

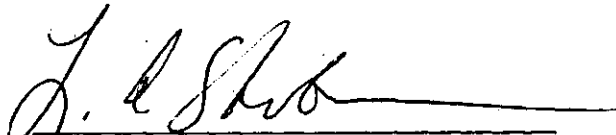
THE EVOLUTION OF PROPERTY RIGHTS TO A NATURAL RESOURCE:  
THE OYSTER GROUNDS OF THE CHESAPEAKE BAY


by

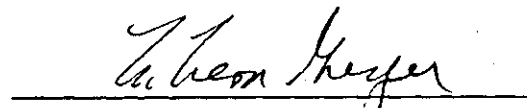
George D. Santopietro

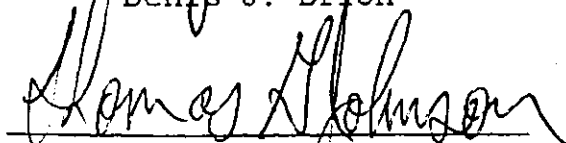
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THE EVOLUTION OF PROPERTY RIGHTS TO A NATURAL RESOURCE:  
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by

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(ABSTRACT)

Economists take an interest in property rights structures because of their importance in the definition of incentive structures. Fisheries have been analyzed as open access resources because they are not often organized around private property rights. The lack of private property rights though should not be taken to imply unlimited access. There is a need to differentiate between situations in which an institutional structure supports a system of common property rights from those in which access to a resources is truly limited.

In this study, a conceptual framework of the structure and workings of property rights to natural resources is developed. This includes a taxonomy of possible property rights structures that differentiates among types and degrees of common and private property. The study then compares and contrasts the differing views in the economics literature on the process by which property rights evolve.

This conceptual framework is used to develop a set of research question that will structure the inquiry about the evolution of property rights to a specific natural resource,

the Chesapeake Bay oyster grounds. The conventional and Institutional perspectives are related to fishery management policy and their differences assessed. The Institutional perspective is shown to raise questions about the historical development of property rights that would not be considered by conventional economists.

The resulting research questions are used explain the economic history of the property rights to the Chesapeake Bay oyster grounds from 1607 to 1986. In Maryland and Virginia certain grounds of the Chesapeake Bay are reserved as a public oyster fishery, but, they have been regulated and managed by the states. In the history of the fishery, those who harvest from the public grounds have continually resisted the extension, or even encouragement of oyster cultivation on private leaseholds. The primary advocates of greater privatization of the bottoms have been economists and biologists. The governments of each state have chosen to maintain the commons in order to provide employment for watermen and to more widely distribute income among them.

The results of a survey of Virginia's oyster harvesters are presented. These provide further insights for discussing the role of the watermen in the evolution of property rights, and help to form conclusions on the future of the fishery. This case study leads to the discussion of conclusions on the theory of the economics of property rights.

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## Chapter Four

### Alternative Theories on the Evolution of Property Rights

There is no political solution  
To our total evolution  
Have no faith in constitution  
There is no bloody revolution

We are spirits in the material world

Our so-called leaders speak  
With words they try to jail you  
They subjugate the meek  
But its the rhetoric of failure

Sting

#### 4.1 Introduction

The taxonomy of property rights developed in the previous chapter will help the economic analyst characterize the institutional environment in which his chosen problem is set at a given point in time. As such, it should be an important element in his explanation of the current status of the subject of his inquiry. When he begins to ask questions about the impact of a public policy measure, he also needs to be concerned with how the property rights structure changes. The implementation of change in policy will alter the exposure to costs and access to benefits of individuals and groups with a stake in the use of a resource.

To begin an explanation of what causes change in a Property rights structure and how change occurs, questions as to why property rights exist and what functions they serve are addressed. Within economics this subject has been

much neglected by the mainstream of the profession, economists start with the belief that all property should be private and see their role in the policy process as advocates of privatization. Only the Public Choice and institutional economists have attempted to understand the process by which property rights change and how their change is related to economic performance. The Public Choice economists view the property rights structure as an endogenous element of the economic system while the Institutionalists regard it as an integral part of the whole social order and environmental setting. Indeed, land tenure was a major concern of the early Institutionalists. The attention they paid to the structure of property rights was part of what separated them from the mainstream [Commons].

After a review of each school's thought on the emergence of property rights this discussion will turn to consideration of how they differ in interpreting the impetus or change. What are the forces behind the demand for a shift in the property rights structure? From this follows the question of how the impetus is translated into action. To use the market metaphor, how do demand for and supply of collective action interact? Then, as economists we are faced with the question of whether or not there are criterion by which we can offer to judge the desirability of proposed property rights change.

#### 4.2 Why Property Rights Emerged

##### 4.2.1 The Rise of Order from Anarchy - The Public

### Choice View

An anarchy is a world without formalized rules governing the behavior of people toward one another. This does not necessarily imply a world without order. An ordered anarchy exists if, "... people respect the minimal set of behavioral norms dictated by mutual tolerance and respect" Buchanan, 1975, p. 2]. More recently, Buchanan refers to this as "moral order" [Buchanan, 1981]. In the Public Choice view though, this is considered to be an impractical form of organization because of the lack of mutual agreement on defining the limits on individual freedom of behavior. Conflict is sure to arise when people differ in their beliefs as to what constitutes proper behavior. Nonetheless, Buchanan contends that much of our world is characterized by behavior which accords with mutual toleration. He especially notes behavior with respect to problems of coordination, e.g. polite conversation, stopping at red traffic lights. Unfortunately any examples one can give of this reflect one's own perception of mutual tolerance. For instance, the civil rights movement was viewed by segregationists as disruptive of social order, while for the civil rights activists discriminatory practices betrayed a lack of mutual respect. Buchanan believes that the sense of ordinary respect for his fellow man which can be empirically observed in the behavior patterns of the average American is indicative of a moral order [Buchanan, 1977].

Hayek discusses this social order in more general terms, "Order with reference to society thus means essentially that individual action is guided by successful foresight, that people can foresee with a high degree of confidence what collaboration they can expect from others. Such an order involving an adjustment to circumstances, knowledge of which is dispersed among a great many people, cannot be established by central direction" [Hayek, p. 160],

The Public Choice view is based on a belief that over a large range of activities, individuals find it worthwhile to conform to moral rules and conventions. Conformist behavior is not a matter of ethical choice or coercion according to Hayek. Rather, "On the whole, those conventions and norms of social intercourse and individual conduct do not constitute a serious infringement of individual liberty but secure a certain minimum of uniformity of conduct that assist individual efforts more than it impedes them" [Hayek, p. 147].

Three centuries ago, Thomas Hobbes wrote about the rise of unlimited monarchies in Leviathan. To Hobbes, the behavior of purely self-interested men plunged society into an anarchistic war of each against all. In this Hobbesian anarchy life was nasty, brutish and short. Escape from a state of perpetual conflict could only be found in an agreement among all men to surrender all their presumed rights to a sovereign. In return for this power, the sovereign was to guarantee peace. Individuals in society

were seen by Hobbes as willingly subjecting themselves to the unconstrained will of one person because of their strong desire for peace. Hobbes was aiming for a positivist description of the social order of his time which was characterized by the concentration of power in unlimited monarchies.

The explanation of modern constitutional democracies in the West requires a story of how some societies were able to escape from the Hobbesian jungle while preserving a large degree of individual freedom. Buchanan [1977] offered this in the context of the Prisoners' Dilemma game.

Briefly, this game involves a society with only two individuals, A and B. When they engage in a struggle over available resources the pay-offs are 9 for A and 2 for B. This solution is found in the lower right quadrant of Figure 4.1. It is defined as the state wherein neither one respects any rights of the other. Both individuals would be better off if they could come to an agreement over the division of resources, thereby avoiding necessary defensive measures which require the expenditure of some of the resources each acquires in conflict. These savings from mutual disarmament would allow A to claim a pay-off of 19 while B would get 7. This represents a state in which each respects an assignment of rights specified by contractual agreement rather than either conflict or subjugation to the will of another. Buchanan's argument is that these potential gains will



		B	
		Respect A's Rights	No respect for A's Rights
A	Respect B's Rights	19,7	3,11
	No respect for B's Rights	22,1	9,2

Prisoners' Dilemma

Figure 4.1

provide incentive for A and B to attain an agreement under which each is able to act freely and secure in his tenure, Each is more assured of what the other's behavior will be.

of course for the agreement to remain in effect each must be willing to forgo the gains which would accrue if he violated the contract while the other respected it. Notice that the highest pay-offs are attained when one individual breaks the contract. The advantage in renegeing on the contract however is lost if the other person follows suit. This brings about the plunge into Hobbesian anarchy. An element of stability exists in the (19,7) solution because, "No player can guarantee for himself a better outcome than that which he secures under universal adherence to the agreed on rights assignment" [Buchanan, 1975, p. 27].

In the Public Choice view, the rise of property rights is characterized by contracts of mutual disarmament which induce mutual respect. The ability to predict the behavior of other members of society that is necessary for social order is made possible by free agreement among individuals to move from a "natural distribution" of resources to a Preferred position, all without resort to a complete abdication of personal liberties.

As more individuals are included in a society the preferred position becomes less stable. The advantages of cheating become greater as large numbers make individual behavior more difficult for others to discern. The emergence of property rights therefore also will include explicit

terms and conditions for enforcement of the initial assignment. Some enforcement institution can be expected to be created to secure this. As "each person will receive some benefit from the assurance that his established claims will be honored by others in the community ... enforcement qualifies as a public good" [Buchanan, 1975, p. 67]. Buchanan however notes that enforcement is a different type of public good because, in order to be effective, it must "include the imposition of physical constraints on those who violate the rights structure" [Buchanan, 1975, p. 67]. For him, this solution creates the problem of constraining the behavior of the enforcing institution itself. The contract must also define the rules under which the authority must operate in making and implementing decisions if the development of a modern Leviathan is to be prevented. These would be constitutional level rules.

In his more recent thinking, Buchanan [1981] has retermed the Hobbesian anarchy as "moral anarchy". He further identifies as a "moral community" a group in which each individual member identifies with a collective unit, a community, rather than seeing themselves as independent and isolated. Most people feel a sense of loyalty to a number of various groups at any one time. They are part of a family, a church, a business, a nation. A society is held together, says Buchanan by some combination of moral community and moral order. This cohesion is reduced by the extent of moral

anarchy among its members [Buchanan, 1981].

To sum up Buchanan's contribution, the initial contract starts with some natural distribution that emerges from the Hobbesian struggle. Order emerges as people lay down their arms and accept rules of behavior and respect rights of possession. This "moral order" is stabilized by enforcement mechanisms. Individual liberty is preserved by setting limits on the emergent protective state.

Hobbes and Hayek both based their explanations of social order on the assumption that all human behavior is motivated purely by self-interest. Hobbes saw this leading to a pitiless struggle from which the centralized state emerged. Hayek could equally rationalize the creation of constitutional, free-market democracies. Buchanan does not make this assumption. He is less concerned with why people agree and more concerned with the observation that agreements are reached. The fact that gains from agreement are possible however is always cited as an incentive for individuals to contract agreements. The Public Choice economists following Buchanan have made utility maximization a key element in their models of collective action. The Process in which an outcome is attained that is preferred by individuals in a society and that depends upon the cooperation of each individual has been termed joint individual utility maximization. Dahlman defines this antecedent condition. "Assume private wealth maximizing behavior as the norm. Agents pursue their own personal goals

if the rules and regulation they set up are the result of joint individual decision making. That is to say, if certain restrictions on individual choice or infringements on personal freedom are observed, we shall interpret these as if they are voluntarily agreed upon by a collective of private decision makers, and not imposed upon them against their will by some dictatorial power or by forces of cultural tradition beyond the control of mankind" [Dahlman, p. 99].

In the Public Choice view, property rights are instituted as voluntary contractual agreements emerge from a process of joint individual utility maximization.

#### 4.2.2 The Public Image - The Institutionalist View

The Institutionalists recognize the wide variety of motivating factors that exist within each person. Kropotkin stresses that by imposing the prespecified neoclassical assumptions of human behavior, the investigator will not be able to recognize the existence of mutual aid as a force in social evolution. In his time and our own, there exist too many examples of selfless action to limit our view of economic action solely to the self-interest extreme of the spectrum of human behavior. Boulding offers a more general assumption of human behavior, "We behave according to some image of the consequences of our acts" [Boulding 1956, P-115].

How an individual interacts collectively within society

is shaped by that part of his image of the world shared by other people. Boulding calls this the public image. When a common public image exists, then the value system of individuals must be approximately the same. The basic bond of any society, subculture or organization is a shared values system. From public images of organization, institutions, such as property rights, emerge. Institutions find their support in a common belief in their value. This belief may be held throughout the entire society or within subcultures. From this notion, Boulding hypothesizes an alternative to the Public Choice explanation of the process which brings about collective action. "A subculture may be defined as a group of people sharing a public image. This need not be a conscious image, and the group need not be conscious that they are sharing it. If, however, there are basic similarities in the images of the different individuals in the group, the behavior of the group will reflect and will, in general, reinforce the similarities. One may venture the hypothesis that there is some degree of similarity among the images of a group of interacting people which forms, as it were, a critical watershed" [Boulding, 1956, p. 133]. The difference between this and the Public Choice view is that organizations are formed by subcultures in a consensual rather than a contractual process.

Hodgson has recently expanded upon Boulding's point the consensual process may not always involve conscious action by individuals and that this is widely ignored in

economic theory. He notes that, "Neoclassical economics does not make any distinction between actions that do and do not result from full conscious deliberation. All acts are Programmed at the same level according to the given functions of preference or utility. The Austrian school makes an equivalent error by assuming that all (relevant) actions result from planning and deliberation at the same level of consciousness" [Hodgson, p. 831-2].

The Austrian and neo-Austrians economists (Public Choice economists) critique socialism on the basis that a central agency cannot possibly process all the information necessary to plan a national economy. Hodgson chastises them for not also making the parallel observation at the level of the individual that, "... just as a central planning agency cannot concentrate all the relevant information for national economic planning as if it were 'in a single head,' neither can the human mind fully and rationally process all the information relating to individual human action at the highest level of deliberation" [Hodgson, p. 839].

In psychology, understanding unconscious mental processes is included in the domain of cognitive theory. Hodgson describes cognitive theory as showing that, "... the mind responds to the vast amount of sensory data it receives by working to reduce uncertainty at the conceptual level and giving the 'chaotic jumble' of stimuli some sense and leaning" [Hodgson, p. 834.] In relating the concerns of

cognitive theory to the topic of what forms a public image and how this fits into the concerns of economists, Hodgson makes several points. The implication of a public image can be found in cognitive theory. According to Hodgson, Emphatically, cognitive theory does not lead to the exclusion of the social dimension but to its reinforcement. We cannot hope to create a conceptual framework capable of handling vast quantities of information on our own. We have to rely on interaction with others to develop our cognitive skills, to form judgments about the world, and to acquire guidelines for action. This basic point is uncontroversial, even simplistic, at least for the social psychologist Hodgson, p. 844].

What is basic to social psychologists is anathema to economists because, as Hodgson says, "To put it bluntly, this flies in the face of the widespread assumption in economics that we are masters and mistresses of our fate [Hodgson, p. 833]. Returning to the comparison of the idea of institutions emerging from public images rather than the contracting behavior of individuals, Hodgson puts the question, "How can an agreed contract between two agents be regarded as a fair expression of their needs if it results in part from motives or drives that are not fully conscious?" [Hodgson, p. 833].

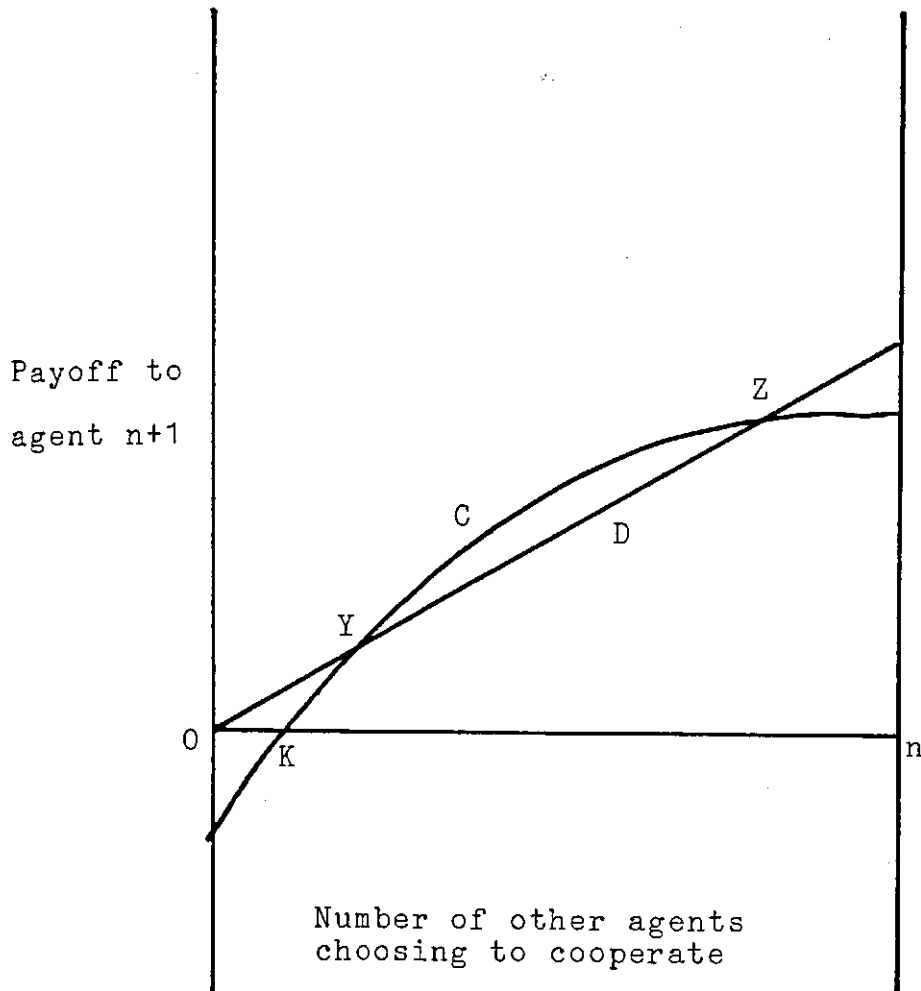
While the Public Choice economists use the prisoners' dilemma and the consequent free rider problem as explanations of why collective action cannot really succeed



without coercion, the Institutionalists note and accept the reality of collective action with and without enforcement mechanisms. Free riders are often tolerated in a society, They do not always cause a complete unraveling of the social order.

Boulding's idea that successful collective action depends upon the participation of a critical number of individuals has recently been discussed by Runge [1985]. He uses the diagram shown in Figure 4.2 to make his case that, under certain circumstances, a critical mass of cooperating individuals is a logical possibility. Agents derive payoffs from cooperation (C) or defection (D) based only on the number of other agents who also choose to cooperate. Alternative incentive structures can be represented by various positions of the C and D curves. In this setting there is some number  $k > 1$  such that if  $k$  individuals cooperate and the rest defect, those who do cooperate are still better off than if they all defected. Where  $k < n$ , the number of agents, some free riders,  $(n-k)$  can be tolerated, even though at some levels of  $k$  the  $n-k$  free riders gain more than the cooperators do.

Given the shape of the C and D curves in the figure this will be true for all numbers between  $k$  and  $y$ . At levels of cooperation less than  $y$ , the value to a given agent of defecting is high so that defection dominates cooperation. beyond points  $y$  enough agents are voluntarily cooperating



Coalition Formation

Figure 4.2

that others are induced to join in the coalition. The coalition will continue to gain cooperators until point  $z$ , at which so many agents are cooperating that defection again becomes the better strategy. Thus, there are two equilibria, a superior one at  $z$  and an inferior one at  $0$ , the open access situation.

If a critical mass of agents of at least size  $y$  forms, society will ultimately include a coalition of  $z$  agents acting collectively despite the persistence of  $n-z$  free riders. If, however, the open access equilibrium has become established, attainment of a superior position will require an organized change in behavior that may need to be coerced.

Clearly social order based on the acceptance of behavioral norms by a critical mass is less costly to maintain than one requiring coercion. The Public Choice economists believe that each individual must be coerced or threatened with coercion to maintain a stable social order. The Institutionalists show how social order can exist when individuals act in accord with a public image of what constitutes proper and natural behavior.

A property rights structure can therefore, be maintained with minimal enforcement costs if citizens believe that the current distribution of property rights is consistent with the natural order. According to Lindbloom, the authority to define property rights is often granted to the state voluntarily. He gives three reasons for why an individual would prefer to give control over part of his

freedom to act to others.

1. The person believes there is someone else who knows best what to do.

2. It shifts responsibility for a troublesome decision.

3. To focus responsibility on some one person to coordinate the actions of others.

In the Public Choice view, property rights emerge as a contractual agreement from a process of joint individual utility maximization along with an enforcement mechanism to insure behavior in accord with the terms of the agreement. A constitutional level agreement is made to establish rules for the exercise of enforcement since the collective body entrusted with the rights to exercise coercion cannot be trusted to limit its exercise of power.

In the Institutionalist view, people subscribe to value systems. The property rights structure is a function of social values. In some cultures, private property is highly valued as a property rights structure. In others, the public image may support the maintenance of a form of common property. There is no preconceived notion of what a public image has to be. It may involve tacit cooperation or explicit contractual agreements with enforcement mechanisms. The Institutionalists reject the idea that property rights or the value systems from which they derive can somehow be judged as more or less efficient. How one perceives the

opportunity cost of a property rights structure depends upon one's own value system. The belief that all operational level decisions can and should be left to individuals is simply part of one particular value system. This is also true for the belief that all institutional level decisions can and should be made so that joint individual utility maximization is attained. These are values, not analytical concepts.

#### 4.3. Impetus for Institutional Change

##### 4.3.1 Public Choice View

In Buchanan's model, property rights emerge from some "natural distribution" because of the benefits of mutual disarmament. Property rights become enshrined in an agreement on respect for rights, enforcement and limits on governmental authority. The distribution assigned under this law however begins to lose its dominance as exogenous change in the natural distribution occur. In Figure 4.3 a new situation is shown. As can be seen in the payoff in the lower right quadrant, there has been a complete reversal of the anarchistic power balance. All else remains the same, individual B now has nothing to gain by respecting the rights of A. He would be better off if he could plunge society back into the Hobbesian jungle. The contracts which legitimize the results of the previous struggle may have little value to him. Those who received less under the initial distribution but later gain in bargaining power can logically be expected to behave in the same way as those who

		B	
		Respect A's Rights	No respect for A's Rights
A	Respect B's Rights	9,2	3,11
	No respect for B's Rights	22,1	19,7

Prisoners' Dilemma

Figure 4.3

had bargaining power before then. The security of tenure under the original agreement derived from A's ability to exercise power. The exercise of bargaining power is a continuing factor in the evolution of property rights and does not disappear when a constitution is accepted.

Rather than a fall back into anarchy, A would prefer to respect B's rights even if B no longer respects the old agreement. A renegotiation of the agreement could possibly induce B to once again respect an assignment of rights to A if his payoff is greater than 11 and A's is more than 3.

In the Public Choice literature, the seminal article on the demand for change in a property rights structure was written by Demsetz. He proposes the thesis that, "... the emergence of new property rights takes place in response to the desires of the interacting persons for adjustment to new benefit-cost possibilities" [Demsetz, p. 350]. These desires can only be fulfilled at the institutional level of decision making. Collective action at this level, according to the Public Choice economists, is the result of joint individual utility maximization. More formally, this can be expressed as:

$$\begin{aligned} & \text{Maximize } U(\underline{x}) \\ & \text{subject to } (\underline{p}\underline{x})' - \underline{p}\underline{x} \geq \text{transactions costs} \end{aligned}$$

4.1

where:  $U(\underline{x})$  is a utility function  
 $\underline{x}$  is a vector of resources  
 $\underline{p}$  is a vector of resource prices

That is, when the benefits of a new allocation ( $px$ )' exceed benefits of the old allocation  $px$  by at least the costs of transacting change, there will be a tendency for some individuals to work for change. New rights are created and old rights change because of the response of some people to opportunities for economic gain. This response is induced by, "... changes in economic values, changes which stem from the development of new technology and the opening of new markets, changes to which the old property rights are poorly attuned" [Demsetz, p. 350].

Demsetz asserted the validity of his thesis by recounting an anthropological study of the Montagne Indians of the Labrador peninsula. They had developed a system of private property rights over previously open access hunting grounds in response to the increasing demand for small animal furs by French traders.

In his article, Demsetz concentrated his attention on the left side of equation 4.1. Dahlman, in writing about the enclosure movement in Great Britain, focused on the right hand side, the transactions costs element of the relationship. According to Dahlman, the people of the villages where the open field system was practiced were aware of the alternative of private property rights. Although the open field system was dominant in England, there had always been some enclosed farms.

The usual story about the enclosures is that, "...



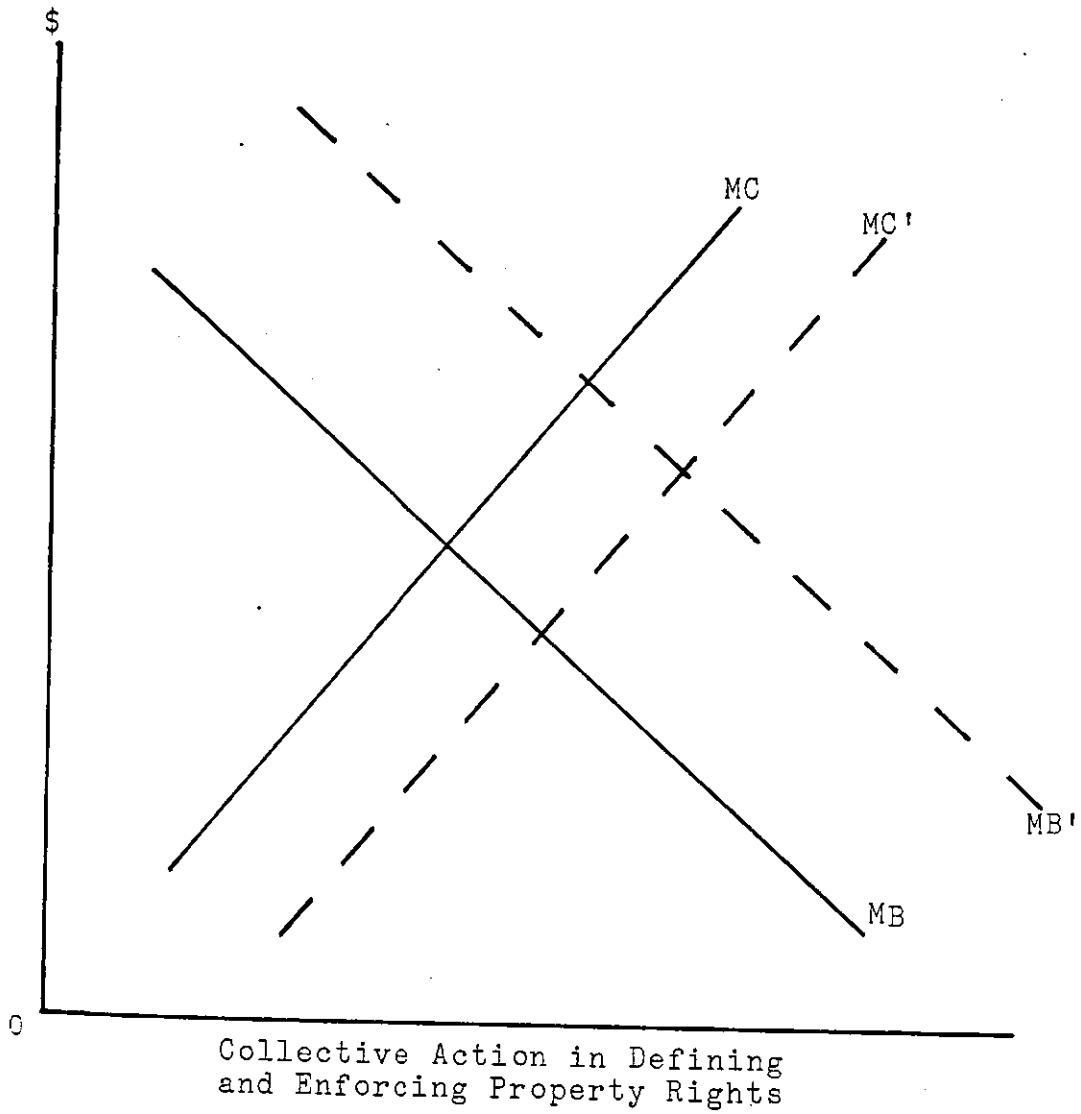
there was a sharp increase in the demand for wool owing to the growth of the Dutch wool manufacturers, and that the price of wool rose very steeply as a result" [Dahlman, p. 163]. The conversion of corn fields to grazing pasture for sheep has thus been widely regarded as the explanation for the enclosure. This would fit in well with Demsetz's theory. Dahlman however, claims that this explanation is inadequate because of the long duration of the movement. He contends that, while the alternative of enclosure was always available, and often generated greater benefits than the open field system, enclosure was a response to a decrease in transactions costs.

Enclosure did not occur everywhere at once as would be expected with Demsetz's simple model. Enclosure took place only as the transactions costs of the change were reduced to an amount less than the benefits of the change. The apparently random abandonment of the open field system can be explained by the fact that transactions costs are location specific. It is Dahlman's claim that one village would reach agreement on enclosure while its neighbor did not soon follow suit because of differences between them in negotiating and enforcing any final agreement.

Anderson and Hill bring the dual concepts of utility maximization and cost minimization together within the traditional marginal decision model of neoclassical economics in their article on the enclosure of range land in the American West. Collective action aimed at defining and

enforcing property rights have both benefits and costs, either one of which can be subject to change. "Establishing and protecting property rights is very much a productive activity to which resources can be devoted. But like any other activity, the amount of investment will depend upon the marginal benefits and costs to investors of allocating resources to these endeavors. By expressing the amount of property rights definition and enforcement activity as a function of marginal benefits and marginal costs and by specifying the shift parameter for each function, it is possible to explain the structure of property rights in a society and provide a vehicle with which we can analyze changes in property rights over time" [Anderson and Hill, p.202].

These relationships are represented in the graph in Figure 4.4. Activities in the definition and enforcement of property rights are measured along the horizontal axis. The costs of defining property rights are measured along the vertical axis. This construct allows a synthesis of Demsetz's and Dahlman's contributions. Demsetz predicts an increase in activity with an upward shift of the curve representing the marginal benefits of an increase in the definition and enforcement of property rights, e.g. from MB to MB'. Dahlman noted the possibility of a downward shift in the curve representing marginal transactions costs, e.g. from MC to MC'. The shifts could be the result of a change



Benefits and Costs of Defining Property Rights

Figure 4.4

Source: Anderson and Hill

in the value of any of the parameters in the function, e.g. technological innovations, increased population, tastes or change in relative resource scarcity (since this is only a partial analysis.)

#### 4.3.2 New Messages - The Institutional View

The Institutionalists critique of the Public Choice explanation of the forces driving change in the social order is not that it is inappropriate but rather that it is inadequate. Schmid concurs that, "There is no doubt that geographic factors, technology, human propinquity, mutual advantage and changing prices are factors in the formation of property rights" [Schmid, p. 29].

Buchanan and other economists [Schotter] consistently predict the emergence of a private property system from the contracting behavior they hypothesize typifies human response. This simply betrays western prejudice and personal ideology. The institutions supposed to evolve from their game theoretics reflect the theorists own western experience. Other conceptions of tenable social organization fail to be considered because their image of what is possible is limited by their initial assumptions. They apply an image of individual utility maximizing behavior which derives from the analysis of competitive markets to the process of collective choice. The focus on the competition wrong individuals leaves no room in their theory for cooperation. Forbearance can only be the result of joint individual utility maximization, not a shared system of

To assume that this is strictly a voluntary response is to also ignore the exercise of power in limiting individual behavior. Even today, people are threatened with coercion when undertaking activities others regard as illegitimate (e.g. burial of toxic wastes in one's backyard.) Some people are threatened with coercion by illegitimate groups so that they will forbear as others desire (e.g. allowing the dumping of toxic wastes on private and public land.) If forbearance can be increased by any means other than joint individual utility maximization, then the Public Choice theory is inadequate.

The Institutionalists are concerned with more than the calculation of equation 4.1. They ask why are the benefits *and* costs perceived as they are? Where does the public image come from? How does it change?

In Boulding's conception, images change as new messages cause a change in the value system. New messages make known new images of alternative institutional arrangements and the inadequacies of the old. Where do these new messages originate? Boulding makes a parallel between the creation of new messages and the process of biological evolution in discerning three sources of new messages.

1. New ideas may just appear in the mind of a creative individual. This is like random mutation that changes a gene in some species of an ecosystem. If he is to communicate and persuade, this image will be

implanted in the minds of others. The creative individuals who have the greatest impact tend to be charismatic or prophetic. Boulding calls them nucleators - "bearers of viable mutant images, true entrepreneurs of society" [Boulding, 1956, p. 75]. The name intellectual entrepreneur also fits this type.

To Boulding, "How these individuals originate and how they exercise their influence on the images of others is a profound mystery" [Boulding 1956, p. 75]. The development of Jungian psychology takes part of this mystery away. In their classification of temperament types, Kiersey and Bates identify a type with these characteristics. They call this type pedagogue. Found in only about five percent of the general population, individuals of this type place people as being of the highest importance and priority. They are outstanding leaders of groups, both task groups and growth groups. They have the charming characteristic of seeming to take for granted that they will be followed, never doubting that people will want to do what they suggest. More often than not, people do, because this type has unusual charisma. They are influential because they handle others with charm and concern.

2. In an ecosystem the opening of an empty niche may bring about an adaptive response by some species which then fills it. Likewise, a new message may be a conscious response to opportunities opened up by changes elsewhere in either the social or natural environment. Norgaard refers to

the responses of sociosystems and ecosystems to messages from each others as co-evolution. Image creation that is guided by the existence of empty niches includes, but is not limited to what is now called induced innovation [Hyami and Ruttan].

3. New messages can be created from a synthesis of previously known ideas. As Boulding points out, "Sometimes it is not the single individual but rather the chance combination of individuals which produces the striking effect" [Boulding, 1956, p. 76]. This can be a synergistic or dialectic process. Hegel described the dialectic process in a social system as the competition between two images, a thesis and an antithesis for acceptance. As the weak spots in one image are identified by the proponents of the alternative thesis, it gains acceptance as the public image.

An important condition for the initiation of change is the existence of nonconformist subcultures in which new messages can be nurtured. These will be groups that put a high value on revolt against orthodoxy. Individuals in these groups later serve as messengers of alternative images to the rest of society (e.g. the apostle Peter and Paul.)

The messages a public receives may well include price signals and technological innovation which have a direct effect on the relationship expressed in equation 4.1. They

however, do more than just this. They can change our value system, our perception of what constitutes proper and

natural behavior. Our own tastes and preferences can be modified by influences from our social and natural environments. In the Institutional view presented here, the impetus for change in the property rights structure comes from our reaction to a wide variety of messages and *not* just price signals as the Public Choice economists would argue.

#### 4.4 Collective Choice - The Decision Process in Politics

##### 4.4.1 Applying the Economic Model to the Decision Process in Politics - The Public Choice View

The concern of economists is predominantly with the exchange process in economics as observed in the marketplace. As a public policy analyst the economist needs to enlarge his perspective to include the exchange process politics wherein collective choices are made. One source of pressure for collective action is the demand for change is the structure of property rights as entrepreneurs respond to new opportunities for economic gain. Collective action can be at the institutional level, in limiting access to a resource, or at the operational level, regulating and inducing production. The economist becomes concerned with the role of these entrepreneurs in the process of collective action when he is interested in knowing, "... whether the opportunities they discover and the actions they take will increase the size of the pie for society" [Anderson, p.

According to the Public Choice view, in searching for



unforeseen opportunities for himself, the entrepreneur is not concerned with whether his actions increase or decrease the size of the pie for society. When property rights are well defined, enforced and transferable, the entrepreneur has a clear idea of what actions he can take regarding resources and of what will be the personal consequences of his decisions. In the Public Choice view, they will then take only those actions that produce net benefits for themselves and, quite unintentionally, for society. What if these conditions do not prevail? Then opportunities exist for the entrepreneur to derive rents from exploiting an open access resource or transfers from government. This is rent-seeking. Transfers from government at the operational level include subsidies and public provision of private goods. At the institutional level, this behavior is aimed at limitation on entry and enforcement of assigned rights. When this behavior serves to create well defined property rights it contributes to the pie-enlarging process. Rent-seeking is a negative sum gain if it includes, "efforts to use the coercive power of the government to increase personal wealth for some at the expense of others" [Anderson, p. 932]. It includes restrictions to inhibit competition in the marketplace and to redistribute existing rights.

In the West, the decision making process at the institutional level is defined at the constitutional level. In the United States, the collective decision making process

is embodied in executives, legislatures and the courts. Opportunities for rent seeking attract resources in order to influence decision making in each of these sectors of government. These resources are said to be wasted because they are allocated to activities with a negative sum gain. Rent seeking behavior by a single individual is likely to be effective only at the local level of government, e.g. town, county. In order to more effectively influence state and national politics, individuals form special interest groups. Influence can be more powerfully exerted in the public decision making process when votes and financial resources are organized. The activity of a special interest group has the character of a public good. All those who share the common interest of an organized group will benefit without having to be a supporting member of the organization. Under what conditions will individuals organize to act in their collective self-interest? Olson offers several reasons for why a group might form and act. If the group is relatively small, each member will not only receive a large share of the benefits, but will also be able to keep track of the contributions of his fellow members. This generates a level of social pressure which dissuades free-riding behavior. No explicit coercion or outside incentives are necessary to insure participation.

Some one individual may find it worthwhile to provide some quantity of a public good all by himself because of differences among members in tastes and income. His demand

is great enough that the private gain is sufficient incentive for him to obtain some without concern for the benefits received by those with less demand. Olson calls this "exploitation of the rich."

A large interest group can encourage participation by offering a private good as a by-product to members only. These are "selective incentives," the sale of which is tied to support of the organization. Newsletters, journals, and group rate insurance are all examples of positive selective incentives commonly used to enlist individuals into a group.

The desire to "... win prestige, respect, friendship, and other social and psychological objectives" [Olson, p. 60] creates social incentives to contribute to a group. These are viewed as just another form of selective incentives. Olson contends that they strengthen his theory "... for social status and social acceptance are individual, collective goods" [Olson, p. 61].

If none of these are sufficient to elicit voluntary membership, a group can form and survive if individuals are forced to join. This can be done by appealing to the coercive power of the state. A small group lobbies for legislation which requires all others with a common interest to support it or suffer the penalty of law. Olson cites as an example of this the closed shop, where union membership is a requirement of employment.

Thus far, the discussion has only been concerned with

the demand for collective action. The institutions supplying collective action are the legislatures and the bureaucracies. Analysis by Public choice economists of legislative behavior in which the majority rules, reveals a voting process referred to as logrolling [Mueller]. In logrolling, a legislator will trade his vote on an issue of little importance to him provided that those who desire his vote will in exchange vote in support of some issue of particular interest to him in the future [Frey]. Similarly, among the electorate, coalitions of disparate interests may form in order to increase the total number of votes they can bring together to put pressure on the legislature or elected executives. One of the consequences of vote trading is that total public expenditure greatly exceeds what it would otherwise be because it increases the likelihood of the participants winning on their relatively more important issues.

The Public Choice economists also apply the economic model to the activities of bureaucrats. Public employees are assumed to maximize their own utility subject to certain constraints. The top bureaucrats are believed to shape the behavior of the civil service. It is hypothesized that they derive utility from their own income, power, prestige, perquisites and ease in management [Frey, Mueller]. Though may not be clear which of these arguments any particular bureaucrat is maximizing, all are to some extent a function of the size of the agency's budget. Utility is positively

related to it. The budget allocation is usually the primary-constraint facing a bureau director. In this model of bureaucratic behavior, government is not expected to maximize social welfare. In pursuing their own goals, bureaucrats seek to maximize the size of their budget. Viewing the government treasury as an open access resource, they have an incentive to capture as large a share as possible. In order to demonstrate a public purpose for a larger budget, "... each bureaucrat must find ways to increase the magnitude and scope of agency activity" [T. Anderson, p. 932]. The nonmarket nature of the goods he produces makes monitoring of government business a problem. No accurate measure can be made of the value of a public good.

On the supply side, the bureaucrat controls information on the costs of production. No one in either the rest of the government or the public has much of an incentive to become informed on how well an agency makes purchases (unless he thinks he can make money with a book about it.) This gives the bureaucrat the discretion to pursue his own goals. Even he desired to improve the performance of his agency, the bureaucrat can only make a guess about the value of his agency's product. He cannot make marginal comparisons without the benefits of information contained in prices. More likely, he will coalesce with the special interest groups which benefit from his agencies activities, in

seeking greater funding. Since they do not bear the opportunity costs of this, "... they pursue programs that concentrate benefits while dispersing costs, thereby building up a constituency for increased agency activities" [T. Anderson, p. 932].

The Public Choice economists conclude that, "... the "...the information and incentive structures are as likely to generate government failure as they are to generate market failure" [T. Anderson, p. 933]. Unless further constraints are placed on government activity in the West, the Public Choice economists see much potential for negative sum games from collective action at both the operational and institutional levels. Not all change in property rights is for good and not all change that could be good is realized.

Buchanan fears that the increasing intrusion of government into the lives of Americans is aiding in what he perceives as a breakdown of the moral order. A stable moral order requires only a protective state to guarantee enforcement of property rights. The increasing involvement of government in managing economic activity creates conflict in society because of the competing interests and goals of various "moral communities." Each proclaims that it is acting in the national interest, but Buchanan conjectures that there is little moral community in the United States.

there is no one public purpose supported by a value shared by all.

As citizens observe exploitation of the government  
Private interests under the guise of nonexistent

national purpose, they become "... more disillusioned with governmental processes, and are more and more attracted to assume roles as moral anarchists" [Buchanan 1981, p. 12]

#### 4.4.2 The Institutional View

In the previous section on the impetus for change, it was noted that Institutionalists contend that property rights emerge from images of how economic decisions can and should be made. The first step in this process, the creation of potential new images of property rights alternatives was then discussed. Now attention is turned to a second step - the adoption of new images. What are the conditions which influence the collective adoption of a newly conceived image into a realized institution? What are the differences between the Public Choice view, which uses the self-interested rent-seeking economic model to analyze this question, and the Institutional view?

Hodgson noted how not all individual choice is fully deliberative, rather it is greatly influenced by custom and culture. In the Institutional view, this is just as true for collective choice. Institutional change is dependent upon what alternatives a population is aware of and receptive to. The intellectual entrepreneur has a major role in preparing the way for change by raising the social consciousness. Educating the public involves more than just increasing knowledge, it also includes shaping and reforming individuals' tastes and preferences. Though this point seems

obvious, it is denied by most economists who assume that individuals know their own tastes and preferences and then take these as given and stable. Institutionalists realize that preferences are often not known, are amenable to change and that this change is influenced by factors in a person's exterior environment.

Intellectual entrepreneurs cannot all be characterized as economic rent-seekers. They may be working to change the public image for reasons other than personal financial gain. Their purpose may be to promote a particular ideological view of what constitutes proper and natural behavior. It is commitment to an ideology that drives the intellectual entrepreneur. His satisfaction derives from the acceptance of his value system by a broad group of people. He enjoys reshaping the public image. As mentioned in section 4.3, these are the people who fit the pedagogue temperament type.

Custom, culture and self protection can serve to inhibit the evolution of a public image in spite of forces for change originating elsewhere in the social or environmental order. Boulding describes the atavistic consequences of "institutional stickiness" in contending that, "it is not fanciful, however, to detect pathological relationships at certain times and places in history between the public images and the rest of the social universe. As world moves on, the image does not" [Boulding 1956, p.

Even when the benefits of a new institution outweigh



the costs of change old institutions may be retained, argues Runge, "... if alternatives seem to offer greater uncertainty if the status quo appeals to powerful interest. Unless the net benefits (rents) resulting from a change in property rights are clearly favorable to a sufficiently large (or powerful) group, there is a conservative tendency to retain property rules in the face of changes in the environment" [Runge 1984, p. 810].

Boulding notes that there are dangers in intellectual entrepreneurship because, "An image which is about to collapse of its own weight is frequently supported far beyond its time by the efforts of misguided people to push it over. The attacks of the reformers produce defensive mechanisms on the part of the holders of the image. It is identified in the value system with other dearly held values and hence, any messages inconsistent with it are rejected" [Boulding 1956, p. 122].

Change occurs when an institution which is inappropriate to its social and natural environment becomes no longer tenable. The public image which supported it either withers away or gives way to an alternative.

In the Public Choice view, rent seeking behavior is the cause of institutional change which decrease the sum total of all individuals' welfare. Rent seeking is an inherent failure of government by majority rule. This view fails to recognize rent seeking as simply a part of the basic

struggle over authority and resources which carries over even into constitutionalism. To conclude that contractual agreement resolves interpersonal conflicts is to attribute more value to them than they deserve. Property rights can never be completely defined and enforced. The varied activities of organized crime in the United States (as in the dumping of toxic wastes) are proof of this.

Even the process of joint individual utility maximization includes the exercise of power. The burden of paying the transactions costs of altering the property rights structure through the political process falls less heavily on those who already possess greater wealth and income generating capacity. Nor are the transactions costs of collective action the same for all individuals. Every time there is a change of administration, allies of the incumbent lose ease of access to government, while the allies of the winning party gain better access. The rules of access to government can themselves be thought of as a property rights. They constitute an important part of each individual's wealth holding [Schmid]. Most importantly, access is a prerequisite to power in collective decision making.

People desire access to the collective decision-making process in order to have the state exercise its powers to 1) grant them access and use rights to resources and 2) to transform the public image of what constitutes proper and natural behavior, i.e. have their ideology predominate the

process. How the state uses the power at its command depends upon the exercise of power within the collective decision-making process. Each individual and group that seeks to have the state use its power on their behalf gains influence in the decision-making process as it has access to sources of power. What are these sources of power and how are they used? Do individuals and groups possess power to affect the public image without the benefit of access to the power of the state?

Three types of power and the primary source of each are identified by Galbraith. These are shown in Figure 4.5. Galbraith synthesizes previous thought on the nature and exercise of power and establishes his own framework of analysis. He lays bare the sources of power and examines their changing role in western societies. He shows how power is an integral part of the collective choice process. In general, he states that, "Power is the possibility of imposing one's will upon the behavior of another person" [Galbraith, p. 2].

Condign power threatens the individual with something physically or emotionally painful enough so that he forgoes pursuit of his own will or preference in order to avoid it. Submission is gained by the promise or reality of punishment. The exercise of condign power in the past was associated with physical punishment. Galbraith extends the term to also include its exercise by any form of adverse

Type of Power	Primary Source
Coercive	Personality
Compensatory	Property
Conditioning	Organization

Types and Sources of Power

Figure 4.5

Source: Galbraith

action or its threat. Although physical strength is certainly a source of condign power, personality is much more important in its exercise on adults in the modern world. The effective personality wins submission by persuasion. He is able to convert others to his purposes by asserting the unknown with certainty and conviction. To some extent, he also recognizes the will of his constituency and identifies himself with it. Because he does so, it agrees, on some matters to accept his will. He is the empathetic communicator that Kiersey and Bates define as the pedagogue type.

Compensatory power is the opposite of condign. It offers the individual a reward or payment sufficiently advantageous or agreeable so that he forgoes pursuit of his own preference to seek reward instead. The exercise of compensatory requires property. It is exercised in the process of joint individual utility maximization by those with the ability to get others to submit to their purposes by buying their acquiescence. The values of the relatively more wealthy will count more in collective action decision making than those who are less well to do.

The submission to the purposes of others that is won by compensatory power is central to the functioning of capitalism. The assembly line worker stays at his machine, creating profits for its owners because he receives his hourly wage for so doing. In the United States, compensatory power is subject to much government regulation. Its use is

also greatly conditioned by law and custom. In our society though, many forms of compensatory power are regarded with disapproval or are specifically outlawed, e.g. buying votes, bribing public officials.

Galbraith perceives both condign and compensatory power as less important than, and giving way to conditioned power. He states, "The acceptance of authority, the submission to the will of others, becomes the higher preference of those submitting. This preference can be deliberately cultivated - by persuasion or education. This is explicit conditioning. Or it can be dictated by the culture itself: the submission is considered to be normal, proper, or traditionally correct. This is implicit conditioning. Conditioned power is the product of a continuum from objective, visible persuasion to what the individual in the social context has been brought to believe is inherently correct" [Galbraith, p. 29].

Conditioning power is the ability to shape an individual's image of what constitutes proper and natural behavior. It is less costly to exercise because when people are conditioned to behave in a certain way, and believe this behavior to be proper and natural, enforcement costs are quite low relative to coercion. When individuals are seen to adopt a behavior without coercion, it is often incorrectly assumed that they are acting voluntarily, in a way consistent with their own best interests. They are observed

agreeing upon rules of social behavior that infringe upon their own freedom to act without being compensated or coerced. Therefore this compliance is thought to be consistent with joint individual utility maximization.

Of course there will always be those who are not influenced by conditioning power. Coercive enforcement mechanisms may be developed to attempt to control their behavior. However, a higher standard of living could be enjoyed when people conform without large expenditures on enforcement mechanisms. For instance, in the West, people are conditioned to accept respect for the private property of others as a natural duty. The private property system depends primarily upon the wide acceptance of forbearance as a duty in order to keep enforcement costs from outweighing the productivity gains that can accompany it.

Galbraith identifies the source of conditioned power as organization. Personality and property can have increasing effect as sources of power only with the support of organization. Organizations defined as, "A number of persons or groups united for some purpose or work" [Galbraith, p. 15]. The participants have submitted to the purposes of organization in pursuit of some common purpose, which then normally involves the winning of the submission of people or groups external to the organization. For executives, high salaries are collected for submission but belief in the purposes of the corporation - conditioned power- is almost certainly more important says Galbraith. He also notes that

even in the case of the factory worker, the individual responds to compensatory power but also takes some pride in his job and reflects this in its performance. This is what Veblen called "workmanship".

Those who want to make their values count are finding that organization for the purpose of conditioning public opinion and political votes in their favor is the most effective route for attaining their goals. Galbraith observes that, "... the most recent great movement in the dynamic of power is the rise of organization as a source of power and the concurrent lessening in the comparative roles of personality and property" [Galbraith, p. 131].

While organization is an effective means of exercising conditioning power, the process of forming and maintaining an organized group relies upon the exercise of the different types of power. Comparing Galbraith's framework to Olson's theories, we can see that groups held together by selective incentives are depending upon compensatory power to gain and hold members. Large groups that depend upon their own or the state's ability to coerce individuals to participate are exercising condign power. Olson though never discusses how the use of coercion is legitimized in a democratic society (not that this is always the case, e.g. the Mafia). Olson finds it necessary to integrate social incentives with the more materialistic selective incentives.

Both of these oversights result because he fails to



recognize the importance of conditioning power in influencing individual behavior. With Galbraith's more precise view, we can see that social pressure and the attainment of prestige and dignity are a function of conditioning power rather than a form of compensation. These are elements of our social life. They depend upon the prevailing public image of what constitutes proper and natural behavior. From this perspective, we can formulate several questions on how collective action begins that would not arise from Olson's analysis. He argues that when the value of a collective good is relatively greater to one individual than others he may be induced to be the first to provide at least some of it. To this possibility we can also add the potential of provision by individuals who trust that others will contribute if they do because they have been conditioned to believe this. The discussion on personality types also leads us to consider the possibility that collective action will be initiated by a natural leader who possesses qualities which inspire others to follow.

With the rise of organization, the decision process in politics has become a process in which leaders and interest groups work for marginal adjustments in public policy to meet each others' needs and desires. Lindbloom describes this as mutual partisan adjustment, a process in which, interest-group leaders seek common cause among themselves and with additional parties. Alliances are formed between interest-group, congressional, administrative, and executive

leaders. It is a vast process of mutual accommodation to win votes, to assemble the votes of smaller groups in ever larger blocs and, for some leaders, to achieve influence by delivering votes to others" [Lindbloom, p. 140].

Quite similarly, Boulding refers to the democratic process as mutual modification of images. In this process, "Decisions are essentially temporary in nature in the sense that they do not close the discussion, although they do have the effect of modifying it. We live in a perpetual state of unresolved conflict. A decision is a partial resolution of conflict. The majority does not rule, a majority decision is simply a setting of the terms under which the minority continues the discussion [Boulding 1956, p. 103].

This process includes what the Public Choice economists call vote trading, but Lindbloom's concept of this is much broader. He uses the term "reciprocal obligation among authorities" to describe the common situation in which, "an authority is locked into a network of obligation that requires him to use his authority to do favors for other officials who have used their authority to do him favors.

conversely, he initiates favors for other officials in order to put them under obligation to him" [Lindbloom, p. 31]. Thus, mutual convictions of support will be incurred among legislators, interest groups, executives and bureaucrats.

This mutual adjustment process is also characterized by

a decision making strategy Lindbloom calls "disjointed incrementalism." Policy change is not a decision based upon full knowledge. As the Austrians point out, a governmental authority is not capable of integrating all the information needed to make optimal collective decisions. Yet certain tasks, like the definition of property rights, must be made collectively. In a pluralistic system, the number of players in the policy process is so large that the mutual adjustment process can usually only accommodate change incrementally. If the new policy proves insufficient, then another marginal change may occur. "In such a system," contends Lindbloom, "a policy maker is to proceed incrementally and sequentially, with close interplay between end and means. In such a strategy, a policy maker is less concerned with 'correctly' solving his problem than with making an advance. He is also less concerned with a predetermined set of goals than with remedying experienced dissatisfaction with past policy while goals and policies are both reconsidered" [Lindbloom, p. 114].

In the Public Choice model, legislators and political Parties constantly seek to maximize votes. A party's reform, a candidate's positions, are both designed to appeal to those policies favor this model is too simplistic for two reasons. First, people vote for a person, not a single policy. Each candidate will be able to represent a single voter's preference on every issue. Secondly, there will be issues for which no

unmistakable majority can be clearly perceived. When there is doubt as to what will best appeal to voters, Lindbloom claims that, "... each party and its candidates will tend to espouse the traditional positions and ideology of the party. Each party will also try to differentiate itself from the other and then try to persuade undecided voters to move their volitions in the direction of what the party proposes" [Lindbloom, p. 142]. Neither may succeed in discovering what the majority preference on any one issue is because each voter weighted all the issues in his own way.

The Public Choice model also has no place for ideology in the behavior of the bureaucracy. Ideological commitment may be what brought an agency director into public administration. The desire to reform the government and reshape the public image of what government ought to be could be the most important factor in his utility function. It certainly seems to be so for the Public Choice economists themselves! It would also have to be for the bureaucrats when they expect to implement the reforms they suggest.

Two of the aspects of the Public Choice description of politics do fit into the Galbraith/Lindbloom framework. Rent seeking occurs because, "While a proliferation of public and private groups engaging in mutual adjustment brings a remarkably wide range of interests and considerations to bear on public policy, the same process tends also to take pains for the organized at the expense of the unorganized"

Lindbloom, p. 141].

secondly, the growth of government is difficult to restrain because of "the inevitability that authority, no matter how precisely assigned by constitutional tradition and contemporary redesign, is always given extended use" [Lindbloom, p. 140].

Lindbloom notes one characteristic of the struggle for authority not acknowledged by the Public Choice economists, but that parallels Galbraith's point on the relationship of wealth to power, but with more specifics on how this is done. "Some can hire a supporting organization: others cannot. Some can hire public relations consultants, broadcast time, newspaper space, and other public platforms; others cannot" [Lindbloom, p. 141].

As noted earlier, benefits can be gained at either level of decision making. A group may be seeking either public provision of a good or service of particular value to them or restrictions on competition. Limiting access requires the use of condign power which in our society is restricted by law to the state. Those seeking its use on their own behalf must appeal to the state. When these actions are limited to movements toward more clearly defining private rights in property they are "efficiency improving" in the Public Choice view. The criterion, or lack thereof, for judging collective action is the topic of the next section.

4.3 Criterion for Judging the Outcomes of Collective Choice

#### 4.5.1 The Contractarian Social Order - The Public Choice View

Their fear of society plunging into a state of moral anarchy has led Public Choice economists to put forth criteria for those decisions that must be made collectively. Public policy can then be judged as worthwhile or as negative sum gain rent seeking. From Rawls, they borrow the notion of justice as fairness. They then contend that fairness can be found in the trading behavior of individuals at the operational level because the trading process involves genuinely voluntary agreement among individuals. Market trading is considered efficient by most economists, but is its outcome just? Buchanan applies the justice as fairness concept to conclude that if the process is fair, its end result must be taken as just, with voluntary agreement being the central property of fairness. Judgment is to be passed on the process of collective action rather than its results.

The process of free trade is implicitly unanimous. If free trade is fair and just, its outcomes then is just if it is unanimous. To Buchanan and other Public Choice economists, conceptual unanimity is the only acceptable criterion for collective choice in any individualistic social order, like the United States and Western Europe. This unanimity principle is necessary to preserve the feeling of mutual respect among individuals that sustain the

moral order according to the Public Choice economists. The conflicts over the use of government for the purposes of diverse moral communities or subcultures erode the moral order. With unanimous consent on all collective decisions these conflicts become non-existent, just like the presumed notion of national interest.

Buchanan considers the initial agreement on property rights as sacrosanct. This prejudice is evident in the way he explains this shift in the natural distribution, "The law-abiding members of the community may find themselves in a genuine dilemma. They may simply be unable to block the unilateral violation of the social contract" [Buchanan, 1977, p. 90]. The actions of the initially less endowed groups in society to improve their situation is considered to be somehow less moral than the actions of those who used the constitutional process in the past to protect the possessions they obtained when they were better able to exercise power.

The government therefore should not engage in any re-allocation of post-trade outcomes because there is no common value system on which to base the desirability of the moves.

basic functions of the protective state are provision of national defense, defining and enforcing property rights and establishing a commercial code of law for private contracting.

The Public Choice economists are interested in two particular problems relating to the role of government as

they define it. Buchanan's primary question is how might a state be instituted to perform these basic functions without assuming powers of Leviathan. Dahlman professes that the property rights approach of Public Choice economists adds to economic analysis the problem of choosing "... that institutional environment that maximizes the value of the final allocation by minimizing the transactions costs associated with moving from the initial to the final distribution of resources" [Dahlman, p. 68].

The role of the economist in the Public Choice view, is to be a specialist in contract. His job is to point out to individuals ranges of mutual gains to be had from engaging in voluntary exchange. As a policy advisor in the collective action decision making process, he becomes especially concerned with finding ways to reduce transactions costs in order to facilitate voluntary agreements and trade. Rules which assign responsibility for the opportunity costs of resource use are "efficiency improving". Rules are inefficient which interfere with free exchange leaving trading opportunities unconsummated.

#### 4.5.2 The Institutional View

The Institutionalists approach to the study of collective decision making is descriptive and positive. Unlike the Public Choice economists, they do not establish normative principles to judge either the process or the results. They regard the Public Choice view as utopian. The



belief that a constitution will, or even ought to, stop the basic struggle over authority is rejected because it is both normative and unrealistic.

The unanimity principle is normative in both its support for the status quo and its implications. Any strict Constitutional provision which requires conceptual unanimity in the collective choice decision making process simply legitimizes the results of the previous struggle. The exercise of power though is a continuing factor in the evolution of property rights. It cannot be expected to disappear when a Constitution is accepted. The use of power to achieve one's purpose within a constitutional process is inevitable and no less moral than its use in establishing the status quo. The status quo cannot really be conceived of as contractual, and asserts Samuels, "... there is no justification of giving it such preeminent status simple because it is in existence and requiring contractual and only contractual change from now on" [Samuels, p. 531].

The status quo is seen by the Institutionalists as simply one point in society's valuational process. As Guiding was quoted as saying, any decision is only a Partial resolution of conflict. In the mutual partisan adjustment process which characterizes collective decision making in the West, many groups use government, but not all groups are equal and many remain latent.

In the Institutional view, individual choice in agreeing to contracts is not purely volitional. It is rather

a function of what they term the individual's "opportunity set" [Schmid]. Any outcome resulting from the unanimity rule is a consequence of the existing individual opportunity sets. An opportunity set is a function of an individual's income, wealth and other sources of power. Income and wealth are derived from ownership of human and natural resources. The ability to develop human resources and the opportunity to hold and exploit natural resources depend upon the existing working rules of the society. These working rules are found in the laws and the prevailing institutions. Any changes in the assignment of property rights made via a collective choice process in which each individual has a say will be a function of the existing property rights structure.

In reality, collective action for choosing among the options that constitute a property rights structure is a matter of determining whose values are to count, who is to benefit and who is to be exposed to additional costs. Restricting government would not put an end to the exercise of organized power. The forces of large private pressure groups would still find ways of influencing society. For instance, "The Federal Government might decline, but the American Medical Association would remain" [Bosanquet, p.

Buchanan's distinction between moral order and moral community is a false dichotomy because both are based on

ethical choices. Mutual respect is just as much a value as mutual support. What Buchanan actually does is raise the question of how inclusive is a public image. If all members of a society share a similar set of values with respect to some public issue, then a moral community exists at the national level. If there are different subcultures within the society, various public images will be competing in the process of collective decision making. Increasing competition among interest groups can be taken as a positive sign that more people are involved in the policy process. They are breaking up the monopolies of the past by making their values count too. The losers may well want to become moral anarchists if they feel sufficiently self-righteous and have a low regard for the future consequences this might bring.

The success of further extensions of governmental authority in modern politics depends upon the ability of those seeking it in reshaping the public image of what constitutes proper government activity. The exercise of conditioning power through organization will be the most important method for accomplishing this. Social stability will not be endangered if the new policies are widely accepted, in this context, quasi-unanimity is a measure of success, not a moral prerequisite. It does not imply that all acquiescence is truly volitional. The Social Security program is an example of government gone too far for the Public Choice economists, but an extension that enjoys broad

public support.

The belief in the inevitable failure of government in allocating resources at the operational level reflects the Austrian vein in the Public Choice view. The government cannot plan well because government officials cannot know all. Yet in their role as specialists in contract, searching for policies that are acceptable to all participants, the public Choice economists also set themselves up as synoptic planners. They do not see that they are really partisan participants in the mutual adjustment process [Lindbloom].

The Public Choice economists fail to see how coercive their normative principles can be. Coercion can be justified either to sustain the status quo or to bring about change that all would agree to if they were only reasonable and honest. No situation can be shown not to be Pareto optimal because conceptual unanimity for any change is not likely. The task of describing the current and alternative states itself involves specifying so many details of the present and future that getting informed consent is also an unlikely prospect. The impracticality of the unanimity principle means that Buchanan's notion of conceptual unanimity and the Rawlsian notion of "general principles that would be advanced by a person who did not know his particular circumstances" are "... ingredients for a normative dialogue, and that in real disputes a group that is able to exercise dominance is justified in imposing their will on

who disagree if they can satisfy themselves that they are acting in accordance with conceptual unanimity and general principles that a person who did not know his particular circumstances would advance" [Tideman, p. 9-10].

#### 4.6 An institutionalist/Evolutionary Model of the Evolution of Property Rights

The Public Choice model of the evolution of property rights was presented in Figure 4.4. The application of a supply and demand market model to the process of collective choice is rejected by the Institutional and Evolutionary economists as a sufficient description. In their respective, the collective choice process is characterized by the mutual adjustment of interest groups. This process is more than the equilibrating of rent-seeking behavior and transactions costs for defining property rights. Given an impetus for change its fulfillment is dependent upon the exercise of power in the decision-making process. The sources of power at the command of forces of change and opposition to change constitute an opportunity set. Mutual adjustment is a function of the opportunity sets of individual and groups with an interest in the decision-making process. It is within the collective decision-making process that property rights are defined. Therefore, a model of the evolution of property rights should show how opportunity sets influence the definition of property rights each level of decision-making. This is done in Figure 4.6

The decision-making process at the institutional level

INSTITUTIONAL  
LEVEL

Mutual Partisan Adjustment → Decisions on limiting access

Personality → Organization ← Income and Wealth

OPERATIONAL  
LEVEL

Individual Choice

Influence of Power in Defining a Property Rights Structure

Individual Choice at Operational Level

Figure 4.6

is identified as mutual partisan adjustment. This will include the exercise of coercion as described in the expanded taxonomy of Chapter Three. Following Galbraith's anatomy, power is seen to also include compensatory power and conditioning power. The exercise of power by interest groups and individuals is derived from three sources - personality, organization, and income and wealth. This constitutes his opportunity set. The influence of each source of power on the mutual adjustment process is illustrated by the arrows. Other arrows connecting the sources of power, indicate the influence they have on each other, as discussed in section 4.4. At the institutional level, the mutual adjustment process produces decisions on who has access to resource. The arrow leading from decisions on limiting access indicates that these decisions, in turn, affect the income and wealth of individuals and interest groups. The impact of access decisions at one point in time affects an interest's ability to influence the decision-making process at the institutional level in the future.

When decision-making at the operational level is the tight of an individual, his decisions are a function of the resources at his command. These are part of his income and wealth. The influence of the exercise of power in the mutual adjustment process on individual choice is seen in Figure 4.6. An individual's income and wealth depend upon decisions granting him access to resources. The choices an individual makes on how to use these resources are also factors in

determining his wealth and income. If he can increase their value, he will have more power in the decision-making process.

Operational level decision-making can also be a product of collective action. In Figure 4.7, the model is shown when the mutual adjustment process also is used to make decisions on production. In this situation, all three sources of power influence operational level decision-making. The decisions on what to produce and how to produce impact on the income and wealth of those with access to the resource. This in turn, affects their future ability to influence decisions at both levels.

Different groups may be important as decision makers at each level. Once a group is excluded at the higher level, it will not have much interest in decisions at the operational level. Only those who "make the first cut" will be "players in the policy process" at the lower level. If a specific group granted access at the institutional should involve the state in operational level decisions, the way is opened for partisan groups other than the original user group to become involved in decision-making.

Boulding and Norgaard have both pointed to the importance of recognizing that property rights "co-evolve" with the natural environment, as discussed in section 4.3. A change in the natural environment may create a message that provides impetus for a change in the property rights



INSTITUTIONAL  
LEVEL

Mutual Partisan Adjustment → Decisions on limiting access

Personality → Organization ← Income and Wealth

OPERATIONAL  
LEVEL

Mutual Partisan Adjustment → Decisions on production

Influence of Power in Defining a Property Rights Structure  
Collective Choice at Operational Level

Figure 4.7

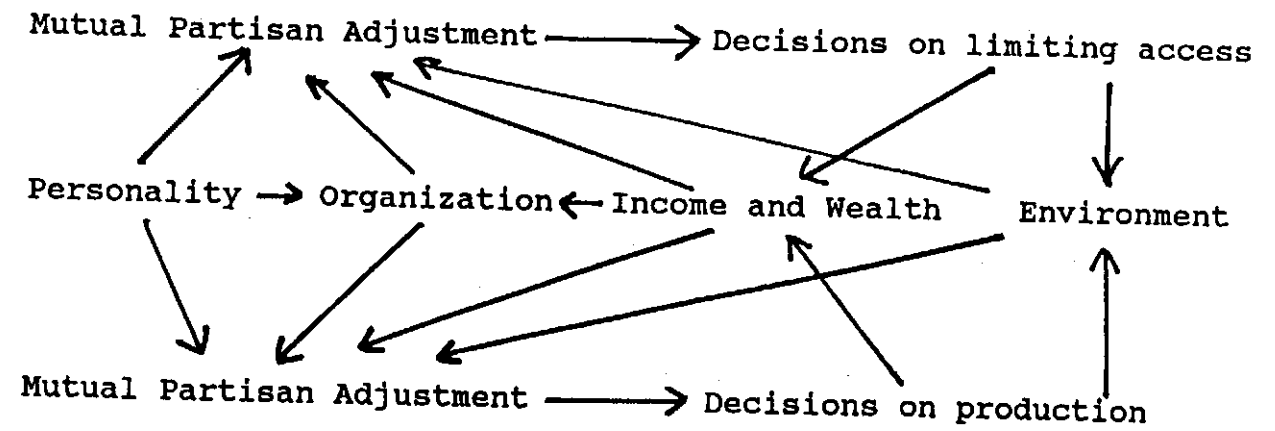
structure. The reciprocal nature of this relationship leads to the feedback of responses between the sociosystem and the natural environment. The affect of economic activity on the natural environment may be different under one property rights structure than another. A model of the evolution of property rights should include recognition of this co-evolutionary process.

In Figure 4.8, the environment is incorporated into the model. Both access and operational types of decisions are shown to have an impact on the natural environment. Decisions on access and operations regulate the impact people have on the environment. The answers to questions on how many fish may be taken, what levels of BOD will be permitted, who will be forced to reduce emissions are examples of this. The natural environment has an influence on the decision-making process at each level. An exogenous change in environmental conditions may lead to a change in the property rights structure. Because of the feedback process though, the reaction of the environment to the way in which it is used under one property rights structure may lead to a reassessment of the rules of access and operations. With this framework, we can trace a pattern of interrelationships between the sources of power in human society and the environment, observing that each affects the other in the decisions we make on how to use natural resources.

This framework for analyzing the evolution of property

INSTITUTIONAL  
LEVEL

OPERATIONAL  
LEVEL



Influence of Power and the Environment in Defining a Property Rights Structure

Figure 4.8

rights will be used in Chapter Five to expand the traditional model of fisheries economics. Economists in the past have used the traditional model to compare economic values with open access to those when a fish stock is private property. They conclude that privatization of the stock is the optimal policy, as long as the transactions costs of this do not outweigh the benefits to be gained. In this study however, the expanded model is to be used to try to understand how forces for and opposed to change in property rights influenced the evolution of property rights to the oyster grounds of the Chesapeake Bay. In Chapter Five, a series of questions that derive from the application of this framework to the expanded economic model of a fishery are presented. They indicate how an Institutional analysis of property rights change in a fishery might proceed. They specifically include the consideration of who has the initial rights to a resource, what form these are in, how they are valued, and what other sources of power are brought to bear in determining access and use rights to a fishery resource.