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"Reflections on property rights and commons in the economies of Western Europe"

My basic message is that commons, both as a concept and as a reality, is alive and well also in developed capitalist economies. In fact, without a sophisticated use of the particulars of institutions developed to govern the commons of Western Europe, the ability to govern the development of modern capitalist economies would be seriously hampered. And the urban way of life creates a demand for new types of commons. To me it seems that the more sophisticated capitalism becomes, the more sophisticated do institutions governing various types of commons become.

Items:

- One core institution of modern capitalism is known as trust funds. In their organisation they use techniques developed in the management of commons in the traditional agricultural societies of Western Europe: the joint ownership.
- The same technique is brought back to organise new types of commons: land trusts to manage cultural landscapes and heritage on behalf of a society.
- In the last issue of CPR-digest Marshall Murphree wrote about protected areas as a kind of commons. In general one may say that the concerns about protecting nature and biodiversity growing out of the modern urban cultures now is a leading force in creating ideas about commons.
- The indigenous peoples of the more developed economies represent another margin of change. In Norway the struggle of the Saami people to gain recognition for their rights to the lands of their society has resulted in ideas about new types of commons.

And from ideas there grow institutions. Are these developments surprising seen from perspective of IASCP? It should not be, but if it is so, maybe that is because we yet do not quite understand all aspects of what a commons is? In particular I think current theory is rather muffled on the question of dynamics. In fact: the evolutionary dynamics of commons is today one of the frontiers in research on commons (Stern et al. 2002).

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Why dynamics of commons?

If we want to use our theoretical insights to design new institutions for some commons we need to understand the dynamic implications of all the small details going into such an exercise. We even have to know the implications of leaving out some detail.

I think our understanding of the dynamics of commons will be furthered most rapidly by comparative studies of a variety of commons, in a variety of settings. And this must include the commons of Western Europe. At one time also the countries of Western Europe were developing. They did not do away with their commons. They learned to transform them as needs arose and they applied the learning in new contexts. Thus they developed the property rights institutions of modern capitalism in a practical day-to-day struggle between powers and interests. Today I believe we can do away with a lot of the suffering and errors this process entailed (during the enclosure or privatisation of commons). If only we can find out how it was done.

However, I do not believe that we can carry a recipe for solving problems from one country to another. Social institutions do not travel well. They travel as cultures travel, by groups of people carrying them along in their heads. Usually new institutions grow from a foundation of existing institutions. But learning about other ways of doing things is important in such a growth process. Therefore I will take this opportunity to speculate a bit around what I have learned studying some European commons. I will introduce a few characteristics, and I will try to explain why I believe they are important to the historical dynamics and security of tenure of the commons of Western Europe. These explanations are hardly more than reasonable hypotheses. I believe they deserve to be investigated.

In general it will be useful to take a closer look at how property rights are working in some of the more developed economies. In fact, it could be extremely useful, if we are to believe what Hernando de Soto (2000) says in his book on "The Mystery of Capital." De Soto argues forcefully that the scholars and businessmen of the more developed countries do not really understand why Western democracies have become rich. And in particular: we do not understand what the role of property rights has been in this process of economic development.

The maxim of "getting the property rights right" has usually meant private property in a rather unsophisticated, dominium plenum, interpretation. The standard advice of development theory shows no sensitivity to the complexity of property rights institutions and absolutely no understanding of how and why they work. But students of commons in all their variations ought to appreciate

the variety and complexity of the institutional matrix governing resource usage. By looking at the commons of more developed economies with the problem of understanding their developmental dynamic in mind I will suggest some alternative or supplementary classifications to those most often used today.

Tools for comparative studies: classifications

Dynamics means change. It means change in

- Uses: the goods found in the resources of the commons
- Owners: the various types of collectives
- Property Rights: the various ways in which owners may hold resources.

By looking at the commons of more developed economies with the problem of understanding their developmental dynamic in mind I will suggest some alternative or supplementary classifications to those most often used today.

Change is often associated with conflict. But there are many kinds of conflict. Some are destructive, some are just a waste of resources, but some are also constructive. If change is what we want, we should try to channel the conflict into constructive forms. Can that be done? Getting the common property rights right might help us avoid some unnecessary or destructive conflicts. And in particular, if we want to preserve the commons into the future, there are some conflicts we need to look at.

For all property rights regimes there are recurrent points in time where conflicts are likely to occur. That is when

- Rights are traded,
- Owners die, or
- New resources are discovered.

Even if we prohibit trade in resources (which I do not think we should do) the other two events are likely to occur - sooner or later. Current theory does not have much to say about how to handle the death of owners or what to do when new resources are discovered in an area governed as commons. Perhaps it is obvious that this is for the commoners to decide? I do not consider it obvious, so let us take a closer look at what we are talking about and see how such events may affect the uses of the commons, the owners and the way they own the commons.

Types of Goods I

By considering whether there may be competition among appropriators for the utility of the good and whether current technology allows exclusion of appropriators from any part of a mutually exhaustive and complete partitioning of the resource, we get the well known classification of goods into private, common pool, club, and public.

Table 1 Typology of goods

Resource is	Appropriators are:	
	Excludable	Non-excludable
Subtractable	PRIVATE	COMMON POOL
Non-subtractable	CLUB	PUBLIC

Source: adapted from Ostrom and Ostrom 1977

This typology of goods gives us analytical categories that may describe aspects of the utility of real world products, not necessarily the physical goods themselves. Thus, there is considerable room for political choice about the degree to which some real world product shall be treated as private, common pool, club or public, or as a mixture². The question faced by a governor is not just the technical feasibility of exclusion, or the economic return from subtraction, but also their moral desirability and political feasibility. Recent studies of property rights emphasize their embeddedness in a political system and emergence from a political process³. Thus the definition of property rights as being one or another type is an interesting fact in itself, and should be expected to vary among societies.

Just consider a simple good like taking a “Walk in the wood”. You appropriate it by actually walking in the wood. But what kind of good is it? It is technically excludable, but it may in many cases be very costly to exclude, like it is for many common pool resources. It is in general non-subtractable, but will be affected by crowding. Thus it may be either a club good or a public good with utility modified by crowding. Can we a priori from these characteristics say anything about who will hold –or who ought to hold - the right to walk in a particular wood?

In Norway the right belongs to any person who legitimately stays in Norway, and it is inalienable. In England it belongs to the owner of the land except where custom or contract allocates it otherwise, and it can be traded.

There is nothing inherent in the nature of “walking in the wood” which might be used to “solve” the problem of assigning the right to any particular person. But with increasing crowding there will be an increasing number of externalities

² See Berge (1994): Thus I disagree with McKean’s (2000) position that the nature of a good in general is a physical fact, given the technology. This is only part of the story. The nature of the good is also open to political choice and symbolic manipulation, sometimes with a vengeance, if the physical characteristics of the good are disregarded.

³ Brouwer 1995, Sened 1997, Hann 1998

affecting other goods in the wood. At some point the cost of these externalities may be high enough to make the cost of exclusion reasonable. Assuming that crowding is real and not just theoretically possible, at what degree of crowding does this happen? Real evidence seems to be missing. All arguments end up with a political “choice” at some point in history. But there is one interesting aspect to the different choices in Norway and England. In Norway the right of access to woodland is conceived as separate from the land. In England it is bundled into the fee simple tenure.

But let us get back to the problem of the discovery of new resources. How will they fit into this classification?

Types of goods II

In those few legal systems I have studied the ground and the remainder appears as important and useful resource categories besides the particular positively defined rights and duties. I think they are important to the dynamics of change in the commons. Presumably positively described rights such as the right to pasture, or the right to cut trees only of the family *Betulaceae* (and not any other types of broad-leaved trees, or evergreens), or similarly defined rights are well known.

These positively described rights can be as refined as they will, in more developed economies it has proved necessary to think about that which as yet is not known, that which as yet is an undiscovered resource. In mature legal systems this category is known as the remainder. The remainder is that which is left when all positively described goods are accounted for. In slowly changing or static societies this does not amount to much and can be safely ignored. But as social and economic change picks up speed more and more often conflicts arise about goods, which can be classified as previously having been part of the remainder.

So who owns the remainder? The usual stipulation is that the remainder follows the ground. The owner of the ground is also the owner of the remainder. But that is a convention; it is not a necessary link.

I believe that a description of how the three elements of “ground, remainder, and positive rights”, are held will give a comprehensive foundation for understanding the long-term economic and social dynamics of a commons. And without trying to argue in more detail I will also venture as a reasonable guess that the dynamic of commons in societies where economic and social change is significant to a greater degree is determined by the allocation of ownership to ground and remainder than the allocation of positively described rights. The positive rights define what currently may take place, allocation of ground and

remainder determines who decides when and how new elements can be introduced, of course with due consideration of the old ones.

Types of owners

At the outset common property may seem deceptively simple. Instead of the unmanaged common pool resource, the open access depicted by Hardin, we expect to find a situation where the collective has established itself as a self-conscious unit able to craft rules governing the usages of the common pool resource by the members of the collective. Well, of course, the process of establishing a self-conscious collective with well-working decision procedures is complicated, and theoretically it is hardly understood at all how it was done the first time. But such collectives are ubiquitous so we can at least for now take them for granted. But there are different kinds of collectives.

A basic classification of actors may give four types of owners: two types of public owners, the sovereign state and the dependent local state, and two types of private owners, the corporate body and the individual. Owners of commons are often assumed to be corporate bodies. But is it really the case that owners of commons have to be collectives? At first blush our standard classification of owners would seem to suggest so. But that is not the case (McKean 2000). Commons are not defined by **who owns** the goods but by **how they are owned**. We shall return to that.

Classification of owners II

In collectives individuals come and go. Exactly what rights and duties will membership in the collective entail? If an individual dies or moves away from the resource, what happens to this person's membership rights? Will they be extinguished with the person or can they be bequeathed to descendants? One important characteristic of an owner is the motivation for owning. Exactly what does it mean for a collective to hold some environmental resource? Do the collective hold it for collective enjoyment? Do they hold it in trust for someone? Do they hold it for their member's individual enjoyment? Does holding the resource mean the collective can do whatever they decide on among themselves? If not, how are their powers of deciding circumscribed?

Being an owner in a more developed economy is far from the old Roman law ideal of *dominium plenum*. To contain destructive externalities and uphold societal values the modern state has extended the legislation on tort and also created new instruments of environmental regulations. These instruments apply equally to all property no matter who owns it. But ownership is still a powerful tool. The rise of new concerns about ecosystems and biodiversity has led the state to define new types of commons such as national parks and other types of protected areas mostly on state owned lands or lands the state have had to buy.

The purpose or motive for owning is in reality much more important than what type of actor the owner is. In modern economies motives are no longer private affairs. How this is used in its most sophisticated way we see in the trust funds. A classification of owners according to motive for owning, may be more useful than the standard classification introduced above:

- Owners in trust (public ownership)
- Self-regarding owners (private ownership)
- Stakeholders (non-owners)

The trust fund is a mode of owning in common with particular significance for the social and economic dynamic of capitalist economies. The two most important features of a trust are first that the ownership is on behalf of somebody else, and second that its assets are owned jointly. Commons can be owned either jointly or in common. If they are owned in common each member of the community of owners holds a fractional share of the commons and this share can be bequeathed or transferred to the descendants of the owner. Family property is usually owned in common. If the commons is owned jointly each member owns “all of it concurrent with his or her co-owners” or equivalently, an ideal share of it. Upon the death of a co-owner his or her rights in the commons devolve to the co-owners, not to the descendants of the owner. Without joint ownership trust funds would not be able to function.

What we may call “real” commons usually displays the feature of being owned jointly by the members. If a person leaves the community of owners his rights in the commons reverts to the co-owners, his or her fellow community members. But not all commons are owned jointly. Swedish forest commons are owned in common. The dynamic implications of the distinction are obvious, for example in the number of owners (growing like the population) and their relations to the local community (some owners will move away).

The other characteristic of trust funds is that they are owned on behalf of somebody else (the beneficiary) than the legal owner. In England this has led to a distinction between ownership at law (the trustee) and ownership at equity (the beneficiary). The beneficiary may not intervene in the ordinary governance of the trust fund. But if the beneficiary thinks the trustee manages the fund in a way that damages the beneficiaries ability to enjoy the benefits of the trust, the trustee can be taken to court for breach of trust.

In many countries it seems that the state has taken upon itself the task of trustee for the natural resources of communities. But it has neglected to introduce any remedies for the beneficiaries. Breach of trust can happen without consequences. In the long run that is not good for either trustee or beneficiary.

Let us return to the question of how resources are held.

Types of property rights

Property rights discussions are often introduced by the classification:

- State property (public rights held by a state?)
- Common property (private rights held by corporate bodies?)
- Private property (private rights held by legal persons?)

Does this mean that states do not own commons? Or does it mean that individuals cannot hold any rights in a commons? In Norway we find that both the state, corporate bodies and individuals can be among the group of co-owners for a particular commons.

But this classification is not really a classification of property rights. It mixes ideas about owners and motives, but leaves out a whole lot about how an owner may be able to hold property. So is it a useful classification?

I suspect it grew out of the distinction between socialist economies where the state owns the means of production, particularly land, and capitalist economies where private bodies own the means of production. Then academics discovered that there was something in between which neither are state nor individual, but a self-governing collective. The classification seemed both obvious and natural in precisely the way Mary Douglas (1986) says classifications will be if they are based on basic shared values. But natural classifications will seldom provide new insights. The classification may at one time in history have said something about broad types of economic systems. For the scientific study of property rights and how institutions affect resource use it is useless.

Classification of property rights II

To get at the dynamic of an institution one needs to look for the distribution of decision-making powers and characteristic styles of decision-making. Property rights includes rules legitimising which decisions can be made and who can make them in what ways and at what points in time. Alternative classifications might be devised based on style of decision-making, motive for owning, or procedures for exchange of property rights. In my view such classifications will make it easier to see the dynamic potential of a property rights regime.

For example according to style of decision making

- Rights exercised by a bureaucracy
- Rights exercised by delegation of executive powers to one or to a group of executives
- Rights exercised by an individual owner

Similarly we might have classified property rights according to **legitimate purposes** for the owner:

- Profit motive,
- Trustee motive,
- Public utility motive,
- Protection of intrinsic and precarious values - the sacred.

Or we could have classified according to **procedures for exchange**

- Inalienable property,
- Heritable but not exchangeable,
- Conditionally exchangeable,
- Freely exchangeable

The dynamics of property rights systems

Goods, Owners, and Ways of Owning are elements of dynamic social systems. In any particular form they define a regime. To get at the long term dynamic of the regime we need to understand how the institutional environment will interact with the regime to give the regime recognizable properties such as a degree of stability, a degree of security of tenure, or a degree of sustainability of resource use. It is this understanding of the dynamic of property rights institutions de Soto (2000) says we need.

To get at the dynamics of any property rights system, including commons, we need to appreciate how institutions are working. “Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction”, says Douglass C. North (1990:3). Rules range from general constitutional law to informal norms and conventions. North’s proposition is a convenient starting point but it is not the whole story. Institutions are more than just rules. Arthur L. Stinchcombe (1997) reminds us that institutions are staffed and created to do a job of regulating organisations. For a rule system to become an institution it needs guardians charged with the interest and authority to monitor and enforce the rule system. Hence, whenever we find an institution we do not only find rules, we also find a group of people with a mandate to watch the performance of the rules. At the most elementary level the group of guardians will be the people who devise the rules. In modern states we expect in most cases to find a bureaucracy as guardian⁴.

The guardians are human beings with beliefs and values, they have less than perfect knowledge and they have personal as well as class interests. Therefore the job performance of the bureaucrats can be seen as a distinct and separate force

⁴ Rereading North (1990) with this in mind it is rather obvious that his concept of institution implicitly takes the existence of bureaucracies for granted.

besides the body of rules. But neither are rules and guardians enough as a starting point. To understand institutions we also need to see the driving forces in their genesis.

The origin of institutions is found in the human need to safeguard life and livelihood. Addressing this need involves many and pervasive problems of collective action. In his book Hernando de Soto (2000) tells a compelling story of the power of these needs, and of the problems created by governments refusing to see them - or being unable to create institutions taking care of these needs.

Safeguarding resources: the problem

While the single omnipotent and omniscient person would have no management problems at all, such a person would neither have fellows nor a society around. If we take as a starting point that fellow humans are around, that they compete in the acquisition of benefits from divisible and scarce resources, and that they also are concerned about the equity of the final distribution, certain problems follow inevitably:

- Allocation of resource quotas: who gets how much from each resource?
- Allocation of costs: how do you distribute costs (monitoring and sanctioning costs, other transaction costs,)?
 - Monitoring: how do you organise controls so that no one takes more than agreed and that everyone pays his/ her share of the cost?
 - Sanctioning: what particular and practical consequences do rule breaking entail?
- Rulemaking: what are the procedures for (re-) negotiating the rules governing the management of the resource?

Safeguarding resources: the institutional solution

The core of the agreement on allocation, monitoring and sanctioning is in the Western world known as property rights. Their formal logic is fairly well known. But their social dynamic and their real world mechanisms of stabilization are not well known⁵. It is to this problem de Soto's study speaks, not so much in terms of the exact mechanisms as in outlining a neglected area of research, and the devastating consequences of this lack of knowledge for development policy.

De Soto and his team investigated the relation between the legal system and the activities of ordinary people in terms of the cost of getting title to housing lots or starting a small business in Cairo, Lima, Manila, Mexico City, and Port au Prince. In the cases he has investigated, he finds that this takes 6-25 years and

⁵ "In the West, the law is less concerned with representing the physical reality of buildings or real estate than with providing a process or rules that will allow society to extract potential surplus value from those assets. Property is not the assets themselves but a consensus between people as to how those assets should be held, used, and exchanged." (de Soto 2000:157)

costs more than the land is worth. Exactly as the formal theory predicts and common sense suggests: People do not follow such rules. The result is an enormous sector of extra-legal activity comprising 50-85% of the population in most of the developing world. These extra legal people are ordinary people who build houses, start businesses, and work - all outside the official legal system. The implications for the dynamic of the economic system are profound. The property rights that the various groups develop in order to secure lives and livelihoods are not legitimated and defended by the state, they remain local and precarious. Every so often the state tries to evict some group of people defined as squatters on land they do not own. The trust in the state declines, and is in many cases non-existent.

De Soto's main argument is that the lack of property rights – meaning rules and bureaucrats interested in and willing to defend the livelihoods and assets of ordinary people - results in lost opportunities for sustaining economic growth. By recognizing and fixing the capital these people create in their everyday work; building their homes, and developing their businesses the state could do more for economic development than all development aid. But the implications of this neglect go further. The most important is that it reveals a profound lack of understanding of property rights among politicians and top administrators of these states, and, by implication, the consultants and advisors of the international aid organisations.

The system furthers mistrust to the state, and a lack of everyday understanding of the relation between state and property rights necessary for modern economies. This has devastating consequences not only for economic growth but also for modern resource management. More and theoretically better informed studies of property rights institutions in the developed world might help illuminate the missing parts of the institutional structure of the rest of the world.

So where do these institutions of the developed economies come from? An answer to this question is beyond the scope of this presentation. The various approaches to the study of societal institutions in the various sectors of society give partial glimpses of the way they currently are working. And the theoretical reconstructions of their internal logic give glimpses of why certain aspects of them are so persistent.

Property Rights

According to Godelier (1984:76) "the concept of property may be applied to any tangible or intangible reality", and rules of property rights will "always assume the form of normative rules, prescribing certain forms of conduct and proscribing others under pain of repression and sanctions". But he also warns "Property only really exists when it is rendered effective in and through a

process of concrete appropriation" (p. 81). This view certainly echoes de Soto's (2000) view of the development of customary property rights in the extra-legal sector of most third world and former communist countries.

Property rights "help man form those expectations which he can reasonably hold in his dealings with others" (Demsetz 1967, p. 347). This means that property rights are a central part of human interaction. Even in situations where the actual on-going interactions have nothing to do with the distribution of benefits, one can see that the prevailing property rights affect the framework of interaction at least by defining and infusing the space-time setting of the interaction with particular meanings and classifications of events (Douglas 1986).

This view of property rights means that they are a central part of all social institutions, and that institutional change means changes in property rights.

The construction of social institutions

Institutions consist of a rule system and an organization with a mandate to interpret and apply the rules. In democratic polities rule systems are either legislated or mandated by legislation and, in so far it is possible, founded on customary practices. Organizations that are mandated to implement legislated rules are called (public) bureaucracies. The bureaucrats will have the authority to monitor all actors subject to the rules and to initiate sanctioning of those who are not following the rules when they should. Customary rules are more often designed to be self-enforcing. It is the actual practice, which both define and monitor the rules. Also customary rules are usually legitimised and monitored through local, neighbourly associations or assemblies.

The formal rule systems of developed countries consist of two types of rules: property rights and public regulations⁶. The two rule types could be said to define two types of regimes.

Property rights regimes

Rights and duties exist in the minds of people. They consist in what people believe they can legitimately do to the physical world. The precise limits to the rights and duties are the result of negotiations among stakeholders trusting that their agreements will be enforced by the state (or its equivalent for customary rules). Political processes will from time to time impose new rights and duties or alter the definition of old ones. Discrepancies in understanding the precise content of rights and duties in given situations may on the one hand cause

⁶ For more extensive treatments see Eggertsson 1990 and Ostrom 1990 on property rights regimes, Kahn 1970/71 on regulation regimes, and Ostrom 1990 on bureaucracies.

conflict and sanctioning, but also on the other hand, learning and adjustment to the new content of the rights regime.

Regulation regimes

Most regulation will be concerned with behaviour of actors in given conditions regardless of location and property relations to the physical world. Such regulations will of course have implications also for our understanding of property rights, but the impact is indirect. Direct regulation of property rights may come in situations where property rights are absent or where the societal environment is changing so rapidly that old rights become inapplicable. But in ordinary situations the state will promulgate direct regulation of activities (e.g. use of technology in harvesting, size of quotas from common pool resources, protection of endangered species or ecosystems). In time these regulations may stabilize as new or changed definitions of property rights. Also the system of property rights will invariably generate some negative externalities. These may be addressed by imposing regulations on activities regardless of established rights and duties (e.g. through legislation on tort). As such rulings are enforced, the perception of the world by owners and users, and hence their understanding of the property rights, will be adjusted.

Bureaucracies

Rights and duties need guardians with power to monitor behaviour, interpret rules, and sanction breaches. The structure of power in such organizations, and the worldviews brought to bear on the perception of activities of owners and users of resources and the interpretation of the rules governing their activities, are critical for the long-term sustainability of the institution. Also the design of regulations needs commitment from people with power to monitor, interpret and sanction behaviour in relevant contexts.

The social construction of institutions

Customary rights and duties

All formal institutions are created, or grow, on top of a foundation of informal institutions. Thus resource management institutions comprise not only the formally created institutions (property rights and public regulations), but also comprise the customary practices based on local culture and perceptions, as well as the corporate culture of professional bureaucracies. Customary rules may add to both property rights regimes and regulation regimes. These local social and cultural environments (customary rules) co-exist with, and work together with the formal institutions in framing the activities in relation to resources. Without some degree of congruence between customary rules and formal rules the escalation of monitoring and sanctioning costs, will make the formal institution ineffective.

The social construction of institutions gives a solution to the second order collective action problem⁷. The existence of these institutions comes to be so much taken for granted that people can use them to overcome at least some of the first order problems⁸ (Ostrom 1990).

Lock-in between institutions and organizations: path dependence

Institutions that are observed in practice have been constructed by trial and error throughout history. On top of the social construction of institutions there is a conscious effort at constructing social institutions, but without any real understanding of the dynamics of institutions, hence the long history of trial and error.

In both professional and non-professional contexts there have been established ways of perceiving and interpreting resource problems, developed a repertoire of procedures for deciding on solutions, and designed a set of feasible instruments for implementing the solutions. The institutions thus constructed are, however, in their turn shaped by impacts from availability of technology and strength of market forces. Introducing science as aid in the construction of institutions does not necessarily help. Scientific knowledge and authority are not free-floating entities, but linked to specific bureaucracies and organisations. The corporate culture of such entities becomes a prime expression of what is seen as scientific knowledge and its authority. Only by becoming self-aware and sensitive to the inherent limitations of scientific models will science be able to have a sustained impact.

The social reality of institutions constructed around a resource use system embeds the thinking and informs the activities of the various resource users. Thus Owners, Local users, Workers, Professional managers, and Firms of resource industries all pursue their goals, values and preferences within the constraints of both a physical and institutional reality. By assumption the various actors and interests groups organize their resources to

- Optimise their returns from resource use activities by conforming to and exploiting the existing institutional environment, or to
- Change the resource policy in a desired direction if the expected outcome of a political effort is seen as cost effective⁹.

⁷ The second order problem: how do you manage to create rules to solve the first order collective action problem?

⁸ Examples of first order collective action problems: If the resources are insufficient for everybody, how do you limit the number of people with rights? If those with rights have incentives to overexploit the resource how do you stint their usage? If resources are needed for monitoring and sanctioning how do you get everybody to contribute? If effort is needed to keep up the productivity of the resource how do you get everybody to participate?

⁹ "Individuals can use the state in several ways for their personal gain: by lobbying for rules that increase the community's aggregate wealth, by seeking direct transfers that are not output enhancing and may have negative

The outcome from both activities will be to change the resource management institutions. The impact is immediate in so far as it affects the activities in relation to the resource. It is indirect if the changes affect the future action parameters through politically initiated changes in legislation and regulations.

The competition among actors ensures that those who are best at exploiting the resources within the existing institutional system will prosper and become powerful¹⁰. The historical dynamic of adaptation to an institutional structure among actors produces a lock-in between the population of actors and the institutional structure. Radical proposals for changes of the institutional structure will meet powerful opposition from those who are best at exploiting the resources within the old institutional structure (the population of organisations prospering from the old rules). And political powers responsible for the formal rule system will most of the time be sensitive to opposition from a group of powerful organisations. Radical change becomes very difficult. This so-called lock-in between organisations and institutions produces what now is called path dependence in the development of a society (North 1990).

But the opposition to proposals of changes of institutions may not come only from the population of actors prospering from their usage of the resource system. If the proposed institutional changes entail major changes in the bureaucracy monitoring the rule system, such as changing the allocation of power, or changing the allocation of resources for monitoring and sanctioning, also the bureaucracy may take “political” action directed at minimizing the actual changes. The most powerful resistance against changes in the institutional structure is achieved when the population of actors and the bureaucracy see a common interest in minimizing the changes. The role of the bureaucracy is also part of the lock-in between institutions and organisations and the path dependence of the development of a society.

Conclusions

Here at the end, let us return briefly to the commons of the developed economies of Western Europe. The amount of research on the current and emerging commons of Western Europe is insignificant. Most of what is done comes from historians or legal historians¹¹.

effects on incentives, and by obtaining property rights that create artificial scarcities and output losses.” Eggertsson (1990:262)

¹⁰ “In a zero-transaction cost world, bargaining strength does not affect the efficiency of outcomes, but in a world of positive transaction costs it does and given the lumpy indivisibilities that characterize institutions, it shapes the direction of long-run economic change”. North (1990:16).

¹¹ The study of the commons of medieval and early modern England and their enclosure can be called a special branch of economic history. This literature is not insignificant either in volume or importance to the theory of the institutional dynamic of modern economies. The studies of contemporary commons are few, but important. See Netting 1981, Stevenson 1991.

Today the action is in the protection of biodiversity and cultural landscapes. In Norway the management of the large predators affects both these problems. In other countries it may be something different. But in the efforts to protect biodiversity and cultural landscapes various stakeholder groups do not recognize that they are trying to reinvent the concept of commons, and often they seem to commit the same errors in our countries as in the developing world.

The major error is to neglect the current holders of rights. My advice is here as elsewhere: “do not neglect local users and customary rights”. The rule of law protects the customary rights as much as statutory rights. That is a basic tenet in the development of property rights in the more developed economies.

There is nothing like infringing on property rights for generating action, and nothing like legitimate and secure property rights for generating economic development. These, I believe, are the major lessons from the evolution of property rights to resources in Western Europe.

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