ac.nz

Dr John W. Selsky
Department of Management
University of Melbourne
Parkville, Victoria, Australia
tel +61-3-8344-4714
fax +61-3-9349-4293
jwselsky@unimelb.edu.au

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Abstract

New Zealand's Resource Management Act 1991 (RMA) was part of wide ranging structural and policy reforms that commenced in 1984 and continue to evolve. Multidisciplinary interest in the implications of these reforms has generated a wealth of literature by social scientists in New Zealand and elsewhere. However, an important topic that has eluded significant comment is a commons perspective on the management of resources such as water, fisheries and wildlife. In the commons literature, these kinds of resources have been of central concern as common pool resources, and examining the various regimes for their management has driven much commons scholarship. However, in a number of New Zealand based studies of specific resources, in particular water and fisheries, a commons perspective has been at most an implicit assumption and not an explicit framework for informing theory or a tool for guiding practice. Our two objectives in this paper are to bring the implicit commons assumptions to the foreground by demonstrating how the commons perspective can assist in understanding natural resource management issues and responses that have emerged during the last few years in New Zealand; and to comment on the strengths and weaknesses of the RMA for managing CPRs in New Zealand.

Key words: common pool resources, New Zealand, emergent commons

Introduction

Many of the major environmental issues that have captured the New Zealand public's attention during the last decade relate to the management of common pool resources. While longitudinal data to monitor changes in the state of the New Zealand environment is lacking, available information plus public media accounts indicate that the country's terrestrial, air and ocean commons all are under increasing pressure. Even compared to the opinions held only ten years ago, most stakeholders in New Zealand would now agree that its 'clean green' image is heavily tainted. These issues are, of course, not confined to New Zealand. The wider context is the increasing recognition globally of the need to understand the intimate linkages between key natural resources and environmental systems on the one hand, and the local and national institutions that regulate and manage them on the other hand. This recognition has been stimulated in part by commons scholars and has led to some important interdisciplinary theorizing about these linkages (e.g., Berkes & Folke, 1998a; Gunderson, Hollings & Light, 1995).

New Zealand's Resource Management Act 1991 (RMA) was part of wide ranging structural and policy reforms that commenced in 1984 and continue to evolve. Multidisciplinary interest in the implications of these reforms has generated a wealth of literature by social scientists in New Zealand and elsewhere. However, an important topic that has eluded significant comment is a commons perspective on the management of resources such as water, fisheries and wildlife. In the commons literature, these kinds of resources have been of central concern as common pool resources, and examining the various regimes for their management has driven much commons scholarship. However, in a number of New Zealand based studies of specific resources, in particular water and fisheries, a commons perspective has been at most an implicit assumption and not an explicit framework for informing theory or a tool for guiding practice.

Our two objectives in this paper are to bring the implicit commons assumptions to the foreground by demonstrating how the commons perspective can assist in understanding natural resource management issues and responses that have emerged during the last few years in New Zealand; and to assess the strengths and weaknesses of the RMA for managing that country's CPRs. An important question is the adequacy of the management regimes and practices embodied in the Act for managing complex common pool resource systems, as defined below. We focus on the Act's capacity for adaptive management (Berkes & Folke,

1998b) and learning (McCool & Guthrie, 2001), which are crucial for handling the dynamism of such systems. Our conceptual base draws on the first author's research on planning and the RMA (e.g., Memon 1993; Memon & Perkins, 2000) and on our previous joint work on complex CPR systems and emergent commons (e.g., Memon & Selsky, 1998; Selsky & Memon 1995, 1997, 2000).

The Challenge of Managing Common Pool Resources in New Zealand

The discourse of property rights has proved extremely powerful in shaping public policy in New Zealand since the mid 1980s. This discourse has been dominated by an underlying neo-libertarian ideology. This has encouraged and enabled private property owners to assert the dominance of individual private property rights over collective (community, common-property or public) rights. Wide ranging policy reforms have been carried out within this discourse during the last two decades in the form of corporatisation and privatisation of publicly owned "assets." These explicit government strategies (Duncan & Bollard, 1992) have successfully transferred ownership of a number of formerly publicly owned natural resources, such as forests and fisheries, to private ownership. This has important implications for the sustainable management of these resources.

The neo-liberal policy environment in New Zealand has also enabled and encouraged property owning groups such as farmers and private corporations to claim de facto proprietary rights in publicly owned resources, and over resources to which rights are not clearly defined. This has been contested by other users. Three recent examples in the Canterbury region include:

1. establishment of private marine farms along the coastline;
2. conversion of sheep grazing properties to dairy farms; and
3. impacts of corporatised port company activities on adjacent local communities.

We argue in this paper that these conflicts are not isolated instances but stem from a systematic application of a neoliberal ideology to environmental management in New Zealand. One could cite comparable examples of dominant elites exercising private property rights to formerly public natural resources in all regions of the country.

In the examples above, if the resources are viewed as common pool resources, then the assertions of private property rights may be interpreted as new enclosures of the commons. For example, in example #1, the public coastal marine space is enclosed through its

occupation by marine farming applicants. In example #2, the farm conversions have stimulated an intense competition for water for stock and to dilute waste, thereby appropriating more public water. In example #3, the port operations have violated de facto rights to amenity resources assumed to be a commons by local residents. Like the enclosures of common land in the UK in the early 19th century, these modern day enclosures have unsettled norms and institutional arrangements that had existed in New Zealand society for several generations, arguably since European colonisation of the country in the early-mid 19th century. These situations have led other stakeholder groups in non-dominant positions to respond by asserting *de facto* rights to some of these enclosed resources. This has led to growing competition and conflict between different stakeholder groups in urban and rural areas. In previous papers we have characterised this as an emergent commons situation associated with managing a complex CPR system (Selsky & Memon, 1997, 2000).

The state is finding it difficult to adjudicate such conflicts among different stakeholders. The RMA is the main statute for resolving environmental conflicts in New Zealand. This groundbreaking legislation was enacted with high expectations in 1991, as the final outcome of several years of delicate, complex negotiation and compromise among various stakeholders. However, as we discuss below, effective implementation of the Act for managing common pool resources has been constrained in a number of important ways.

Commons Theory as a Framework for Analysing the Management of CPRs

The issue of how commons emerge and evolve in complex contexts is important for both theoretical and practical reasons. Theoretically, the grounding of much commons theory in examinations of long-standing, natural-resource based commons has emphasized how homogenous groups of local appropriators build and maintain institutions, but has downplayed how they assert rights to resources (Goldman, 1998), how they *re*construct institutional arrangements (Steins, 1999), and how they intersect with larger but still local social systems.

From a practical stance, the intentions and goals of national-level or extra-local policy makers may be confounded when local officials and other players try to shape policy into local arrangements or "rules". Different user groups and stakeholders may benefit or be disadvantaged from any particular distribution of rights and any particular arrangement of local institutions. These power-related implications may give rise to assertions and denials of

rights and to resistances, co-optations and manipulations of local arrangements as various stakeholder groups strive to fulfil their interests. Interpreting these sorts of interactions as commons processes may yield practical guidance for policy makers concerned with resource management issues.

When collectivities of actors in a domain voice their interests they become potential appropriators of various local resources in the present and the future, and they become potential claimants to the rights attached to those resources (Bromley, 1989). The actors may seek or expect to participate in decisions regarding the appropriation of those resources or satisfaction of those rights (Steins & Edwards, 1999). Moreover, the groups' interests may change over time, and this opens the possibility of new forms of collective action emerging. Their behaviours and institutions may resemble a commons, although conventional commons theory may not recognize it as such.

Bromley (1989) notes that ambiguities in rights are common and are not important unless and until the resource in question becomes scarce to a potential claimant (see also Schlager & Ostrom, 1993: 34, note 14). Local claimant groups can assert traditional and new rights and entitlements to local resources, and other locals may deny, affirm or contest them. The rights that count are those which are able to be asserted and defended over time, regardless of de jure distributions of rights. The contestability of property rights can create spaces within local social systems that function *as if they were* complex CPR systems (Selsky & Creahan, 1996: 347; see also Stave & Armijo, 2000). The as-if-ness is important for understanding new assertions of rights because it allows the conceptual frameworks of commons theory to be applied to those assertions, even if they are not sanctioned in commons institutions. The processes of assertion and defence of rights thus constitute an important part of a commons and help to distinguish a commons from its embedding social system.

To understand the dynamics of such conflicts, it is useful to distinguish property rights in terms of diverse bundles of rights that may be held by the users of a resource system. A property right is "the authority to undertake particular actions related to a specific domain" (Schlager & Ostrom, 1993: 14). With regard to common pool resources, there are five classes of property rights (ibid.: 14-15):

- access – the right to enter a defined physical property;

- withdrawal – the right to obtain the "products" of a resource, e.g., catch fish, abstract water;
- management – the right to regulate internal use patterns and transform the resource by making improvements;
- exclusion – the right to determine who will have an access right, and how that right may be transferred; and
- alienation – the right to sell or lease either or both of the above last two collective choice rights.

Arraying these bundles of rights enables a distinction among four classes of property-right holders: authorised user (access and withdrawal rights); claimant (plus management rights); proprietor (plus exclusion rights); and owner (plus alienation rights). Such rights are specified in law (de jure) and/or in custom (de facto) and may change over time. In existing commons, rights are preceded by rules, i.e., "prescriptions that create authorizations" (ibid.). Issues of participation (e.g., who may contribute to decision making, such as resource users) may apply to rule making (e.g., regulatory decisions) or to rights authorization (e.g., allocation decisions) (Hanna, 1995) in any of the five classes. Broad participation of stakeholders may increase the legitimacy of a resource management regime (ibid.).

Historical Antecedents & Contemporary Land Ethic

Arguably, values that sanctify private property in regards natural resources are not alien to New Zealand culture. As members of a post-colonial, property owning capitalist society, the majority of Pakeha New Zealanders[1] have historically been vigilant about private property rights and their legal protection. The ethic of private ownership and the alleged right to do what one wants with their land is deeply embedded, particularly in the rural society. In the distinctive bicultural New Zealand context, that ethic manifested historically in the Land Wars during the mid 19th century, leading to confiscation of Maori owned land and other natural resources by the state. These resources were then either reallocated to Pakeha settlers or managed directly by the state. Present day attitudes can be traced back to such figural events in New Zealand's short (170-year) European history as a colonized society in the Antipodes.

[1] A Maori term in common parlance denoting New Zealanders of European heritage.

The traditional pre-colonial Maori economy and society, built primarily on communal foundations, was marginalised as a consequence of being dispossesed. The state played a pivotal role after the Land Wars in opening up land for European settlement and farm development. Assigning private property rights on a freehold or leasehold basis on the condition that land was cleared and brought into production was fundamental to this process coupled with provision of subsidised infrastructure services such as transportation and agricultural extension and research. Park (1995) has described the early colonial period of settlement as a systematic "campaign against nature".

Despite the importance accorded to the institution of the family farm as the basis of the country's economic prosperity, political stability and social wellbeing during most of the twentieth century, the state was the largest landowner and developer in New Zealand until the 1980s. In fact, widespread state intervention was accepted by most of the populace and the major political parties as imperative in order to promote land settlement and development of an agricultural export economy. The large central government development bureaucracies such as the Forest Service and Lands & Survey Department played a paternalistic role in New Zealand society until their demise in 1984. More over, until 1984, widespread state intervention in almost all facets of New Zealand society and economy was not perceived to be in conflict with the ethic of private property ownership. This is understandable in the context of the political economy of a European settler society in the South Pacific based on a dependency relationship with the “core” economy of Great Britain until Britain joined the Common Market.

The changes associated with the process of land settlement and development have had wide ranging impacts on the health of common pool resources on the basis of which New Zealand's comparative advantage in the global markets for wool and dairy products was established: destruction of wetlands through drainage, loss of biodiversity including native fish habitats, water pollution, proliferation of pests and weeds, pesticide poisoning of the countryside and soil erosion. A number of these environmental changes began to become visibly manifest as early as the 1930s. The natural capital of common pool resources was commodified and progressively depleted to produce primary products for overseas export markets and to accumulate financial capital. The farmers, foresters, fishers and miners were often given economic incentives by the state to harness these resources in a manner consistent with Hardin’s ‘tragedy’ thesis. That is, while title to Pakeha owned land was clearly defined

de jure (even though contested by Maori on the strength of Treaty of Waitangi rights), New Zealand's rich bounty of CPRs such as water, wetlands and fisheries were often treated as de facto open access resources because rights to these either were not clearly defined or were not effectively enforced by the state. The commonly held attitude, still prevalent today, is embodied in the Kiwi folk maxim, "she'll be right, mate". This is illustrative of that common belief in limitless natural abundance amongst settlers in the 'new worlds' of the Americas and Australasia (Flannery, 1994). The geographical consequences of such attitudes are most visible today in the total deliberate extermination of natural landscapes from New Zealand's lowland areas (Adams quoted in Park, 1995).

Despite apparently callous attitudes on the part of early mainstream society, a small minority of New Zealanders also recognised that the country had a distinctive and rich natural heritage that needed nurturing and protection. Since the very early days, the solace and the beauty of the mountainous countryside and forests were valued, if not taken for granted, by many (Wearing, 1996a). Such iconic images of New Zealand have become an important part of the New Zealand psyche and reflected in its art, culture and lifestyles (Wearing, 1996b). These images have been bootstrapped in a promotional image for internal and overseas consumption: the country and its products as 'clean and green.'

It is only now and almost reluctantly that New Zealanders are being forced to come to terms with the dissonance between their clean-green mental images of the country's environment and the progressive depletion of the natural capital of common pool resources. As Park (1995) has commented, New Zealanders have had neither the sense of place nor ecological consciousness to ask such questions or to explain what has happened. A majority of the inhabitants have been able to hold onto the clean-green myth for several reasons: the relatively small population dispersed over a large land area at relatively low densities in cities as well as in rural locations; relatively slow cumulative impacts of many environmental changes resulting from human activities; the absence of a significant urban industrial economic sector; acceptance that grassland monoculture on the plains was imperative for economic well-being; and relatively easy access to a still relatively uninhabited forested mountainous countryside for recreation. When a journalist recently wrote an article in the widely read international journal *Nature* describing New Zealand as a poisoned paradise, he was declared unpatriotic by a Cabinet minister. And a study released by the Department of

Conservation in 1996 electrified the country by documenting the poor state of New Zealand's resources and the lie of the clean-green image (Greenprint, 1996).

During the mid 1980s, a series of unprecedented changes took place in the course of New Zealand's development, changes which have exposed the once highly protected economy to deregulated market forces and external competition. These changes have had major environmental impacts. Under the aegis of the fourth Labour government, these changes were conceived and executed by a small, elite group of politicians, business people and government officials, whose primary motivation was to increase the competitiveness of the economy in the global economic order. The dominance of the ideology of the marketplace and a search for efficiency in the use of resources were hallmarks of these fundamental changes in policy direction. Besides deregulating the production and financial sectors of the economy, the reforms have been comprehensive in scope, including central and local government administration, environmental management, education and the provision of social services.

These changes in policy direction signified fundamental shifts in the workings of the country's political economy, and the traditional ethic of private property has been mobilised to serve that new order. Arguably, the non-interventionist rhetoric espoused by leading cabinet ministers (including the former Minister for the Environment) and influential interest groups (e.g., Business Roundtable; Federated Farmers) has only served to raise unrealistic expectations on the part of many rural and urban landowners regarding the sanctity of private property in terms of environmental regulation by the state.

The RMA may be seen as a product of the two currents described above: (1) New Zealanders' attempts to reconcile their traditional relationship with their bounteous natural environment and the progressive degradation of it; and (2) their recognition of the need for more robust institutional arrangements to manage the natural environment through neoliberally influenced policy mechanisms.

The RMA As a Policy Instrument for Managing Common Pool Resources

While much has been written about the efficacy of the Resource Management Act during the last decade (e.g., the edited collection by Memon & Perkins, 2000), no one has looked at it in terms of commons concepts. Doing so entails viewing the resources covered within the

ambit of the Act as CPRs, and viewing the Act itself as a commons institution designed to identify property rights arrangements that would produce an efficient allocation of economic goods and bads (Bromley, 1988). The Act focuses the assignment of property rights on predictable effects rather than on uses as under the previous regime. In the following two sections we comment on the RMA as a framework for managing simple and complex common pool resources.

The Act creates rational and streamlined procedures for decision-making for environmental planning and provides an integrated framework for managing all natural resources (land, air, water, coastal space and geothermal) except minerals. The central purpose of the Act is defined in terms of sustainable management of natural and physical resources, and that feature was considered globally innovative as well as ambitious at the time of its passage. The Act recognises that the state has an important role in managing these resources and defines a hierarchical, three-tier planning structure. This hierarchy is based on the assumption that decisions should be made as close as possible to the appropriate level of community of interest where the effects and benefits accrue. While central government's principal role is to oversee and monitor the Act, it also retains direct management responsibility for the allocation of Crown-owned mineral, energy and coastal resources. It also has a key role in setting national standards, such as for air and water quality, which are binding on all regional and district councils.

Most of the responsibility for identifying issues, developing policy responses and implementing and monitoring these responses has been delegated to two tiers of local authorities, and disputes are settled by the national-level Environment Court. *Regional councils* have direct responsibility for soil, water and geothermal resources and pollution control. They share coastal management with central government. The major administrative instrument is the resource consent for a project, and regional councils have approval power over these. *District councils* have the primary responsibility for land-use planning and noise control. Rights and obligations of the various parties are more clearly defined than before and the decision-making procedures for the different resources are consistent. The Act provides penalties and systems of enforcement to ensure that the law is upheld, as well as granting liberal opportunities for public participation regarding claims to all five classes of property rights identified by Schlager & Ostrom (1993) above. It also signifies the government's objective that developers and other resource users account for full environmental costs.

The structure of the Act also reflects a determination on the part of government for a deregulated land market as part of a more open and competitive economy; a move away from state involvement in promoting economic growth and towards a decentralised administration of regulatory controls; and the use of economic instruments rather than regulation to achieve good environmental outcomes. All **r**egulatory controls now have to be justified in terms of benefit-cost analysis. In contrast to the broad objectives of the previous planning legislation, and notwithstanding the definition of the sustainable management objective of the Act in section 5, the Act has been promoted by the government primarily as a law to control environmental externalities.

Despite the integrated and comprehensive scope of the Act, its structure makes a fundamental distinction between how land is managed and how water and air are managed. The Act stipulates that a landowner can undertake any activity on his/her land unless there are restrictions prescribed in a plan approved under the Act. In contrast, the presumption with respect to water and air is that no one is permitted to use these resources for a particular activity unless that use is authorised by a provision in a plan approved under the Act. This distinction recognises that land in New Zealand is predominantly privately owned and accords supremacy to private property rights. This has historically been the case in New Zealand. Politicians traditionally have always been solicitous of the rights of private landowners. The neo-libertarian pressure groups such as the Business Roundtable and Federated Farmers, with the support of the Treasury officials, made sure that this land ethic was firmly embedded in the RMA when it was enacted. The Treasury officials also held the view that common pool resources such as water could be managed most efficiently if they were privatised. Until recently, the Ministry for Environment in its submissions to proposed regional water plans took this stance as well.

Therefore, we see that the Act is underpinned by the assumption of the private-property regime as most desirable for natural resource management, not the common-property regime. The viability of the former assumption rests on secure and unambiguous property rights. The success of the quota management system for allocating and managing marine fishery resources in New Zealand is seen to attest to the success of the private property regime for managing common pool resources. However, we believe that it is more realistic to view the RMA in terms of the common-property regime because the property rights to natural and

social resources may be locally contended. Since the RMA was enacted, numerous instances have emerged of contention over access, withdrawal and even management rights to certain resources. Elected district and regional councils and the Environment Court have been kept busy adjudicating these disputes.

It is in the recognition of the dynamic nature of property rights that the RMA can be conceptualised as a policy tool for managing two classes of common pool resources:

- 'simple' common pool natural resources whose usage is restricted to members of a single appropriator group, e.g., farmers taking water from a stream to irrigate farms, or local Maori inhabitants harvesting eels from a lake.
- 'complex' CPR systems consisting of natural and social resources used by multiple stakeholders, e.g., urban drinking water or residential amenities. ('Stakeholders' are direct appropriators plus those with an expressed interest in the appropriation; see Selsky & Creahan, 1996.)

The RMA as a Policy Instrument for Managing Simple CPRs

We believe the single CPR framework is most relevant to inform the analysis of communally based institutional arrangements being developed by different New Zealand Maori *iwi* (tribes) and *hapu* (sub-tribes) to manage their natural resources. The resource ownership and management claims related to the Treaty of Waitangi were a significant policy issue in the resource management and related central and local government reform initiatives during the 1980s. From the Maori perspective, issues related to the ownership and control of natural resources (including land, water, air, geothermal, energy and mineral resources) have been at the heart of recent debates and decisions regarding how such resources should be managed. The Treaty of Waitangi guaranteed to the Maori ownership of these resources and, by implication, a major voice in their management. The resource management and local government reform initiatives during the 1980s were not successful in traversing wider constitutional issues relating to Maori ownership rights. Hence, the scope of the Resource Management Act is limited to recognising Maori values and increasing Maori participation rights, within the workings of the new institutional arrangements. Proposed reforms to empower iwi authorities as a form of local government to manage iwi owned resources were abandoned. Instead, Maori claims have had to be addressed during the 1990s through the

Treaty settlement process on a tribal basis. (The exception is the Treaty settlement of fishery claims on a pan-tribal basis.)

There are ongoing debates amongst the Maori about the role of iwi and hapu in communally owning and managing resources under their control. For example, the participation rights accorded to Maori under the RMA has enabled some iwi and hapu to secure sole tribal rights to resources such as harvesting eels in glacial lakes in the South Island. These rights were secured as part of the process of renewal of resource consents under the RMA for hydro power generation by private electricity companies. Eels in South Island lakes and rivers are regarded as a traditional food source by the Ngai Tahu and other South Island tribes. There are comparable communally based Maori initiatives (*mataitai* reserves and *taiapure*) to rehabilitate and manage traditional seafood gathering places in the coastal marine environment under the Fisheries Act. To date there has been limited documentation and analysis of the diverse Maori communally based institutional initiatives that have begun to take root during the past ten years (Ririnui & Memon, 1997).

There are also limited examples of local, single issue-based collaborative resource management arrangements within the predominantly Pakeha rural farming society. For example, voluntary associations have been set up in partnership with local government to ration the allocation of water for irrigation during dry seasons under the purview of the water allocation procedures in the RMA. These may be viewed as incipient co-management arrangements. As noted above, during the 1990s the possibility of using tradable permits as a means of developing a more flexible and efficient system of water allocation was persistently promoted by the conservative National party governments with the support of groups such as the Business Roundtable. However, regional councils have been slow to adopt fully fledged tradable water allocation regimes. Prevalent community attitudes in New Zealand still regard water as a freely available resource to all, not as a tradable commodity. With the assistance of the Ministry for Environment, a few regional councils have set up experimental regimes that permit limited trading of withdrawal rights amongst homogenous user groups such as orchardists (Memon, 1997). Such institutional initiatives can be evaluated within the framework of simple CPRs.

The RMA as a Policy Instrument for Managing Complex CPR Systems

Complex CPR systems (CCPR) (Selsky & Memon, 1995, 2000) are characterized by functional properties not found in conventional CPRs but which still satisfy the definition of a commons:

- *Multiple resource uses and user groups*: The uses and user groups tend to be overlapping and potentially conflicting. In a CCPR one cannot expect to find a single user group with primary affiliation with the resource and using the resource in the same way, and no other user groups. Yet, one can still expect to find joint use of the resource, efforts at maintaining the boundary between legitimate and non-legitimate appropriators, and participation in rule making and enforcement.
- *Variances between de jure and de facto property rights*: In a CCPR one cannot expect to find a stable and uncontested distribution of rights to a stable, consensually defined set of local resources. Yet, one can still expect to find assertions of old and new rights to local resources by local appropriators and potential appropriators and attempts to defend and institutionalize them.
- *Volatility in uses and institutional arrangements*: In a CCPR one cannot expect stable, persisting, local institutional arrangements. Yet, one can still expect efforts at local collective action to secure sustainable appropriation of crucial resources, or more broadly, to address shared resource management problems.

In previous work (Selsky & Memon, 1995) we claimed that resources subject to these properties gave rise to local emergent patterns in the use and management of the resources, hence the resources needed to be examined as a resource system. That is, in a CCPR one cannot expect that institutional arrangements designed for a dominant user group will generate intended outcomes. Instead, outcomes can be expected to be a function of the behaviour of all user groups in the resource system. This is because user groups respond to each other's actions and to the impacts of extra-local actors and rules. Extra-local rules – such as formal policy directives or informal normative guides – are interpreted locally and manifest in distinctive local patterns of decision and action, and ultimately in local institutions that get made up "on the ground". At an aggregate level, this local interactivity generates emergent patterns of use and management of the resource(s) which produce the system's outcomes (ibid.; Ostrom, 1990). An example is Stave & Armijo's (2000: 11) 'indirect subtractibility' in the Las Vegas Wash watershed, in which "one discharger's use of

the Wash as a conduit for wastewater may not affect another discharger's use, but it has the potential to erode the channel and alter the wetland ecosystem used by others."

Thus in CCPRs, resources and institutions have an emergent character which is often not visible in conventional commons theory. New rights assertions are a key characteristic. New resources may be discovered; they may 'emerge' as a newly recognised externality (usually negative) of the application of rights to existing resources. Such emergent resources are often social and are attached to an existing natural resource (e.g., tranquillity or views in a residential neighbourhood). New institutions may then struggle for expression to address de facto rights to the newly identified resources. We have called these processes *emergent commons* (Selsky & Memon, 2000).

An example is a study of evolving relations between a port company and its local community over an eight year period in Dunedin, New Zealand (Selsky & Memon, 1997; Memon & Selsky, 1998). Conflicts began when a variety of national statutes changed, as described earlier in this paper. This unsettled local arrangements and found expression in a new problem, the loss of residential amenity. The problem quickly became framed as one of collective action, and several residents groups formed to litigate against the port company's proposals for development of the port zone. Community members voiced their assumed rights to serenity in legal, media and civic forums, and were somewhat successful in sustaining those rights. After years of fruitless contention and litigation, the parties agreed to participate in an issues committee brokered by the city council. Over two years that forum helped the parties to understand their differences and take steps to reconcile them. This case may be analysed as a CCPR system, in that the resource system contained primary users/appropriators (e.g., residents, port workers) and various stakeholders (e.g., the port company, shipping companies, non-resident recreational boat owners, tourists, city council). An amenity commons arose out of the emergent patterns of use and management of the many resources associated with the local port, and a new institution arose to deal with these emergent patterns.

Towards an Assessment of the RMA for Managing Complex CPRs

The key question here is, to what extent is the RMA an adequate instrument for adaptive/reflexive learning and management in regards New Zealand's natural resources? It is instructive to view the RMA from this perspective because "…the way that planning

proceeds and the manner in which the public is involved in messy situations are different from how planning and public participation are designed for tame problems. In messy situations, emphasis must be placed on learning and consensus building" (McCool & Guthrie, 2001: 310).

This is consistent with the volatilities inherent in CCPRs. We believe the most revealing approach to evaluating the Act's effectiveness is its ability to manage *complex* CPRs and systems. Such an evaluation should be two-pronged: a process oriented evaluation focussed on decision-making dynamics amongst different stakeholders; and an outcome oriented evaluation judged in terms of environmental outcomes. We make preliminary comments below about the effectiveness of the RMA from a process perspective, in the absence of solid evidence about outcomes. We focus on the Act's administrative framework, the relation between national and local processes, and its ability to handle emergent commons

Strengths of the RMA

The first avenue for assessment concerns the administrative framework of the RMA. In a number of respects the Act is innovative as a framework for integrated management of common pool resources even though its effectiveness is debatable on the basis of recent implementation experience. The focus of the Act is on management of the environment in a holistic sense, grounded in the principle of sustainable management. It creates a relatively integrated and rational administrative framework for adjudicating conflicting rights claims. This is clearly an advance on the fragmented patchwork of statutes that the Act replaced. In statutory terms, the Act accords greater degree of 'common pool' protection to non-land resources (water, air, coastal space, geo-thermal) than to land resources, which are treated predominantly in private property terms. Thus, in theory, public interest(s) in non-land resources are now better protected than public interest(s) in land resources.

An important policy implication of the emergent commons concept bears on a second avenue for assessing the RMA as a commons institution, that is, the relation between national level policy (some commons theorists would call it 'exogenous' if the local commons is viewed as the unit of analysis) and local interests, rules and rights: "Government policies that have ignored the local knowledge of participants or underestimated their ability to solve collective-action problems have done great damage" (Keohane & Ostrom, 1995: 21). In addition, years of empirical research on CPR institutions has shown that "arrangements worked out by

participants, intimately knowledgeable about details of their activities, are likely to be more workable than blueprints developed by policy analysts and imposed by politicians and bureaucrats. Flexibility and a willingness to permit differently designed arrangements to develop on different issues" is crucial in complex and evolving situations (ibid.: 22), because "unanticipated reactions of involved parties" can frustrate the intentions of central policy makers and planners (Snidal, 1995: 68). Thus it is important to create national or larger-system policies that allow for varied expressions of local stakeholders and their assertions of *de facto* rights to local resources. The RMA is laudable as a model for democratic environmental governance because it devolves substantial responsibility for resource management to district and regional councils within a three-tiered structure of decision-making. The Act places importance on designing planning policies and regulations on the basis of a multidisciplinary knowledge base. Scientific, social and economic analytical knowledge and skills are a required input into the policy development and assessment processes as well as during policy implementation, monitoring and evaluation. Moreover, the Act is cognisant of cross-boundary issues. Its framers recognised that the environment is seamless and incorporated provisions for co-ordination amongst different agencies to address such interrelationships.

A third avenue for assessment concerns the extent to which the Act can handle the inevitable emergent commons that arise out of use and management of complex CPRs. In other words, how robust is it in the face of change and conflict? The RMA has essentially created favourable conditions for handling emergent commons. Its increasing provision for consultation and participation in plan making, as well as its resource consent process, allows for new assertions in allocation decisions. Essentially, these provisions evoke de facto rights that exist in the community and enable those rights to be brought into the formal institutional arena for consideration. It might be argued that this creates incipient co-management processes and provides a platform for emergent commons. For example, in the Dunedin case study mentioned above, the local community discovered the various proposals of the port company and was empowered to voice their concerns through the resource consent processes of the RMA. The residential groups that opposed the development plans of the port company also voiced their oppositional rights claims through litigation in the Planning Tribunal (later the Environment Court) established by the Act. Later they negotiated directly with the port company in the forum convened by the city council. Whereas the latter forum was not enjoined through a formal provision of the RMA, it could be seen as an outgrowth of the

application of the RMA's provisions in this particular case. In fact, the Act also does make provision for environmental mediation as an alternative dispute resolution technique. This is designed to overcome some of the drawbacks of adversarial decision-making procedures and encourage greater reliance on deliberative and communicative approaches to conflict resolution. It is important to note that the local community would not have been able to be so assertive or so participative in these matters under the previous institutional regime because the relevant platforms did not exist.

Some constraints on the effectiveness of the RMA

The effectiveness of the *apparently* generous public participation provisions of the Act has been compromised by several factors. First, the New Right rhetoric espoused until recently by the former Minister for Environment and some of his key officials in the Ministry have portrayed the Act as a reductionist, effects based statute rather than an integrated planning statute. These officials have admonished local authorities to administer the Act through "light handed" regulation. Even though the purpose of the Act in section 5 is defined broadly in terms of sustainable management inclusive of community well-being[2], the New Right discourse has sought to interpret the purpose more narrowly, limited to managing bio-physical impacts (Grundy, 2000). Some members of the former Cabinet deliberately cultivated highly unrealistic expectations on the part of the dominant elites regarding their presumed property rights.

Second, the view that the RMA imposes high transaction costs on business and therefore discourages investment has been consistently advocated by influential business groups over the last decade (including the American Chamber of Commerce!) (McDermott, 2000). These groups continue to lobby the government to make the RMA less 'restrictive,' that is, more sympathetic to protection of private property rights. Politicians tend to be supportive of these views, irrespective of political party colours, on account of the precarious situation of New Zealand's post-colonial economy in the global marketplace. The predicament has worsened since last year with the realisation that the wide ranging structural reforms implemented since the 1990s have not produced the anticipated economic benefits.

[2] There has been considerable contention over the inclusion of the social dimension of sustainability in the intent of the Act. Until recently the Ministry for Environment has sought to exclude it, but a number of decisions of the Environment Court support a broader interpretation of the Act which suggest that the social dimension could or should be considered.

Third, a popular rural view is that the RMA does not entitle local government to restrict traditional farm management practices. Until now, farmers in New Zealand have had a great deal of latitude in what they do on their land and strongly resent any interference. They also believe that under the prevailing 'user pays' ethos the beneficiary user groups or the government should compensate them for any property rights restrictions which are for community benefit (e.g., fencing margins of rivers and lakes, protecting areas of native vegetation). In terms of CCPR concepts, this represents a clear counter-assertion of rights.

Fourth, the playing field under the RMA has proved to be uneven. Developers have strong incentives to marshall professional expertise to support their applications to councils and at hearings before the Environment Court. While this is a risky game for them, they stand to make significant financial gains if the outcomes are favourable. By contrast, the 'average citizen', local communities and NGOs have to depend on their own more limited resources. In response to persistent concerns voiced about this imbalance, the government this year set up an environmental legal assistance fund to technically empower community groups to help overcome barriers to participation under the Act. An upper threshold of $20,000.00 per case has been set and eligibility is limited to matters of 'public interest'. A related concern is the commodification of resource consents (Gleeson, 2000). Developers put pressure on councils not to notify (i.e., publicize a formal invitation for public input on) applications as a means to fast track decision-making. The developers then attempt to obtain consent of opposing parties through financial inducements.

Fifth, some contend that the Maori have been disempowered by the Act (Matunaga, 2000). The RMA places significant obligations on those administering it to consult Maori. Nevertheless, for historical and other reasons, there is a great deal of ambivalence within the mainstream society about Maori being accorded a privileged status under the Act. On the other hand, some Maori are joining this 'game'. For example, a vast majority of the applications for marine farming in Canterbury are by the large Ngai Tahu tribe. Here we find the ironic situation of an indigenous people having to colonise their own ancestral marine territory. This is caused by the commodification of those natural resources, as inscribed in New Zealand's contemporary political economy and enshrined in its resource management statute.

Sixth, an adversarial mindset, carried over from the previous planning regime, has been reinforced by the new competitive neoliberal ethos. New Zealand's lack of a deliberative political culture is particularly manifest at the local and regional level. Typically, environmental conflicts have been resolved through adversarial contests amongst bureaucrats influenced by lobby groups, either behind closed doors or in the courts. Such entrenched attitudes constrain a reflexive and adaptive approach towards conflict management.

Finally, even though it is now manifestly clear that the RMA reflects the tension in the concept of sustainability among economic, social and ecological values, central government has refrained from providing strategic leadership to address this tension. The Ministry for Environment, established in the late 1980s as an advisory and advocacy agency for environmental policy, has been deliberately emasculated through lack of funding and other constraints. Local government agencies have also struggled in implementing the Act on account of lack of capability and funding constraints (May et al., 1996).

Conclusion: A Turning Point?

Is the Resource Management Act a turning point for resource management in New Zealand? The answer is not simple. On the one hand, one can say yes: The Act offers a much more comprehensive and integrated approach than the statutes it replaced; it adopts sustainable management as its foundational principle; and its neoliberal mode of operations is frame-breaking. On the other hand, one can say no: Observations of its workings during the past ten years show a continuance of past practices of interest group politics in resource management arenas that have undermined its holistic and idealistic principles.

Assessing the RMA as a commons institution stimulates other insights. Taking a design principles perspective on the RMA as a commons institution (Ostrom, 1990), one would predict the Act would be unviable because of the large number of 'users' covered by the Act, the complexity of uses of the nation's natural and social resources, its large scale and its wide scope. However, we have shown that taking an emergent commons approach allows for more possibilities. The Act does not take an explicit common-property approach, as it is firmly rooted in traditions of private property. Nevertheless, we have argued that a common-property perspective can be inferred, and indeed must be acknowledged because of the contestability of property rights to (natural and social) resources, and also because of the possibility of new assertions of (property) rights unleashed by the new consultation and

participation provisions of the Act. From this perspective, the Act must be adjudged positively.

The RMA embodies an important tension as a policy instrument for managing complex CPRs. Bromley (1998) discusses how sustainability cannot be achieved by assuming that satisfactory social order will emerge spontaneously from the workings of individual market transactions. A 'constructed order' is needed. In its broad scope, oriented towards sustainable management, the RMA is indeed a good example of a constructed order. The Act is also consistent with Bromley's (1998) advocacy of a rights-based approach to sustainability, "predicated upon rights for future persons and duties for those now living who sit in a position as dictator over the settings and circumstances that will be passed on to future persons" (p231). On the other hand, the ideology that has shaped the design and implementation of the Act is neoliberal, with its light-handed approach to regulating uses of land resources and land-based market transactions. Bromley notes that today "…the content and meaning of property rights in land are discovered as courts seek to reconcile the varied and conflicting interests in natural habitats" (p239). Observation of the workings of the RMA show that this is the case in New Zealand.

In a broad sense our equivocal assessment of the RMA is predictable. New Zealand, its natural and social resources, and its resource management institutions are part of a global struggle to come to terms with environmental mental models and practices that are increasingly seen to be unsustainable. The tension in policy development that we believe characterizes the Act reflects a wider evolving relationship between the natural environment and the institutions we construct to manage them. Bromley (1998: 239) believes the concept of sustainability encapsulates this tension: "Sustainability is at once a fine idea and a hopeless concept. It is good because it reminds us of the fate of future persons; it is hopeless because it begs for operational content." The RMA was and is ambitious in striving to give operational content to the sustainable *management* of a nation's entire set of natural resources, but it has been challenged in fulfilling that ambition by prevailing political realities. Like the discourse of sustainable *development* at the global level, the discourse and operation of the RMA in New Zealand is in danger of losing the connection with the underlying ethos of the commons.

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