

RESILIENCE AND ADMINISTRATIVE LAW IN TRANSBOUNDARY RIVER GOVERNANCE

Professor Barbara Cosens



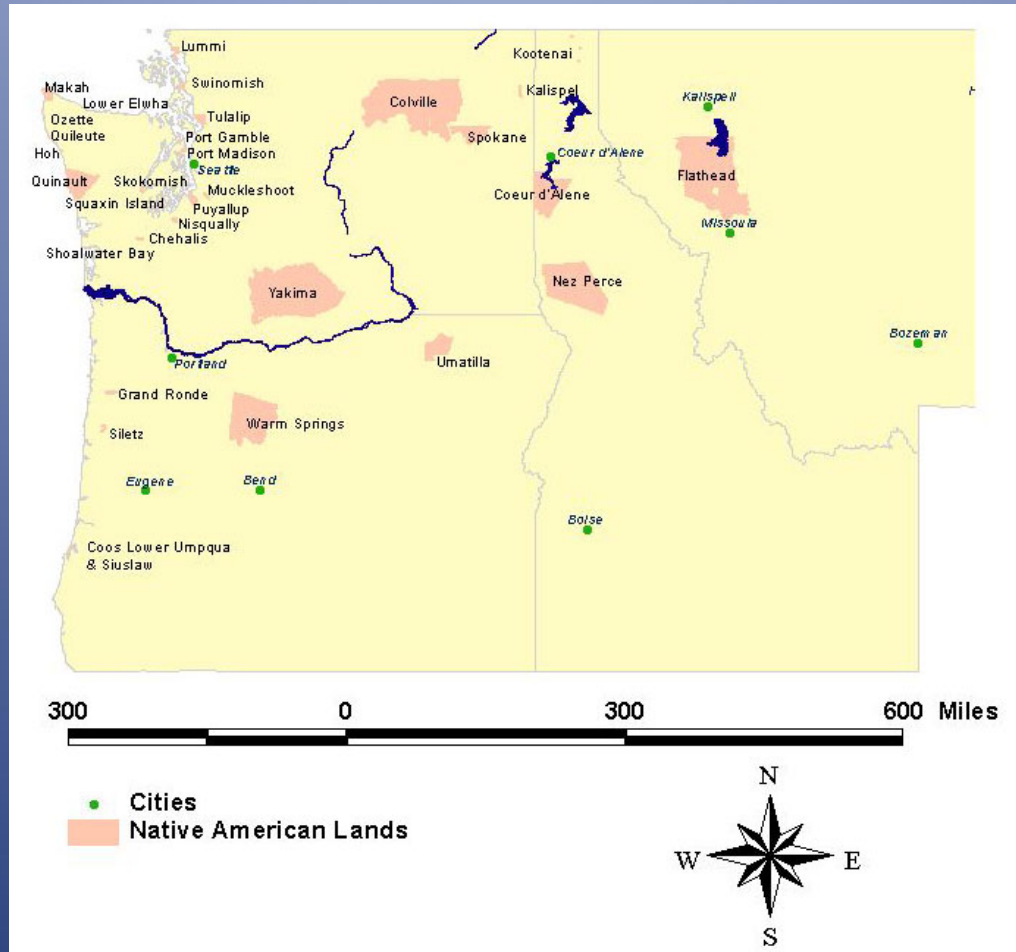
University of Idaho
A LEGACY OF LEADING

WATERS
Of the WEST

Columbia River Basin



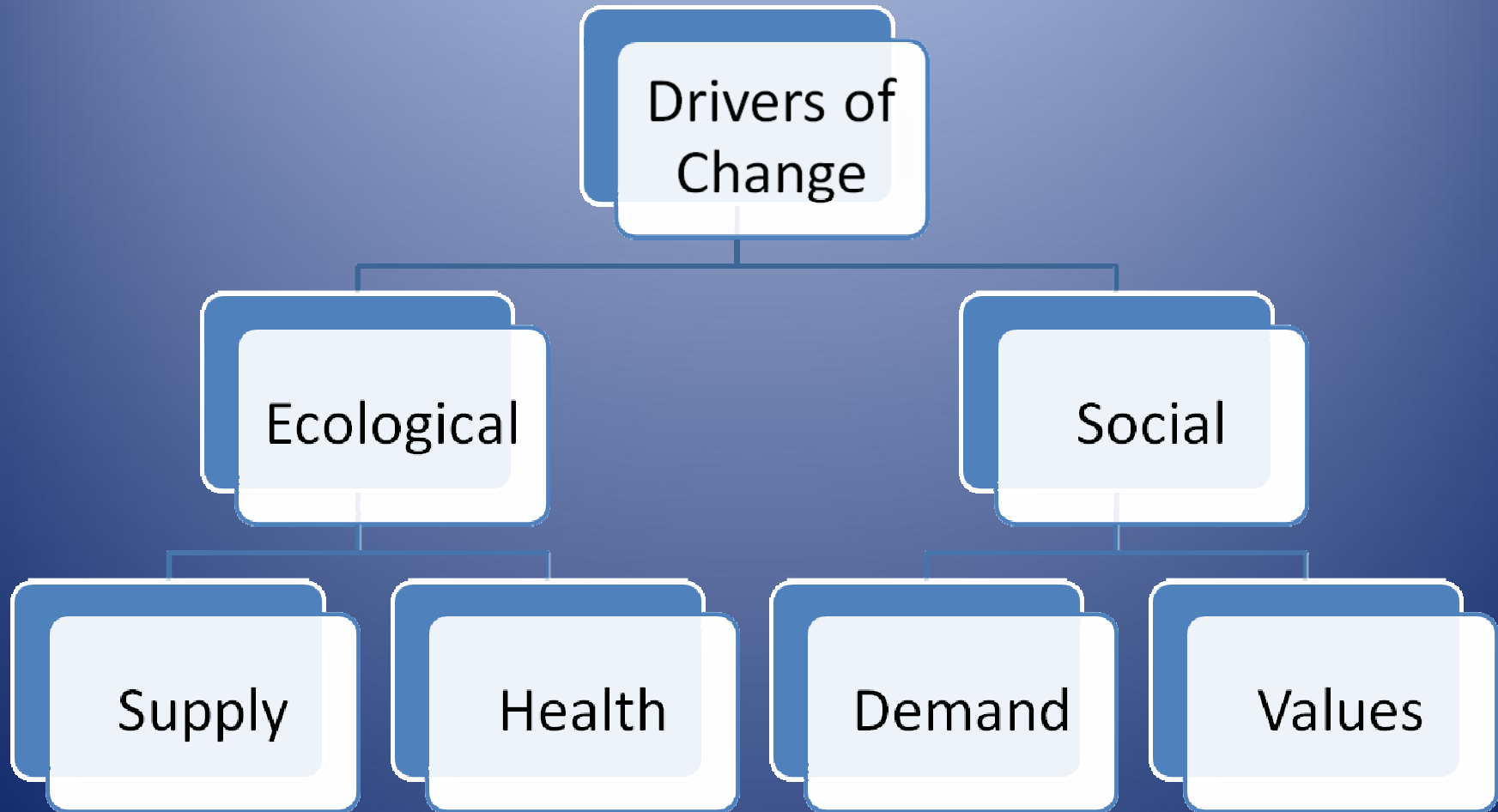
Indigenous Lands



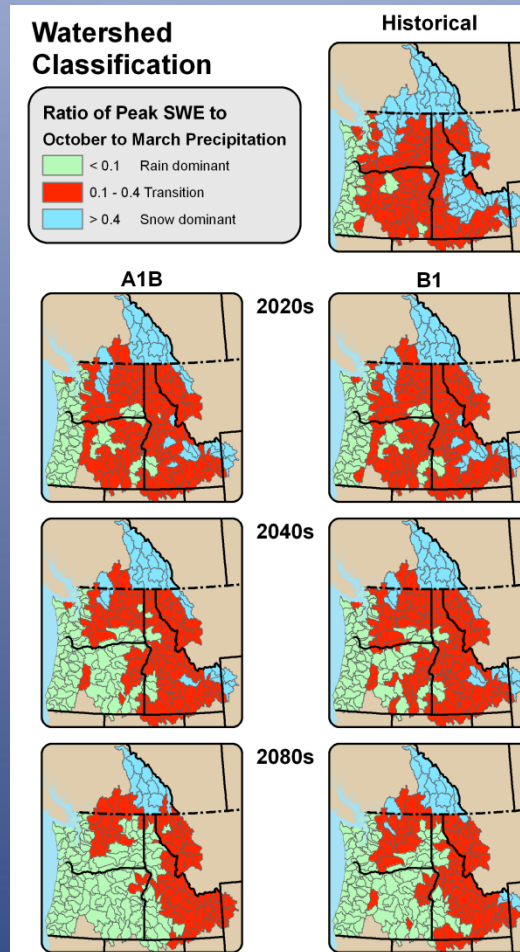
Digital Collections, University of Washington

<http://content.lib.washington.edu/aipnw/maps.html>

Transboundary Rivers

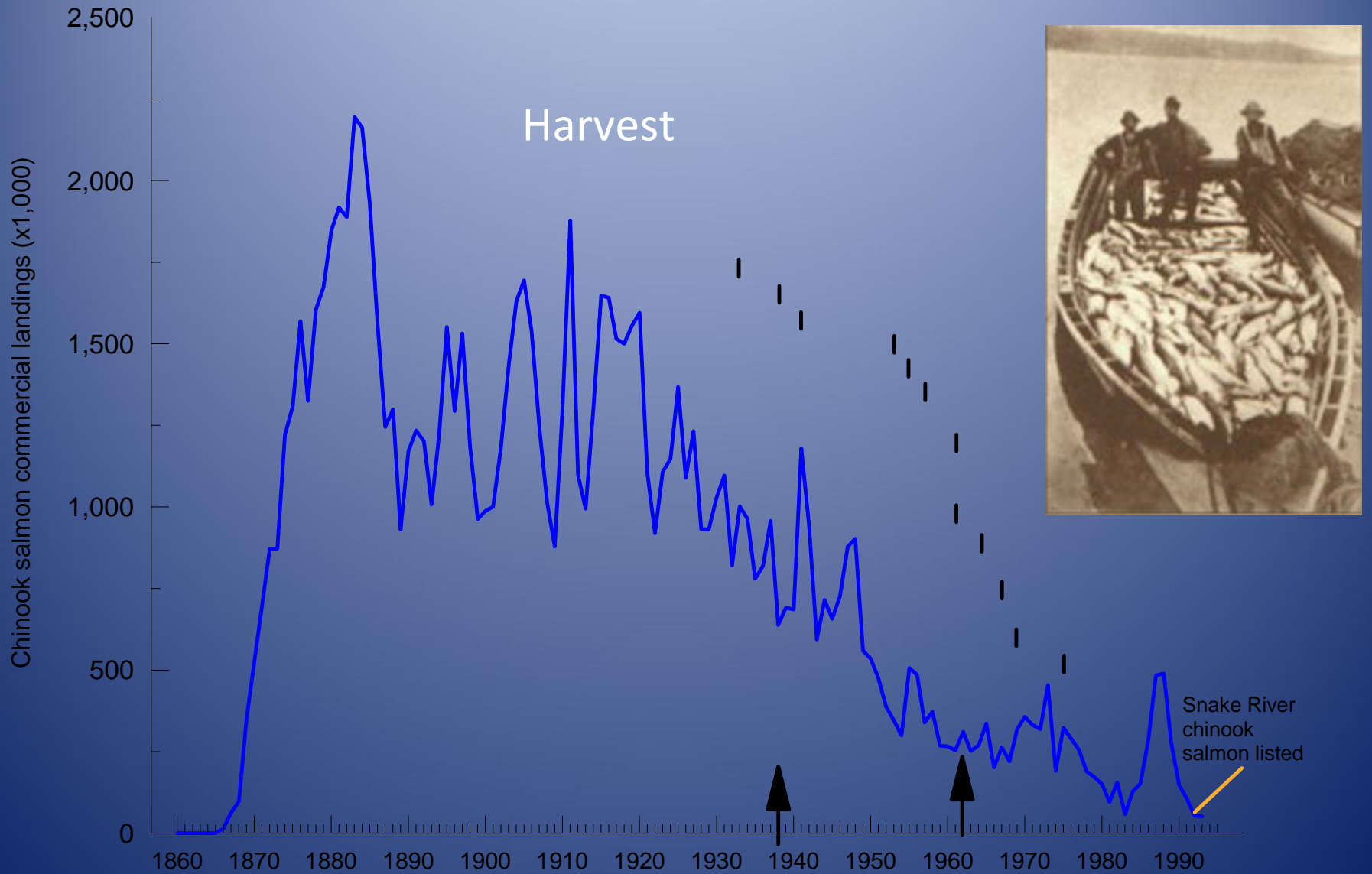


Supply: Peak Snow-Water Equivalent/ Precipitation



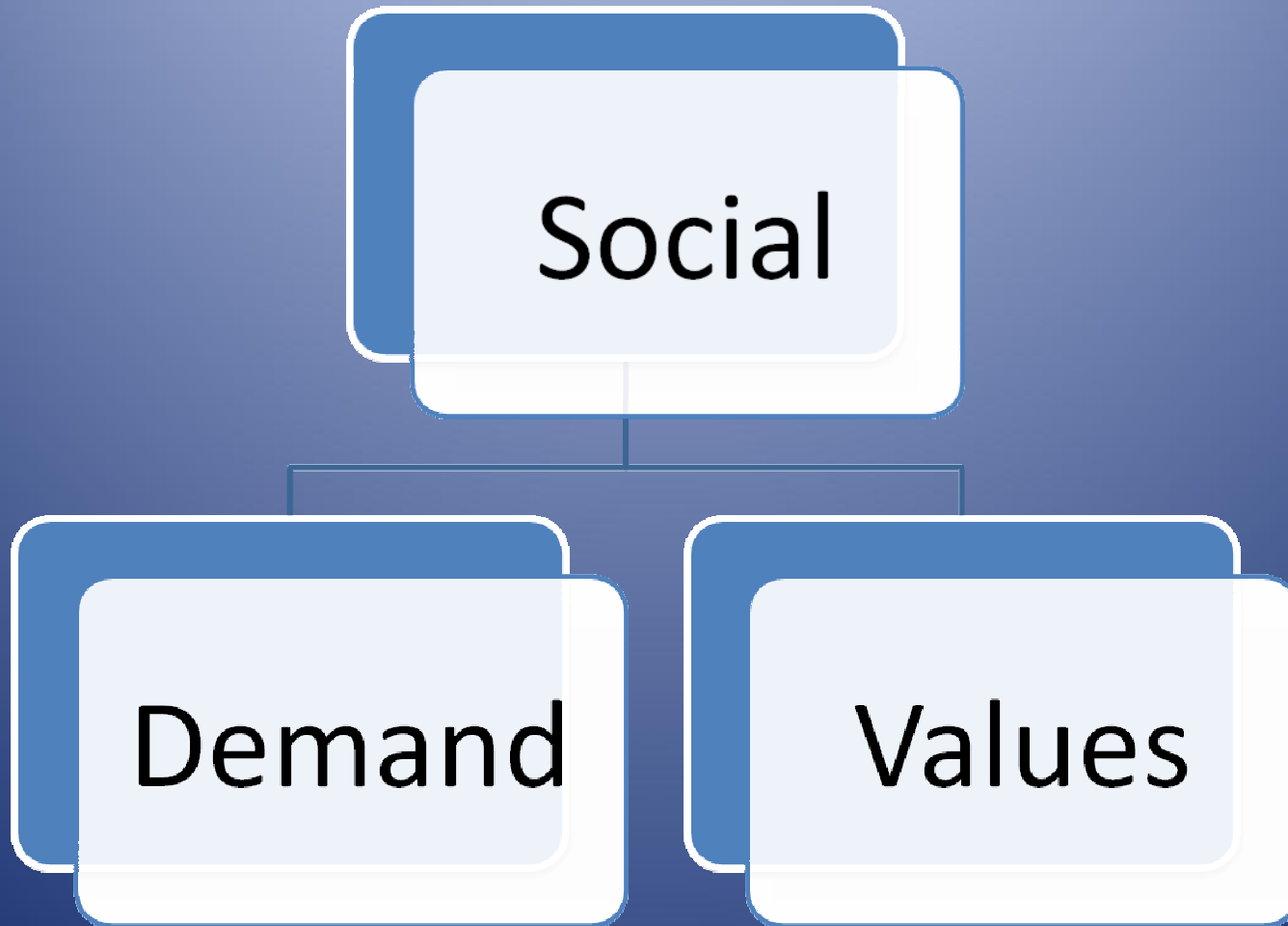
A. Hamlet, UW, CIG

Ecosystem Health



Columbia River Chinook Salmon Harvest Records [C.Peery]

Drivers of Change



Demand

- The daily drinking water requirement per person is 2-4 liters, but it takes 2 000 to 5 000 liters of water to produce one person's daily food.
- Over the period to 2050 the world's water will have to support the agricultural systems that will feed and create livelihoods for an additional 2.7 billion people.
- Source: Food and Agriculture Organization of the United Nations (FAO)

Values



Indigenous Fishery



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WilliamJosephGallery.com

Hydropower and Storage



Ecological Health



Complexity and Emergence

- *Water is H₂O, hydrogen two parts, oxygen one. But there is a third thing that makes it water, and nobody knows what that is.* D.H. Lawrence, *The Third Thing*

Why Resilience?

Why Law?

Resilience

- *the capacity of a system to absorb disturbance and reorganize while undergoing change so as to still retain essentially the same function, structure, identity, and feedbacks . . . [Walker et al., 2004]*



Administrative Law

- Used in this context as any law addressing the process of resource management, even if buried in substantive law.
- Goals of process in achieving resilience:
 - Legitimacy
 - Multi-scale response

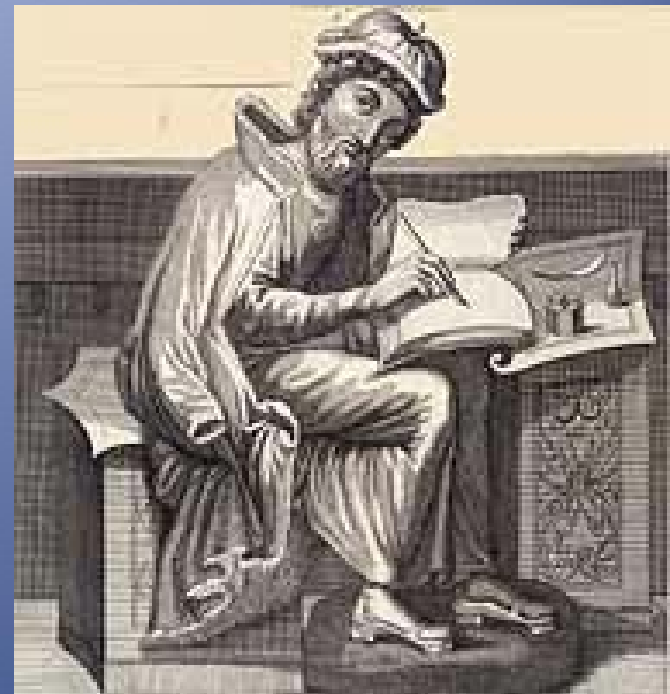
Legitimacy

- Assumption: loss of legitimacy is a key barrier to flexible, adaptive, collaborative governance.
- Administrative law sources of legitimacy [from Esty 2006]
 - **Results-based**
 - **Order-based**
 - **Deliberative**
 - Systemic
 - Procedural

Results-based Legitimacy



Order-based Legitimacy



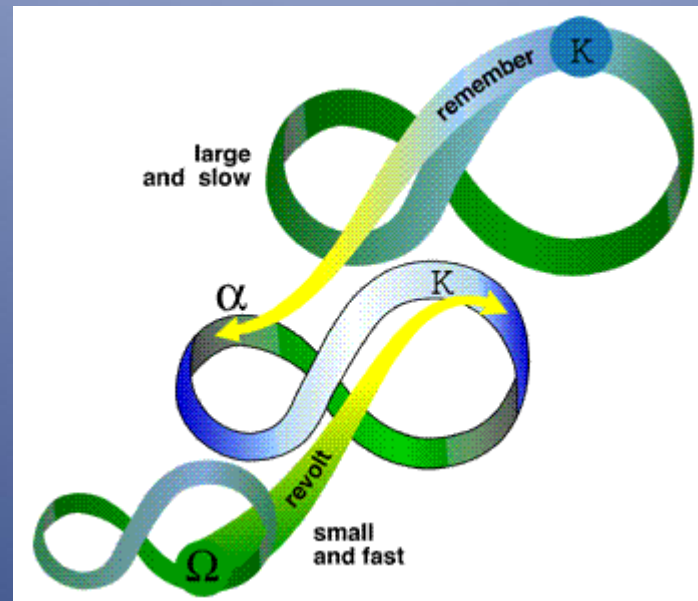
Deliberative Legitimacy



Multi-scale

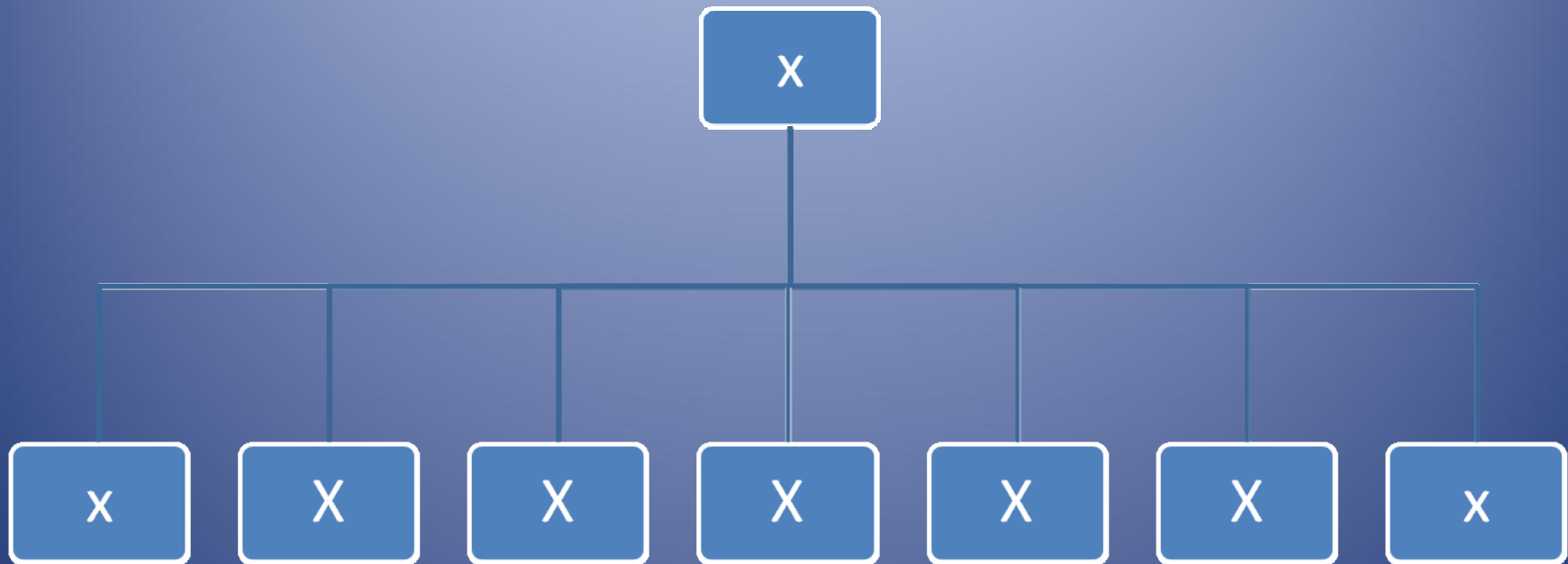


Panarchy



Holling, C.S., What is this panarchy thing? Resilience Science
<http://rs.resalliance.org/2007/03/21/what-is-this-panarchy-thing-reflections-pt-11/>

Emergency Response





To come to terms with the Columbia, we need to come to terms with it as a whole, as an organic machine, not only as a reflection of our own social divisions but as the site in which these divisions play out. If the conversation is not about fish and justice, about electricity and ways of life, about production and nature, about beauty as well as efficiency, and about how these things are inseparable in our own tangled lives, then we have not come to terms with our history on this river.

Richard White, *The Organic Machine*