Adaptive adjudication and multi-stable moralities: Human rights adjudication as a site of learning for social-ecological resilience

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Abstract

Learning is deemed essential by resilience scholars for the governance and development of social-ecological systems, as uncertainties, nonlinearities and surprise predominate. However, scholars have found it difficult to translate the types of learning required for ecological systems as pursued, for instance, in environmental management (where learning may involve the accretion of scientific information) to social systems in domains such as law (where learning may take the form of principled deliberation). It has been claimed on the one hand that while learning in resilience seeks contingent scientific truth, law seeks transcendent moral justice, and on the other that while resilience seeks flexibility and transformative change, law attempts to maintain certainty and surety. Resilience legal scholarship, primarily addressing statutory environmental law, has therefore sought to reform law to allow for adaptive experimentation and learning-by-doing in policy and management. However, the focus on traditional forms of statutory and administrative environmental law has worked to obscure the complex and dynamic ways in which law is beginning to address ‘hybrid’ social-ecological problems that involve both ‘technical’ and ‘principled’ forms of learning. By analyzing environmental cases heard at the European Court of Human Rights (ECtHR), this paper seeks to illuminate the ways in which the practice of legal adjudication – involving the interpolation of multiple ‘ways of knowing’ the environment – increasingly serves as a site of learning in the legal system. Attention to the content of legal deliberation reveals that truth and justice are not fundamentally separate but interactively and adaptively stabilized concepts. Meanwhile, in terms of structure, the ECtHR’s mandate to ensure respect of human rights in the legal systems of member states has produced new lines of accountability and means of environmental protection across multiple scales. Consequently, it is argued that if scholars are to fully understand the connections between law and learning for social-ecological resilience, more attention will need to be paid to the mechanisms – like the ECtHR – that facilitate the mutually adaptive evolution of fact and value in relation to divergent social-ecological contexts and scales. Adjudication of state policy frameworks that regulate environmental change in light of human rights norms helps to ensure that social and ecological understanding co-evolve in the context of a structured and principled discussion about value and human dignity.

Keywords: Adaptive governance, Cross, scale, Empowerment, Equity, Ethics, Justice, Learning, Resilience, Social, ecological systems, Ways of knowing

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