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Transnational Legal Process and Discourse in Environmental Governance: The Case of REDD+ in Tanzania

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Governments in developing countries have adopted policies, laws, and programs to reduce carbon emissions from deforestation and forest degradation (REDD+), with the funding and rules provided by global institutions and transnational actors. The transnational legal process for REDD+, entailing the construction and diffusion of legal norms that govern the pursuit of REDD+, has been driven by discursive struggles over the purposes and requirements of REDD+. At the global level, the development of legal norms for REDD+ has been primarily influenced by coalitions committed to the discourses of ecological modernization, civic environmentalism, and to a lesser extent, climate justice. Through discourse analysis of the transnational legal process for REDD+ in Tanzania, I show how domestic efforts to operationalize REDD+ have been dominated by a government coalition that has emphasized green governmentality, made few concessions to the discourse of civic environmentalism, and completely neglected the climate justice claims of Indigenous Peoples. This case study reveals how discourse analysis may enhance the study of transnational legal phenomena by drawing attention to the complex interplay of global and domestic discourses and its role in shaping legal norms and reinforcing or challenging structures of power and knowledge within and across legal systems.

INTRODUCTION

Legal scholars have long been interested in studying the formal and informal processes through which legal norms are created, carried, interpreted, transformed, and applied around the world (Koh 1996; Halliday and Osinsky 2006; Cotterrell 2009). One influential approach for understanding transnational legal processes, developed by Shaffer, focuses on the role played by public and private actors, institutions, and networks in constructing and diffusing legal norms across different legal systems and their impact on national law and multiple dimensions of state change (Shaffer 2012). Drawing on this framework, sociolegal scholars have shown that transnational legal processes typically feature ongoing and iterative cycles of lawmaking driven by the

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interplay of competing legal norms and practices at the transnational, national, and local levels (Shaffer 2012, 259). More recently, Halliday and Shaffer have argued that this dynamic process can lead to the formation of a transnational legal order, which brings together "formalized legal norms and associated organizations and actors that authoritatively order the understanding and practice of law across national jurisdictions" (Halliday and Shaffer 2015a, 4).

While a number of authors in this literature have acknowledged the relevance of discourses to the development, convergence, or propagation of transnational legal norms and orders (Kim and Boyle 2012; Helfer 2015; Lloyd and Simmons 2015; Rajah 2015), the potential of discursive analysis for understanding transnational legal processes remains largely untapped (Gillespie 2008; Halliday and Shaffer 2015b, 481–85). There are few in-depth qualitative studies of the complex role that competing discourses can play in the construction, conveyance, translation, and application of legal norms within and across legal systems, especially in the context of environmental governance. In order to fill this gap in the literature, I draw on a variant of discourse analysis known as discursive institutionalism (Schmidt 2008) to complement Shaffer's account of transnational legal processes. My approach focuses on understanding how discourses shape and become instantiated in the construction and circulation of legal norms and practices, while also recognizing how different legal institutions may, in turn, constrain and enable the emergence of discourses. Inspired by a rich body of scholarship in the field of environmental politics (Hajer and Versteeg 2005; Bäckstrand and Lövbrand 2006; den Besten, Arts, and Verkooijen 2014), I am interested in examining the complex, dynamic, and reciprocal interactions that may emerge between the discourses promoted by different coalitions of actors and the processes by which legal norms are developed, communicated, interpreted, and applied across multiple legal systems.

In this article, I analyze the role that competing discourses have played in the transnational legal process that aims to reduce carbon emissions by tackling deforestation and forest degradation and increasing forest carbon sequestration (REDD+) in developing countries (see Pistorius 2012).[1] The basic idea behind REDD+ is that the provision of results-based funding from multilateral, bilateral, and private sources, accompanied by the rules, guidance, and technical assistance provided by global institutions and transnational actors, should enable developing countries to tackle the large-scale drivers of forest loss in developing countries and thereby contribute to the world's global climate mitigation efforts (Jodoin and Mason-Case 2016). As many legal scholars have shown, the emergence of REDD+ has affected multiple sectors of international, transnational, and domestic law, most notably relating to the changing roles and responsibilities of developing countries in the climate regime; the governance of forests, land, and natural resources; the nature and configuration of rights to carbon stored in trees; and the recognition of the status, tenure, and rights of Indigenous Peoples and local communities (Lyster, MacKenzie, and McDermott 2013; Voigt 2016; Jodoin 2017; Tehan et al. 2017).

1. The acronym REDD+ stands for "reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries."

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Rather than consider the operationalization of REDD+ as a technocratic endeavor entailing the objective development and application of legal requirements, I argue in this article that the transnational legal process for REDD+ can be understood as a series of struggles between competing discourse coalitions that have unfolded iteratively across different legal systems. My inquiry is structured around four influential discourses that have shaped the field of contemporary climate governance: ecological modernization, green governmentality, civic environmentalism, and climate justice (Bäckstrand and Lövbrand 2006, 2016). Ecological modernization stresses the role of market mechanisms and incentives, public-private partnerships, and technological innovation in addressing global environmental problems (Hajer 1995; Bäckstrand and Lövbrand 2016, 8–10). Green governmentality is premised on the idea that central administrative control, allied to scientific knowledge, is best positioned to steer human behavior and manage the environment in a sustainable manner (Bäckstrand and Lövbrand 2006, 53–55; Rutherford 2007). Civic environmentalism emphasizes the need to foster the participation of multiple stakeholders, including local communities, Indigenous Peoples, nongovernmental organizations (NGOs), and businesses, in environmental governance (Bäckstrand and Lövbrand 2006, 55–56). Finally, the discourse of climate justice opposes neoliberal solutions (such as carbon markets) and favors a fundamental reshaping of the global structures that privilege markets over the protection of nature and communities (Bäckstrand and Lövbrand 2016, 10–12).

I carry out my analysis at two levels. I first discuss the role that key discourses of climate governance have played in the construction and diffusion of legal norms for REDD+ at the global level. Next, I provide an in-depth case study of efforts to interpret and apply these legal norms in Tanzania, focusing on the role of competing discourses and coalitions in the development of a national REDD+ strategy. On the whole, I demonstrate that lawmaking for REDD+ has been driven by competition between different coalitions of actors influenced by, and promoting, different discourses that shape how actors understand the fundamental purposes and requirements of REDD+ —what it should achieve, how should it be financed, how should it be monitored, to what extent it should consider the rights and knowledge of Indigenous Peoples and local communities, and what activities it should support.

At the global level, the transnational legal process for REDD+ has featured competition among three principal discourse coalitions. An influential coalition espousing a discourse of ecological modernization has tended to prioritize the efficiency and effectiveness of REDD+ as a climate finance mechanism, with little consideration of other social or environmental issues. Members of the broader climate justice movement have opposed REDD+, which they view as incapable of addressing deforestation and posing significant risks to the rights of Indigenous Peoples and forest-dependent communities. Another coalition, committed to a discourse of civic environmentalism, has sought to reform REDD+ and maximize its potential to protect forests, ensure the participation of local communities, and improve governance for sustainable development in developing countries. The discursive understandings promoted by these different coalitions have, to different degrees, influenced the development of legal norms for REDD+ at the global level, most notably reflected in the establishment of rules and safeguards for the pursuit of REDD+ in developing countries. Yet these legal norms have done more than simply

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provide the requirements for operationalizing REDD+ —they have narrowed the terms of the debate and entrenched power asymmetries.

While there has been a certain convergence in the elaboration of core legal norms for REDD+, their diffusion across multiple contexts has led to renewed cycles of discursive competition and resulted in the emergence of diverging legal practices for REDD+. My case study of the transnational legal process for REDD+ in Tanzania uncovers how domestic efforts to operationalize REDD+ may trigger competition between discourse coalitions and engender legal outcomes that reflect the complex interplay between global and domestic discourses and institutions. The specific ways in which global legal norms for REDD+ have been interpreted and developed in Tanzania demonstrate how aspects of ecological modernization and civil environmentalism have been shaped by, and incorporated into, a logic of green governmentality. Indeed, the Tanzanian government's analysis of the drivers of forest loss and the solutions thereto along with its approach to the coordination and governance of REDD+ activities, carbon accounting practices, and safeguards emphasize the central role that state institutions and scientific expertise should play in governing forests and managing funds received for REDD+. Tanzania's national REDD+ strategy also suggests that local communities are responsible for forest loss in Tanzania, conceives of REDD+ as a mechanism for placing their behavior under government control, and ignores the rights and perspectives of its Indigenous Peoples. As such, the study of discourses in transnational legal processes provides a useful analytical lens for uncovering the ways in which law may be embedded in, reproduce, or disrupt structures of knowledge and power within and across legal systems as well as accounting for the ability of such processes to generate both conflict and order.

ANALYTICAL AND METHODOLOGICAL FRAMEWORKS

Analytical Framework

My analytical framework draws on three important elements that characterize Shaffer's approach to the study of transnational legal processes. First, Shaffer conceives of transnational legal processes as relating to the construction and diffusion of legal norms by a heterogenous array of public and private actors, institutions, and networks that operate across borders (Shaffer 2012). This pluralist conception of law defines legal norms as "norms that lay out behavioral prescriptions issued by an authoritative source that take written form, whether or not formally binding or backed by a dispute settlement or other enforcement system" (234). A transnational legal process may thus involve a diversity of forms of law, including international treaties, model laws, regulations, and guidelines promoted by transnational actors; standards or codes of conduct developed by private actors; or rules emanating from a domestic legal system (Halliday and Shaffer 2015a, 15–17).

Second, Shaffer treats the processes through which transnational legal norms are constructed and conveyed as multidirectional (2012, 235–36). Rather than focus on the processes through which international legal norms are internalized within states (Koh 1996), this perspective recognizes that legal norms can travel "horizontally" from one

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domestic legal system to another as well as "vertically" across transnational, national, and local institutions (Twining 2004, 34). Moreover, the development, interpretation, and application of legal norms is understood as generating "recursive" cycles of lawmaking within and across multiple legal systems and institutions (Halliday and Shaffer 2015a, 38–39). This view emphasizes that transnational legal processes are often contentious, as different actors compete with one another over the formulation and application of transnational legal norms (Dezalay and Garth 1996; Meidinger 2007; Halliday and Carruthers 2009). The natural ambiguity of legal norms, the path dependence of existing legal institutions, and the particularities of different domestic political contexts all create potential for differences in interpretation and application to arise between actors and institutions (Krook and True 2010; Shaffer 2012, 248–57). These conflicts help explain why the migration of legal norms frequently leads to their translation, rather than to their transplantation, across different legal institutions and systems (Merry 2006; Goldbach, Brake, and Katzenstein 2013; Jodoin 2017, 23–25).

Third, Shaffer argues that recursive cycles of lawmaking across transnational, national, and subnational legal systems can, over time, lead to the emergence of a transnational legal order in which shared understandings and related legal practices are taken for granted by actors in a particular field (Halliday and Shaffer 2015a, 37–42). Transnational legal orders vary considerably in the extent to which they are effectively institutionalized. This can most notably be assessed along two main dimensions: the extent to which legal actors and institutions in a given transnational, national, or local site of law share a common interpretation of legal norms and behave accordingly (normative settlement) and the consistency between legal meanings and practices present in different transnational, national, and local legal orders (concordance) (Halliday and Shaffer 2015a, 42–46).

Sociolegal scholars have identified a number of factors that can account for the emergence, evolution, and effectiveness of transnational legal processes and orders, emphasizing, among other things, facilitating circumstances and contexts, asymmetries in power between actors, the properties of transnational legal norms and their relation to domestic legal systems, and the different forms of influence exercised by and through global institutions and transnational interactions (Koh 1996; Halliday and Osinsky 2006; Merry 2006; Halliday and Carruthers 2009; Shaffer 2012; Jodoin 2017). While some of these explanations acknowledge the relevance of discourses (Shaffer 2012, 250; Halliday and Shaffer 2015b, 481–85), I argue that an in-depth analysis of discourses is essential for understanding the complex and shifting dynamics that animate the construction and conveyance of legal norms in a transnational legal process. In doing so, I draw on a rich body of literature that has uncovered the influence of competing discourses in the governance of environmental issues and the development and implementation of environmental policies (Hajer 1995; Hajer and Versteeg 2005; Bäckstrand and Lövbrand 2006). While law may in of itself be recognized as a particular form of discourse (Humphreys 1985), I am more interested in unpacking how discourses can influence the perspectives and actions of actors that are involved in the generation, interpretation, translation, and application of legal norms in a transnational context (Gillespie 2008). I adopt Hajer and Versteeg's definition of discourse "as an ensemble of ideas, concepts and categories through which meaning is given to social and physical phenomena, and which is produced and reproduced through an identifiable set of

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practices" (Hajer and Versteeg 2005, 175). A discursive approach to transnational legal processes thus focuses attention on how actors and institutions are embedded in structures of language and knowledge that shape, in profound and implicit ways, their understanding of the problems that law seeks to address and the range of possible solutions that it offers (Kim and Boyle 2012; Halliday and Shaffer 2015b, 482).

In particular, I use a variant of discourse analysis known as discursive institutionalism, which examines how discourses shape and become instantiated in social and institutional practices, while also recognizing that institutional contexts constrain and enable the emergence of different discourses (Schmidt 2008). When a particular discourse becomes institutionalized in a given site of authority, this empowers certain actors and perspectives over others and limits the ability of actors to develop and promote discourses that diverge from those that are now dominant (Hajer 1995). At the same time, the institutionalization of a discourse is always contingent since actors retain the ability to challenge or create institutions by generating proposals for change and framing them in light of existing discourses in ways that make them persuasive to other actors (Vijge et al. 2016; Allan and Hadden 2017) as well as by constructing new shared understandings through discursive interactions with others (Schmidt 2008; den Besten, Arts, and Verkooijen 2014). Contests between different discourses ultimately lead policy actors to form "discourse coalitions," which are defined as an "ensemble of a set of story-lines; the actors who utter these story-lines; and the practices in which this discursive activity is based" (Hajer 1995, 64). The ability of a discourse coalition to influence institutions in a given domain hinges on a number of factors, including the stability of its core frames and actors, intracoalition commitment to shared ideas and unity against opposing coalitions, its ability to mobilize resources and support, and the consistency of the story lines that it promotes (Rantala and Gregorio 2014).

Accordingly, a discursive approach focuses attention on the role that discourse coalitions play in efforts to develop and apply legal norms across borders. Discourse coalitions advance competing understandings of a problem and related solutions and seek to influence the generation, interpretation, and implementation of legal norms and practices in different fields of transnational law (Kim and Boyle 2012). Analyzing the emergence, influence, and demise of discourse coalitions at different stages and levels of a transnational legal process is useful for understanding the dynamic process though which one or more discourses become institutionalized within the legal norms and practices that are constructed and diffused across multiple legal systems. As legal norms are promoted and applied across transnational, national, and local legal orders, they may introduce new ideas and empower new actors—classic examples of these sorts of effects can be found in the spread of human rights norms. This can give rise to discursive conflict in which discourse coalitions will compete with one another to define legal problems; demarcate the range of potential solutions; and shape the legal institutions that must be abandoned, modified, or created as a result. Because these struggles take place in the context of existing discourses (Hajer 1995, 60) already present in a site of law, they are likely to generate "hybrid" legal practices that reflect shifts in meaning that are aligned with existing norms (Merry 2006). This period of discursive competition may then be followed by the institutionalization of particular discourses, which is characterized by a settlement in how legal norms are understood and applied within a site of law. In turn, the institutionalization of one or more discourses in a site of law will

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shape the future development, interpretation, and application of legal norms, promoting certain ways of understanding problems and solutions, narrowing the terms of the debate, and entrenching power asymmetries. However, due to the tensions inherent in transnational legal processes (Halliday and Carruthers 2009, 17–19), the institutionalization of discourses in a site of law may nonetheless be challenged in the future by a discourse coalition promoting an alternative discourse, thus generating a new period of discursive conflict (den Besten, Arts, and Verkooijen 2014).

Methodological Framework

The discourse analysis that I carry out in this article aims to provide a critical examination of the complex and evolving relationship between discourses, coalitions, and legal norms in the transnational legal process for REDD+ over time.

I first review the role that competing discourses and related coalitions have played in the development of core legal norms for REDD+ and the way that this has shaped transnational legal ordering across multiple forms and levels of governance. In accordance with Kim and Boyle's work, I assume that discourses not only influence the development and circulation of legal norms at the global level, but also shape the perspectives, positions, and activities of actors engaged in efforts to interpret and apply transnational legal norms at the domestic level (Kim and Boyle 2012). I then provide an in-depth case study of the influence of these discourses and the discourse coalitions that reflect them on emerging legal practices relating to REDD+ in Tanzania, specifically in the context of the development of a national REDD+ strategy from 2009 to 2013. I selected Tanzania as a case study country for two principal reasons. First, its REDD+ readiness efforts had reached an advanced stage by this period, making it possible to study its initial legal outcomes, specifically key decisions made regarding the design and governance of REDD+ that are included in a country's national REDD+ strategy. Second, the pursuit of REDD+ in Tanzania has featured several important disagreements between actors relating to the way in which REDD+ should be understood, developed, and implemented, making a discursive approach particularly useful (Rantala and Gregorio 2014; Rantala et al. 2015).

I drew on multiple methods and sources of data to carry out my discourse analysis of the transnational legal process for REDD+ in Tanzania. The bulk of my discourse analysis relies on careful scrutiny of primary materials related to the REDD+ readiness process in Tanzania, principally policy reports, submissions, drafts, and final documents that I collected during my fieldwork.[2] I also rely on semistructured interviews that I completed in Tanzania in July 2013 as well as remotely throughout 2014 with civil servants, Indigenous and civil society activists, conservation and development practitioners, experts, and private sector representatives working on or knowledgeable about the pursuit of REDD+ in Tanzania.[3] These interviews enabled me to understand the context in

2. All of the documents that are listed in the References as being on file with author are available on my Web site: http://www.sjodoin.ca/references-on-file-relating-to-redd.

3. As part of a broader research project on the transnational legal process for REDD+, I completed ninety-four semistructured elite interviews with individuals affiliated with international organizations, developing and developed country governments, corporations, and NGOs actively working on REDD+ around

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which REDD+ was being implemented in Tanzania and to identify the nature of different discourse coalitions and their approach to the development and interpretation of legal norms for REDD+. Finally, I also refer to a number of secondary sources on the REDD+ readiness process, the governance of forests and lands, and Indigenous Peoples in Tanzania. By triangulating across these different sources, I seek to offer an in-depth analysis of the extent to which different discourses of climate governance are reflected in the interpretation, creation, translation, and avoidance of legal norms for REDD+ in Tanzania.

UNDERSTANDING REDD+ AS A TRANSNATIONAL LEGAL PROCESS

The Origins and Scope of the Transnational Legal Process for REDD+

Throughout the 1990s and early 1990s, efforts to address carbon emissions from tropical deforestation were stymied by disagreements over the respective roles, burdens, and responsibilities of developed and developing countries in the fight against climate change as well as technical and scientific concerns over measuring changes in forest carbon sequestration. As a result, few mechanisms of climate governance, whether in the context of the United Nations Framework Convention on Climate Change (UNFCCC) or the voluntary carbon markets, were geared toward significantly curbing carbon emissions from forest-based sources in developing countries (Jodoin and Mason-Case 2016, 264–65). These initial experiences and debates over the linkages between deforestation and climate mitigation did however increase technical knowledge and legitimize the idea of forests serving as carbon sinks (Boyd 2010). This opened the door for the Coalition of Rainforest Nations, an umbrella group led by Papua New Guinea and Costa Rica, to propose that the provision of new revenue streams based on the market value of forests could significantly reduce carbon emissions from deforestation (RED) in developing countries. In 2005, the coalition succeeded in getting state parties to the UNFCCC to initiate discussions on approaches and methodologies for implementing their proposal (Pistorius 2012, 640). This initial proposal for what was then known as RED was quickly supported by a broad coalition of governments, scientists, and NGOs from both North and South who framed it as a "triple-win solution" for curbing 17 percent of the world's carbon emissions, protecting forests and their ecosystems, and contributing to sustainable development in the developing world (Jodoin and Mason-Case 2016, 266).

After two years of consultations and discussions, REDD+ was formally included as an agenda item of the Bali Action Plan to negotiate a long-term agreement on climate change (UNFCCC COP 2008, ¶ 1(b)(ii)). By 2007, the concept had been expanded from "RED" to "REDD+" to encompass additional activities focused on the reduction of emissions from forest degradation as well as the enhancement of forest carbon sequestration (Pistorius 2012, 639). This increased its relevance to, and support from, a range

the world. For a complete list of these interviews and further information on how they were conducted, see http://www.sjodoin.ca/s/On-Line-Appendix-on-REDD-Fieldwork.pdf. The interview numbers cited in the notes below correspond to the numbered list on this page.

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of developing countries with different forest ecosystems and rates of forest loss and not simply those with high levels of deforestation (639–45). The launch of negotiations over REDD+ in the UNFCCC catalyzed the creation of a large array of multilateral, bilateral, and nongovernmental initiatives to support developing countries in creating institutions and technical capabilities to manage international payments for REDD+, track changes in carbon emissions from forest-based sources, and experiment with pilot initiatives for doing so at the local level (Corbera and Schroeder 2011). In turn, with the funding and support provided by international organizations, bilateral aid agencies, and NGOs, a significant number of developing country governments in Asia, Africa, and Latin America initiated "readiness" efforts to prepare for the operationalization of REDD+ at the domestic level (Cerbu, Swallow, and Thompson 2011).

The launch of these efforts marks the emergence of a transnational legal process in which public and private actors have constructed, conveyed, and applied legal norms for REDD+ across a variety of legal systems (Jodoin and Mason-Case 2016; Jodoin 2017). At the transnational level, legal norms for REDD+ have been constructed and diffused through the decisions adopted within the UNFCCC, the rules and guidance set by two influential multilateral programs, the World Bank's Forest Carbon Partnership Facility (FCPF) and the UN-REDD Programme, and the standards and methodologies developed by nongovernmental organizations such as VERRA, including the Verified Carbon Standard (VCS) and the Climate, Community & Biodiversity (CCB) Standards (Van Asselt and McDermott 2016; Jodoin 2017, 39–44). In particular, Recio has argued that the process of developing and signing grant agreements with multilateral institutions to access and receive finance for REDD+ readiness and demonstration activities has served as a key vector for the conveyance of legal norms in developing countries (Recio 2018). At the national level, legal norms for REDD+ have been adopted and adapted in the context of the national strategies, policies, and laws that developing countries have developed as part of their REDD+ readiness efforts (Jodoin 2017, 44–45). Finally, at the local level, legal norms for REDD+ have been developed and implemented through the REDD+ projects designed and carried out by governments, NGOs, private firms, and local communities in line with transnational certification standards as well as relevant domestic laws and regulations (Jodoin 2017, 45–46). While some of these projects aim to feed into efforts to develop national strategies and technical capabilities at the national level, other projects have instead been undertaken with the goal of generating certified emissions reductions that can be sold and traded on voluntary carbon markets (Cerbu, Swallow, and Thompson 2011).

The Emergence of a Transnational Legal Order for REDD+

The generation, interpretation, and application of legal norms around the world after 2007 was soon accompanied by the launch of countless initiatives, meetings, and dialogues seeking to enhance coordination between different multilateral, bilateral, and nongovernmental initiatives for REDD+ as well as build consensus among governments, international organizations, NGOs, local communities, and the private sector (Gupta, Pistorius, and Vijge 2016; Jodoin 2017; Recio 2018). By 2010, this complex and dynamic transnational legal process had led to some degree of normative settlement

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concerning the concept and basic rules that should govern the pursuit of REDD+ by developing countries, leading Bodansky to allude to the formation of an "incipient" transnational legal order (Bodansky 2015, 304). The primary legal norms at the heart of the transnational legal order for REDD+ were gradually settled not only through the decision making taking place within the UNFCCC, but also through the legal standards emerging from multilateral institutions, bilateral agreements, and private standard-setting bodies (Streck and Costenbader 2012).

Five important sets of legal norms have come to define the scope of the transnational legal order for REDD+ in the past decade and have been formally institutionalized by the UNFCCC COP in the Cancun Agreements (La Viña, de Leon, and Barrer 2016) and in the Warsaw Framework for REDD+ (Recio 2014). First, developing country participation in REDD+ is undertaken on a voluntary basis; dependent on national circumstances, capacities, and capabilities; and subject to the provision of adequate levels of international support and finance, including public, private, bilateral, multilateral, and market-based sources (UNFCCC COP 2014, decision 9). Second, REDD+ activities carried out by developing countries have a *jurisdictional* focus, which means that they aim to reduce carbon emissions by addressing national drivers of deforestation (UNFCCC COP 2014, decisions 11 and 15), as opposed to the local scale that is the standard basis of forest carbon sequestration projects.[4] Third, the scope of activities eligible for recognition and funding as jurisdictional REDD+ include: (1) reducing emissions from deforestation; (2) reducing emissions from forest degradation; (3) conservation of forest carbon stocks; (4) sustainable management of forests; and (5) enhancement of forest carbon stocks (UNFCCC COP 2011, ¶ 70). Fourth, REDD+ activities are meant to be supported through *results-based* finance that requires that their effectiveness in reducing carbon emissions can be fully measured, reported, and verified in accordance with international guidance (UNFCCC COP 2014, decision 9). Fifth, the domestic operationalization of jurisdictional REDD+ in a developing country should proceed in three phases, starting with the development of national strategies or action plans, policies and measures, and capacity building, followed by an initial implementation of national policies and demonstration activities and additional capacity building, and leading to results-based actions subject to measurement, reporting, and verification (MRV) (UNFCCC COP 2011, ¶ 76).

In addition, the transnational legal order for REDD+ has converged around legal norms that establish the conditions of "REDD+ readiness" that developing countries must achieve in order to carry out and receive funding for jurisdictional REDD+ activities, namely: (1) the adoption of a national strategy or action plan; (2) the establishment of a forest emissions level; (3) the development of a system to measure changes in forest-related carbon emissions; and (4) the creation of a system for social and environmental safeguards (UNFCCC COP 2011, ¶ 71). Of particular relevance from a legal perspective is the fact that multiple institutions require, in different ways, that developing countries participating in REDD+ ensure the full and effective participation of Indigenous Peoples and local communities in the pursuit of REDD+ initiatives and develop safeguards that recognize and protect their rights in their implementation (Jodoin 2017, 54–86). I shall

4. That said, REDD+ projects may nonetheless feed into efforts to develop national REDD+ institutions and policies.

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briefly discuss each of these conditions, as they have shaped domestic preparations for REDD+ carried out by developing countries; influenced the development of national strategies, policies, and laws; and become the principal focus of ongoing efforts to generate, interpret, and apply legal norms for REDD+ around the world. These conditions also reveal the extent to which the operationalization of REDD+ is entangled with complex and divisive legal issues that concern how forests should be managed, to what ends, and for whose benefit (Brockhaus and Gregorio 2014).

The adoption of a national REDD+ strategy or action plan is meant to set out a governance framework and related initiatives and milestones for creating institutions, adopting or reforming laws and policies, and establishing enabling conditions for the successful implementation of REDD+ at the national level (Minang et al. 2014). In setting up a national REDD+ framework that is tailored to its particular circumstances, a developing country must determine: which types of landscapes and activities are eligible for REDD+ funding; which sources of international funding for REDD+ should flow into the country, including whether this should include market-based sources of finance; whether and how the benefits derived from REDD+ activities should be shared with different stakeholders within the country; how to ensure the full and effective participation of Indigenous Peoples and local communities; and whether the clarification or revision of land and forest tenure and rights is required by different REDD+ activities, potentially including by creating "carbon rights" to own or benefit from the carbon stored in forests (Angelsen 2009).

The development of a reference level and the creation of an MRV system are not merely technical exercises but are also intimately connected to law and governance. Reference levels serve as a benchmark against which the performance of a REDD+ in reducing carbon emissions is measured and thus determines which actors, sectors, ecosystem, and regions will be the focus of efforts to reduce emissions and the extent to which they will have to do so (Chagas et al. 2013). MRV systems provide the information base upon which REDD+ interventions are initiated, evaluated, and managed and related payments are allocated and disbursed at various scales (Devries and Herold 2013) and differ significantly in the extent to which they recognize the potential contributions of community-based approaches (Larrazábal et al. 2012). As such, the design of MRV systems may privilege certain actors, forms of knowledge, and sets of values and objectives. Some approaches to MRV "may serve to marginalize local actors, obscure local differences, and/or promote carbon over other forest values," while others "can be used to mobilize counter-expertise and activate agency in diverse ways, both of global scientific elites and local actors" (Gupta et al. 2012, 730).

Finally, the adoption of social and environmental safeguards and the development of systems for reporting information on their implementation have obvious implications for law and equity (McDermott et al. 2012). The recognition and protection of the rights of Indigenous Peoples and local communities in this context has proven to be contentious, especially since international, regional, and domestic legal systems differ significantly in whether, how, and to what extent they respect, understand, and apply these rights (Savaresi 2012; Jodoin 2017). More broadly, differences in the design of safeguard systems adopted for REDD+ can have very tangible implications. Emphasizing the mitigation of risk and negative impacts through "do no harm" safeguards implies a "trade-off between economic growth, sustainable forest management,

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the social and cultural value of forests, and carbon sequestration" that may limit the extent to which REDD+ initiatives yield positive outcomes for ecosystems and local communities (Bastakoti and Davidsen 2017, 12).

While the transnational legal order for REDD+ has been characterized by a high degree of normative settlement and concordance in terms of the basic rules of REDD+ and elements of REDD+ readiness, actors have continued to contend with one another over the development, interpretation, and application of legal norms for REDD+ across different legal systems. Within the UNFCCC, negotiations have focused on the identification of drivers of deforestation, methodological standards for MRV systems, financial incentives for noncarbon benefits, market-based sources of funding, and reporting on safeguards information systems (UNFCCC Secretariat 2016). Differences in the standards for funding REDD+ activities have also emerged across different multilateral, bilateral, and private initiatives whose conditions and safeguards are elaborated on the basic of existing legal norms (Streck and Costenbader 2012; Roe et al. 2013). At the national level, the transnational legal process for REDD+ has also led to heterogenous outcomes, which is to be expected not only because of the enduring influence of domestic legal norms, but also because of the notion that jurisdictional REDD+ activities should be aligned with the national priorities and capabilities of developing countries (McDermott and Ituarte-Lima 2016; Vijge et al. 2016). More fundamentally, as I will explain in the next section, the nature and prevalence of normative conflict in the transnational legal process for REDD+ is tied to the competition that it has engendered between discourse coalitions in this complex and dynamic field of lawmaking.

Discourse Coalitions in Transnational Legal Ordering for REDD+

At the global level, the initial emergence of REDD+ was closely tied to a discourse of ecological modernization reflecting a narrow and technocratic understanding of REDD+ as a climate finance mechanism providing results-based payments to shift economic incentives away from activities that contribute to forest loss toward those that increase forest cover, with little consideration of other social and environmental issues (den Besten, Arts, and Verkooijen 2014, 42–43). However, the inclusion of REDD+ as an agenda item in the Bali Action Plan in 2007 rapidly generated discursive struggles over the scope, purposes, and rules of REDD+. For one thing, the advent of REDD+ attracted the attention of governments, Indigenous Peoples, and NGOs who were skeptical of its purported benefits for climate mitigation and concerned about its potentially negative implications for ecosystems and local communities (Nielsen 2013, 12–13; den Besten, Arts, and Verkooijen 2014, 43–44). For another, the spread of REDD+ across multilateral, bilateral, and nongovernmental legal systems provided new venues for the development of alternative discourses and norms emphasizing other priorities, most notably in terms of the recognition and protection of the rights of Indigenous Peoples (Wallbott 2014, 6–7).

After 2008, the transnational legal process for REDD+ has thus featured competition between three principal discourse coalitions that den Besten, Arts, and Verkooijen refer to as: REDD+ advocates, REDD+ critics, and REDD+ reformists. Embracing a discourse of ecological modernization, REDD+ advocates have been primarily concerned

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with ensuring that the funds channeled through REDD+ lead to significant and measurable reductions in carbon emissions and have therefore emphasized the need to safeguard the efficiency of REDD+ as a results-based mechanism and the importance of building robust and scientifically sound systems for tracking carbon emissions (Nielsen 2013, 12–13). The discourse of ecological modernization promoted by REDD+ advocates has most notably been reflected and instantiated in the World Bank's FCPF, which provides funding and support for the operationalization of REDD+ in developing countries, including by channeling public and private funds to test results-based payments for REDD+ activities. The memo that led to the creation of the FCPF in 2008 explicitly recognized that it "is, first and foremost, a climate change mitigation instrument, and that REDD will not solve all the problems affecting forests, including loss of biodiversity, poverty, etc." (FCPF 2008, 36). The FCPF has thus been criticized for its embrace of market-based approaches to REDD+, its narrow focus on carbon accounting, and its failure to protect the rights of Indigenous Peoples in its operational policies (Dooley et al. 2011).

By contrast, REDD+ critics have espoused a discourse of climate justice and have actively opposed the very notion of REDD+, which they view as being incapable of addressing deforestation, as overemphasizing carbon sequestration to the detriment of other important social and environmental values (Dooley et al. 2011), and as implying a commodification of nature that is incompatible with the traditional values of Indigenous Peoples and forest-dependent communities (Fincke 2010). REDD+ critics have criticized the construction of legal norms within multiple legal systems for REDD+, while limiting their direct engagement in official intergovernmental processes to avoid providing REDD+ with any further legitimacy as a result (Long, Roberts, and Dehm 2010, 237–38). REDD+ critics have nonetheless played an important role by pressing REDD+ advocates to recognize the importance of other social and environmental objectives and thereby creating opportunities for REDD+ reformists to support their integration in the legal architecture for REDD+. REDD+ critics have collaborated with one another in promoting a critical discursive understanding of REDD+ through transnational networks like the Accra Caucus (Accra Caucus 2009) as well as spaces that are tied to broader movements committed to the promotion of climate justice (Long, Roberts, and Dehm 2010) and the rights of Indigenous Peoples (Wallbott 2014).

Like the REDD+ critics, REDD+ reformists have had doubts about the ability of REDD+ to effectively tackle deforestation and have been concerned with its negative social and environmental implications (den Besten, Arts, and Verkooijen 2014, 642). However, promoting a weaker variant of the civic environmentalism discourse, REDD+ reformists have sought to maximize its potential as a mechanism to protect forests, empower local communities, and improve governance for sustainable development. REDD+ reformists have played a critical role in supporting the construction and conveyance of legal norms that seek to deliver multiple environmental and social benefits through REDD+, including, for instance, by emphasizing the importance of land tenure reform, social and environmental safeguards, and community-based approaches to carbon accounting (REDD+ Safeguards Working Group 2014). The discourse of civic environmentalism in the field of REDD+ has been most notably been reflected in the work of the UN-REDD Programme and the REDD+ SES Initiative. While the UN-REDD Programme has provided support and guidance regarding the development

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of MRV systems and financial mechanisms to operationalize REDD+, its other areas of work have included national REDD+ governance, stakeholder engagement, multiple benefits, benefit sharing, and the transformation of forestry and land use (UN-REDD Programme 2012, 10–11). The REDD+ SES is a multistakeholder program that provides a voluntary set of social and environmental standards that countries can use to build their own safeguards systems and that "respect the rights of Indigenous Peoples and local communities and generate significant social and biodiversity benefits" (REDD+ SES 2012, 3). Both the UN-REDD Programme and the REDD+ SES Initiative have most notably promoted safeguards and related guidance that go beyond those adopted in the Cancun Agreements or those used by the FCPF in recognizing and respecting the rights of Indigenous Peoples and local communities (Jodoin 2017, 54–86).

To a large extent, the core legal norms that have come to define the transnational legal order for REDD+ and are enshrined in the Cancun Agreements and the Warsaw Package for REDD+ can be seen as representing a compromise between the discourses of ecological modernization and civic environmentalism and respond to, without fully addressing, the claims of the climate justice movement (Nielsen 2013; den Besten, Arts, and Verkooijen 2014). They accord importance to efficiency and methodological accuracy in their focus on forest emissions levels and MRV systems and their use of the language of safeguards appears to privilege carbon sequestration over other social and environmental values. Yet, their focus on developing a national strategy for REDD+ and a system of social and environmental safeguards also suggests the necessity of addressing issues that go beyond the management of results-based payments for carbon sequestration, opening the door to tackling complex problems tied to the governance of lands, forests, and resources in developing countries and the recognition of the rights and participation of Indigenous Peoples and local communities (Brockhaus, Di Gregorio, and Mardiah 2013).

While these legal norms have led to a certain settlement of the core legal norms relating to REDD+, they have not put an end to discursive struggles altogether. REDD+ advocates, reformists, and critics have continued to compete with one another in consolidating or challenging the ways in which different discourses have been instantiated in lawmaking for REDD+. As a result, the field of REDD+ has grown more fractious as these competing discursive understandings of REDD+ have led to the generation of diverging legal standards, approaches, and tools (Jodoin 2017, 56–63). As I will show in the subsequent section, another important venue for discursive competition over REDD+ has been in developing countries themselves, where governments have moved forward with the complex exercise of interpreting, developing, and applying legal norms to operationalize REDD+.

DISCOURSE COALITIONS IN THE TRANSNATIONAL LEGAL PROCESS FOR REDD+ IN TANZANIA

Background and Context

Close to 40 percent of Tanzania's landmass is made up of forests, primarily comprising dry woodlands that are not amenable to large-scale logging, and nearly

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30 percent of the country is covered by wildlife reserves and national parks (Kashwan 2015, 101). Tanzania's forests support the livelihoods of forest-dependent and rural communities who use them for food, medicines, shelter, subsistence agriculture, firewood and charcoal, livestock grazing, and small-scale logging (Burgess et al. 2010, 341–43). These local activities, along with the conversion of lands for agriculture, biofuels production, and human settlements; illegal logging and mining; and infrastructure development, have resulted in high rates of deforestation and forest degradation in Tanzania (Mbwambo 2015, 1–2). Given the small-scale nature of some of the drivers of forest loss and their underlying causes such as poverty, energy needs, and food insecurity, community-based approaches to forest management have long been seen as a promising avenue for tackling deforestation in Tanzania (Blomley et al. 2017). However, while Tanzania has developed an advanced regime for supporting communities in governing their forests, this has not resulted in a meaningful devolution of authority over forests in practice (Goldman 2003; Nelson and Blomley 2012).

This paradoxical state of affairs reflects the role and influence of two competing discourses, green governmentality and civic environmentalism, in how forests have been managed in Tanzania for several decades. The discourse of green governmentality can be traced back to Tanzania's colonial history when British authorities centralized the management, conservation, and exploitation of forests in accordance with prevailing scientific practices and with the ultimate objective of maximizing the returns from forest resources (Hurst 2003, 359–61). With a view to protecting forests from local consumption, the British established forest reserves and evicted pastoralist and forest-dependent communities from their traditional lands (Nelson et al. 2009, 301–03). Upon achieving independence in 1961, Tanzania inherited this colonial forest regime, with the government forest administration controlling large state forest estates (Kashwan 2015, 100).

Green governmentality endured in the policies adopted by the authoritarian socialist regime of Julius Nyerere. In a 1961 speech known as the Arusha Manifesto, Nyerere famously proclaimed that the "conservation of wildlife and wild places calls for specialist knowledge, trained manpower and money" (Neumann 1995, 366). The Nyerere government increased the number and scope of protected forest areas (Nelson et al. 2009, 303–05) and placed forests under the management of specially trained bureaucrats, with the ultimate goal of supporting Tanzania's development at the national level and little consideration of the interests of local communities (Hurst 2003, 364–66). In a contemporary context, Tanzanian forest governance has continued to emphasize the importance of statist control over forests through decentralization measures that have reinforced and legitimated state authority and the proliferation of data collection, monitoring, and analysis (Scheba and Mustalahti 2015). Another manifestation of the discourse of green governmentality in Tanzania has been the marginalization of the rights of pastoralist communities, whose status as Indigenous Peoples is rejected by the government (Laltaika 2013) and whose traditional grazing lands have been alienated to make way for wildlife conservation areas (Neumann 1995).

At the same time, Tanzanian forest policy has reflected the influence of civic environmentalism since the early 1990s, when international donors, conservation NGOs, and Tanzanian officials began experimenting with community-based approaches to forest management (Nelson and Blomley 2012, 85–88). This new commitment to

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participatory forest management (PFM) (Mustalahti 2014, 201) led to the adoption of the Village Land Act in 1999 and the Forest Act in 2002, which enable communities living in or adjacent to forests to control and manage or comanage their forests through the establishment of Village Land Forest Reserves (VLFRs). VLFRs are meant to give local communities statutory rights to manage, control, and benefit from forests and their resources (Nelson and Blomley 2012, 83). Indeed, by 2011, 11 percent of Tanzania's forestland was managed under PFM, and 18 percent of all villages had PFM institutional arrangements (Blomley et al. 2017, 7).

However, the process for establishing VLFRs has been beset by the imposition of a standardized set of technical and administrative requirements that require the expertise, funding, and engagement of external actors—district officials, development experts, and conservation NGOs (Scheba and Mustalahti 2015). The establishment of VLFRs has also been stymied by district officials reluctant to approve new VLFRs due to concerns over losses of tax revenue and bribes associated with the exploitation of forest resources (Nelson and Blomley 2012, 89–91). Finally, the forest-dwelling and pastoralist communities that identify as Indigenous Peoples have been unable to establish VLFRs because they do not generally hold statutory tenure over their traditional lands or meet the requirements for establishing villages under Tanzania's land administration system (IFAD 2012, 14) and their customary lands have remained subject to coercive conservation practices (Laltaika 2013). More broadly, ambiguities over the recognition of different rights to lands and forests has generated conflict between villages, Indigenous communities, and government officials (Kashwan 2015, 103). Although it reflects the rhetoric and promise of civic environmentalism, the pursuit of community-based forest management in Tanzania has thus been affected by the enduring influence of green governmentality discursive practices that emphasize the role of expertise and bureaucratic rule in managing forests (Goldman 2003; Brockington 2017).

Discourses in the REDD+ Readiness Process in Tanzania

The influence of multiple competing discourses can also be discerned from the very outset of the pursuit of REDD+ in Tanzania. Tanzania's efforts to implement REDD+ began in 2008, with the conclusion of a bilateral agreement with the government of Norway. With funding provided by Norway and the UN-REDD Programme, Tanzania created a National REDD+ Taskforce to oversee the preparation of a National REDD+ Strategy, the organization of multistakeholder consultations, and the selection of REDD+ pilot projects. The discourse of governmentality was clearly reflected in the appointment of the taskforce itself, which was composed of government officials and did not include any civil society representatives (URT 2010, 50–51). In addition, the first draft of a national strategy released by the taskforce envisaged the creation of a national trust fund, guided and staffed primarily by government representatives, to manage and channel funding for REDD+ received from abroad (URT 2010, 14–17). The draft national strategy also emphasized the importance of national institutions for MRV and situated carbon accounting in the realm of experts, repeatedly acknowledging the need for increased technological and human capacity to set baselines and to monitor and verify carbon stocks (URT 2010, 64–71). Finally, even as

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it recognized the importance of the rights of forest-dependent communities, the draft strategy specifically denied that the concept of Indigenous Peoples applied to pastoralist and forest-dwelling communities in Tanzania (URT 2010, 11).

The discourse of civic environmentalism was also manifest in the early activities of the National REDD+ Taskforce. For one thing, the taskforce carried an initial set of consultations with stakeholders across Tanzania in order to prepare the first draft of a national REDD+ strategy (IRA 2009). For another, the draft national strategy identified enhanced support for participatory forest management as an important pathway for reducing carbon emissions in Tanzania. The strategy explained how lessons learned from Tanzania's experience with community-based forest management could be integrated with the implementation of REDD+ and envisaged several strategic interventions for REDD+ that would reduce poverty and support livelihoods among rural communities, strengthen forest governance, and enhance participatory land-use planning and conflict resolution (URT 2010, 36, 83, 84, 87).

Finally, ecological modernization was only present to a limited degree in the draft national strategy, with a vague acknowledgment the potential role of carbon-trading mechanisms among other sources of funding for REDD+ (URT 2010, 43–44). However, these propositions remain speculative and were not discussed in concrete terms. With the release of the first draft National REDD+ Strategy in December 2010 and the organization of a further series of multistakeholder workshops in the first quarter of 2011, two competing discourse coalitions began to form around the pursuit of REDD+ in Tanzania. On the one hand, a group consisting primarily of government actors espoused a discourse of green governmentality. Motivated to capitalize on REDD+ as an opportunity to obtain long-term funding for forest management,[5] this governmental discourse coalition advocated in favor of a more statist administration of REDD+ finance and activities in the country[6] (Rantala and Gregorio 2014, 4–5).

Another discourse coalition consisting primarily of domestic and international NGOs piloting REDD+ projects in Tanzania with the assistance of Norwegian funding coalesced around a weak version of the discourse of civic environmentalism (Rantala and Gregorio 2014, 5; Rantala et al. 2015, 202–03). These NGOs most notably released a series of briefs and statements that emphasized the importance of including civil society in the governance of REDD+, strengthening participatory forest management, recognizing community rights to manage forests outside of VLFRs, and pushing for the national REDD+ strategy to include a set of social and environmental safeguards (Campese 2011; MJUMITA and TFCG 2011; TFCG 2011). In addition, this coalition opposed the adoption of a national approach to financing REDD+ activities and advocated for the creation of decentralized benefit-sharing mechanisms. This position was largely based on previous negative experiences with centralized benefit sharing in

5. Interview 15 at 8: "The director of forestry [in Tanzania] was always really excited by REDD. Because how do you fund these uneconomically viable forest resources. This was the silver bullet that was going to save that huge funding gap."

6. Interview 11 at 5: "Tanzania to some extent is a governmental led country. Civil society is strong, but it doesn't have a strong position in decision making. And then there was a lot of money on the table for REDD in Tanzania, which I would say that early on confused the game. Because there was more talk about the money than about what this is. So there was more interest in who should get the money, rather than starting small and then building up with a goal to something."

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Tanzania and the concern that REDD+ could pose a threat to communities' land and forest rights,[7] exacerbating preexisting issues of state capture of forest benefits (Rantala and Gregorio 2014).

In early 2012, the National REDD+ Taskforce responded to the feedback received in the stakeholder consultations by naming a civil society representative to the taskforce and creating a technical working group for legal, governance, and safeguards issues, which included a representative of "Pastoralists and Hunter Gatherer Organisations" (Nordeco and Acacia 2014, 8, 11). In spite of these nominations, the National REDD+ Taskforce continued to ignore the perspectives of stakeholders and the experiences generated through the pilot projects[8] and reflected instead the views of government representatives on REDD+ (9).

This is clearly reflected in the second draft National REDD+ Strategy released in June 2012. While it acknowledged the role that the allocation of land and tenure rights for local communities and the establishment of VLFRs could play in the pursuit of REDD+ in Tanzania (URT 2012, 10, 12, 22, 35, 43), this second draft strategy did not recognize the customary rights of villages to manage their forests on unreserved lands (22) and continued to privilege a national funding mechanism for managing international payments for REDD+ and channeling related benefits to local communities (37). The second draft strategy also omitted all references previously included in the first draft to the terms Indigenous Peoples, pastoralists, hunter-gatherers, or the UN Declaration on the Rights of Indigenous Peoples. In line with the changing requirements for REDD+ readiness established in the Cancun Agreements, the second draft strategy included new commitments to adopting a set of social and environmental safeguards for REDD+ (35) and undertaking a strategic and social impact assessment that

7. Interview 15 at 1: "I think if we take the context of Tanzania, the threat, potentially, is that central government, and I am thinking particularly about the forest administration here, it's recently become and executive agency which means that it has to raise its own revenues. And for many years they have been struggling with how do they raise assets which have no production value other than existence value. They generate economic benefits to the nation, but not financial benefits to the institution. Which is a problem that many governments dealing with high biodiversity assets have struggled with. There was a huge excitement about REDD early on, particularly in Tanzania where I have had most of my experience. Because this was the silver bullet that was going to answer this question. Payments for watershed services, biodiversity offsets hadn't really delivered the goods, and there was a great hope that carbon would help in this problem. So and as a completely legitimate, and totally understandable reaction of a badly financed and rather desperate government institution to struggling to make ends meet. The problem has been that with this sort of demand for increased revenue generation has come an increasing reluctance to share those revenues with any other stakeholders, regardless of the degree to which they may be perceived to be adding value or indeed reducing costs of government institutions. So there's a sort of tacit acknowledgment of the government of the role of communities, but that has increasingly not translated into a willingness to share revenues of any form—licensed royalties, revenues and any form of carbon benefits." Interview 16 at 8: "Because they don't trust the central government. If we are to protect our forests, in our district, we want to have direct access to the funds. We have seen it from the PFM that we don't receive anything or hardly anything. So I think that's the real challenge in Tanzania."

8. Interview 11 at 5: "The national REDD taskforce should have been the one pulling in and organizing the dialogue around it and bringing in the various stakeholders. And that was a role when we designed the national joint programme for Tanzania, we thought that we would be taking. But that went with a governmental process that was very governmental—it didn't really reach out to the civil society and bring in all of our private sector and the other ministries . . . . So it was a little bit of a closed process around the taskforce, and therefore, like I think it seems that you have perhaps noticed that the pilot projects did not feed into the policy process . . . because nobody really knew what was going on, and there wasn't perhaps open consultations about the strategy and so on."

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would "give special consideration to livelihoods [and] resource use rights (including those of forest dependent Peoples)" (48). The release of the second draft strategy prompted a number of international and domestic stakeholders to reiterate their concerns and recommendations regarding the need to further recognize and engage with Indigenous Peoples,[9] to explicitly recognize and clarify the land and tenure rights of villages in relation to unreserved forests and the carbon stored in village forests (TFCG et al. 2012, 2), to consider adopting a nested approach for the management of international REDD+ payments and the sharing of benefits derived therefrom (5), and to systematically integrate social and environmental safeguards into the very body of the strategy (3).

After one last set of consultations, the National REDD+ Taskforce produced a third and final draft of the National REDD+ Strategy, which was formally approved in March 2013. On the whole, the National Strategy reproduces the underlying storyline associated with the global emergence of REDD+, namely that it provides "an exceptional opportunity for Tanzania to benefit from financial mechanisms that take cognizance of the increasing importance of sustainable forest management in reducing emissions and increasing storage of CO2 to mitigate climate change and its impacts" (URT 2013, 3). Yet, the specific ways in which legal norms for REDD+ have been interpreted and developed in the National Strategy demonstrate how aspects of ecological modernization and civil environmentalism have been shaped by, and incorporated into, a logic of green governmentality. My analysis below considers, in turn, the extent to which these discourses are manifest in discussions of the drivers of forest loss and the solutions thereto, the coordination of REDD+ activities, the management of finance and benefit sharing, carbon accounting practices, and social and environmental safeguards.

The National Strategy identifies the following as direct drivers of deforestation and forest degradation in Tanzania: agricultural expansion, human settlements, population increase, overgrazing, firewood and charcoal production, uncontrolled mining, timber extraction, infrastructure development, and biofuel production (URT 2013, 14–15). The strategy goes on to discuss two underlying causes of forest loss that suggest the overriding importance of green governmentality and civic environmentalism. To begin with, the strategy addresses a number of "policy failures" responsible for deforestation: "inadequate capacity of the government to implement strictly the instituted centralized and decentralized management systems due to inadequate financial and management capacity, which result into inefficient management of forest resources; inability of government to adequately define resource tenure rights thereby subjecting forests to 'open access' with the consequent risk of over-exploitation and general resource degradation

9. Interview 5 at 7–8: "So here and there in some documents you can see Indigenous Peoples mentioned but not in a manner that outlines their rights . . . . pastoralists or hunter-gatherers wherever they are referred to in the document is in a negative way and this is because people are not represented. I fought very hard and that was a bet I lost. We were never represented in the policy board." Interview 16 at 3: "We have made sure that during the stakeholder process when this REDD strategy was made, that the Maasai people and other hunter gatherers have been invited. One representative is also on the national REDD task force. Not in the . . . board. But in the technical working group. Also have been part of the stakeholder meetings in Arusha. So we have put pressure and been in dialogue that they should be included and be part of this." Interview 23 at 5: "[things changed] Because of the different stakeholders that put pressure. Very big pressure."

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and inability to create the right investment incentives in forest activities; and inadequate mechanisms to charge a sufficiently high forest rent which reflects the real financial cost of managing forests" (15).

While the language of incentives in this passage is reminiscent of ecological modernization, it forms part of a broader diagnosis suggesting, in line with green governmentality, that forest loss is ultimately driven by lack of governmental control over natural resources. Given the way in which the problem of deforestation has been framed, it is not surprising that the strategy states that it "has put considerable emphasis on capacity building and infrastructure development at the national and sub-national levels" (URT 2013, 17). The majority of the strategic interventions for addressing drivers of deforestation and forest degradation are indeed focused on expanding and strengthening the ability of the government to govern forests by: enforcing laws and regulations, strengthening forest management at all levels, developing effective land-use planning mechanisms, increasing monitoring capacity, practicing integrated decision making across governmental sectors, and developing bureaucratic knowledge and expertise (48–51). It is striking that quite a few of the strategic interventions contemplated in the strategy are designed to govern local communities themselves, including measures to strengthen "mechanisms for controlling traditional/taboos activities," "educate and advocate abandoning of unfriendly environmental, social and economical [sic] traditions and cultural beliefs," "[c]ontrol migrants," and "[s]upport and monitor family planning programme" (48–51).

In addition, the National Strategy also recognizes "population growth, urbanization, and rural poverty" as underlying causes of deforestation in Tanzania (URT 2013, 16). This acknowledgment of the relationship between underlying socioeconomic vulnerability and forest loss echoes the weak civic environmentalist discourse, as does the importance accorded to PFM in the strategy. The strategy states that PFM "has emerged as a central element in ensuring sustainable management and conservation of Tanzania's forests" and thus "provides a value basis for rapid REDD+ readiness" (9). The strategy accordingly features several strategic interventions that could enhance the ability of local communities to manage their forests, including clarifying forest tenure and land rights, accelerating participatory land-use planning, and concluding benefit-sharing agreements with forest adjacent communities (48–51).

Yet, the way that PFM is deployed throughout the strategy is a far cry from stronger conceptions of civic environmentalism or the claims of Indigenous Peoples[10] and ultimately reinforces the importance of state administration and expertise (Rantala et al. 2015, 209). In fact, the strategy frames local communities as responsible for forest loss, rather than agents that have the potential to manage their resources sustainably: "While some traditional rural communities have developed comparatively sustainable forms of resource use, poverty-led environmental degradation is still responsible for much of the deforestation and forest degradation taking place in the country" (URT 2013, 16). The emphasis that is placed on the role of communities in driving deforestation appears to be

10. Interview 5 at 8: "I think, first of all, it could avoid the negative statement like pastoralists destroy the environment, because it is the other way around . . . . A lot of Indigenous Peoples' forests are also already conserved. The whole REDD concept was twisted [to take] away benefits that rightly go to Indigenous people."

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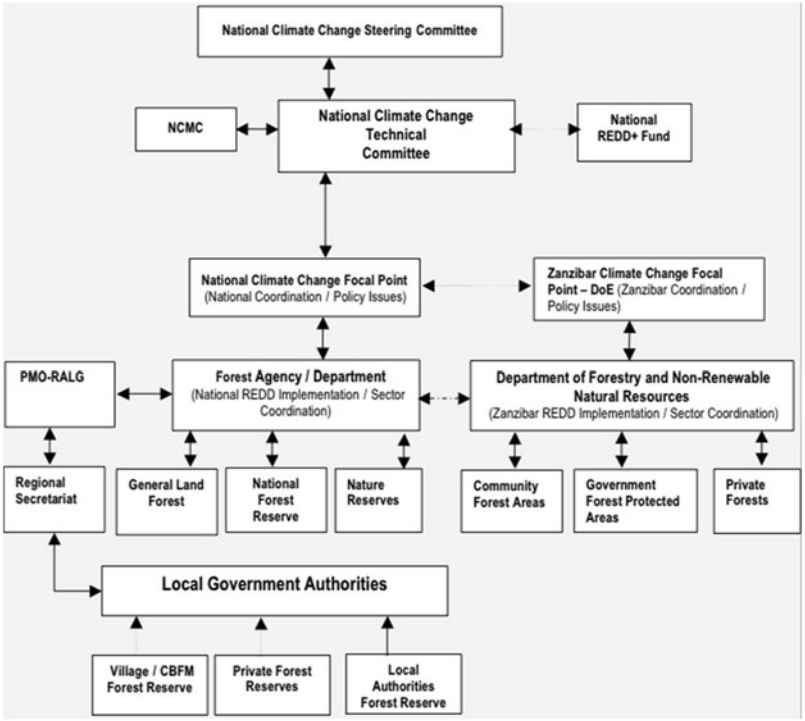

FIGURE 1.
Chart of the Institutional Structure for REDD+ in Tanzania (URT 2013, 22)

somewhat misplaced, given the evidence that forests governed through PFM have had lower rates of forest loss than those that are managed by central authorities (Blomley et al. 2017, 8). Moreover, the strategy conceives of PFM not as means of empowering communities, but as a program that has "helped to integrate communities into forest management" (URT 2013, xii). Finally, the strategy fails to expand on the obstacles that stand in the way of expanding the scope of PFM in Tanzania, such as bureaucratic inefficiency and corruption in the central and central government. Instead, its focus lies with the incapacities of villages to implement PFM and the need for state intervention to assist them in doing so: "To improve governance at local level that will eventually facilitate sustainable PFM, the village institutions need capacity development in areas such as planning, mobilization, finance management, good governance, and lobbying. The local/central government needs to provide the different skills through various training programmes done at village level" (19).

The National Strategy's discussion of the coordination of REDD+ activities reveals a similar emphasis on the central role of government intervention and control. The logic of green governmentality is clearly illustrated in a figure included in the strategy (reproduced here), which delineates a hierarchical structure of REDD+ governance that situates, from top to the bottom, the central government, the forest department, the district government, and villages (see Figure 1 below). Invoking the language of bureaucratic organization and expertise, the strategy explains that the pursuit of REDD+ requires a "coherent and credible institutional framework with well informed and

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capable personnel to manage and coordinate REDD+ activities at national and sub-national levels" (URT 2013, 22). Elsewhere, the National Strategy alludes to civic environmentalism by including the engagement and active participation of local government authorities, the private sector, and CSOs as a key strategic action for the implementation of REDD+ (42). However, rather than consider public participation as an asset or matter of justice or equity, the involvement of multiple stakeholders is framed in the strategy as something that "invokes challenges on effective coordination, decision making and governance" and "possible sources of inefficiencies" requiring "capacity building, political will, and awareness raising" (22).

The sections on the management of REDD+ finance and benefit sharing in the National Strategy also reveal the overriding influence of green governmentality. Rejecting calls to adopt a decentralized approach to finance and benefit sharing, the National Strategy commits Tanzania to continuing preparations toward establishing fund-based financing options (URT 2013, xx, xiv, 17). This strong preference for the development of a national fund for REDD+ is not only consistent with the discourse of green governmentality and its concern for increasing governmental resources and capacity in the environmental realm,[11] but also reflects an implicit "mistrust"[12] of market-based mechanisms that is tied to Tanzania's socialist past.[13] In comparison with earlier drafts, the National Strategy includes fewer explicit references to the language and practices associated with ecological modernization, save for a brief overview of forest carbon-trading mechanisms that apply internationally (16–17) and two vague commitments to employing payment for environmental services schemes (41, 49). On the other hand, responding to the concerns expressed by CSOs espousing a discourse of civic environmentalism, the National Strategy does refer to the importance of equitable benefit sharing, which is presented as being critical to ensuring the participation of communities in the pursuit of REDD+ activities (10–11). However, the strategy merely includes it as one of the enabling conditions for the effective implementation of REDD+, without providing further particulars on the way in which equitable benefit sharing might be achieved in practice (44). The strategy also refers to the possibility of employing a

11. Interview 14 at 8: "The government prefers it based on because people who are for it and they are saying that once we have good government … central government fund, that means you could resolve the issue of leakage. Especially to the villages which they can't get their credit, for example beyond their control like fire mandates. We can't get any more credits. The other thing is because the government also can put their own funding to the system to make sure that those kind of risks that the government can take over. I think the government wants to have also a final say. On the other hand I think in our case we see it … is it because of the bureaucracy? That is one. But also obtaining a national credit is going to be not possible unless … is not going to work in practice because you have a national system and you have other people who are reducing emissions somewhere and if the payment is going to be a national based on the national system." Interview 16 at 7: "Tanzania is very clear that when this strategy was launched and when the climate change strategy was launched the day after, they would like to have a fund, a climate change fund." Interview 19 at 3: "a central fund is necessary to avoid double-counting and leakage." Interview 20 at 5: "The idea was … there should be a broker somewhere. Someone who can negotiate on behalf of the beneficiaries. We know what is happening with biofuels. Where actually the local communities are being exploited simply because they don't know the value of their land. This is a good lesson that we should think about."

12. Interview 16 at 7.

13. Interview 15 at 12: "Tanzanian government is sort of made up of people who have studied in east Germany and Poland—they are good old fashioned socialists. There is no place for private markets. If they had their way we'd be back to state corporations."

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nested approach to REDD+, but it is striking that it is reformulated in a way that reinforces the primacy of the central government, being defined as a way to "enable the state to account in a fair way for gains and losses and to reward stakeholders who are responsible for reductions in carbon losses" (xviii).

The carbon accounting practices that are outlined in the National Strategy also demonstrate a clear commitment to privileging administrative and technocratic rationalities that are associated with green governmentality, with some minor concessions to civic environmentalism. The strategy anticipates the creation of a national forest-monitoring and MRV system that emphasizes the importance of technology and expertise and values reliability, accuracy, and efficiency (32–39). The determination of reference emission levels is envisaged as a nested process, requiring the development of "an interlocking set of baselines that cover the whole country and aggregates to the national baseline" (38). This approach is required to enable the central government to redirect finance to incentivize different stakeholders that could contribute to REDD+ and recognize that "national parks, forest reserves, village forest, community forests, and private forests could account for their carbon levels" (38). As such, the strategy provides, with respect to the measurement and monitoring of forest carbon stocks and emissions that "[t]he methods to be applied are also expected to be participatory in order to ensure engagement of local communities in the MRV process" (39). Nevertheless, this participatory aspect of carbon accounting is not elaborated upon in the strategy and does not appear as a component of the activities formulated for the full implementation of REDD+.

Finally, the National Strategy includes few details regarding the substance of its social and environmental safeguards for REDD+, which were ultimately developed through the methodology and multistakeholder process provided by the aforementioned REDD+ SES (Jodoin 2017, 139–43). The discussion of safeguards reflects a weak form of civic environmentalism that is embedded within a broader logic of green governmentality. To begin with, the strategy does recognize that REDD+ can generate multiple benefits, including "poverty alleviation, maintenance of forest dependent communities' rights, improved community livelihoods, technology transfer, sustainable use of forest resources and biodiversity conservation" (URT 2013, 52). After summarizing the different standards on REDD+ safeguards provided by the UNFCCC, the World Bank, and the UN-REDD Programme, the strategy emphasizes that "Tanzania's own national legal and policy framework provides important environmental and social safeguards that apply to REDD+ including laws and policies relating to land and forest property rights, and environmental impact assessment" (54). The strategy is signaling here, among other things, that Tanzania's safeguards policies will not recognize the status and rights of Indigenous Peoples on its territory, which is consistent with Tanzania's historical resistance to this concept and current policy position.[14] Indeed, the strategy itself uses the

14. Interview 5 at 5: "Because they say a myth in Tanzania that we are one; there is no tribalism. We don't know or address as each other along tribal lines. Which is perfect, but very ideal because there are other groups that are really suffering and by putting them in that larger group, you undermine them. So it has really, really plagued ... It is harder in Tanzania to talk about Indigenous Peoples' rights than anywhere in Africa, because of that sort of socialism. And taboo, because even elite people are trained in human rights law where they won't touch." Interview 15 at 9: "most people in government will claim there are no Indigenous people in government. It's not widely accepted here.... There's a complete rejection of

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term "forest-dependent peoples" instead (xi, xxii, 5, 8, 48, 52, 54), which was the term eventually employed in the safeguards policy adopted in 2013 (URT Vice-President's Office, 2013). Moreover, the strategy actually proposes several interventions that could potentially have negative impacts on Indigenous Peoples such as pastoralists, given their existing political and economic marginalization. For example, it commits to reviewing "livestock policy and strategies to reduce overgrazing and nomadic pastoral practices" as drivers of deforestation, and it also supports "commercial livestock destocking campaigns" (URT 2013, 50). This once again reinforces the view that local communities are responsible for deforestation and that REDD+ could be employed to place their behavior under government control.

Overall, the foregoing analysis suggests that the interpretation and application of legal norms for REDD+ in Tanzania can be understood as flowing from the interplay of discourses that have defined REDD+ at the global level and preexisting discourses that have shaped forest and land governance and the treatment of different communities in Tanzania for several decades. Importantly, these domestic discourses were shown to have shaped the terms of the discursive struggle itself. While global debates over REDD+ have been animated by discursive struggles opposing ecological modernization to civic environmentalism, the emergence of the transnational legal process for REDD+ in Tanzania has engendered a competition between discourse coalitions committed to green governmentality or civic environmentalism. Lawmaking for REDD+ in Tanzania has primarily reflected the logic of green governmentality, with a few concessions to aspects of civic environmentalism. Within this context, the discourse of ecological modernization has been minimized, and in some cases subsumed within these two discourses. Meanwhile, the discourse of climate justice promoted by forest-dependent peoples and Indigenous rights organizations has been completely marginalized in Tanzania, with the very status of Indigenous Peoples not being recognized (Jodoin 2017, 149–50). The relegation of Indigenous Peoples is also evident in practical aspects of the REDD+ readiness process, including in their exclusion from the consultations that were held by the National REDD+ Taskforce (Nordeco and Acacia 2014, 11) as well as the selection of pilot projects that were carried out at the local level (Jodoin 2017, 163–64).

What is more, the ways in which green governmentality and civic environmentalism have been deployed in the context of REDD+ in Tanzania have been intimately tied to its distinctive history and institutions of forest governance. Recognizing the role

pastoralism in Tanzanian government. It is extraordinary and it is persistent and I don't understand it. A constant refrain that pastoralists are traditional and primitive and they need to be modernized . . . . Forget about Indigenous people. There's a rejection of any way of life that isn't effectively sedentary and agricultural." Interview 16 at 3: "In Tanzania it has been a challenge not to include . . . our dialogue on Indigenous Peoples. Because like most other African countries they are not recognizing that they have Indigenous Peoples or they say 'we are all Indigenous.' So, what we have done is to raise the question and mostly it is used 'Forest dependent People' and the rights of local communities." Interview 18 at 4: "according to the government there are no Indigenous people in Tanzania. Everyone is Indigenous. That's quite a challenge. So PINGO's forum and other organizations claim that the Maasai are Indigenous. How would you say that someone is Indigenous? That's a problem." Interview 21 at 2: "There are no Indigenous Peoples in Tanzania because all Tanzanians are indigenous. Living in a rural areas does not make someone any less Tanzanian or any more Indigenous. In fact, only South America has truly Indigenous Peoples." Interview 23 at 6: "Tanzania does not recognize IPs. It's not that they don't recognize the existence, they don't want to use the word IP, they'd rather call them Forest Dependent Communities. You know, because they think that IP is relating to colonialism. That is the difference."

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played by domestic factors in mediating the influence of transnational legal discourses helps explain two important features of the REDD+ lawmaking process in Tanzania. For one thing, Tanzania's long-held commitment to green governmentality and the distrust that it has engendered between government officials and local communities assists us in understanding both the government's resistance to decentralized funding mechanisms as well as the unexpected faith that domestic civil society actors have placed in market-based finance for REDD+. For another, the key governmental and civil society actors involved in the REDD+ readiness process have all conceived of community participation through the lens of Tanzanian forest policies and the language of village-based governance, from which Indigenous Peoples are largely excluded. As such, paying attention to the interplay between global and domestic discourses in the transnational legal process for REDD+ reveals the incomplete nature of legal norms and the ways that their transmission across borders can generate ongoing discursive struggles over the diagnosis of problems and the solutions adopted to resolve them, in ways that privilege the ideas and interests of some actors over others.

CONCLUSION

My discursive analysis of the transnational legal process for REDD+ in Tanzania yields three broad conclusions and suggests several lines of inquiry for future scholarship. First, I have shown how discourses are reflected in the construction and application of legal norms for REDD+ across multiple systems and levels of governance. In Tanzania, the emergence of the transnational legal process for REDD+ has triggered the consolidation of two principal discourse coalitions. One of these coalitions has supported an understanding of REDD+ grounded in green governmentality, emphasizing the role of communities in driving deforestation and the need to change their behaviors, the importance of centralized coordination and funding of activities, a technocratic approach to MRV, and safeguards that reinforce existing Tanzanian law. The other primary discourse coalition has espoused civic environmentalism, including an emphasis on community forest management and community-based approaches to MRV, nested REDD+ rewards, and strong social safeguards. Most importantly, although both discourse coalitions may have drawn on ideas and legal norms circulating across systems and levels of law at the global level, the articulation and influence of these discourses has reflected the mediating influence of Tanzanian legal institutions and discourses. As well, the discourse of climate justice, especially with respect to the recognition of the rights of Indigenous Peoples, has been completely sidelined due to, among other things, Tanzania's traditional resistance to transnational conceptions of Indigeneity. These findings suggest that it may be fruitful for legal scholars to conduct additional research on the ways that existing domestic legal institutions, norms, and discourses may shape the adoption, interpretation, translation and application of legal norms for REDD+ in developing countries. In doing so, it may be especially enlightening to expand the levels of analysis studied in this article to include the local level. This might uncover a whole other layer of interplay between global and domestic norms and discourses and the customary legal institutions and practices of Indigenous Peoples and local communities (see, for example, Vijge 2015; Scheba and Rakotonarivo 2016).

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Second, my discursive analysis helps explain how the construction and spread of legal norms for REDD+ has led to increasing convergence as well as fragmentation between the multiple legal orders that govern the field of REDD+. While an incipient transnational legal order for REDD+ has converged around legal norms defining the nature of REDD+ and setting out the basic elements of REDD+ readiness, this narrower discursive understanding of REDD+ has not ended discursive struggles over REDD+ altogether. As my case study of Tanzania illustrates, efforts to operationalize REDD+ in light of domestic institutions and realities have triggered additional discursive struggles between coalitions committed to very different conceptions of environmental governance. As a result, the transnational legal order for REDD+ is currently characterized by a significant degree of fragmentation, in terms of diverging transnational legal standards for financing REDD+ as well as domestic legal norms and practices. Additional research is needed to examine whether and how the unsettled and competitive nature of the broader transnational legal process for REDD+ has affected the effectiveness of REDD+ as an instrument of legal reform and change in developing countries (see, for example, Halliday and Carruthers 2009).

Third, my work confirms that the pursuit of REDD+ is more than a technical exercise entailing the objective application of international requirements and conditions—it constitutes a form of governance that engages with a range of complex legal and policy issues relating to the management of forests and resources and the rights and sovereignty of Indigenous Peoples and local communities. My analysis of the development of a national strategy for REDD+ in Tanzania reflects the central importance of discursive struggles over equity to the pursuit of REDD+ as "the rights and well-being of local communities are pitted against government-led approaches to REDD+ in fear of recentralization of forest governance and appropriation of REDD+ benefits by the state" (Rantala and Gregorio 2014, 6). In addition to conflicts between the government and communities, I also show how REDD+ in Tanzania has reinforced social inequities between communities. Indeed, the interplay of global discursive practices emphasizing rights and participation and domestic discourses relating to village governance have shaped Tanzania's approach to REDD+ in ways that have excluded and marginalized Indigenous Peoples. Tanzania has moreover refused to recognize the presence of Indigenous Peoples in the context of its REDD+ strategy (preferring instead to employ the term "forest-dependent communities"). Not only has it denied them the opportunity to benefit from REDD+, but its National REDD+ Strategy envisages policies that may be harmful to their rights and ways of life, especially those of nomadic pastoralists. As such, while legal scholars have accorded significant attention to the recognition of the rights of Indigenous Peoples and local communities in the context of REDD+, more work is needed to carefully consider how other key issues in the domestic operationalization of REDD+, including MRV systems, policy changes, and benefit sharing, may affect their rights and well-being. In doing so, a critical evaluation of discourses may provide a useful way of assessing the ways in which the language of participation and tenure reform may be deployed to govern, rather than empower, Indigenous Peoples and forest-dependent communities (see, for example, Dehm 2016).

Beyond the field of REDD+, my research suggests that the field of law and society may enrich the study of discourses in environmental policy and governance. First, my interest in the *transnational* has led me to pay attention to the interplay between global

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and domestic discourses. While many studies using discourse analysis in the field of environmental governance tend to focus on the diffusion of global discourses and their influence on domestic policies (McGregor et al. 2015; Vijge 2015), my analysis has revealed the critical importance of recognizing the ways in which preexisting domestic discourses may mediate the influence of the primary discourses circulating at the global level. Second, my focus on *legal* norms helps explain, in part, the recurrence of discursive struggles. I recognize that legal norms, even if they can take on fixed meaning in some contexts, are naturally ambiguous and are open to interpretation and refinement. Given the inherent indeterminacy of law and the path dependence of legal systems, it is not surprising that the dissemination of legal norms has the potential to trigger additional or different cycles of discursive competition over its content and application. Third, the concept of *process* conveys a dynamic understanding of discourses and their evolving relationship with legal norms over time. Going beyond a relatively static conception of discourses, I demonstrate in this article how the deployment and articulation of discourses may change across institutional contexts and how their influence on the development of legal norms unfolds as an iterative process.

This article also highlights three important contributions that discursive institutionalism may make to the study of transnational legal processes. To begin with, my case study of the transnational legal process for REDD+ in Tanzania evinces the critical importance of examining three forms of discursive interplay in a transnational legal process: the struggles between discourse coalitions within and across transnational, domestic, and local legal systems; the congruence (or lack thereof) between transnational, domestic, and local discourses; and the relationship between discourses and legal institutions in any given site of law. Analyzing the formation, evolution, translation, and implementation of legal norms in light of these three sets of interactions is helpful in explaining the dynamics and outcomes of transnational legal processes. Moreover, a discursive approach suggests that the durable and constitutive effects of discourses form significant obstacles that stand in the way of the emergence of a highly concordant transnational legal order. While transnational legal processes may feature the widespread diffusion and settlement of legal norms at the transnational, national, and local levels, the way in which these legal norms may be further developed, interpreted, and applied may be influenced by discourses that reflect fundamental disagreements over transnational legal norms and the problems that they are meant to address. As this article illustrates, discursive analysis may help explain why the adoption of transnational legal norms in a site of law may nonetheless engender conflicts in interpretation and implementation, despite the appearance of a shared commitment to similar objectives at a global level. Finally, and most importantly, paying careful attention to the ways that discourses privilege certain actors and forms of knowledge over others helps uncover the profound and implicit ways in which the generation and diffusion of legal norms may be embedded in, reproduce, or disrupt structures of power.

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