

Representation and Accountability in Decentralized Sahelian Forestry: Legal Instruments of Political-Administrative Control*

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I. Introduction	448
II. Political Decentralization and Community Participation: If Ever the Twain Shall Meet	453
III. Rural Administration and Representation	457
A. Chiefs	458
B. Councils	465
IV. Two Cases	468
A. Participation By Committee in Burkina Faso: The Forest of Nazinon.	469
1. Institutional Structure of the Project	469
2. Practice	471
3. Representation in Popular Participation	472
B. Participation through Local Government in Mali	474
1. The Institutional Structure of Participation	474
2. Representation in Popular Participation: Who Makes Decisions?.	475
C. Discussion: Who Benefits, Who Decides?	475
1. Who Participates in What Benefits?	475
2. Who Participates in Decisions?	477
V. Colonial Administration in the Participatory Era	479
VI. Conclusion	487

As a form of rule, apartheid is what Smuts [1936] called institutional segregation, the British termed indirect rule, and the French *association*. It is this common State form that I call decentralized despotism.

—Mahmood Mamdani¹

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1. MAHMOOD MAMDANI, *CITIZEN AND SUBJECT: CONTEMPORARY AFRICA AND THE LEGACY OF LATE COLONIALISM* 8 (1996). Mamdani is a leading African political scientist currently at Columbia University, with a joint appointment in Political Science and Anthropology.



I. INTRODUCTION

Policies of Indirect Rule under the British and Policies of Association under the French created an institutional segregation in which most Africans were relegated to live in a sphere of so-called customary law (or the *indigenat*), while Europeans and urban citizens obeyed civil law — customary law being an administratively driven form of state-ordained and enforced regulation.² In 1936, British colonial officer Lord Hailey wrote: “[T]he doctrine of differentiation aims at the evolution of separate institutions appropriate to African conditions and differing both in spirit and in form from those of Europeans.”³ Mamdani points out that “[t]he emphasis on differentiation meant the forging of specifically ‘native’ institutions through which to rule subjects.” He continues:

[A]lthough the bifurcated State created with colonialism was deracialized after independence, it was not democratized. Postindependence reform led to diverse outcomes. No nationalist government was content to reproduce the colonial legacy uncritically. Each sought to reform the bifurcated State that institutionally crystallized a State-enforced separation, of the rural from the urban and of one ethnicity from another. But in doing so each reproduced a part of that legacy, thereby creating its own variety of despotism.⁴

This article argues that by uncritically privileging local government and “customary” authorities, recent decentralizations and rural participatory development projects and policies can maintain and even deepen this ongoing legislated apartheid. New projects and policies launched within this highly unequal set of rural relations take on the contours of this context. While so-called “participatory” development projects are bringing benefits to rural West Africa, they cannot be widely transformative while embedded in a bifurcated political-administration. Without great care, they may reinforce the very structures of unequal privilege they seek to upset. Participatory approaches to rural development are in a bind. Such approaches must use or construct local representation if they are to proceed. They must do this, however, under conditions where locally accountable representative bodies are rare, and representative alternatives are difficult to construct beyond the temporary legitimating presence of outside development agents. They must do this in a context where rural authorities are upwardly accountable to the central state, rather than downwardly accountable to the local population.

Justifications for participatory and decentralized interventions are also similar to the ideological justifications for Association and Indirect Rule, which were presented as humanitarian attempts to “raise” the quality of African lives.⁵ Although colonial policies now look brute and unapologetic, they were

2. See *id.* at 3-8.

3. *Id.* at 7.

4. *Id.* at 8.

5. In 1909, Governor-General William Ponty argued that “[e]ach people should conserve its autonomy . . . in allowing each race to evolve according to its particular mentality, in conserving as much as possible, the

accompanied by idealist justifications strongly believed by their purveyors.⁶ In 1936 the liberal anthropologist Lucy Mair, who deemed the British and French systems of Indirect Rule and Association to be equivalent, wrote:

The basic aim of Indirect Rule is the development of an African society able to participate in the life of the modern world as a community in its own right. In territories where it is followed government does not accept the encouragement of European enterprises as a duty, but judges its value in the light of the contribution which it can make to African development. The other aspect of Indirect Rule — the preservation of African institutions where the needs of the Africans themselves do not call for their modification — is almost a natural corollary of this attitude toward European penetration

[. . .]

Under Indirect Rule the land of the territory is recognized as the property of the native tribes, and, though alienation is still permitted, the ruling principle is

individuality of the tribe, we shall contribute to favor the birth of individual effort in the midst of each group" RAYMOND LESLIE BUELL, *THE NATIVE PROBLEM IN AFRICA* 996 (1929). In 1917, Governor Van Vollenhoven of French West Africa remarked:

I have explained why we need the help of the chiefs These reasons are not in the chief's interests. The chiefs are not ancient sovereigns whose thrones we want to protect; the thrones either did not exist or else were destroyed by us and they will not be raised again. *Our reasons are solely in the interests of the people under our authority.*

Pierre Alexandre, *The Problems of Chieftaincies in French Speaking Africa*, in *WEST AFRICAN CHIEFS: THEIR CHANGING STATUS UNDER COLONIAL RULE AND INDEPENDENCE* 24, 65-66 (Michael Crowder & Obaro Ikime eds., 1970) (emphasis added). In 1932 Governor Brévié stated: "At a time when *we are trying to enrich our subjects* by giving them a methodical plan for production, [the chiefs] must be forced to be worthy of the gratitude of their people for the part they have played in this" *Id.* at 68 (emphasis added). Later, Brévié spoke of "*our desire to ensure a better future for their people . . .*" *Id.* at 70 (emphasis added). Of course, it is never certain that the governors truly believed what they said.

6. See Jean-Pierre Chauveau, *Participation paysanne et populisme bureaucratique: Essai d'histoire et de sociologie de la culture de développement*, in *LES ASSOCIATIONS PAYSANNES EN AFRIQUE: ORGANISATION ET DYNAMIQUES* 25, 25-60 (Jean-Pierre Jacob & Philippe Lavigne Delville eds., 1994); see also Alexandre, *supra* note 5, at 65-68; BUELL, *supra* note 5; MARGERY PERHAM LUGARD: *THE YEARS OF AUTHORITY 1898-1945* (1960). In 1922, Yves Henry, the Agricultural Inspector General of French West Africa argued for a participatory model of development "[t]o educate the peasant, give him the means to work well, then progressively bring to his land tenure improvements without which any program would be but in vain." Chauveau, *supra* at 31-32. He then asked:

How does one bring together a producer association and what financial means would one put at their disposition to improve tools and cultivation? In French West Africa, these associations find an excellent base in the private mutual assistance societies [*sociétés de prévoyance*] But their existence is not be assured, they will not fill their duties except under the double condition of being truly agricultural associations and of seeing the structure of the current mutual societies broken from their purely administrative organs that are suffocating them. [Because] the peasant does not understand them, his initiative will not be awakened, he will not clearly profit except if these organizations are not extremely supple and if the administrative tutelage needed at the beginning is relaxed bit by bit, to finally disappear and be replaced by a simple power of control.

Chauveau, *supra* at 32. With such plans, the administration of French West Africa created an agricultural policy believed to be based on the specificities of African peasants.

always that such alienation must produce beneficial results to the native community and must be accompanied by adequate compensation. Neither the wholesale transference of native populations nor the curtailment of their reserves to dimensions which make them unable to gain subsistence by their accustomed economic methods are permitted under such a system. Village life on the lands protected by the ancestral spirits, work organized through traditional systems of co-operation and fitting into the accustomed rhythm of alternating effort and recreation, by methods improved perhaps, not under the strain of necessity but through the incentive of increased returns, becomes the bases of an economic development, which, if properly guided, can be integrated into the structure of an African society instead of remaining an external disintegrating force.⁷

With "participatory development" substituted for Indirect Rule (and "indigenous groups" for "native tribes") this praise would sound like progressive policies today. Nevertheless, this article's critical look at decentralization and participation is not meant to condemn them as forms of neocolonialism. Rather it is intended to provoke examination of the colonial past and the decentralized, participatory, natural resource management approaches of the present, to identify how these "new" approaches could help usher in an era of rural enfranchisement.

Direct and indirect forms of local authority and those now described as democratic can all administer rather than enfranchise rural populations. Rural enfranchisement — the shift from subject to citizen — requires locally accountable representatives empowered to make significant decisions. Rural populations are not enfranchised by competitively elected representatives whose every decision must be approved by centrally-appointed administrators under the French system of *tutelle* (oversight). Nor are they enfranchised by representatives who have no powers of decision, local elections without independent candidates, and empowerment of non-accountable local bodies through indirect systems (through ad hoc committees, NGOs, chiefs, or other notables). The two critical characteristics of enfranchisement are: (1) downward accountability of local authorities; and (2) their empowerment through the control of valuable resources and significant decisionmaking powers. Under Indirect Rule and Association rural authorities were upwardly accountable to the central state.⁸ Elected representatives can be either upwardly or downwardly accountable, empowered or not, or under tight *tutelle*, depending on the constitution, organic code, electoral laws, and the multiple texts (including forestry codes) spelling out the division of

7. LUCY P. MAIR, *NATIVE POLICIES IN AFRICA* 12-14 (1936).

8. See MAMDANI, *supra* note 1, at 23-24. Upward accountability here is shaped by what Mamdani calls "administratively driven" laws: "[C]ustomary law was an administratively driven affair, for those who enforced custom were in a position to define it in the first place. Custom, in other words, was state ordained and state enforced." *Id.* at 22. "Under apartheid, 'the administrative powers of the chief were systematically strengthened' but were made accountable to 'a new consensus,' one that 'emphasized the state as the determiner of the consensus.'" *Id.* at 45. See also BUELL, *supra* note 5.

powers among levels of government and between representatives and administrators at each level.⁹ These legal codes circumscribe enfranchisement. Each must be scrutinized when claims of community participation or political decentralization are made.

Paralleling colonial patterns, current participatory efforts appeal for legitimacy to local, non-state authorities, supporting these authorities in the process. Chiefs are used in participatory projects as state administrators, intermediaries, or mere symbols of the "indigenous," thus legitimating the project to local populations while providing it with a local and native flavor for project personnel and advocating supporting participation from afar.¹⁰ Although used as if they were representative, chiefs may not represent or even be accountable to local populations. Nor may elected rural representatives be locally accountable. As this article shows, the structure of elections in Senegal and Niger makes elected representatives upwardly accountable to the central state, rather than downwardly accountable to the populations they ostensibly represent.¹¹ In Burkina Faso and Mali, where electoral codes foster downward accountability of representatives, they are integrated into projects and decisionmaking powers as advisors to administrative or project-created bodies, rather than as empowered decisionmakers.¹² This was the structure of Association and Indirect Rule: central control administered through local appointed authorities (whether called chiefs, councils, or administrators) backed by and advising the state, while presenting only a semblance of local representation.¹³ This is also the structure of "decentralized," "participatory" forestry in the West African Sahel.

Through forestry projects and policies in Burkina Faso, Mali, Niger, and Senegal, this article explores decentralized participatory development in a Francophone political-administrative context.¹⁴ It focuses on the legal-administrative instruments by which the state exerts control over forests — through control over local authorities and over the powers they are permitted to wield. This article examines the ensemble of legal structures that impinge upon those who make decisions regarding the disposition of forests, forest labor opportunities, forest market access, and forest benefits. Control over the disposition of forests is configured at the intersection of multiple laws — not by any one law alone. Forestry policies cannot tell us who controls forests any more than

9. See discussion *infra* Parts III, IV.

10. See NATIONAL RESEARCH COUNCIL, DEMOCRATIZATION IN AFRICA: AFRICAN VIEWS, AFRICAN VOICES 35 (Sahr John Kpundeh ed., 1992); Jane Guyer, *The Spatial Dimensions of Civil Society in Africa: An Anthropologist Looks at Nigeria*, in CIVIL SOCIETY AND THE STATE IN AFRICA 223 (John W. Harbeson et al. eds., 1994); Isaac Ncube Mazonde, *The Basarwa of Botswana: Leadership, Legitimacy and Participation in Development Sites*, 20 CULTURAL SURVIVAL Q. 56 (1996).

11. See discussion *infra* Part IV.C.

12. See *id.*

13. See discussion *infra* Part V; cf. MAMDANI, *supra* note 1; BUELL, *supra* note 5.

14. See discussion *infra* Parts IV, V.

electoral codes tell us the powers that representatives can wield. Once forestry laws indicate which resources and decisions are in the local public domain, then the structure of accountability of public representatives shapes whether those decisions are indeed being placed into "community" hands.

Laws, of course, tell only part of the story of who controls forest access. They are contested, circumvented, selectively applied, interpreted, and re-interpreted in their making and implementation.¹⁵ Law is embedded in a whole realm of extra-legal, social, cultural, and political-economic relations. These relations shape the effects and meanings of any laws or legal changes — whether of electoral codes or environmental regulations.¹⁶ These laws nevertheless have profound effects that make them the focus of this inquiry. Efforts at participatory rural development are often contradicted by political-administrative laws that systematically disable accountable local representation. This article identifies disabling and enabling laws that circumscribe the possibilities for expanded rural enfranchisement. It examines the legal structures that leave today's rural populations without representation in decisions affecting their everyday lives, and with little control over valuable subsistence and commercial resources. The problem faced in creating greater local participation involves not only fostering a strong beginning, but also involves dismantling the very political-administrative laws designed to prevent it.

Part I of this paper defines participation and decentralization, exploring the role of the state in bringing the concepts together. Part II outlines historical and current roles of chiefs and rural councils in rural representation. Part III presents two case studies with an analysis of the decisionmakers and those benefited by forest management. Part IV explores some of the broader relations between colonial and current practice in decentralized participatory forestry. This article concludes by arguing that decentralized and participatory approaches to natural resource management as currently designed are dangerously close replicas of the policies of the colonial era — Indirect Rule and Association — that managed,

15. See ROBERT BATES, *MARKETS AND STATES IN TROPICAL AFRICA* (1981); Jagdish N. Bhagwati, *Directly Unproductive, Profit-seeking (DUP) Activities*, 90 J. POL. ECON. 998, 998-1002 (1982); Anne O. Krueger, *The Political Economy of the Rent-Seeking Society*, 64 AM. ECON. REV. 291 (1974).

16. See JOHN L. COMAROFF & SIMON ROBERTS, *RULES AND PROCESSES: THE CULTURAL LOGIC CONTEXT* (1981); SALLY FALK MOORE, *SOCIAL FACTS AND FABRICATIONS: "CUSTOMARY" LAW ON KILIMANJARO, 1880-1980* (1986); GERTI HESSELING, *LEGAL AND INSTITUTIONAL INCENTIVES FOR LOCAL ENVIRONMENTAL MANAGEMENT* (International Development Studies, Roskilde University, Occasional Paper No. 17, Henrik Secher Marcussen ed., 1996); Ben Cousins, *How do Rights Become Real?: Formal and Informal Institutions in South Africa's Land Reform*, 28 IDS BULL. 59-68 (1997); Louise Fortmann, *Talking Claims - Discursive Strategies in Contesting Property*, 23 WORLD DEV. 1053, 1053-63 (1995); Jesse C. Ribot, *From Exclusion to Participation: Turning Senegal's Forestry Policy Around*, 23 WORLD DEV. 1587, 1589-92 (1995); Jesse C. Ribot, *Theorizing Access: Forest Profits Along Senegal's Charcoal Commodity Chain*, 29 DEV. & CHANGE 331-34 (1998); Franz von Benda-Beckmann, *Property Rights and Common Resources* (May 1995) (unpublished manuscript prepared for the Agrarian Questions Conference Wageningen) (on file with author).

rather than enfranchised, rural populations. The conclusion is that participatory decentralization requires locally-accountable representation of rural populations in matters of natural resource management and use. Locally-accountable bodies must hold powers over nature for successful decentralization to occur.

II. POLITICAL DECENTRALIZATION AND COMMUNITY PARTICIPATION: IF EVER THE TWAIN SHALL MEET

Decentralization is the devolution of central state assets and powers to local or private decisionmaking bodies: representative local government, local administrative branches of central government, non-state organizations (e.g., NGOs, cooperatives, associations) or private individuals and corporations.¹⁷ When powers are delegated to local branches of the central state, the process is called deconcentration — bringing government and its services closer to the population.¹⁸ Devolution to non-state bodies (NGOs, other private groups, or individuals) is called privatization — indeed it is a form of enclosure when it involves privatization of community or public resources.¹⁹ Devolution to community and representative local government is usually called political decentralization and can be a mechanism of community participation.²⁰ Following Donnelly-Roark,²¹ the term “participation” is used to mean power-sharing in decisionmaking. Participation must include real devolution of significant powers. Despite its problematic nature, the term “community” is used to denote the ensemble of a

17. See Fortmann, *supra* note 16.

18. “Decentralization” is any act in which a central government formally cedes powers to actors and institutions at lower levels in a political-administrative and territorial hierarchy. Deconcentration (or administrative decentralization) occurs when powers are devolved to appointees of the central government. “Bureaucratic decentralization” is another name given to deconcentration. See PHILIP MAHWOOD, *LOCAL GOVERNMENT IN THE THIRD WORLD* (1983); B.C. SMITH, *DECENTRALIZATION: THE TERRITORIAL DIMENSION OF THE STATE* (1985).

19. When powers are ceded from the state to non-state bodies such as private individuals or corporations, the process can be termed *privatization*.

20. The political, economic, and social significance of any act of decentralization or participation depends on what is being devolved and to whom. There are many powers and resources that can be decentralized to many different entities. Service provision responsibilities, assets of the state, regulatory powers, and decision-making powers can be decentralized to local branches of the central state, autonomous local state governance bodies, non-governmental organizations, individuals, etc. The political and economic meanings of a given act of decentralization, depends on *what* is devolved to *whom*. The political valence of decentralization cannot be assumed. Each act of decentralization must be scrutinized to understand its implications. In some instances, it can be the extension of the central state, the shedding of what should be central state responsibilities, privatization, or enclosure, etc. Decentralization can also be the creation of local autonomy under locally accountable representation when the right powers are devolved to the representative groups. In that case it can be a powerful form of community participation. It is here that participation and decentralization could converge. Decentralization of different powers and things to different bodies serve very different agendas. We need to examine what they are and how they function *case by case*.

21. See Paula Donnelly-Roark, *Reinventing Decentralization Burkinabé Style: Progress and Strategy Notes* (April 1997) (unpublished mimeo) (on file with author).

geographically specified local population.²² With respect to the West African Sahel, this term is used to refer to the village or the population under the smallest unit of local government. Here, community participation is the collective control of public resources and decisions.

In the 1980s the developmentalist view of the third-world state flipped from that of a progressive force of change and modernization to that of a primordial arena of greed, hindering development.²³ In the process the undifferentiated category of "civil society" flipped from being backward to being the source of creative energy for modern market-oriented change — if only the state could be rolled back.²⁴ A parallel reversal is underway in environmentalism.²⁵ Individuals and local communities are no longer viewed as environmental villains destroying

22. For an excellent discussion of the idea of "community," see Arun Agrawal, *Community in Conservation: Beyond Enchantment and Disenchantment* (University of Florida, Gainesville, Conservation and Development Forum Working Paper No. 1, 1997) (on file with author). My use of this term does not imply that community is only about solidarity or uniformity. Villages are highly differentiated communities. For further examples, see SARA BERRY, *NO CONDITION IS PERMANENT: THE SOCIAL DYNAMICS OF AGRARIAN CHANGE IN SUB-SAHARAN AFRICA* (1993); Henrik Secher Marcussen, *The Need for a New Perspective on the Sahelian State*, in *IMPROVED NATURAL RESOURCE MANAGEMENT: THE ROLE OF THE STATE VERSUS THAT OF THE LOCAL COMMUNITY* 24-25 (International Development Studies, Roskilde University, Occasional Paper No. 12, Henrik Secher Marcussen ed., 1994); Sara Berry, *Social Institutions and Access to Resources*, 59 *AFRICA* 41, 41-55 (1989); Thomas Painter et al., *Your Terroir and My "Action Space": Implications of Differentiation, Mobility and Diversification for the Approche Terroir in Sahelian West Africa*, 60 *AFRICA* 447-63 (1994); Ribot, *Theorizing Access*, *supra* note 16; Ribot, *From Exclusions to Participation*, *supra* note 16; Camilla Toulmin, *Gestion de Terroir: Principles, First Lessons and Implications for Action* 10 (1993) (unpublished discussion paper prepared for UNSO) (on file with author). Many planners, however, have wrongly treated them as uniform in the past. Painter et al., describe the interacting factors in Sahelian communities as including:

[T]erms of access to land; the size and quality of land holdings; gender; seniority; the ownership of livestock; participation in off-farm income-generating activities; status as founding member of the community or as an outsider; the size and maturity of households; access to domestic and extra-domestic labour inputs; wealth; political power; links with the state; access to credit and materials; types of production systems; membership of chiefly or noble lineages or of caste-like categories (such as ex-captives); and the nature and effectiveness of diversification strategies.

Painter et al., *supra* at 455. It is due to this diversity, that questions of community representation discussed in this article arise. The *gestion des terroirs* approach — one of the cutting edge donor-sponsored natural resource management schemes in Francophone West Africa — implicitly acknowledges the population of a *terroir* to be a community:

Gestion des Terroirs refers to the activities of community members as they go about using natural resources within the *terroir* for their livelihoods. By definition, they have a sense of collective claim on the *terroir*, and exercise some degree of social and politically sanctioned control over the terms of access to the resources by community members and outsiders.

Painter et al., *supra* at 450. Painter et al., also provide a well developed analysis of the limits of the *terroir villageois* concept, pointing out how *terroirs* are embedded in multiple relations that exceed their boundaries. *See id.*

23. See Peter B. Evans, *The Eclipse of the State? Reflections on Stateness in an Era of Globalization*, 50 *WORLD POL.* 62-87 (1997); James Ferguson, *Transnational Topographies of Power: Beyond "the State" and "Civil Society" in the Study of African Politics* (1996) (unpublished article manuscript) (on file with author).

24. "Civil society" is usually defined as the ensemble of non-state organizations and relations that constitute associational life. For a discussion of the term, see MAMDANI, *supra* note 1, at 13-21.

25. See Agrawal, *supra* note 22.

nature through ignorance, greed, and need,²⁶ and are instead viewed as heroes whose local knowledge and affinity with nature will save the earth's threatened resources.²⁷

Participatory approaches to environment and development received a great boost from these reversals in state-society polarity, which emerged from a long history of frustration with failed top-down approaches. These approaches sit comfortably at the intersection of indigenous rights movements, anti-statist sentiments of both the left and right, structural adjustment agendas, and fiscal crises of post-cold war third-world states. The privileging of civil society, of "indigenous" institutions, and of the "local" community all support a participatory approach to the various goals that outside — and many local — agents pursue. Participatory development has become a means to incorporate civil society into the decisions formerly reserved solely to state agents. Now that the state is perceived as bad, and civil society as good, decentralization and participation are avenues by which control is transferred from one to the other.

The last decade ushered in a global spate of new laws and projects to foster decentralization and participation in forest management (and natural resource management in general), on the rationale that these approaches can improve forest management, boost economic and administrative efficiency, address equity problems, foster development, and help save the environment.²⁸ Participatory

26. See generally PAUL R. EHRLICH, *THE POPULATION BOMB* (1978); DONELLA H. MEADOWS ET AL., *THE LIMITS TO GROWTH* (1974); Garrett Hardin, *The Tragedy of the Commons*, 162 *SCIENCE* 1243 (1968) (vilifying local communities).

27. See TARIQ BANURI & FREDERIQUE APFFEL MARGLIN, *WHO WILL SAVE THE FORESTS? KNOWLEDGE, POWER AND ENVIRONMENTAL DESTRUCTION* (1993); ELINOR OSTROM, *GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION* (1990); VANDANA SHIVA, *STAYING ALIVE* (1989); NARESH SINGH & VANGILE TITI, *EMPOWERMENT: TOWARDS SUSTAINABLE DEVELOPMENT* (1995); Darrell Posey, *Indigenous Management of Tropical Forest Ecosystems: The Case of the Kayapo Indians of the Brazilian Amazon*, 3 *AGROFORESTRY SYS.* 139-58 (1985); David Western & R. Michael Wright, *Background to Community-based Conservation*, in *NATURAL CONNECTIONS: PERSPECTIVES IN COMMUNITY-BASED CONSERVATION* 1-15 (David Western et al. eds., 1994).

28. In theory, participation can increase economic and managerial efficiency by: (1) allowing the local populations who bear the costs of forest use decisions to make those decisions, rather than leaving them in the hands of outsiders or unaccountable locals; (2) reducing administrative and management transaction costs via the proximity of local participants; and (3) using local knowledge and aspirations in project design, implementation, management, and evaluation. Participation can redress inequities by helping to retain and distribute benefits of local activities within the community. In this manner it could be a tool of social justice. Participation in the benefits from local resources can also contribute to development by providing local communities with revenues. See JOHN COHEN & NORMAN UPHOFF, *RURAL DEVELOPMENT PARTICIPATION: CONCEPTS AND MEASURES FOR PROJECT DESIGN, IMPLEMENTATION AND EVALUATION* (1977); JEAN-MARIE BALAND & JEAN-PHILIPPE PLATTEAU, *HALTING DEGRADATION OF NATURAL RESOURCES: IS THERE A ROLE FOR RURAL COMMUNITIES?* 245-347 (1996); NATIONAL RESEARCH COUNCIL, *supra* note 10; NANCY LEE PELUSO, *RICH FORESTS, POOR PEOPLE: RESOURCE CONTROL AND RESISTANCE IN JAVA* (1992); PUTTING PEOPLE FIRST: *SOCIOLOGICAL VARIABLES IN RURAL DEVELOPMENT* (Michael Cernea ed., 1985); WORLD BANK, *THE WORLD BANK PARTICIPATION SOURCEBOOK* 145-80 (1996). Aid organizations and national forest services also often assume that community participation in resource management results in better environmental practices. While such a claim has some logical underpinnings, it is not a demonstrated fact. See Peter D. Little, *The Link Between Local Participation and Improved Conservation: A Review of Issues and Experiences*, in *NATURAL CONNECTIONS*, *supra* note 27, at 347, 347-72.

forestry is viewed as a way of achieving forest management while drawing on the skills, knowledge, and proximity of local populations, with the added benefit of introducing local autonomy and increased local income. Internalization and equity aspects of community participation, however, are predicated on the existence of a structure for community decisionmaking that is locally accountable and representative. These aspects also, of course, depend on the devolution of decisions over valuable resources (natural and financial) to these structures. Yet in the West African Sahel, the instruments through which communities are being involved or represented in decisionmaking do not constitute actual participation by the community.²⁹ Nor are locals who do "participate" (whether or not they represent the community as a whole) being allowed a voice in many of the critical decisions involving the disposition of forests or the benefits that flow therefrom.³⁰

Participation without locally-accountable representation is simply not community participation. Nor can it be called participation when representative bodies are created without real decisionmaking powers over the disposition of valuable resources. Many apparent decentralization efforts actually re-centralize with one law what they have devolved with another. In the cases examined here, when local structures are representative, few powers are devolved to them. Conversely, when local structures have powers, they are not representative, but rather centrally controlled. In the legal maze of decentralization and participation, "participatory forestry" efforts control the local level centrally through the intermediary of non-representative local, state, and non-state authorities.³¹ Rather than empowering or enabling, these policies control and administer the local, treating rural populations as subjects to be managed and used. For these reasons, new laws and projects masquerading as political decentralization or community participation must be carefully analyzed.

In lieu of opposing state and civil society, this article ends by attempting to bring the state back in as a legitimate representative of community — if and when local government is reformed. Community participation does not have to involve a state/non-state dichotomy. It can be about the structure and role of local state formations.³² It can address those whom local government represents and serves — the central state or local constituencies — and what powers they wield. Representation concerning public goods is ostensibly the role of states. However, these states should be downwardly-oriented, accountable to, and legitimated

29. See discussion *infra* Part IV.C.

30. See *id.*

31. See Jesse C. Ribot, *Participation Without Representation: Chiefs, Councils and Rural Representation*, CULTURAL SURVIVAL Q., Fall 1996, at 40-44; Ribot, *Theorizing Access*, *supra* note 16; see also Jesse C. Ribot, *Local Forestry Control in Burkina Faso, Mali, Niger, Senegal and the Gambia: A Review and Critique of New Participatory Policies* 17, 20, 25, 29, 35 (World Bank, Rev. Policies Trad. Energy Sector Discussion Paper, 1995).

32. See JUDITH TENDLER, *GOOD GOVERNMENT IN THE TROPICS* (1997); Evans, *supra* note 23.

from, below. They should not be upwardly and outwardly-oriented colonial and postcolonial states accountable to colonial rulers, centralized managerial governments, and international aid and financial institutions. Decentralization with participation requires a switch from the decentralized despotism of administrative apartheid to autonomous empowered forms of locally-accountable rural, representative government. This article problematizes local representation to ensure that inequitable forms are no longer relied on in an uncritical manner. If decentralization and participation are to converge, it will be through some form of generalized rural enfranchisement.

III. RURAL ADMINISTRATION AND REPRESENTATION

In the Francophone countries of the West African Sahel, decentralization and popular participation rely on at least three sets of laws. First are the organic codes or constitutions that set up the levels of government (national, regional, and local), among which powers and responsibilities are divided.³³ These codes determine the actors present at each level of government, the actors that are to be elected or appointed, and the relation between appointed and elected officials.³⁴ The second set of laws are electoral codes, which determine who shall be represented by elected officials, and how accountable these officials are to the public.³⁵ These laws determine when elections are held, who may run, and who may vote.³⁶ The third set of laws are technical codes. These bodies of law concern specific sectors of society and economy such as traffic laws, land tenure, forestry, and pastoral laws. They specify who gets to make which decisions over the sector in question — whether appointed officials, elected bodies, technical services (such as the Forest Service), corporations, cooperatives, NGOs, or private citizens.³⁷ These bodies of law determine who decides the disposition of trees and forests. They are upheld by judicial and enforcement bodies.³⁸ Together, these are the legal instruments of political-administrative control.

Chiefs and elected Rural Councils are the authorities that are set up by organic and electoral codes. Participatory development and natural resource management policies and projects usually rely on village chiefs or Rural Councils to represent rural populations — when they are attempting to be representative. This Part questions the degree to which chiefs or councilors represent or are accountable to the populations for whom they ostensibly speak. Chiefs are often seen by outside actors as a kind of authentic, primordial, pre-colonial, indigenous, local, and

33. See, e.g., MALI CONST. tit. XI-XIII.

34. See discussion and examples *infra* Part IV.C.

35. See *id.*

36. See *id.*

37. Forestry codes are discussed in Part IV.

38. See, e.g., MALI CONST. tit. VII.

therefore appropriate institution of community representation. A brief look at chiefs indicates that their representativity and accountability is problematic. Rural Councils, which are elected representative bodies, are also quite problematic because these institutions are structured in a way that also may not accountably represent local populations.³⁹

A. CHIEFS

In the West African Sahel, villages are the most common unit of social aggregation around which local use and management of woodlands are organized both by local populations and by outside agents.⁴⁰ Each village typically has a chief, and some have specialized chiefs overseeing forest use.⁴¹ There are also other poles of authority within villages, such as land priests, sorcerers, marabouts, Imams, non-village-based pastoral chiefs, griots, merchants, heads of certain castes (e.g., hunters in Mali), and chiefs of the young (*maasamari* in Niger).⁴² While these other figures are involved in resource management,⁴³ most

39. Many projects also approach sub-village groups such as fishers, woodcutters, pastoralists, farmers, women's, or youth associations. These groups, whether unions, cooperatives, NGOs, or associations, however, do not necessarily reflect the concerns of a village as a whole — particularly in matters concerning public resources such as forests, streams, pastures, or public works. While they are often treated as if they were representative, they are not. They represent their particular interests and their representatives or leaders are accountable to their particular constituencies — and often only to themselves. There is no systematic basis for them to speak on behalf of the community as a whole. In Senegal, for example, cooperative presidents — usually powerful notables — treat their cooperatives as private property, often filling them with family or dummy members to obtain state services to which cooperatives are entitled. See DONALD B. CRUISE O'BRIEN, *SAINTS AND POLITICIANS: ESSAYS IN THE ORGANIZATION OF A SENEGALESE PEASANT SOCIETY* 128 (1975); Jesse C. Ribot, *Market-State Relations and Environmental Policy: Limits of State Capacity in Senegal*, in *THE STATE AND SOCIAL POWER IN GLOBAL ENVIRONMENTAL POLITICS* 24-40 (Ronnie D. Lipschutz & Ken Conca eds., 1993). Spokepersons for various local movements or organizations are often self-appointed or sponsored by outside aid agencies or NGOs and non-representative. See NATIONAL RESEARCH COUNCIL, *supra* note 10, at 35; Guyer, *supra* note 10; Mazonde, *supra* note 10. The concern of this article is the ostensibly accountable and locally-constituted structures of rural representation (rather than on NGOs, business-oriented NGOs, governmental NGOs, private volunteer organizations, corporations, etc.); therefore, these latter groupings are not examined in any further detail.

40. See Thomas J. Bassett, *Introduction*, in *LAND IN AFRICAN AGRARIAN SYSTEMS* 6 (Thomas J. Bassett & Donald E. Crummey eds., 1993); Hubert M.G. Ouédraogo, *Les Coutumes Relatives a la Gestion des ressources naturelles au Burkina Faso*, FAO-LEG No. TCP/BKF/2352 (1994) (Programme de Cooperation Technique publication); Richard Roberts, *Conflicts over Property in the Middle Niger Valley at the Beginning of the Twentieth Century*, 25 *AFR. ECON. HIST.* 79 (1997); Rémi Kini, *An Evaluation Study of Natural Forest Management for Wood Fuel Production in the Sahel: A Burkina Faso Case 21* (1994) (paper submitted to Michigan State University in Partial Fulfillment of the Requirements for the Degree of Master of Science, Department of Resource Development) (on file with author); see also Ribot, *Local Forestry Control*, *supra* note 31, at 10.

41. See sources cited *supra* note 40.

42. See sources cited *supra* note 40.

43. See, e.g., CARE-Mali, *Ogokana* (Agriculture and Natural Resources Technical Report Series, Projet d'Agro-Sylviculture Villageoise de Koro, Dec. 1993).

state and outside organizations still privilege village chiefs as the primary connection to village populations.⁴⁴

Few references to chiefs focus on the village level. Most examine the canton, district, or paramount chiefs, operating at larger territorial-administrative scales. The French did, however, work with, depose, appoint, and regulate village-level authorities, deeply shaping the current legal standing and powers of village chiefs. The position of chiefs at all levels has been established or deeply transformed by the process of state formation in the colonial period.⁴⁵ Colonial rulers relied on village chiefs, disproportionately shifting power to them.⁴⁶ Chiefs were heavily tainted by the colonial experience, which had at once strengthened their powers through subjugation followed by European backing, and had undermined their legitimacy through the excesses and contradictions produced by the external backing and the exigencies of colonial administration.⁴⁷

Through the colonial period to the present, village chiefs have been integrated into the state as an administrative auxiliary to the prefect or *commandant du cercle*.⁴⁸ This role has been fraught with ambiguity and tension due to the dual allegiances of chiefs downward to their people and upward to the central state. The role of the chiefs is further stressed by the competing sources of chiefly power and legitimacy within local culture, and their role as links to, and agents of the outside world.

Pre-colonial chiefs derived their authority from a variety of sources: rights of conquest, control over land, direct descent from great ruling ancestors, and membership in a particular ruling family.⁴⁹ In 1896, shortly after the French military conquest of the French Soudan, Governor Colonel Louis de Trentinian argued for a native tribunal system in order to relieve French commandants of

44. See L. GRAY COWAN, *LOCAL GOVERNMENT IN WEST AFRICA* 44 (AMS Press 1970) (1958).

45. See *id.* at 44-45; CYPRIAN F. FISIY, *POWER AND PRIVILEGE IN THE ADMINISTRATION OF LAW: LAND REFORMS AND SOCIAL DIFFERENTIATION IN CAMEROON* (1992); Terence Ranger, *The Invention of Tradition Revisited: The Case of Colonial Africa*, in *LEGITIMACY AND THE STATE IN TWENTIETH-CENTURY AFRICA* 62, (Terence Ranger & Olufemi Vaughan eds., 1993); Jean Suret-Canale, *The Fouta-Djalon Chieftaincy*, in *WEST AFRICAN CHIEFS*, *supra* note 5, at 79-97; Alexandre, *supra* note 5, at 24; Peter Geschière, *Chiefs and Colonial Rule in Cameroon: Inventing Chieftaincy, French and British Style*, 63 *AFR.* 151 (1993); Alastair McIntosh, *Rethinking Chieftaincy and the Future of Rural Local Government: A Preliminary Investigation*, 13 *TRANSFORMATION* 27, 27-45 (1990); Roberts, *supra* note 40; Emile van Rouveroy van Nieuwal, *Chiefs and African States: Some Introductory Notes and an Extensive Bibliography on African Chieftaincy*, 25 *J. LEGAL PLURALISM* 6 (1987); Jean Suret-Canale, *La Fin de la Chefferie en Guinée*, 7 *J. AFR. HIST.* 459, 459-93 (1966).

46. See COWAN, *supra* note 44, at 44-45.

47. See FREDERICK COOPER, *DECOLONIZATION AND AFRICAN SOCIETY: THE LABOR QUESTION IN FRENCH AND BRITISH AFRICA* 12 (1996).

48. See CHRISTIAN LUND, *LAW, POWER, AND POLITICS IN NIGER: LAND STRUGGLES AND THE RURAL CODE* 67 (1998); Alexandre, *supra* note 5; Suret-Canale, *The Fouta-Djalon Chieftaincy*, *supra* note 45; Suret-Canale, *La Fin de la Chefferie*, *supra* note 45.

49. See Alexandre, *supra* note 5, at xi; Marja Spierenburg, *The Role of the Mhondoro Cult in the Struggle for Control over Land in Dande (Northern Zimbabwe): Social Commentaries and the Influence of Adherents* (paper for Center for Applied Social Sciences, University of Zimbabwe, Harare, Oct. 1995) (on file with author).

"little affairs."⁵⁰ Trentinian instructed his administrators: "Do not get mixed up in the many conflicts without significance, which demand understanding of the morals and traditions of the population. Instead, give additional prestige and authority to the native leaders, who are our indispensable intermediaries."⁵¹ These "native leaders" included notables, village chiefs, and marabouts.⁵² Trentinian's approach to native justice was later codified into law in a November 1903 decree, appointing the village chief and elders to preside over civil disputes. Courts of appeal were established at the levels of the Province and *Cercle*.⁵³ Roberts suggests that a 1905 appeal of a property case by local litigants to the higher courts already "hints at significant erosion of the 'principle' of collective property rights and the powers of the village chiefs."⁵⁴

As the French worked through and began to back local chiefs, they claimed to choose them — "as far as possible" — by "custom."⁵⁵ "In general, the first 'chiefs' [recognized by the French] were people who had served or entered into other relationships with the European authorities."⁵⁶ Under French colonial rule, Africans, such as cooks, translators, and soldiers, could be made into chiefs even if they were not from the region in which they were appointed.⁵⁷ In some cases the pre-colonial authorities sent captives or other caste persons to work with the Europeans.⁵⁸

In the 1930s, due to resistance to colonial rule, the French made a greater effort to align the appointment of chiefs with what they believed was local custom.⁵⁹ In 1934 a French decree covering Guinea required that village chiefs be "designated by the authority of family heads."⁶⁰ Starting in 1936 the colonial French West African government required that "the people" be consulted through the medium of village chiefs about the choice of a canton chief,⁶¹ reflecting presumed representativity and legitimacy of village chiefs.⁶² In 1947 the colonial government issued a decree on "Indigenous Rule in Senegal" stating that "[v]illage chiefs and commissions are elected by direct universal suffrage by the electors,

50. Roberts, *supra* note 40, at 89.

51. *Id.*

52. *See id.*

53. *See id.*

54. *Id.* at 85.

55. Alexandre, *supra* note 5, at 52-53.

56. JEAN-FRANÇOIS BAYART, *THE STATE IN AFRICA: THE POLITICS OF THE BELLY* 135-36 (1993); *cf.* BUELL, *supra* note 5, at 990; WILLIAM J. FOLTZ, *FROM FRENCH WEST AFRICA TO THE MALI FEDERATION* 12-13 (1965).

57. *See* van Rouveroy van Nieuwaal, *supra* note 45, at 6-7.

58. *See* BAYART, *supra* note 56, at 135-36; *cf.* Geschiere, *supra* note 45.

59. *See* van Rouveroy van Nieuwaal, *supra* note 45.

60. Alexandre, *supra* note 5, at 52-53.

61. *See* COWAN, *supra* note 44, at 177.

62. Proposed canton chiefs then had to be approved and appointed by the administration. *See id.* (citing the Arrêté of Dec. 28, 1936).

male and female," for a four year term.⁶³ But in 1957 the colonial government of French West Africa introduced legislation again limiting suffrage to household heads (as in 1934) and a specified list of notables, while limiting candidacy for the position to those from "families who have a right to the chieftaincy."⁶⁴ No limits were set on term lengths.⁶⁵ This is the system that was in place when these countries gained independence.⁶⁶

As instruments of French rule, chiefs were backed by the French military, allowing them to make and enforce native laws (through the system of native tribunals, *l'indigénat*), gather and deliver tax revenues, and recruit *corvée* labor and soldiers.⁶⁷ During the 1940s, however, chiefs lost much of the power assigned to them by the French colonial state. On one side, powers were shifting away from chiefs as the cadres of professional administrators and specialists within the bureaucracy grew and Africans were elected to political office.⁶⁸ At the same time, the authority of chiefs was weakened as they lost the power to recruit and use forced labor, and with the increased role of technical services and the activities of political parties among rural constituencies.⁶⁹ As Cooper writes of French West Africa, "The ultimate sign of a shift in the nature of authority was that 'traditional chiefs' in the 1950s tried to organize themselves into trade unions," to be set up regionally and regrouped under *Union Fédérale des syndicats des chefs coutumiers de l'A.O.F.*⁷⁰ By the end of the colonial period chiefs had risen to, and fallen from, the peak of their power.

At independence the French-educated young leaders of the new West African nations, Boigny, Touré, Senghor, and Keita, turned against chiefs, but chiefs persisted. As in the French colonial administration, chiefs in the new independent states were incorporated into the administration as civil servants, in pursuit of national unity.⁷¹ Despite their transformations, in the great majority of rural West African villages the village chief remains a principal authority.⁷² Their legitimacy is, however, "full of ambiguity," as noted by Ouali et al., from Burkina Faso's Decentralization Commission.⁷³ Being aware that chiefs were often creations of

63. Alexandre, *supra* note 5, at 58. It would be worth digging through the colonial record to find the story behind this short reign of universal suffrage and limited terms at the village level.

64. COWAN, *supra* note 44, at 178.

65. In South Africa, the governor of the colony could appoint and remove chiefs, and these chiefs were minor deputies to the governor beginning in 1891. See McIntosh, *supra* note 45, at 28-29.

66. See discussion *infra* in this Part.

67. See COOPER, *supra* note 47, at 276, 553 n.13.

68. See *id.*

69. See *id.*

70. *Id.* at 276.

71. See van Rouveroy van Nieuwaal, *supra* note 45, at 9, 21.

72. See *id.* at 23; Alexandre, *supra* note 5, at 24; FISIV, *supra* note 45; Firmin Ouali et al., Etude de base sur l'état de la décentralisation au Burkina 16 (1994) (unpublished summary report, Commission Nationale de la Décentralisation, Premier Ministère, Burkina Faso) (on file with author).

73. Ouali et al., *supra* note 72, at 16.

the administration caused "the *évolué* [the 'evolved' French-educated Africans] to look upon the chief, not as a representative of a way of life which is essentially African, but as a tool in the hands of the administration."⁷⁴ While chiefs cannot often oblige governments to take any positive action, throughout Africa they possess the power to hinder government policies by showing — as discreetly as they wish — that they do not favor popular cooperation. And so, although it is seldom mentioned in speeches and development plans, government officials in most countries go out of their way to obtain the local chief's consent to initiatives of various kinds.⁷⁵

In independent Senegal, Mali, Niger, and Burkina Faso there are still state-structured processes for choosing village chiefs.⁷⁶ In Senegal, village chiefs (usually the head of the hereditary male line) are elected by heads of households, who are virtually all male.⁷⁷ This system is identical to the colonial system first instituted in Guinea in 1934, and later, throughout the French West African colonies.⁷⁸ In Mali, under the new laws of decentralization, village chiefs are selected by a village council of five to seven members elected by universal suffrage in each village, but from a list of candidates selected by the appointed state administrator at the level of the *cercle*. The village council is presided over by this same state representative.⁷⁹ The term of the village council and chief lasts for five years.⁸⁰

In Burkina Faso, each village is divided into committees of youth (men aged eighteen to fifty), elders (men over the age of fifty), and women (all females over

74. COWAN, *supra* note 44, at 186.

75. See MAHWOOD, *supra* note 18, at 231. Indeed, as van Rouveroy van Nieuwaal states:

When we speak of chiefs in Africa in the present context we are not speaking about an extinct or even a dying species. We are speaking at most about a threatened one, threatened by the intervention of the legislator and the administration, who are all too often of the opinion that through legal reforms, institutions such as that of chieftaincy, still firmly entrenched in African society, can be blotted out or robbed of their legitimacy.

van Rouveroy & van Nieuwaal, *supra* note 45, at 23.

76. See Loi No. 007/93/ADP Portant regime electoral des conseillers de village, de secteur communal, de departement et de province (1993) (Burk. Faso); Loi No. 95-034, Portant Code des Collectivités Territoriales en République du Mali (1995) (Mali); Décret No. 72-636 du 29 mai 1972 relatif aux attributions des chefs de circonscriptions administratives et chefs de village, J.O. July 17, 1972, p. 965 (Sen.); Tidiane Ngaido, *Redefining the Boundaries of Control: Post-Colonial Tenure Policies and Dynamics of Social and Tenure Change in Western Niger 17-20* (1996) (unpublished Ph.D. dissertation, University of Wisconsin (Madison)) (on file with author).

77. Décret No. 72-636 du 29 mai 1972 relatif aux attributions des chefs de circonscriptions administratives et chefs de village, J.O. July 17, 1972, p. 968 (Sen.).

78. See Alexandre, *supra* note 5, at 52-53.

79. See Loi No. 95-034, Portant Code des Collectivités Territoriales en République du Mali, arts. 62, 70 (1995) (Mali).

80. See CODE ELECTORAL art. 171 (Sékou Mamadou Chérif Diaby ed., *Les Textes Fondamentaux de la III^e République du Mali* 1991) (Mali). The term of the chief is not specified, but presumably the position turns over with the council.

the age of eighteen).⁸¹ The representatives elected by each committee at national elections constitute a village council. The village council then elects from its members a village council president.⁸² "Customary" chiefs, however, remain as unofficial authority figures alongside these village presidents. In Niger, "traditional chiefs" have been officially recognized since the mid-1970s and their current status is laid out in a 1993 Ordinance,⁸³ according to which only those "of a given traditional or customary collectivity can be candidate to the chieftaincy of the considered collectivity, if he has customary right to it."⁸⁴ As Ngaïdo points out, "Chieftaincy becomes a caste in which only birth members can postulate to [the] role of chief."⁸⁵ Chiefs have the status of "administrative magistrate," allowing them to preside over local customary, civil, and commercial matters.⁸⁶ Chiefs in Niger also preside over a village council "elected or designated" by "local structures of participation" which include youth associations, cooperatives, socio-professional groups, and Islamic associations (such as the Imam).⁸⁷ The village council advises the local state administrator. "Customary and traditional communities are hierarchically integrated in the administrative organization . . . placed under the tutelage of administrative circumscriptions and territorial collectivities."⁸⁸

As discussed above, village chiefs in these Sahelian countries are not necessarily representative of, or accountable to, the populations over whom they preside. The official processes in Senegal and Burkina Faso systematically underrepresent or exclude women, though to a much lesser degree in Burkina Faso, where women have one third of the village vote.⁸⁹ In Niger and Senegal, chiefs hold their position for life.⁹⁰ They neither represent — in any procedural sense — nor are systematically accountable to the village as a whole. Further, in Niger, only members of an elite line, or "caste," can run for the office.⁹¹ In Burkina Faso and Mali the process for choosing village council presidents and village chiefs

81. See Loi No. 007/93/ADP Portant regime electoral des conseillers de village, de secteur communal, de departement et de province (1993) (Burk. Faso).

82. See *id.*

83. See Ordinance 93-028, quoted in Ngaïdo, *supra* note 76, at 18.

84. *Id.* art. 7.

85. See Ngaïdo, *supra* note 76, at 19.

86. *Id.*

87. The Nigerian state has viewed these institutions as means of managing the rural world. They are highly defined and structured by the state making them "tools with which to achieve the political management of society." Kent M. Elbow, *Legislative Reform, Tenure, and Natural Resource Management in Niger: The New Rural Code 34* (Land Tenure Center decentralization study, Madison, WI, 1996).

88. Ordinance 93-028, art. 2, quoted in Ngaïdo, *supra* note 76, at 18, cf. Mahamadou A. Diallo, *Problematic de la Decentralisation au Niger 12-13* (1994) (preparatory document for the Praia Conference, CILSS, République du Niger) (on file with author).

89. See Loi No. 007/93/ADP Portant regime electoral des conseillers de village, de secteur communal, de departement et de province (1993) (Burk. Faso).

90. See Décret no. 72-636 du 29 mai 1972 relatif aux attributions des chefs de circonscriptions administratives et chefs de village, J.O. July 17, 1972, p. 968 (Sen.); Ngaïdo, *supra* note 76, at 19.

91. Ordinance 93-028, art. 7, quoted in Ngaïdo, *supra* note 76, at 19.

appears more accountable due to regular periodic elections. However, under the new decentralization laws in Mali, chiefs are effectively administrative appointees confirmed by periodic local elections.⁹²

Aside from the systems of chief selection, there are various social mechanisms — not explored in this article — that can hold village “customary” authorities or elites locally accountable.⁹³ These, however, may not assure the accountability of chiefs. Some chiefs are despots, while others are responsive community leaders, depending on the personality of the chief, the specific history of the village in question, and its location in a larger political economy.⁹⁴ For example, in a 1994 forest rebellion involving thirty villages in Makacoulintang, Eastern Senegal, about half of the chiefs acted in line with the wishes of villagers, who by-and-large were against commercial woodcutting in their area.⁹⁵ The other chiefs were “bought for a few sacks of rice” by the wood merchants.⁹⁶ In Eastern Senegal,

92. See MALI CONST., arts. 62, 70.

93. See FISY, *supra* note 45, at 213; MAMDANI *supra* note 1; Spierenburg, *supra* note 49; cf. ALBERT O. HIRSCHMAN, EXIT, VOICE AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS AND STATES (1970); JAMES C. SCOTT, THE MORAL ECONOMY OF THE PEASANT: REBELLION AND SUBSISTENCE IN SOUTHEAST ASIA (1976); Jamie Thomson, Community Institutions and the Governance of Local Woodstocks in the Context of Mali's Democratic Transition 14 (1995) (unpublished paper presented at the 38th annual meeting of the African Studies Association, Orlando, FL).

Hirschman observed that the negotiating position of subordinate classes was strengthened by their exit options. See HIRSCHMAN, *supra*. Cf. SCOTT, *supra*. Bayart notes that because of this, the dependents were not without a voice within either lineage or central societies. See BAYART, *supra* note 56. They were (more or less) represented in a range of councils, associations, and societies in which they often had important functions. One author estimates that over one third of the monarchies and the chiefdoms he investigated included councils of commoners who were involved in political decision-making and that more than three-quarters of the chiefdoms, and the quasi-totality of the monarchies, had created lay courts of justice. See *id.*, at 22-23. These figures provide some indication of the limitations which the subordinate actors were able to impose upon the leaders. See *id.* He then gives the example of how village chiefs imposed by the powerful Yatenga monarchy were not forced upon the population. Chiefs named by the king, but unwanted or unliked, may be met by silent resistance and obfuscation until “. . . a new assignment will be found for the unfortunate chief.” *Id.*

94. The notion that indigenous African chiefs were despots was used during the early colonial period to justify subjugating them to European standards of conduct. For example:

When the French undertook the occupation of West Africa they were confronted with a number of native tyrants who cruelly exploited their subjects. Life and property were insecure; slavery and human sacrifice prevailed in many areas. In a few cases, local Almans had imposed a form of discipline, maintained by terrorism, upon thousands of unwilling subjects.

BUELL, *supra* note 5, at 987. Much of this view was probably European projections that served to justify the “civilizing” mission of colonization. It was clear, however, that under the French, indigenous chiefs were despotic when they could hide behind their French backing. This latter problem helped justify the curtailing of chiefs' powers over “judicial matters, land and tribute” and more direct control by the French administration. *Id.* at 987. But these criticisms of chiefs by no means constitute a comparison with or excuse for French colonial administrative practices, which were certainly also despotic, cruel and violent, and fostered despotism among chiefs. *Id.* See Suret-Canale, *La Fin de la Chefferie*, *supra* note 45; Suret-Canale, *The Fouta-Djallon Chieftaincy*, *supra* note 45.

95. See Ribot, *From Exclusion to Participation*, *supra* note 16, at 1593-96; Ribot, *Rebellion, Representation and Enfranchisement in the Forest Villages of Makacoulintang, Eastern Senegal*, in PEOPLE, PLANTS AND JUSTICE (Charles Zerner ed., forthcoming 2000).

96. Ribot, *Rebellion, Representation and Enfranchisement*, *supra* note 95.

village chiefs have a difficult time denying access to powerful merchants. These merchants often are close to political and religious leaders, and villagers rely on them for access to loans and connections in urban centers. Village chiefs are pulled by local wishes and by the broader relations in which they are embedded.⁹⁷

The authority of chiefs, with whom international development agencies often establish their ties to local populations, is still legally structured by the state. Chiefs are not an alternative to the state, but rather a particular manifestation of state intervention in the rural arena. In the countries of the West African Sahel, current village chiefs chosen through state-sanctioned processes typically come into the position through inheritance via a patrilineage tracing back to warriors, the founding family of the village, or families chosen by colonial powers to replace antagonistic local leaders.⁹⁸ But to view chiefs as indigenous, traditional, local, and accountable representatives of rural populations is to assume too much. As Mamdani suggests, reliance on chiefs may continue the encapsulation of individuals within community through the administratively driven empowerment of these so-called "customary" decisionmakers to "represent" local people.⁹⁹

B. COUNCILS

Since independence from France in the early 1960s, Burkina Faso, Mali, Niger, and Senegal have created rural councils as elected units of local government. In Senegal, one express purpose of these councils was to facilitate "participation" by local populations via direct suffrage.¹⁰⁰ Participation and local autonomy are also express purposes in the decentralization of Burkina Faso and Niger.¹⁰¹

In all four countries, the smallest units of rural government regroup five to fifty villages, denoted in this article as the rural community or local government (similar in scale to U.S. counties). In all but Niger, these local governments have both elected governance bodies, called Rural Councils,¹⁰² and a central government administrator, the *Sous-préfet* (sub-prefect), appointed by the Minister of the Interior.

97. *See id.*

98. *See van Rouveroy van Nieuwaal, supra note 45, at 6-7.*

99. *See MAMDANI, supra note 1.*

100. *See* Décret no. 72-636 du 29 mai 1972 relatif aux attributions des chefs de circonscriptions administratives et chefs de village, J.O. July 17, 1972, p. 965 (Sen.); Loi no. 64.46 du 17 juin 1964, relative au domaine national, J.O. (1964) (Sen.); Gerti Hesselting & M. Sypkens Smit, *Le droit foncier au Senegal: L'impact de la réforme foncière en Basse Casamance 15* (no date [circa 1984]) (unpublished manuscript) (on file with author).

101. Ordonnance no. 92-037, *Projet d'Ordonnance portant organisation de la Commercialisation et du transport de bois dans les grandes agglomérations, et la fiscalité qui lui est applicable*, Aug. 21, 1992 (Niger); Ouali et al., *supra* note 72; Diallo *supra* note 88, at 6.

102. The most-local level of administrative council goes by different names in each country. Here, the terms "Rural Community" and "Rural Council" are used to refer to the jurisdiction and its representative body respectively.

In Burkina Faso, the Rural Council is composed of elected representatives of village committees.¹⁰³ These representatives form a council and elect a president from among themselves. In Senegal, candidates for Rural Councils are presented for election by nationally-registered political parties. Each party presents a slate of candidates for each council. In a winner-take-all system, the council is then occupied by the winning slate. Each council then elects a president from among its members. The slates fill three-fourths of the council, while one-fourth of the representatives are chosen by a general council of producer and marketing cooperatives and associations (such as youth and women) for a five-year term.¹⁰⁴ In the past, candidates in Mali for councils of the Rural Communities were to be presented by party list in a system of proportional representation, and elected by universal suffrage for a five-year term.¹⁰⁵ In Mali's new electoral code, however, independent candidates will be able to run in future elections.¹⁰⁶

In Niger, a series of *coups d'état* has periodically halted decentralization efforts since independence. To this day, only about ten percent of the rural administrative units planned since independence have been established.¹⁰⁷ The structure of representation in rural administrative affairs was first organized in 1961 through chiefs who were appointed by the Council of Ministers in each administrative district and who presided over elected councils. However, according to Diallo, "[T]he district chiefs had no powers at all."¹⁰⁸ In 1983, a system of representation based on village councils was composed of members elected or appointed by "structures of participation" (cooperatives and associations mentioned above in the discussion of village chiefs) that were under the supervision of executive appointees. This system was eliminated in 1991, and appointed state administrators ran rural affairs in consultation with political parties and other organizations.¹⁰⁹ Prior to the 1996 *coup d'état* Niger had planned to create elected representatives at the level of *arrondissements*. The elections would be by party list, as is done in Senegal.¹¹⁰ *Arrondissements* remain, however, under the authority of appointed *sous-préfets*, and under the new arrangements, "[T]he sous-préfecture effectively presents the same institutional core bequeathed by

103. See discussion *infra* Part IV.A.

104. See Loi No. 95-034. Portant Code des Collectivités Territoriales en République du Mali arts. 4, 7 (1995) (Mali); Décret no. 72-636 du 29 mai 1972 relatif aux attributions des chefs de circonscriptions administratives et chefs de village, J.O. July 17, 1972, p. 965 (Sen.).

105. See Loi No. 95-034. Portant Code des Collectivités Territoriales en République du Mali arts. 4, 7 (1995) (Mali).

106. See Loi No. 96-050. Portant Principes de Constitution et de Gestion du Domaine des Collectivités Territoriales (1996) (Mali).

107. See Diallo, *supra* note 88, at 7.

108. *Id.* at 4.

109. See *id.* at 4, 16.

110. See *id.*; Elbow, *supra* note 87.

colonization."¹¹¹ Niger's *arrondissements* are also divided into customary collectives under "customary chiefs."¹¹²

While there is universal suffrage in elections in Mali and Senegal, and in those proposed in Niger, independent candidates in Senegal and Niger cannot run for election to local councils. Because villagers have little influence over national political parties, and lack the resources to form parties, they are unable to choose their own candidates. Indeed, villagers in Eastern Senegal often expressed the opinion that Rural Councils do not represent them, but instead represent political parties and the cooperatives.¹¹³ As one villager explained, "[T]he Councilors are chosen by Deputies in the National Assembly. Deputies choose people based on those who support them in their elections. The Councils are chosen by the parties."¹¹⁴ As Hesseling writes based on her research in Senegal in 1983, "They are at times nothing more than sections of the Socialist Party."¹¹⁵ Further, few parties have the resources to organize local government slates, so there is little competition in local elections.¹¹⁶

In 1977, when Senegal's Rural Council system was just being established, it was already evident to one researcher that party politics would undermine popular participation.

The Rural Community could be a body that would organize and steer desired auto-centric development. But for this, it must be removed from political controversies. Unfortunately, it is already becoming a stake for the political parties who are trying to control its executive institution. A politicized Rural Council is at risk of not serving the interests of the community, but those of the party(ies) from which its members are derived. In this manner popular expression is at risk of being strangled, one more time.¹¹⁷

Indeed, in 1994, over 300 of Senegal's 317 rural councils were of the ruling Socialist Party.¹¹⁸

111. Diallo, *supra* note 88, at 19.

112. See LUND, *supra* note 48, at 64-65 (discussing research conducted in Eastern Senegal).

113. Cooperatives in Senegal are usually dominated by a few powerful notables. See O'BRIEN, *supra* note 39, at 128; Ribot, *supra* note 39.

114. Interview with anonymous villager in Koumpentoum, Senegal (June 1994). The author does not provide interviewees names to protect informants.

115. Hesseling & Smit, *supra* note 100, at 17.

116. The role of political parties in local government needs to be examined in greater detail. At the end of the colonial period, the question "[s]hould parties be introduced into local government?" was already being contested. COWAN, *supra* note 44, at 221.

117. Andre Carvalho, *cited in* Hesseling & Smit, *supra* note 100, at 43.

118. While the party system is often praised as a way of creating national unity, the experience in Uganda may prove otherwise. In 1986, Uganda created local Resistance Councils whose members were elected independent candidates. Parties were excluded from local politics. Local populations expressed their preference for this system over "customary" leaders. Indeed, as Karlström reports: "[S]ince political parties are excluded from it, the RC system has not been perceived as a vehicle for the manipulation and exacerbation of religious and ethnic divisions. Virtually all of my informants were adamant about the incompatibility of parties with the

Even if Rural Councils were openly elected, they are not independent decision-making bodies. The official role of Rural Councils in all four Sahelian countries is merely to *advise* and *assist* the *Sous-préfet* on political and administrative matters.¹¹⁹ Under the system of *tutelle* (administrative oversight) inherited from the French, decisions of the Rural Councils of local governments must be approved by the *Sous-préfet* and *Préfet*.¹²⁰ So, even in Burkina Faso where Rural Councils are relatively representative of local populations, they are simply not autonomous decisionmaking bodies. They are administrative links to the central government, advising the *Préfet* in the same manner as would colonial village and canton chiefs. Today's Rural Councilors, like colonial chiefs, are upwardly responsible to their administrative officers, rather than downwardly answerable to the local population. So, on two counts — the administrative system of control or "tutelage" under the *Préfets* and the electoral system of party politics — their accountability is oriented upward toward the central state.

In all four countries, chiefs and rural councils are established — in different configurations — as advisory and administrative organs of the central government. Local representatives hold only limited decisionmaking powers themselves — some of these powers in the forestry sector are discussed in the cases below. One aim of these cases is to illustrate that the laws ostensibly designed to devolve powers to local authorities and to ensure local community participation may not do so. Neither the organization of representation and local authority, nor the distribution of powers, are structured to do so. This simple fact brings into question the intentions behind what is called decentralization and participation.

IV. TWO CASES

New forestry laws across the Sahel claim participation as a core goal.¹²¹ Given the limitations on existing forms of representation, how do "participatory" policies and projects construct local control? Who makes decisions and who benefits? Below are thumbnail sketches of participatory approaches now being promoted. In Burkina Faso and Niger, projects are creating village-level participatory structures through committees. Local Government is used in Mali and Senegal as the basis for participatory forestry. Below is a case of participation in Burkina Faso that was chosen as an example of participation by committee. The

RC system and the local unity and solidarity that it has produced." Mikael Karlström, *Imagining Democracy: Political Culture and Democratization in Buganda*, 66 AFRICA 15-16 (1996). When I mentioned independent candidates in local elections in Burkina Faso, I was told "we don't want another Rwanda here." This fear of "disorder" and conflict, which was also expressed by members of the decentralization commission in Mali, may be more of an excuse for simply maintaining party control.

119. See Diallo, *supra* note 88, at 19.

120. See *id.*

121. See CODE FORESTIER arts. 3, 7, 37 (1997) (Burk. Faso) (Loi No. 006/97/ADP, Jan. 31, 1997); Projet de Loi Portant Principes de Constitution et de Gestion du Domaine des Collectivités Territoriales Décentralisées art. 11 (1994) (Mali); CODE FORESTIER (1993) (Sen.) (Loi No. 93-06, Feb. 4, 1993); Kini, *supra* note 40, at 4.

Mali case was chosen as an example of the reliance on local government. Of the four cases in the study, these two have gone furthest toward accountably representing and empowering local populations.

These sketches are not intended to give an ethnographic description of the ebbs and flows of local power in natural resource management. Nor are they intended to explore the extra-legal powers — held by chiefs, marabouts, merchants, and rural and urban elites — that permeate rural life.¹²² Rather, these sketches examine the institutional environment that these laws and projects aim to create. It is in these legal-institutional arrangements that the stance of national governments, vis-à-vis representation and local autonomy, can be evaluated. Field research for these cases was conducted in 1994.

A. PARTICIPATION BY COMMITTEE IN BURKINA FASO: THE FOREST OF NAZINON

1. Institutional Structure of the Project

Within Burkina Faso, woodfuel production practices range from military involvement in forest extraction and commerce to highly-managed woodfuel production through international donor projects such as the joint United Nations Development Program (UNDP) and Food and Agricultural Organization (FAO) project in the Nazinon forest thirty miles south of Ouagadougou. This section examines the arrangements in Nazinon, which are considered cutting-edge participatory forestry. In 1994, managed forests supplied approximately five percent of Ouagadougou's woodfuel. These project-based practices are being proposed for more general application in forestry laws across Burkina Faso.¹²³ The basis for generalization — through the creation of a local forested domain and in provisions for sub-contracting under management plans — has been built into the 1997 Forestry Code.¹²⁴

The Nazinon scheme creates cooperatives (called *groupements*) in villages surrounding the forest of Nazinon and a union coordinating the cooperatives. The creation of these cooperatives is enabled by the new Law on Decentralization, which gives such groups legal corporate standing.¹²⁵ In each village the UNDP/FAO project has organized villagers interested in woodfuel production into a cooperative responsible for forest management. Each cooperative elects a president, secretary, treasurer, and manager. A union of Nazinon cooperatives with a General Assembly is composed of all managers, secretaries, and treasurers of the

122. See Ribot, *From Exclusion to Participation*, *supra* note 16, at 1593-96; see generally Ribot, *Theorizing Access*, *supra* note 16.

123. See *Aménagement des Forêts Naturelles pour la Sauvegarde de l'Environnement et la Production de Bois: Status de l'Union Pre-Cooperative des Groupements de Gestion Forestière*, UNDP/FAO/MET OF:BKF/89/011 (1993) (Burk. Faso).

124. See CODE FORESTIER (1997) (Burk. Faso) (Loi No. 006/97/ADP, Jan. 31, 1997).

125. See Donnelly-Roark, *supra* note 21, at 4.

village cooperatives. The union's Administrative Council is composed of the cooperative managers and a president elected from the General Assembly. The Administrative Council is empowered to make daily administrative and business decisions of the union, and is responsible for surveying the implementation of all laws concerning the union and forest management.¹²⁶

The national Forest Service has also set up a Technical Office of the union to develop forest management plans in collaboration with the Administrative Council. The new Forestry Code¹²⁷ requires that "[t]he management of forests is done conforming to prescriptions of forest management plans. The forest management plans are developed by the Forest Service or under their control."¹²⁸ These plans direct the unions' management and use of the forest in keeping with the Forestry Code. After the plans are approved by the Forest Service, the manager from each cooperative is charged with assuring its implementation under the guidance of the Technical Office. In addition, a Control Committee, including representatives from the national government's Control Service, the Minister responsible for cooperatives, the Minister of Territorial Administration, and a Village Council representative, surveys the unions' and cooperatives' accounts.¹²⁹

Each union also has a Management Fund, co-managed with the Forest Service, fed by woodfuel taxes and fees, gifts, inheritances, or loans.¹³⁰ In Burkina Faso, the producer, wholesale, and retail prices are fixed by the Minister of Commerce.¹³¹ The local price of firewood (the price at which cooperatives can sell to merchants) is fixed at 1610 FCFA¹³² per *stère* (one cubic meter of roundwood). Following the fixed price structure, the cooperative's woodcutters receive 610 FCFA per *stère*. Five-hundred FCFA then is placed in the Forest Management Fund under Forest Service control, two hundred FCFA funds the treasury of the cooperative, and three hundred FCFA pays for the cutting permit (i.e., a Forest Service tax or stumpage fee). The funds that enter into the cooperative's treasury are earmarked to finance forest management activities, credit for cooperative members, and public works serving the larger village community.

126. See Nazinon cooperative statute, *supra* note 123; see *Aménagement des Forêts Naturelles pour la Sauvegarde de l'Environnement et la Production de Bois: Plan d'Aménagement et de Gestion de la Forêt Classée du Nazinon*, UNDP/FAO/MET OF:BKF/89/011 (1993) (Burk. Faso).

127. See CODE FORESTIER (1997) (Burk. Faso) (Loi No. 006/97/ADP, Jan. 31, 1997).

128. *Id.* art. 41 (unofficial translation).

129. See *Aménagement des Forêts Naturelles pour la Sauvegarde de l'Environnement et la Production de Bois: Plan d'Aménagement et de Gestion de la Forêt Classée du Nazinon*, UNDP/FAO/MET OF:BKF/89/011 (1993) (Burk. Faso).

130. See *id.* arts. 16-17.

131. See Burkina Faso, *Schema Directeur pour l'Aménagement des Formations Naturelles Autour de Ouagadougou*, 10 UNDP/FAO/MET/Direction de l'Environnement, Ouagadougou (1993).

132. FCFA is West African currency. The exchange rate in 1994 was approximately 350 FCFA per U.S. dollar.

2. Practice

A few examples can illustrate how policies are, of course, not uniformly implemented as specified. In most cases, notables simply override the authority of cooperative or union officials. Merchants, for example, have been able to circumvent the fixed producer price, and village notables and even non-village-based woodcutters have made claims on the resources of cooperatives.¹³³ Village cooperatives have had trouble keeping urban woodcutters brought from the cities by merchant patrons out of their forests.¹³⁴ Wood cut in one village is often sold by these woodcutters through cooperatives in other zones, channeling the management and other funds to the latter cooperative's account. Merchants at times pay woodcutters less than the 610 FCFA in the forest, and then arrange with cooperatives to receive back the 610 FCFA earmarked for the woodcutters, thereby undercutting the producer price.¹³⁵ Foresters also engage in woodfuel commerce themselves. All this occurs under the surveillance of project coordinators and agents.¹³⁶

A cooperative member in one Nazinon village explained: "The notables asked for a loan [from the cooperative's village fund] for a sacrifice in the name of the whole village, but they did not pay it back. We gave them 35,000 FCFA for a cow and 5000 for a sheep. They sacrificed these at the chief's house. They ask each year; it's a sacrifice in the name of the village before the harvest. The cooperative is obligated to pay out. We cannot refuse."¹³⁷ "Last week," another member recounted, "the chief and *préfet* came to ask for money to complete the building of a schoolhouse. The cooperative had already given 300,000 FCFA to the project. The cooperative will have to meet to discuss this. In any event, the 300,000 was not paid back."¹³⁸ The cooperative members feel these uses of their funds are wrong. They feel the fund is for them and that the village is stealing from them. The fund, however, was set up for the village. The cooperative has some control over it, but it is intended for public works because the forests ostensibly belong to the village as a whole.

According to a forestry extensions worker with the Nazinon project, however, the powers of village elites are somewhat tempered by their location in a larger set of relations:

The cooperative cannot be denied its existence by anyone in the village since the *préfet* in Léo [capital of the Department] has officially recognized it. The

133. See Jesse C. Ribot, *Africa Regional Study Review of Policies in the Traditional Energy Sector* (RPTES, Forestry Sector Policy Report, Burkina Faso, Report to the World Bank, Dec. 1994).

134. See *id.*

135. See Burkina Faso, *supra* note 131.

136. See Kini, *supra* note 40, at 28.

137. Interview in Burk. Faso (July 1994).

138. *Id.*

government is in agreement with them [the cooperative members] because the government knows that this affair is profitable for the government. So, even if the village chief is against this project, he cannot say anything. There are two reasons he can't be against it now. First, he agreed to allow the project in the beginning. Second, he took money from the project that he cannot repay. If he goes against the project he will be biting himself since he is now in debt to the project, which is the government.¹³⁹

This is not confusion about rules. The rules are quite clear to cooperative members and have been explained to the chief. Powers of village elites and the authority of state backing combine to shape the use of project resources, at least those resources earmarked for use by the village as a whole.

3. Representation in Popular Participation

The management structures being created in Nazinon are not representative. They are not participatory in any inclusive or community sense. The new policies place some responsibilities for and powers over woodfuel management into the hands of cooperative members, a group of self-selected, economically self-interested individuals. Decisions over the disposition of forests (embedded in management plans) and over the revenues from forest exploitation are made by these private individuals in conjunction with the Forest Service. Ultimately, however, the Forest Service maintains complete control of all production and management decisions through required approval and control of the rules by which production and management can take place. A local representative from the Village Council is only brought into the national Control Committee where he or she is just one member among many.¹⁴⁰ Further, the Control Committee makes

139. Interview in Nazinon Forest, Burk. Faso (July 1994).

140. See FISY, *supra* note 45, at 227.

[In Cameroon, the land consultative boards are composed of] 'the sub-préfet, or the district head, as chairman; a representative of the Lands Service, as Secretary; a representative of the Surveys Service; a representative of the Town Planning Service, (in the case of urban project); a representative of the Ministry concerned with the project; the chief and two leading members of the village or the community where the land is situated.'

This specifies the members of the land commission that manages National lands. The chiefs and two notables are in a minority in a commission that is dominated by bureaucrats. It is because of this composition of the land commission that Fon of Kom [traditional owner of the land] . . . claimed that the land was no longer his own . . . The chiefs have realized that they have been co-opted into this commission and have been marginalized therein. The real power of attribution lies with the chairman and his secretary, not with the chief and his two notables.

See id. at 227-28. In this case the chief still, however, collects homage before land inspections. The homage usually includes a bottle of Scotch whisky and 5,000 francs. Fisy later points out that for some chiefs close association with state bureaucracies is significant. They can enjoy prestige and exact more tribute from their subjects by association with the state. He points out that these are usually chiefs who were dependent on or subjugated by other chiefs or were more marginal. *See id.* at 229.

no decisions regarding forest use.¹⁴¹ As a detailed evaluation of the project points out, "Although the advisory board of the cooperatives holds the highest position in the project organization chart, it has no authority to make operational decisions regarding project implementation and administration. It is the technical department located one step below and headed by a forester (*chef de chantier*) which draws the annual work plan. The role of the cooperative is confined to the provision of labor to carry out this plan."¹⁴²

Members of Burkina Faso's National Commission on Decentralization expressed concern that representation is lacking in natural resource management project committees:

When the members have been regularly elected, they have a legitimacy and therefore represent all of the village in matters concerning this sectoral aspect of local development policy. If one considers that the management of the commons policies is in the end a general policy of local development, one would therefore be cautious when considering the commons management committee as the structure that can represent the village in all instances responsible for management of local development.¹⁴³

The Commission goes on to say that, since the beginning of participatory efforts in the 1960s, little real participation has been effected. Rather, local populations have been viewed as "objects of development" to be educated, informed, and guided. The only participants in development have been "international experts, politicians, and national technocrats often located in urban areas."¹⁴⁴ Engberg-Pedersen also found natural resource management committees of the closely related *Gestion des Terroirs* (management of the village-commons) projects set up by donors across Burkina Faso to be undemocratic, arguing that they do not represent village populations due to lack of a locally-rooted participatory process and domination by Forest Service agents.¹⁴⁵

In short, little control over forest disposition is devolved to local authorities. Control remains officially held by the Forest Service and private groups. Even these private organizations are given little say in forest management. No realm of autonomous decisionmaking is specified — that is, written into law — for the cooperatives or union. The creation of such a realm is left to the Forest Service, to be specified in management plans. So, while foresters may decide to cede important decisions to the union and its cooperatives, it would be as a privilege at the whim of foresters rather than as a right. Participation in the labor of production and management, as well as some benefits (to a degree difficult to

141. See Kini, *supra* note 40, at 38-40.

142. *Id.* at 39.

143. Ouali et al., *supra* note 72, at 21.

144. *Id.* at 21-22.

145. See Lars Engberg-Pedersen, *Creating Local Democratic Politics from Above: The Gestion des Terroirs Approach in Burkina Faso* 4, 11 (1995) (unpublished working paper) (on file with author).

discern), is accomplished. But this participation includes only a special self-selected subset of the larger community. While part of the revenues return to the village as a whole, the decision to cut or not to cut the forests is not in its hands.

B. PARTICIPATION THROUGH LOCAL GOVERNMENT IN MALI

1. The Institutional Structure of Participation

Mali's new forestry laws¹⁴⁶ assign responsibilities for forest management to local government (called Decentralized Territorial Collectives). The new laws give local governments a forested domain within their territorial jurisdiction and the right to protect or conserve part or all of their forested domain.¹⁴⁷ According to the new laws, any individual or group of individuals wishing to commercially cut for woodfuels within the forest domain of a local government must organize a Rural Wood Management Structure (WMS, or *structure rurale de gestion de bois*).¹⁴⁸ A WMS can be a cooperative, corporation, association, or any other form of organization recognized by the state. These are groups of private individuals interested in practicing or investing in commercial woodcutting.

Before a WMS can begin using the forest, the Forest Service must propose a management plan for approval by the local government.¹⁴⁹ This plan includes an annual woodfuel production quota which, according to forestry officials, is to be determined by the sustainable potential production of the forested domain of the local government in question. The annual quota will be set by an ad hoc commission composed of two representatives of the WMS; one from local government, and one member of the Forest Service.¹⁵⁰ In recognition of the contentious political nature of quota allocation, the new laws also create a regional commission to resolve conflicts over the fixing and distribution of quotas.¹⁵¹ This commission is to be organized by the Minister responsible for forests.¹⁵² Once a management plan and quota have been established and approved, a cutting permit can be delivered by the Forest Service upon the payment of a forest exploitation tax.¹⁵³

Mali's new participatory forestry laws, by replacing a system in which the Forest Service controlled the delivery of permits, gives local governments

146. See *Projet de Loi Portant Principes de Constitution et de Gestion du Domaine des Collectivités Territoriales Décentralisées* ch. 4 (1994) (Mali); *Loi no. 94___/AN-RM Fixant les Conditions de Gestion des Ressources Forestiers* (1994) (Mali).

147. See *supra* note 146.

148. See *Loi No. 95-003, Portant Organisation de L'Exploitation, du Transport et du Commerce du Bois* art. 4 (1995) (Mali).

149. See *Loi no. 94___/AN-RM Fixant les Conditions de gestion des ressources forestiers* art. 54 (1994) (Mali).

150. See *Loi No. 95-003, Portant Organisation de L'Exploitation, du Transport et du Commerce du Bois* art. 10 (1995) (Mali).

151. See *id.* art. 11.

152. See *id.*

153. See *id.* art. 18.

considerable power over the disposition of forests. Indeed, Mali has given local populations greater decisionmaking powers over local natural resources than has any other Sahelian country. Local government representatives can decide to protect the forests by decree or they can control exploitation through approval or rejection of forest management plans. They can also use these powers to control which WMS can exploit local forests. The Forest Service, however, has maintained control over the location, timing, and amount of wood to be cut, including quotas and management plans to control the method of forestry.¹⁵⁴

2. Representation in Popular Participation: Who Makes Decisions?

As in Burkina Faso, Mali's local government representative on the quota committee is only one among four members and is not guaranteed a controlling role. The "mode of allocating the quota" in this committee is left to the order of the Regional Governor, a central government appointee.¹⁵⁵ The Forest Service has also reserved the talk of quota dispute resolution for itself, a job better suited to an independent judiciary. As described previously,¹⁵⁶ Mali's new forestry code devolves some significant decisions to local government bodies.¹⁵⁷ However, two factors diminish the most progressive aspects of these new policies. First, the system of *tutelle*, or central government oversight of local representatives, is still in place, bringing into question the degree to which the new powers will be controlled by administrative appointees. Second, jurisdiction over forests may not be devolved to local government, but rather to intermediate-level governance structures such as *Cercles* and Regions. As a result, many forests will also remain under central government control.¹⁵⁸ These two factors could severely restrict the new powers of local government.

C. DISCUSSION: WHO BENEFITS, WHO DECIDES?

1. Who Participates in What Benefits?

The benefits in these cases include labor opportunities in woodcutting, income from these labor opportunities and from the sale of woodfuel, and some role in

154. See Thomson, *supra* note 93, at 23. Thomson adds that in Mali:

The new forestry law in effect continues the Forestry Service's effort since colonial times to undermine local control systems. It reserves to foresters as sworn officers, whether of the state or the *commune* [local government], sole authority to sanction infractions of the code. It maintains the previous system of rebates on forestry fines for the officers who identify infractions and process them.

Id. at 24.

155. *Projet de Loi Portant Principes de Constitution et de Gestion du Domaine des Collectivités Territoriales Décentralisées* arts. 6, 11 (1994) (Mali).

156. See discussion *supra* Part IV.B.1.

157. See sources cited *supra* note 121.

158. See Tove Degnohl, *The Terroir Approach to Natural Resource Management: Panacea or Phantom? — The Malian Experience* 7 (papers of the Fifth Annual Conference of the International Association for the Study of Common Property) (1994) (on file with GEO. INT'L ENVTL. L. REV.).

forest decisionmaking. Labor opportunities are important because they have often gone to migrant or urban workers brought by forestry merchants from outside the woodcutting area, and because integrating local labor increases village income. There is also profit from the sale of wood. In Burkina Faso, the Minister of Commerce fixes firewood prices in an attempt to keep prices in participatory projects above those received by independent woodcutters.¹⁵⁹ These opportunities and profits go largely to the private individuals who make up management committees and woodcutting organizations. Membership is self-selected or influenced by foresters and village elites — these are effectively private organizations. In addition to private income and profit, in two cases some benefits are directed at the community as a whole. In Burkina Faso, each cooperative has a fund fed by a firewood tax, part of which is earmarked for public works serving the larger village community.¹⁶⁰ In Niger, ten percent of non-tax revenues from woodfuel sales go to the village chief (a hereditary power in Niger); this too is ostensibly to benefit the community as a whole.¹⁶¹

While some villagers benefit from labor opportunities, local woodfuel sale, and fees collected for community funds, most profit in West African woodfuel markets accrues through access to transport and urban trade.¹⁶² Unfortunately, the Forest Services in all of these countries have maintained tight control over the delivery of transport permits and have refused to assist woodcutters in gaining access to transport or merchant licenses.¹⁶³ This legacy of the colonial bifurcated economy has been strictly maintained. Villagers in all four countries have expressed their desire to operate in transport and urban markets. In Burkina Faso, Nazinon's union president complained of their continued exclusion from these markets. This most lucrative segment of the woodfuel sector is currently dominated by urban merchants and truckers. In short, villagers are permitted to participate in forest labor but only benefit from a limited portion of forest-based profits.

There are benefits to local populations of participating in donor projects, such as that in Nazinon. Among the diverse activities in which Sahelian households engage, providing wood to cities is not, however, a priority for forest villagers in

159. See sources cited *supra* note 131.

160. See sources cited *supra* note 131.

161. See Ordonnance no. 92-037, *Projet d'Ordonnance Portant Organisation de la Commercialisation et du Transport de Bois dans les Grandes Agglomérations, et la Fiscalité qui lui est Applicable*, arts. 22-27, Aug. 21, 1992 (Niger).

162. See Ribot, *Theorizing Access*, *supra* note 16.

163. See CODE FORESTIER arts. 44-46 (partie réglementaire) (1995) (Sen.) (Décret 95-357, Apr. 11, 1995); Loi No. 95-003, *Portant Organisation de L'Exploitation, du Transport et du Commerce du Bois* arts. 19-22 (1995) (Mali); Ordonnance no. 92-037, *Projet d'Ordonnance Portant Organisation de la Commercialisation et du Transport de Bois dans les Grandes Agglomérations, et la Fiscalité qui lui est Applicable*, art. 14, Aug. 21, 1992 (Niger).

Burkina Faso.¹⁶⁴ According to one researcher, “[T]he demand for natural resource management does not seem to arise from within the villages.”¹⁶⁵ He concludes his study of four villages, “[T]he only reason why villagers accept [natural resource management] councils [is] because they do not want to be impolite and they provide a means to get funds for the development of the village.”¹⁶⁶ Regardless of how donor funds are distributed, these observations bring into question the post-donor sustainability of the project-based approach. Such project funds, nevertheless, constitute an additional benefit of participatory forestry.

2. Who Participates in Decisions?

Management plans and quotas reserve to the Forest Service the power to make decisions over where, when, and how much wood will be cut.¹⁶⁷ In Mali, and in Senegal to a lesser extent, local government representatives participate in, and have some control over, the daily decisions of plan implementation.¹⁶⁸ In Burkina Faso and Niger it is the village-level committees of cooperatives and unions that can make daily implementation decisions.¹⁶⁹ But the rules of cutting and management that they must follow and the quantities they can cut are defined by the Forest Services and spelled out in project management plans.

Control of forest exploitation through Forest Service management plans is practiced throughout the Sahel.¹⁷⁰ This practice assumes that exploitation of the forests cannot be entrusted to local populations, through the creation of rights over forest exploitation, but rather only through the specified allocation of cutting privileges. Embedded in this approach are the assumptions that the Sahelian ecology is fragile, that forest regeneration must be systematically fostered, and that the knowledge of how to protect or regenerate forests is technical in nature. This approach also assumes that local populations have neither the knowledge to manage their forests, nor the ability to learn the necessary skills. The approach also assumes they cannot discipline themselves, nor operate within a set of standards or guidelines without specific instructions as to how to proceed. Fragile vegetation, however, does not exist in such a harsh environment as the Sahel. From available studies of forest cutting for woodfuel, natural regeneration

164. See Kini, *supra* note 40, at 29; Toulmin, *supra* note 22, at 10. Cf. Dianne E. Rocheleau, *Gender, Ecology, and the Science of Survival: Stories and Lessons from Kenya*, AGRIC. HUMAN VALUES, Winter-Spring 1991, at 156-65.

165. Engberg-Pedersen, *supra* note 145, at 21.

166. *Id.* at 26.

167. See discussion *supra* Part IV.A-B.

168. See *id.*

169. See *id.*

170. See Ribot, *Local Forestry Control*, *supra* note 31, at 14-36.

appears robust.¹⁷¹ Without a threat to the ecology, much greater degrees of local freedom concerning the commercial and subsistence use of forests could be written into law. There is a much greater realm of local autonomy that could be transferred to village populations under some minimal environmental practice standards or guidelines to protect threatened species and prevent soil decline. This type of transfer is not being considered.

The power to make the most critical decision, whether forests surrounding a given community will or will not be cut, has been reserved by Forest Services in Niger and Senegal.¹⁷² In Mali's new forestry laws, Rural Councils have the definitive right to protect all or any part of their forested domain (although the proportion of forests in the local domain will be determined by what a national committee decides is in the national interest).¹⁷³ A clause in Burkina Faso's 1997 forestry code, recently introduced, allowing local governments to reserve forests in their domain.¹⁷⁴ In Niger and Senegal, however, the Forest Service can give woodcutting rights in any forest to anyone they choose, regardless of local wishes, if the local population chooses not to participate in the new and participatory community-based management schemes.¹⁷⁵

In these latter countries, local communities have no legal mechanism for protecting local forests. Foresters can allocate exploitation rights via parastatals, concessions, state sale of parcels, and the delivery of exploitation permits. Communities in project areas who choose not to accept the conditions of participation and those simply not chosen for projects have no legal control over the disposition of forest resources. Therefore, Forest Services can sell the forests out from under them. These local governments and village communities simply do not have the right to say no to Forest Service-sanctioned cutting in surrounding forests.¹⁷⁶ This is hardly participatory forestry.

In short, participation amounts to the Forest Services managing forests with the assistance of cooperatives or committees of private individuals, with increased labor opportunities and profit for these private groups and some income

171. See Jesse C. Ribot, *A History of Fear: Imagining Deforestation in the West African Dryland Forests*, 8 GLOBAL ECOLOGY AND BIOGEOGRAPHY 291 (1999).

172. See discussion *supra* Part IV.A-B.

173. See *Projet de Loi Portant Principes de Constitution et de Gestion du Domaine des Collectivités Territoriales Décentralisées* ch. 4 (1994) (Mali); see also *Loi no. 94___/AN-RM Fixant les Conditions de Gestion des Ressources Forestières* (1994) (Mali).

174. See *CODE FORESTIER* art. 23 (Burk. Faso) (Loi No. 006/97/ADP, Jan. 31, 1997).

175. See discussion *supra* Part IV.A-B.

176. The importance of the right to say no is critical. As Moore et al., asked:

But and above all else do they have the POWER TO SAY NO? Not only does this right/power reflect a serious willingness on the part of the state to create local autonomy, but it can also give local communities bargaining power against the Forest Service which enters these areas with an interest in supplying wood and woodfuels to urban areas.

See Sally Falk Moore et al., *Rapport de Mission, Burkina Faso, Club du Sahel/ARD/PNGT* 6 (Sept. 16, 1991) (unpublished draft report to Club of the Sahel, on file with author).

earmarked for whole communities. Critical decisions over forest disposition are only devolved into local hands in Mali and Burkina Faso. In Mali, however, it will be only over the limited area of forests assigned to local governments by a national committee. The right to commercially-exploit forests is still directly controlled by Forest Services.

V. COLONIAL ADMINISTRATION IN THE PARTICIPATORY ERA

Since 1917, there have been at least four waves of decentralization in Francophone West Africa: after both World Wars, shortly after independence, and in the present decade.¹⁷⁷ Each wave has had the effect of creating geographically-smaller units of governance, including the appointment of administrators to manage these units, the creation of councils to advise these administrators, the devolution of responsibilities to these new governance structures, and the centralization of approval of all decisions in a hierarchy. This hierarchy now stretches from the *sous-préfet* of the *arrondissement* (also overseeing the Rural Community and villages) through the *préfet* of the Department and governor of the Region, to the Minister of the Interior, and president at the Federal level.¹⁷⁸ Before independence, this hierarchy included the Lieutenant-Governor of each colony, the Governor-General of French West Africa, the Minister of Colonies, and to the President of the French Republic. These administrators are all executive appointees of the central government. Each decentralization devolved responsibilities such as control over public works and schools while strengthening central controls over decisionmaking processes and local budgets.

Under colonial rule, the councils of the Lieutenant-Governors and the Governor-General were created to give advice, rather than to make decisions regarding policy matters.¹⁷⁹ Indigenous authorities were included in these councils in a minority role.¹⁸⁰ Similarly, the official role of today's Rural Councils and chiefs is to advise and assist the *sous-préfet*, while the role of the committees set up in "participatory" forestry projects is to advise and assist Forest Service officials. To assure the subordinate role of forestry committees, the Forest Service officials preside over them and must approve their decisions. In addition, local

177. See Décret no. 72-636 du 29 mai 1972 relatif aux attributions des chefs de circonscriptions administratives et chefs de village, J.O. July 17, 1972, p. 965 (Sen.); Ordonnance N77-44/CMLN du 12 juillet 1977 portant reorganisation territoriale et administrative (1977) (Mali); BUELL, *supra* note 5, at 929-30; COWAN, *supra* note 44, at 60; SHELDON GELLAR, SENEGAL: AN AFRICAN NATION BETWEEN ISLAM AND THE WEST 48 (1995); EDWARD J. SCHUMACHER, POLITICS, BUREAUCRACY AND RURAL DEVELOPMENT IN SENEGAL 89-90 (1975); BRIAN WEINSTEIN, ÉBOLÉ 263-66 (1972); Diallo, *supra* note 88; Ouali et al., *supra* note 72, at 7; Richard Crook & James Manor, Enhancing Participation and Institutional Performance: Democratic Decentralization in South Asia and West Africa (unpublished report to ESCOR, the Overseas Development Administration, 1994); Hesselting & Smit, *supra* note 100, at 15.

178. See sources cited *supra* note 177.

179. See J. VON VOLLENHOVEN, UNE AME DU CHEF 189-257 (1920); BUELL, *supra* note 5, at 930.

180. See BUELL, *supra* note 5, at 927-30.

“representative” authorities (chiefs and councilors) are included only as a minority of members on forestry committees, preventing the possibility of representative control over decisions. As in colonial times, government administrators (along with commercial interests who were given privileged seats on advisory councils along with trade permits) rule the rural world. These structures assure that few decisions are in local hands except as a rare privilege allocated by administrative authorities.

As shown by the cases, participatory projects reproduce these colonial relations. Like Association and Indirect Rule, participatory projects rely on administrative bodies to control the use of local labor and resources, legitimated by quasi-representative locally-appointed or “customary” authorities. Through these administrative means, participatory projects are structured to micro-manage valuable resources and rural populations, rather than to create an empowered, inclusive, autonomous local domain. The instruments by which the central state circumscribes local control over people and resources include structures of representation, forms of tutelage, or oversight, and the division of powers between central organs and local structures. These are also accompanied by ideological constructs that support colonial, as well as recent, policies toward rural Africans.

Accountability of representation today is as problematic as in the past. Today there is some locally-accountable representation, legislated in cases such as Burkina Faso’s village presidents (albeit biased toward male representation) and Mali’s new Rural Councils.¹⁸¹ Most local bodies, however, are structured to be accountable to the central state (that is, to their *sous-préfet* and *préfet*) or accountable to political parties. For some local authorities, such as village chiefs elected for life, little, if any, accountability is legally built into their positions.

Problems of accountability also accompany the tendency of environmental projects to rely on indigenous authorities. As with many current rural projects, the search for acceptance through “culturally legitimate allies” was a preoccupation of colonial regimes.¹⁸²

So long as the use of force could be passed off as customary it was considered legitimate, and — to complete the tautology — force decreed by customary authority was naturally regarded as customary. No wonder that when force was needed to implement development measures on reluctant peasants, its use was restricted to Native Authorities as much as possible. In the language of power, custom came to be the name of force. It was the halo around the regime of decentralized despotism.¹⁸³

Because of colonial abuses of this sort, it is important to question today’s search by environmentalists for authentic, indigenous, or customary groups to assume

181. See discussion *supra* Part IV.B.

182. See Mahmood Mamdani, *Response to Comments*, 1-2 AFR. SOC. REV. 145 (1997).

183. MAMDANI, *supra* note 1, at 286-87.

environmental management roles (such as Mali's "indigenous" forest police).¹⁸⁴ Making indigenous authenticity a standard way of naturalizing externally-introduced environmental management may obfuscate the need for more representative forms of local authority to serve a broad-based community will. Like colonial practice, this approach can select authoritarian strands out of indigenous culture and practice to support an outside agenda. Empowering indigenous authorities does not automatically resolve issues of equity, representation, and accountability, nor does it constitute community participation.

Concerning collective resources, local accountability of authorities to ensure representation is one dimension of local autonomy; empowerment is the other. Under the present decentralized participatory regimes, local authorities have few real powers of decision. In forestry they are given few important matters to deliberate over, and their decisions must be approved by administrative appointees — *préfets* and forestry officials. Many forestry decisions and practices to be carried out at the village level — such as when, where, and how much to cut — are handed down as technical decisions of the Forest Service. For example, in the case of "local forestry funds," a large portion of the resources are earmarked for "forest management" purposes as defined by foresters, and use of the remainder is at the discretion of committees or rural councils.¹⁸⁵ As in the colonial period, the powers in forestry given to rural authorities are in the form of administrative edicts.

Land control in the hands of state-appointed "customary" authorities was key to indirect administrative colonial dominance of the hinterlands. Throughout Africa, earth, bush, and village chiefs or priests had ritual powers, but not powers over land allocation or rule over people.¹⁸⁶ Colonial powers misrepresented the role filled by chiefs and priests to be a proprietary one, and gave chiefs the power to allocate land-use rights. "In grounding the powers of chiefs in the right to allocate customary land for use, customary law tended to fortify the position of Native Authorities."¹⁸⁷ These land-allocation powers, in turn, became the foundation of "native" rule. In this manner, land control became and remains an important aspect of the power and legitimacy of chiefs in both French and British colonies.¹⁸⁸ Because authority of chiefs was tied to land, granting private rights

184. See CARE-Mali, *supra* note 43.

185. See discussion *supra* Part IV.A.2.

186. See discussion *supra* Part III.

187. MAMDANI, *supra* note 1, at 140.

188. See LAND AND SOCIETY IN CONTEMPORARY AFRICA (R.E. Downs & S.P. Reyna eds., 1988); LAND IN AFRICAN AGRARIAN SYSTEMS, *supra* note 40; Martin Chanock, *Paradigms, Policies, and Property: A Review of the Customary Law of Land Tenure*, in LAW IN COLONIAL AFRICA 64 (Kristin Mann & Richard Roberts eds., 1991); Michael J. Watts, *Idioms of Land and Labor: Producing Politics and Rice in Senegambi*, in LAND IN AFRICAN AGRARIAN SYSTEMS 157-221, *supra* note 40; Cyprian F. Fisiy, *Chieftaincy in the Modern State: An Institution at the Crossroads of Democratic Change*, 41 PAIDEUMA 50 (1995); Geschière, *supra* note 45, at 166; Hesselting & Smit, *supra* note 100.

in land would undermine rural authority. Therefore, land rights have been kept collective.¹⁸⁹

Land control empowers and legitimates local authorities. It is currently being used to strengthen the legitimacy of the new state-organized forms of local governance in recent reforms in Cameroon, as land allocation functions are slowly being transferred from "customary" authorities to state-structured representative bodies.¹⁹⁰ Village chiefs in Senegal, Mali, Niger, and Burkina Faso still play an important role in local land allocation.¹⁹¹ Land control and state backing still support the influence of "customary" authorities as well as of the more recent rural councils, who have been given a role in land-allocation adjudication.¹⁹² In Niger in recent years "the role and legitimacy of the chiefs has been sanctioned 'from above' through different forms of legislation; a significant one of which is the Code Rural [the law covering land and natural resource management]."¹⁹³

Forests, which are state property in the Francophone countries, are now treated as collective resources to be placed — in however circumscribed a manner — under community control. This current decentralization presents both a danger and an opportunity. Any local actors, good or bad, who receive control over these resources will be strengthened. Like chiefs who received control over land in the colonial period, the authorities who receive power over forests will also be strengthened. For current local authorities — chiefs or councils — control over forests could be a legitimating device,¹⁹⁴ whether these authorities are accountably representative or autocratic. In the hands of locally accountable representatives, control of forests could nevertheless be a positive force for legitimating new, more autonomous governance arrangements. The fact that under current "participatory" and "decentralized" arrangements all of their decisions still must be approved by Forest Services or *préfets* simply places local authorities in the same ambiguous space as past chiefs — caught between local needs and the exigencies of administrative authorities.

In the present decentralization and participatory movement, obligations (through a process called *responsibilisation*) are being devolved to local units of rural administration.¹⁹⁵ In the forestry laws and projects examined, this devolution of responsibilities is accompanied by a devolution of a tighter *tutelle*, a closer regulation of obligations by local bodies, and a stricter monitoring of local

189. See Watts, *supra* note 188; Chanock, *supra* note 188, at 64.

190. Cf. Fisiy, *supra* note 188.

191. See discussion *supra* Parts III, IV.

192. See *id.*

193. See Lund, *supra* note 48, at 82.

194. Sharpe reported that "[m]any groups [whom he interviewed around Cameroon's Korup National Park] cited the use of forest resources for development as an important aspect of government legitimacy . . ." Barrie Sharpe, "First the Forest . . ." *Conservation: "Community" and "Participation" in South-West Cameroon*, 68 AFRICA 25, 31 (1998).

195. *Responsibilisation* is a commonly used term in the French discourse on decentralization.

actions by both administrative and technical services of the central government. While obligations of the past involved taxes in kind and labor,¹⁹⁶ today they involve tax and labor responsibilities in ecological management.¹⁹⁷ One has to wonder if the enforcement of labor obligations for reforestation and environmental management will not also become powers of chiefs and councils backed by the state that will take the form of what this author has elsewhere called “participatory *corvée*.”¹⁹⁸

Both Association and recent participatory approaches follow economic necessity of the central state. Cline-Cole writes that dryland forestry in Nigeria was “administered largely ‘on the cheap,’ through local Native Authorities and Local Government Councils, albeit under supervision from regional forestry services.”¹⁹⁹ Evers also points out that “[d]espite the rhetoric, governments [in the Sahel] see ‘participation’ as a way of reducing financial costs by transferring responsibility for rural development to the community.”²⁰⁰ With the advent of World War I, French Colonial authorities moved from direct rule to association because they could not afford to extend management down to the village level without local assistance.²⁰¹ These authorities created a situation with incentives — at times extremely coercive — or local populations to “participate” in the colonial project. With the fall of the Berlin Wall and the curtailing of international funding in Africa, there is a renewed movement towards relying on, or allocating responsibility to, local authorities to carry out the tasks of outside agents — this time, independent states and the international environmental community.

One of the most egregious and ignored aspects of the current administrative bifurcation is economic. Continued central and concentrated control over forestry marketing is a direct result of colonial laws that granted commercial licenses only to French citizens living in the four communes (urban centers).²⁰² Today, production and marketing licenses and permits are still under Forest Service,²⁰³

196. See discussion *supra* Part III.

197. See discussion *supra* Part IV.

198. See Ribot, *From Exclusion to Participation*, *supra* note 16, at 1595-96.

199. Reginald Cline-Cole, *Dryland Forestry: Manufacturing Forests and Farming Trees in Nigeria*, in *THE LIE OF THE LAND: CHALLENGING RECEIVED WISDOM ON THE AFRICAN ENVIRONMENT* 130 (Melissa Leach & Robin Mearns eds., 1996).

200. Yvette Evers, *Local Institutions and Natural Resource Management in the West African Sahel: Policy and Practice of “Gestion de Terroir” in the Republic of Mali* 13 (Institute of Development Policy and Management, University of Manchester, Rural Resources, Rural Livelihoods Working Paper No. 5, 1994).

201. See BUELL, *supra* note 5, at 983; Pierre Alexandre, *Chief Commandants and Clerks: Their Relationship from Conquest to Decolonisation in French West Africa*, in *WEST AFRICAN CHIEFS*, *supra* note 5, at 2-13; Suret-Canale, *The Fouta-Djalou Chieftaincy*, *supra* note 45; Suret-Canale, *La Fin de la Chefferie*, *supra* note 45.

202. A 1941 decree restricted production permits to French citizens. Because by law the only Africans granted French citizenship were those living in the urban centers, this decree gave special privilege to urban merchants.

203. See discussion *supra* Part IV; see also Loi No. 94-___/AN-RM fixant les conditions de gestion des ressources forestières (1994) (Mali); CODE FORESTIER (1993) (Sen.) (Loi 93-06, Feb. 4, 1993), Chapter 1.

and are allocated to powerful, often urban-based, merchants. Rural populations are relegated to the residual category of usufructuary "rights," inferior to the commercial rights because they are valid only so long as urban merchants and the Forest Service do not decide to cut the forests out from under them.²⁰⁴ While participatory projects aim to increase rural benefits, no project has dared to increase access by forest villagers to the lucrative forestry markets from which villagers are still systematically excluded by government-policy-supported merchant oligopolies.²⁰⁵

An important ideological parallel between participatory approaches and colonial policies is the shared emphasis on community. Africans were "[t]o be civilized 'not as individuals but as communities,' to be subject to a process that one-sidedly opposed the community to the individual and thereby encapsulated the individual in a set of relations defined and enforced by the state as communal and customary."²⁰⁶ According to Megan Vaughan, "As 'communities,' Africans were effectively isolated into manageable groups or tribes, each under the rule of its 'native' authority."²⁰⁷ Participatory projects share this tendency to view rural

204. Note that Mamdani also makes the argument:

Ideologically, civic power claimed to defend rights, and customary power to enforce custom. Economically, civic power regulated market transactions and ensured the reproduction of market relations, and customary power was located at the interstices of the market and nonmarket relations, mediating the link through extra-economic coercion.

MAMDANI, *supra* note 1, at 60. This is an important parallel to the distinction between those with licenses and permits and those relegated to the administrative privilege of usufructuary rights — inferior rights that depend on the administrative branch of the state (in this case the Forest Service) not deciding to use the resource for its own purposes or give it away, license it, to concessionaires, thereby abrogating usufructuary rights by the exploitation — and often temporary destruction — of the resource as a whole.

205. See Ribot, *Theorizing Access*, *supra* note 16.

206. MAMDANI, *supra* note 1, at 51.

207. MEGAN VAUGHAN, *CURING THEIR ILLS: COLONIAL POWER AND AFRICAN ILLNESS* 11-12 (1991). Vaughan is a well-known Africanist anthropologist and historian.

Quoting a 1917 statement of Governor-General von Vollenhoven following von Vollenhoven's comparison of "natives" to children, Buell wrote:

[T]he native does not distinguish private from public affairs He is continually in need of something and addresses himself, to satisfy his desires, to whomever is invested with authority Examples are innumerable where natives will go long distances for the most futile causes, to see the chief The native is not an individual but part of a society.

BUELL, *supra* note 5, at 996. Vaughan points out:

In colonial medical discourse and practice colonial Africans were conceptualized, first and foremost, as members of groups (usually but not always defined in ethnic terms) and it was these groups, rather than individuals, who were said to possess distinctive psychologies and bodies. In contrast to the developments described by Foucault [in Europe], in colonial Africa group classification was a far more important construction than individualization. Indeed, there was a powerful strand in the theories of colonial psychologists which denied the possibility that Africans might be self-aware individual subjects, so bound were they supposed to be by collective identities.

VAUGHAN, *supra*, at 11. Vaughan continues: "By relying so heavily on older modes of production for its very success, colonial capitalism also helped create the discourse on the 'traditional,' non-individualized and 'unknowing' collective being — the 'African' . . ." *Id.* at 11-12.

Africans as “communities.” Without questioning the integrity of the groups being engaged, these projects construct representations — in both senses of the word — of community through committees and customary and state-structured local authorities, without conducting an evaluation of whether the individuals that constitute the local population are empowered in shaping these representations. Participatory community-development projects are based on the most convenient management units. This continued micro-partitioning of rural Africa into administered units subjugates individuals to ostensibly community goals under ostensibly community leadership, while subjugating community needs and desires vis-à-vis collective resources and problems to elite individuals in positions of authority.

Behind this communitarian policy is a long-standing ideology casting Africans as primitive, childlike, and close to nature. Megan Vaughan writes of the “politics of difference” in which European colonizers portray “Africans” as “other” through various means, including association of Africans with nature and beliefs in the “‘childlike’ qualities of ‘savage races.’”²⁰⁸ Governor-General von Vollenhoven argued in 1917 that “[t]he native of French West Africa is a child; he loves to live under his chiefs, as a child loves to live with his parents.”²⁰⁹ This type of language is found in every corner of the colonial literature. French forester André Bertin compared Africans to “children ten to twelve years old,” and advised that “[t]he employer must not be a distant boss, but must behave with his workers like the father of the family.”²¹⁰ In 1994, Mali’s central planning unit responsible for coordination of environmental activities reported that “the State should behave as a good father who assists, advises and controls.”²¹¹

A related ideological parallel is technocratic paternalism, which is rooted in these same infantilizing attitudes. In participatory forestry, forest villagers are all too often seen as land-hungry peasants, lacking the capacity to make but a few highly monitored technical decisions over the disposition of forests, which, it is feared, they would destroy if not constrained.²¹² As in the colonial period, forests

208. VAUGHAN, *supra* note 207, at 13, 20.

209. See BUELL, *supra* note 5, at 996.

210. ANDRÉ BERTIN, LA QUESTION FORESTIÈRE COLONIALE: MISSION D’ÉTUDES FORESTIÈRES ENVOYÉE DANS LES COLONIES FRANÇAISE PAR LES MINISTÈRES DE LA GUERRE, DE L’ARMEMENT ET DES COLONIES 125-27 (1919). Bertin, concerned about disciplining laborers, asks:

How, in effect, can one pursue a native who, most of the time, has nothing to confiscate, and escapes in this manner all manner of civil constraint? The answer is, “One must treat the uneducated natives like children, which they are in reality.” It was the very lack of markets in land — created by the system of *association* and indirect rule and its need to collectivise land to give their local cadres a basis for their power — that also drove the colonisers to use coercive means to obtain and discipline laborers.

Id. at 125-27.

211. Degnobl, *supra* note 158, at 10.

212. See JAMES FAIRHEAD & MELISSA LEACH, MISREADING THE AFRICAN LANDSCAPE: SOCIETY AND ECOLOGY IN A FOREST-SAVANNA MOSAIC (1996); Ramchandra Guha, *An Early Environmental Debate: The Making of the*

are seen as threatened by the actions of unregulated indigenous populations.²¹³ Foresters have consistently argued that their expertise is needed to control this dangerous situation. Rural populations are cast as lacking the capacity for understanding and for implementing the technically-complex exigencies of forest management and protection. They need capacity building. This view justifies an administratively-driven direction of villagers into forest labor activities defined by the technical decisions of the Forest Service. Villagers are given the opportunity to cut and sell forest products under the strict financial and labor supervision of their Forest Service superiors. Such "capacity" arguments, many of which may be unfounded,²¹⁴ are often used as excuses not to grant resource control to rural populations, but instead to keep them under the close *tutelle* of their "father" foresters.

The current decentralization and participatory movement is devolving state-backed powers that are still administratively driven and locally administered by quasi-local, quasi-representative bodies. While there is advisory involvement in some decisions concerning forests, there are only a few (albeit significant) new rights. In the context of ongoing administrative management of rural areas, the analysis of participatory projects and laws create privileges to be allocated (mostly by foresters and councilors), often with burdensome responsibilities, rather than rights for communities and individuals that the state would defend.²¹⁵ Such projects and laws merely administer local programs rather than devolve control. They back centrally chosen and non-representative powers rather than support representative systems of local governance. These projects permit rural populations to engage in local exchange, but exclude them from lucrative long-distance trade. While there are differences between past and present practices, these seem to be only matters of degree.

1878 Forest Act, 27 INDIAN ECON. & SOC. HIST. REV. (1990); Piers Blaikie, *The Political Economy of Soil Erosion in the Third World* (1985); PELUSO *supra* note 28; Thomson, *supra* note 93, at 3.

213. See Henry Hubert, *Le Dessèchement Progressif en Afrique Occidentale*, in COMITÉ D'ETUDES HISTORIQUES ET SCIENTIFIQUES DE L'AFRIQUE OCCIDENTALE FRANÇAISE 421-22, 462-62 (Bureau du Comité pour l'année 1920, 1920); August Aubréville, *L'Utilisation Totale des Bois Tropicaux de l'Ouest Africain*, REVUE DES EAUX ET FORÊTS, June 1939, 485, 486-87; G. Delevoey, *La Conservation des Forêts Coloniales*, BULLETIN DE LA SOCIÉTÉ CENTRALE FORESTIÈRE DE BELGIQUE, Sept. 1923, at 465, 471. Such fears of destruction are often wrong. See also FAIRHEAD & LEACH, *supra* note 212; Ribot, *From Exclusion to Participation*, *supra* note 16; Sian Sullivan, *Towards a Non-Equilibrium Ecology: Perspectives from an Arid Land*, 23 J. BIOGEOGRAPHY 1 (1996). Much of the perceived ecology of the Sahel is an ecology of control. Fears of deforestation and the beliefs about its causality are often more relevant to justifying regimes of control than protection of nature.

214. Fiszbein, reviewing World Bank projects in Latin America, found that "capacity" is derived from the devolution of powers. All local groups she examined had the capacity once they had the resources to work with. Hence, the notion that resources cannot be devolved due to a lack of local "capacity" is little more than an excuse not to devolve resources to local bodies. See Ariel Fiszbein, *Decentralization and Local Capacity: Some Thoughts on a Controversial Relationship* (1997) (unpublished paper presented at the FAO/UNCDF/World Bank Technical Consultation on Decentralization, Rome, on file with author). Thomson, *supra* note 92, describes Dogon villages in Mali that successfully manage environmental and economic affairs.

215. See discussion *supra* Part IV.

VI. CONCLUSION

Colonial forms of rural political-administration are reproduced in Sahelian forestry when ostensibly local representatives — chiefs and rural councils — have a restricted domain of autonomy from their administrative superiors under the system of *tutelle*,²¹⁶ and when these representatives are unaccountable or merely upwardly-accountable to the state rather than downwardly-accountable to the local population.²¹⁷ These forms are also reproduced when local populations participate in forestry decisions through ad hoc advisory committees on which local representatives are a symbolic minority having no binding say,²¹⁸ when there is a lack of judicial recourse on forestry matters,²¹⁹ and when lucrative commercial forestry licenses and permits are allocated to distant merchants while forest villagers must be content with forest labor opportunities and local sale.²²⁰ Finally, colonial forms are also reproduced when villagers are allocated forest use as a privilege, rather than being given rights,²²¹ and when “participation” administratively directs forest villagers into forest labor activities defined by the technical decisions of the Forest Service.²²²

Administratively-driven rural rule is also reproduced in the insufficiently critical humanitarian ideologies that frame rural Africans as a threat to the forests, lacking capacity, and as needy, dependent objects of assistance and development.²²³ The language of decentralization and participation is often that of local control, autonomy, and benefits, yet the new structures being introduced in their name afford little actual power. Local populations are still relegated to a carefully-circumscribed set of roles and relations with the forests creating little autonomy, and few new benefits are devolved. The Forest Services still control all exploitation and management decisions through management plans and oversight. In a system of profoundly central control extended into the countryside in successive waves of “decentralizations,” it is hard to see the new participatory approaches as more than just another centralizing wave. Rather, these approaches constitute a new micro-management of forests by the state with some privatization.²²⁴ They do not usher in a new era of community management or decision-making.

Community participation and political decentralization can converge when they concern locally-accountable representation with actual empowerment —

216. See discussion *supra* Part I.

217. See discussion *supra* Part IV.

218. See discussion *supra* Part IV.A-B.

219. See Ribot, *Local Forestry Control*, *supra* note 31.

220. See Ribot, *Theorizing Access*, *supra* note 16, at 318.

221. See *id.* See also discussion *supra* Part IV.

222. See Ribot, *From Exclusion to Participation*, *supra* note 16, at 1596.

223. See discussion *supra* Part V.

224. Cf. Richard A. Schroeder, *Community, Forestry and Conditionality in the Gambia*, 69 AFRICA 1, 1-3 (1999).

that is, enfranchisement. The typical means of admitting independent candidates in local government elections, creating universal suffrage, and setting specified term lengths could foster locally-accountable representation. Such changes are possible. In 1986, Uganda created a new form of local government called Resistance Councils based on independent candidates.²²⁵ In extensive interviews in four districts, rural populations expressed widespread acceptance of the new elected system, preferring it to prior forms of kingship and chieftaincy.²²⁶ Mali is following suit; legislation has been ratified, but application decrees are not yet in place.²²⁷

Procedures of electoral representation do not, of course, guarantee accountable representation. Rural elites try to manipulate candidacies, electoral processes, and persons in elected or other leadership positions. Inclusive processes cannot create accountable representation; they simply make it a possible outcome of the struggle among various rural strata. As with India's Panchayat experience, some communities will take advantage of this possibility,²²⁸ while others will not. Unfortunately, given the electoral codes in most of the Sahel, this is not yet a possibility. Fair elections, whether or not they establish accountable representation, are critical; they constitute a moral statement by government that endorses popular participation and inclusion.

Electoral procedures, while important, are also not the only means of establishing accountable local government. Mick Moore rejects procedural definitions of democracy, stating: "I conceive democracy as a sub-species of a broader concept: the accountability of state to society."²²⁹ He argues for taxation as a means to create mutual and reciprocal expectations between state and society. The source of state power must be located in the people, rather than in international donor organizations. Taxation, too, is just one means among many that may, under the right circumstances, foster accountability.²³⁰ There are additional means of holding local authorities (elected, appointed, or otherwise) accountable to local

225. Personal communication with Malian *Mission de Décentralisation* (July 1998).

226. See Karlström, *supra* note 118. This system of local elections, it appears, was abolished in 1996. Personal communication with Olivier Dubois, International Institute for Environment and Development, London (July 1998). In addition, Uganda's attempts to democratize the local state has not been paralleled by democratization at the national level. See Ran Greenstein, *Review Symposium: Mahmood Mamdani and the Analysis of African Society*, 1 AFRICAN SOC. REV. 108 (1997).

227. Personal communication with Malian *Mission de Décentralisation*, *supra* note 225.

228. See Meenakshi Ahluwalia, *Representing Communities: The Case of a Community-Based Watershed Management Project in Rajasthan, India*, 28 IDS BULL. 27 (1997); Ajay S. Mehta, *Micro Politics of Voluntary Action: An Anatomy of Change in Two Villages*, CULTURAL SURVIVAL Q., Fall 1996, at 26.

229. Mick Moore, *Death Without Taxes: Democracy, State Capacity, and Aid Dependence in the Fourth World*, in TOWARDS A DEMOCRATIC DEVELOPMENTAL STATE 3 (G. White & M. Robinson eds.) (forthcoming 2000). Mick Moore is a professor of Economics and Development at the Institute for Development Studies at Sussex, England.

230. See Jane Guyer, *Representation Without Taxation: An Essay on Democracy in Rural Nigeria, 1952-1990*, 35 AFR. STUD. REV. 41 (1992) (containing a nuanced discussion of the relation between taxation and representation).

communities. These include embedding authority in the local community, creating belief systems that orient authorities toward service and dedication, providing reputations that local authorities seek to maintain, and using journalists, NGOs, community organizations, or individuals to lobby or act as watchdogs. Also included are social resistance or threats of resistance, accessible independent courts, central-state oversight oriented toward downward accountability (in place of the current form of central *tutelle*), and reporting requirements concerning local government meetings and activities. Finally, elected third-party controllers, open fora for public discussion, awards for good public service, information dissemination about the obligations and powers that local governments have to local populations, education and literacy campaigns, and a free media all can act to hold local authorities accountable to local communities.²³¹ Some of these can be legislated, others cannot. But, accountability, however fostered, can build trust in local authorities. Entrusting those authorities with real powers can make it worthwhile for local populations to attempt to make them accountable.²³²

Perhaps there are better (electoral or non-electoral) indigenous, local, or even exogenous means for structuring local representation and accountability.²³³ The current powers of both chiefs and rural councils are structured by laws with antecedents in the colonial period.²³⁴ The exclusion of women and central control through *tutelle* is explicitly written into old and new law shaping both "customary" and elected local authority.²³⁵ Reworking rural representation is not a matter of dismantling customary systems to favor modern ones. Rather it is the re-writing, and hopefully the elimination, of carefully crafted disabling laws that make both customary and new rural authorities extensions of the central government. Although current governments could change these laws, most resist. The bottom line is that these laws do not serve rural populations; they support central control. Whether representation should be based on indigenous or imported institutions is an open question. Within a long-standing central political-administrative system for managing the rural world, that which is indigenous and that which is imposed can hardly be distinguished. It is time to challenge both.

231. See SCOTT, *supra* note 93; TENDLER, *supra* note 32; Guyer, *supra* note 230; Moore, *supra* note 229; Jesse C. Ribot, *Integral Rural Development: Authority and Accountability in Decentralized Natural Resource Management* (1998) (Working Paper, Africa Technical Division, The World Bank); Jesse C. Ribot & Arun Agrawal, *Making Decentralization Accountable: A Framework for Analysis and Empirical Studies from South Asia and West Africa*, J. DEVELOPING AREAS (forthcoming 2000) (on file with author).

232. Shipton uses the term "entrustment" to explore relations of lending and borrowing in Kenya. His term can be expanded to describe the relation of local public authorities to both central government and the populations they serve. See Parker Shipton, *Luo Entrustment: Foreign Finance and the Soil of the Spirits in Kenya*, 65 AFRICA 172 (1995).

233. See Ouédraogo, *supra* note 40; Spierenburg, *supra* note 49; BAYART, *supra* note 56, at 22.

234. See discussion *supra* Part V.

235. See discussion *supra* Part IV.A. See also Loi No. 007/93/ADP, *Portant Regime Electoral des Conseillers de Village, Desecteur Communal, de Departement et de Province* (1993) (Burk. Faso).

Whether participatory approaches and decentralization laws support the creation of local autonomous domains of collective action cannot be determined solely by examining representation and the distribution of powers. Enfranchisement occurs at the intersection of legal structures; it cannot be created through single-stranded legislation. To determine when participation and decentralization require serious efforts to include rural populations in the powers and benefits of the state, we must ask several questions. First, does legislation support local accountability of representatives (through any mix of the means described above)? Second, what are the types of tutelage (or administrative oversight) built into representative structures? Third, what powers, if any, are being entrusted to these bodies — adjudication, decisions, resources, finances, or the ability to tax? Fourth, in what form are powers devolved — as discretionary privileges to be allocated by an administrative authority or as rights? Fifth, what are the structures of redress? Is there an accessible independent judiciary? Sixth, are responsibilities being devolved that increase local burdens disproportionately to the benefits and powers being devolved? Seventh, what decisionmaking powers and assets are being devolved to private bodies? Are public or community resources being privatized (i.e., enclosed) in the name of community participation? And, finally, are powers of decision that should be kept central — such as fixing minimum environmental standards — being devolved to smaller units of government? These are among the many questions we must ask to identify who can legally decide over the disposition and use of forests and trees.

Legislation by the central state can foster greater autonomy and participation for local populations just as it currently prevents them. The laws analyzed in this article have moved in that direction — pushed by participatory policies and projects that have nibbled at the margins of state-structured inequality, but have rarely challenged its legal core. Welcome change is underway. Mali's admission of independent candidates into local elections is a positive step towards accountability and participation.²³⁶ Mali and Burkina Faso's new laws allowing Rural Councils to classify (or reserve) forests within their domain also constitute major positive changes.²³⁷

Decentralized and participatory forestry intends to, and does, benefit rural populations. But in countries without locally accountable representation, and those under a system of centralized administrative control, it may simply do this as a form of charity in which some benefits are allocated among locals. Even then, it is often the elites who are benefited. It can also, however, be covert privatization, the introduction of new labor obligations (participatory *corvée*), or a modern extension of Association and Indirect Rule. The challenge is to use new projects and policies to push for real, generalized, and enduring participation. If

236. See discussion *supra* Part IV.B-C.

237. See discussion *supra* Part IV.A, C.

participation is to sustain — beyond the term of projects and whims of allocated privilege — empowered accountable representation must be legislated into existence. To sort out whether any given act of decentralization or participation accomplishes this requires going beyond humanitarian impetus and political pronouncements into the labyrinth of laws that clearly spell out exactly who represents communities and who is intended to have and use resources and powers.