COMMON PROPERTY, PROPERTY AND SOCIAL ANALYSIS

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I Introduction

In recent years, anthropologists have been at the center of a debate about "common property" and major contributors to the rich literature documenting examples of this type of property in land and other natural resources. A prime focus of critiques in this literature has been Garrett Hardin's formulation of "The Tragedy of the Commons" which, since its first public airing in 1968, has captured the imagination of an entire generation of thinkers and policy-makers. The largest part of the anthropological contribution has been to provide extensive empirical grounds for rebutting Hardin's proposition of doom being inevitable in communally held resources. In addition to this rather classic role of empirical documentation of contrary cases, some anthropologists, along with others in history, political science and agricultural economics, have challenged the theoretical and methodological premises of both Hardin and other theorists addressing the problems of "common goods". Arguing against the privileging of methodological individualism, game theoretic models such as the Prisoner's Dilemma, and approaches based on utility maximization, these critiques argue that "common property systems" or "common pool resources" demand analyses privileging historical, social and political economic (or "institutional") dimensions.

In this paper, I wish to push these critiques a step further by problematizing the application of the concept of "property" to a wide range of non-private and non-individual systems of managing resources. The argument proceeds, after a brief recapitulation of the critiques of Hardin's Tragedy model, by considering the history and historiography of the demise of the English commons. This is introduced not only because it is a case worth examining for understanding patterns of change in a commons system but because the interpretation of the English commons and its enclosure has had a direct influence on commons elsewhere through theories and paradigms of "common property" and "commons", including that of Hardin. The rethinking of the English case, in which the hegemony of private property rights in land progressively displaced other rights of use, parallels the interpretation I then present of changes in Botswana's communal range. In "the dividing of the commons" in Botswana, I suggest that "common property" is a product rather than a precursor of "private property". The paper concludes by suggesting that comparativist scholarship should not privilege notions of "property" and "property relations" over those of "rights". While not without problems for cross-cultural analysis, the old language of "rights" appears less "freighted" with particular historical (cultural, political, economic) meaning than that of "property".

II Critiques of "the tragedy of the commons"

Hardin's argument is simply captured in his own evocative words (1968):

> The tragedy of the commons develops in this way. Picture a pasture open to all. It is to be expected that each herdsman will try to keep as many cattle as possible ... As a rational being, each herdsman seeks to maximize his

> gain. ... [He] concludes that the only sensible course for him to pursue is to add another animal ... and another ... But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein is the tragedy. Each man is locked into a system which compels him to increase his herd without limit ... Ruin is the destination towards which all men rush, each pursuing his own interests... Freedom in a commons brings ruin to all.

The power of this view -- simultaneously apocalyptic and rational -- has made the "tragedy of the commons ... part of the conventional wisdom in environmental studies, resource science and policy, economics, ecology, and political science" (Feeny et al. 1990:2), as well as a dominant motif in livestock and range policy in Africa. Why is this? A sharpening awareness of problems in the environment in many regions of the world turned to the attractive and seemingly apt simplicity of Hardin's model to explain these problems. I propose that Hardin's formulation matched prevailing intellectual currents for two reasons. In the English-speaking world, at least, it harks back to deeply entrenched notions about commons and individual interests, and it meshes with a renaissance of individualist models and analyses (for example, in the "new institutional" economics and political science, and in the embrace of game theory, rational choice or rational action theories across a wide range of disciplines[1]).

Yet Hardin's model has also evoked considerable critique. Many challenge the inapplicability of the individualist premises of models such as "the prisoner's dilemma", which underlie Hardin's "Tragedy", for analyzing common property. Godwin and Shepard, for example, suggest that the dilemmas presented by common properties resemble not the prisoner's dilemma in which doom is predetermined but the indeterminate "pluralist politics of competing elites" (1979:277). Similarly, Kimber (1981) and Runge (1981) argue that uncertainty about the decisions of others requires interdependence among users in order to provide "assurance mechanisms" rather than the separation of decision-makers in the prisoner's dilemma (type) models.

More empirically based criticism has focussed on two key assumptions: Hardin's equating a commons with "open access", and his positing selfish users of the commons. Hardin's claim that "freedom in a commons brings ruin to all" assumes no regulation or restrictions on use -- his commons <u>is</u> open access.[2] Even though there are many popular sayings, from Aristotle to the peasants of Tigray or Spanish Asturia, to the effect that, "That which is everybody's is nobody's", these evoke the problems of open access rather than common property.[3] As Ciriacy-Wantrup and Bishop (1975:715) state, "Common property is not 'everybody's property'", while Bromley (1992:3) points out the "mischief", theoretical and applied, caused by repeated misunderstandings of common properties.

Similarly, the assumption of inherently selfish users of the commons who favor short-term maximization of individual interests over the long-term sustainability of the communally-held resources

is not upheld by empirical examples. Many contemporary and historical examples have documented "rules of exclusion" and other cooperatively devised regulatory procedures (Godwin and Shepard 1979, Feeny et al. 1990, McCay and Acheson 1987, Ostrom 1990). Studies of commons systems have shown that they are not inherently doomed, even in the face of economic change. In Japan, for instance, the commercialization of agriculture led to privatization of the commons in some villages whereas others "developed management techniques to protect their common lands for centuries without experiencing the 'tragedy of the commons'" (McKean 1992:64). The Swiss common pastures studied by Robert Netting (1976) were similarly maintained over centuries as an important part of village economies through strict community control over patterns of use and over the numbers of claimants (this was aided by a high out-migration). In parts of Spain, the commons persisted well into the mid twentieth century (Behar 1986, Fernandez 1987). Studies of historical and contemporary forms of common property management in countries throughout the world conclude that there is no necessary reason for systems of common property resource management to be less "efficient", less able to embrace technical innovation or commercial production, or to be less sustainable over a long period than any other property system.[4]

Studies show that the reasons for the demise of commons do not inhere in an over-generalized and socially abstracted conflict between "individual interest" and "social obligation". They lie, rather, in historically specific conditions that include the effect of the state's claiming authority over locally managed resources, the role of new technologies in changing patterns of use and assessments of value for different categories of users, and the increased disparity in wealth and influence within a community of users or between categories of users, which makes it much more difficult to regulate use and to enforce rules. The conclusion to be drawn from a large literature is that where a "tragedy of the commons" occurs historically, it derives from a situation where competition over land and its products increases and where differential access to market opportunities and political control reduces the effectiveness of prior regulatory procedures. Tragedy in a commons is produced not by the inevitable confrontation between a self-interested, asocial individual and an impersonal group but by the inability of members of social groups to find (partial) solutions to competition and conflict. It is not the individual calculus that explains a commons system but the social and political relations entailed in a commons system that explains the individual calculus (Peters 1987).

In short, the new scholarship on contemporary and historical commons considers "not the tragedy but the possibilities of the commons" (Hawkins in Bromley 1992:xi). Recently, Hardin himself has responded to criticism and admitted that "the title of my 1968 paper should have been 'The Tragedy of the Unmanaged Commons'" (1991:178). In other words, he recognizes the error of confusing a commons with open access resources. Less recognized is the inadequacy of the theoretical premises and models or their

historical origins.

III Changing historiography of the English commons

In the first half of this century, the conventional and dominant view of enclosure was that it was an inevitable response to the need for greater efficiency in production. According to this view, farmers had seen that "one sheep in an enclosure is worth two on a common" and that the overstocking of the commons was due to the lamentable fact that "that which is everyman's is no man's" (Prothero 1917 cited in Liversage 1945). Trevelyan, an influential and popular historian of the first half of the twentieth century, wrote that the expansion of agricultural production, which had fuelled the industrial revolution, could be seen as the result of enclosure which had "blazed a trail for the whole world" (1944:381). This "triumphal" view (Thompson 1993) had been built up especially through the eighteenth and nineteenth centuries. As the struggle for ascendancy between the rights of owners of private property and the rights to the commons mounted through the eighteenth century, it involved legislative and administrative changes by the Whig elite and shifts in "definitions at law and in local custom" (Thompson 1976:337). The proponents of enclosure developed an aggressive ideological attack on the commons. As enclosure proceeded, the remaining open commons were condemned as inherently stagnant -- "no improvements can be made in any wastes", and defined as unregulated, "a dangerous centre of indiscipline" and "the nest and conservatory of sloth, idleness and misery".[5]

Unsurprisingly, the construction of this view had not been unchallenged either during enclosure or soon after. The opponents of the positive view of enclosure included the "laborer-poet", John Clare (who lamented, "Inclosure came ... and left the poor a slave[6]); David Davies (who said enclosure "has beggared multitudes"); William Cobbett (who indignantly pointed out: "Those who are so eager for new inclosure seem to argue as if the wasteland in its present state produced nothing at all ... [but, in fact i]t goes to the feeding of sheep, of cows ... and ... it helps to rear, in health and vigour, the children of the labourers"[7]. These all wrote in the eighteenth and nineteenth centuries; George Sturt, in the early twentieth century, likened enclosure to "knocking the keystone out of an arch ... the loss of the common ... left the people helpless against influences which have sapped away their interests, robbed them of security and peace... [and] personal pride".[8] The Hammonds were probably the best known critics of the early twentieth century, concluding that enclosure was "fatal to ... the small farmer, the cottager, and the squatter".[9] These works revealing the dark side of enclosure did not displace the dominant view. As we shall see, it was views like those of Lloyd, Prothero and Trevelyan that predominated overwhelmingly in colonial perspectives.

In the nineteen-sixties, the conventional interpretation received support from a new generation of historians. In Snell's useful summary, their conclusions were that enclosure increased the

demand for labor and provided "more regular and seasonally secure employment", "it alleviated pauperism", "it did not adversely affect the small landowner and tenant farmer", "it did not cause out-migration ... and it was conducive to rapid rural population growth" in response to the increased demand for labor (1985:139). These conclusions, which overturned the opinions of the Hammonds and others in an earlier generation of historians, were themselves challenged by research dating from the early seventies whose conclusions I lay out in the next section.

The timing of these shifts in historiographic emphasis and interpretation is important for us. In the 1930s and '40s, the heroic perspective of Trevelyan (likening enclosure to "blazing a trail for the rest of the world") was more influential among the colonial officers and others in their joint construction of communal tenure. And in the 1960s and '70s, the increased influence of methodological individualism and of neo-classical economic theory is evident not only in historians' restatement of the necessity of enclosure for a more efficient and productive economy but in views like that of Garrett Hardin on the doomed "Tragedy of the Commons". Moreover, Hardin's argument was inspired by W.F.Lloyd, one of the "propagandists of parliamentary enclosure" (Thompson 1993:107). Hardin's claim that "Freedom in a commons brings ruin to all" is premised on the same set of propositions invoked by apologists for enclosure in the eighteenth century. These equated "commons" with "open access", to use a modernist term, and asserted the superiority of individual property rights in achieving "improvement" and progress. Such circles in assessment and prescription are essential to recognize.

IV The demise of the English commons

The detailed reanalyses of historians such as Snell (1985) and Neeson (1989) document the negative social consequences of enclosure for several categories of rural people and overturn the conclusions of the new triumphalists cited above by Snell. Snell points out that the sole criterion for assessing the effects of enclosure among such writers (Chambers and Mingay 1966, Yelling 1977, and McCloskey 1975) was the improvement in "productivity and efficiency" of land use. When broader social processes are taken into account, however, a rather different picture emerges. Snell's own research, for example, provides information indicating that, after enclosure, rural employment for agricultural laborers declined, becoming seasonally less secure, and that real wages fell. Neeson (1989), too, documents that, within ten years of enclosure, a sharp decrease in the number of small farmers and a concomitant increase in the size of landholdings among a minority of owners took place, and that large numbers of families who had depended on common rights and common land for part of their livelihood were forced to seek poor relief and/or to migrate.

Moreover, Snell argues that those authors who take only land productivity to be the measure for the "economic" gains of enclosure (which he does not dispute for the landowners) omit to consider other "economic considerations" which would reduce the

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state (1966:97) that, "The occupiers of common right
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, received no compensation because they were not, of
owners of those rights", are accepting "the priority of
of the law' over usages" which was precisely the
the proponents and supporters of enclosure (Thompson
In summary, what was taking place was "a wholesale
ion of agrarian practices, in which rights are assigned
users" to those whose "ancient feudal title" was
into capitalist property-right" (Thompson 1993:137).
mension of this new (or renewed) direction in the
hy of enclosure of the English commons that is most
my purposes here is E. P. Thompson's stimulating and
lysis of the cultural dynamic entailed in the
of the commoners and the parallel rise of the legal,
d ideological support of enclosure. This involved not
ability of the holders of private property rights to
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ntrally involved was the rise of the very notion of
ghts in land and related resources and the growing
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t displace people as users of the common or displace
common uses -- as when an "openfield" system was
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ing preserves. Also displaced was an entire complex of
eas and practices engendering legitimate and authorized
ommon usage. In short, an entire way of life was

npson points out repeatedly, this displacement took
centuries and, necessarily, through a wide range of
, practices, ideas and values. He pinpoints, however,
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ls now a considerably rich documentation of the

centuries-long encroachment and appropriation of commons -- openfields, forests, grazing pastures, heathlands or "wastes" -- and the resistance to these takeovers. I shall give a rapid and inevitably inadequate sense of these processes, based on Thompson and the authors he cites. By the eighteenth century (when parliamentary enclosure reached its peak), the increased appropriation of common resources has to be seen against a confluence of processes. These included the intensifying use made of common resources from population growth, the new gains to be made from the resources due to accelerating commercialization and the growth of urban demand, and the ever increasing drive to agricultural "improvement" through intensive forms of land use, and an intensifying socio-economic differentiation among the population combined with political corruption and self-serving accumulation in high places.

The outcome was increasing levels of the exploitation of common resources and of resulting competition over rightful use. The particular uses varied: "the great encroached on the walks, fenced in new hunting lodges, felled acres of timber..."; the middling levels of "forest officers and under-keepers" sold off "the brushwood ... furze ... venison" in "private agreements with inn-keepers ... butchers and tanners",[11] while local merchants and artisans increased their levels of use for sale (like the blacksmith carting off rushes by the cart-load in Norfolk in the eighteen-hundreds), and the poor cultivated corn and other crops, grazed a few animals, cut wood, peat, caught game and collected the myriad other products of the commons for their own sustenance and for sale (Thompson 1993:103).

Resistance to private appropriation of commons and to the curtailment of common rights was as varied and as constant. Often a crowd or "mobb" gathered to uproot hedges or fences, as in 1710 when an observer reported that the participants "still persist the Right of Common is theirs and next year they hope to see the Hedges demolish't", and again, in 1725, a crowd who "threw down a Mill and ... Gates and Fences [set up by a certain "gentleman"] on the Marsh" in Norfolk were reported to be acting for "Recovery of their Right" (Thompson 1993:116-7). While these examples come from the eighteenth century, similar events are reported in response to threats to common rights in each century. For example, in the environs of Coventry, "riotous resistance .. to attempts to limit .. rights or to enclose lands" were recorded for 1421, 1430, 1469, 1473, 1495, 1509, 1525 and again throughout the seventeeth and eighteenth centuries (Thompson 1993:122-3). Those resisting also came from a range of social circumstances, from the "bourgeois commoners" of Richmond protecting their rights of use for personal use and commercial gain (Thompson 1993:111) to the many more poor families dependent on the commons for their sustenance. These two categories also came into conflict with each other since the first found increasing commercial advantage as towns grew and trade boomed while the latter, in the face of increasing population pressure and declining levels of wages and returns from small-scale farming became ever more dependent on the commons (Thompson p.106).

Group actions could be riots by the "mobb" but also took the form of "theatre" in dramatizing particular events or persons often through long-established customary forms. Actions which had once been merely part of the round of local life took on a more dramatic form when they were stubbornly repeated in circumstances that no longer allowed for them. A prime example was "the regular perambulation of ... the parish" "to make clayme of the Lands thereto belonging and to set forth their bounds". Thompson (1993:98) is quoting here an old man who recalled such customary perambulations in a deposition he was making as part of a petition (c. 1720) against an enclosure of woods considered to be within the parish bounds. In such perambulations, the participants would take implements "for the purpose of demolishing any building or fence which had been raised without permission" in the commons as in the cases cited by Thompson from 1774, 1789, and 1807 (p.119). In addition to the riots and semi-dramatized forms of resistance, far more numerous were those of lobbying, letters, petitions, destruction of records, and other tactics, all of which served to delay some enclosures for many years and even "had some say in the terms of surrender" of the commons (Neeson 1984, cited in Thompson, p.120).

Let me now return to what I described as the most interesting contribution made by Thompson to the rethinking of the demise of the English commons. This concerns the more hidden dynamic of change "below", as it were, the forms of appropriation of the commons and the types of resistance they evoked, indicated briefly above.

One dimension of the exclusion of former commoners was a gradual narrowing in the definition of rights-holders and the scope of these rights. This appears to have picked up pace in the eighteenth century. Members of the gentry or other highly placed persons put new limits on what people could or could not do in the commons. Around 1720, for example, the lord and lady of a manor in Essex informed the poor in their vicinity that, henceforth, they would be allowed to lop the trees in Waltham wood for firewood only on Mondays. The poor objected to this because Monday was the day when they were usually seeking to hire themselves out for the week to the big farmers of the area; and their normal practice was to collect wood on wet days when there was no work. They added a further complaint that while the lord was trying to cut down on their use, he was felling timber for sale, putting many cattle into the woods to graze, ploughing up new land, and setting rabbit warrens for his own pleasure (Thompson p. 102).

From the mid 1600s through to the 1700s, not only were limits being placed on common usages by those claiming greater authority over the common resources but the definition of who could claim to be a rightful commoner was being narrowed. Thompson documents through many instances the narrowing of very general terms like "populacy", "inhabitants" "parishioners", "all within this manor" and so on to more precisely designated categories of those who held recognized properties ("ancient houses" or "messuages"), or who paid various forms of rent, or held specific tenancies. Thus, in

1741 the claim in a Cambridgeshire village that "not only ... tenants but ... occupants", too, had the right of turbary, was rejected by the court as "a very great absurdity, for an occupant, who is no more than a tenant at will, can never have a right to take away the soil of the lord" (p.132). In a Suffolk case in 1774, the court found that while owners of houses or lands in the area could cut rushes on the common, "inhabitants cannot, because inhabitancy is too vague a description" (ibid.). And a similar statement was made in a case in Buckinghamshire in 1788, that disallowed the claim that "the poor, necessitous and indigend ... householders" could take rotten boughs from two coppices because "there is no limitation ... the description of poor householder is too vague and uncertain" (ibid.).

A major rationale for the narrowing in definition was the need for "improvements" in the lands. The beginnings of the changes in agricultural practices, which subsequently came to be known as the agricultural revolution, were back in the sixteenth century. An early case cited by Thompson as an influential precedent is that of Gateward in 1607, whose plea of common right was disallowed because he did not own the house in which he lived. In barring mere inhabitants, the court also noted that "no improvements can be made in any wastes, if such common should be allowed" (Thompson 1993:130).[12] Again, in 1675, the King's Bench justice noted that the lord of an area should be able to use "his" wastelands since without such use "this will be a ready way to enable tenants to withstand all improvements" (p.131, 134). The rationale of making "improvements", which is akin to the call of "progress" on the lips of later modernizers, was increasingly used to justify the claims of greater rights by lords and others eager to increase their exploitation of the commons.

The culmination of the narrowing definition of who had justifiable claims to the commons was the redefinition of some rights as property and the relegation of others to "mere" use. While there might have been many years, even generations, during which such use was considered "customary", these were now redefined as uses that had taken place at the margin of legality or had been illegal. Considering the instances in which former commoners were seen to be merely "inhabitants" and thus with no standing to claim rights in the common resources, Thompson concludes that "the right of use had been transferred from the user to the house or site of an ancient messuage. It became not a use but a property" (1993:135). Those who gained were those who had some form of "ancient feudal title" which became "richly compensated in its translation into capitalist property-right" (p. 137).

Unsurprisingly, as this "capitalist property-right" gained prominence in the ideology, judgments and practices concerning common resources, so did a process of class division. It seems that the next phase of the hegemonic claim of property over former commons was a relative shift in emphasis from casting common usage as an obstacle to "improvement" towards presenting the commons as encouraging idleness, vagrancy and criminality. The former commoners were being recast as a class of inveterate idlers who had

to be disciplined into a proper work force for the development of industry.

There is an enormous literature documenting this process but let me give a flavor of it. In 1788, the removal of certain "poor and necessitous, and indigent ... parishioners and inhabitants of the ... parish of Timworth" from fields where they had sought to exercise a long-established right of gleaning, was justified on several grounds by the judge. It was "inconsistent with the nature of property which imports exclusive enjoyment" (to which we return below). It was also "destructive of the peace and good order of society, and amounting to a general vagrancy" (Thompson 1993:139). Such views were frequently expressed. In 1769, a writer of "Reflections on the various Advantages resulting from the Draining, Inclosing and Allotting of Large Commons and Common Fields", referred to the users of commons as "buccaneers" who "sally out, and drive, or drown or steal, just as suits them" and who "live at large, and prey, like pikes, upon one another" (Pennington, in Thompson p. 163). (The latter image of pike eat pike canot fail to recall the more decorous rationally self-interested herdsman of Hardin's "Tragedy"). While, in 1810, a survey calls for the further "appropriation of the forests" of Hampshire as "the means of producing a number of additional useful hands for agricultural employment, by gradually cutting up and annihilating that nest and conservatory of sloth, idleness and misery, which is uniformly to be witnessed in the vicinity of all commons, waste lands and forests..." (Thompson 1993:163).

Here we see one reflection of the view that later was to cast the demise of the commons as due to the reckless overuse by the commoners and its reclamation due to the innovative energy of the agricultural and other improvers. More importantly, we also see not only the way in which the users of the commons were being relegated to "mere" users and their uses being denied the claim of "right", but the way in which they were being recategorized as a subordinate class of workers. In the case cited above, of the court's ruling against gleaning on the grounds of its being "inconsistent with the nature of property, which imports exclusive enjoyment", the judge also went on to say that to establish "such a custom as a right would be injurious to the poor themselves". This is because "their sustenance can only arise from the surplus of productive industry": since their gleaning would reduce the farmer's gain, who would have to reduce his contribution to "the rates of the parish", so, in turn, would their potential claim for parish relief be less secure. As Thompson states: "as the high tide of enclosure coincided with the political polarisation of the 1790s, so arguments of property and improvement are joined to arguments of class discipline" (p. 163).

This becomes ever more articulate in the castigations of open commons which were said to encourage "habits of idleness and dissipation and a dislike to honest labour". Enclosure was said to ensure that the poor take "an honest employment, instead of losing time in idleness and waste" or that it produces a more "respectable class looking up to the wealthier classes for labour".[13] Precisely

the same ideas were expressed in the antagonism towards the Poor Laws which had begun to provide ever more relief to the many displaced commoners. Opponents like Reverend Townsend argued in A Dissertation on the Poor Laws (1786) that: "The poor know nothing of the motives which stimulate the higher ranks to action -- pride, honour, and ambition. In general it is only hunger which can spur and goad them on to labour". For this reason, he saw "nothing ... more disgusting than a parish pay-table" where the poor came for relief (cited in Snell 1985:123). He concluded that hunger is the most effective guarantee of labor because it is "peaceful, silent and continuous".[14] This is the silent partner, presumably, of the invisible hand of the market.

From common use right to property right

In the seventeenth century, "custom" was still seen to obtain "the force of a Law" where it had the four characteristics of antiquity, continuance ("being continued without interruption time out of mind"), certainty and reason (Thompson 1993:97, citing Carter's Lex Custumaria of 1696). In the many cases cited in Thompson concerning growing competition and conflict over common resources through the eighteenth into the nineteenth centuries, the common rights claimed are shown to have resided in long-practised usages. Claimants referred over and over to certain uses being carried out "as long as [they] could remember" or, in an oft-repeated phrase, "time out of mind". Some of these repeated practices were embedded in community rites and ceremonies such as the parish perambulations. Many were embedded only in succeeding generations' ideas of what was their due and in their daily and seasonal practices. Nevertheless a strong sense of ownership is revealed when, challenged in their uses, people refer to the commons as "ours".[15]

Although seventeenth legal experts like Sir Edward Coke and Carter (cited above) granted "the force of Law" to long-established customary use, in the eighteenth century legal decisions tended to refer to "the legal fiction that customary usages must have been founded upon some original grant, from persons unknown, lost in the mists of antiquity" (Thompson, p.160). The legal fiction thus cast the uses as "less of right than by grace" (ibid.). Simpson, in A History of the Land Law, suggests that "the tenurial system converted the villagers [and their ancient communal system of agriculture] as tenants, and the theory of the law placed the freehold of most of the lands of the manor in the lord. Some of his tenants, it is true, will be freeholders, but the majority hold unfreely in villeinage, and the preeminence of the lord makes it natural to treat him as the 'owner' of the waste lands. Thus a theory of individual ownership supplants earlier more egalitarian notions [governing the primitive village communities]" (1986:108, cited in Thompson p. 126).

Thompson points out that some writers have accepted at face value the "theory of the law" outlined by Simpson and cites the opinion of Hoskins (1963) that "contrary to widespread belief ... all common land is private property. It belongs to someone,

whether an individual or a corporation, and has done so from time immemorial". Thompson illustrates the doubt to be cast on Hoskins' claim that common land had to "belong" to someone by quoting the Russian serfs who told their lord "We are yours, but the land is ours". I'd like to link this statement with the many from the English commoners quoted in Thompson where they refer unequivocally to "our" commons, and to work by other historians who show the deep feelings of attachment to a locality and its commons and the profound sense of dislocation caused by enclosure and by the 1691 settlement law which, requiring "settlement" in a parish to be proved by property ownership, rent or annual labor, led many of the poor to lose their residency status (Snell 1985). What these imply is a very different sense of "belonging": not of a property belonging to someone but of people belonging to a place. It is only when the notion of property as entailing rights to things (or places) gains priority that the older sense is turned on its head. From people belonging to a place and hence, having every right to benefit from the place's bounties, they become people who have no property which belongs to them and, hence, have no intrinsic right to the place's resources.

It is from this historical and ideological move that comes the notion that land held in common, "belonged" in Sir William Blackstone's words "generally to everybody, but particularly to nobody" (cited in Thompson, p. 161). Blackstone, as the most famous eighteenth century writer on law did recognize the rights of custom but, according to Thompson, "considered [them] less as usages than as properties annexed to things" in ways that confounded, in Blackstone's own words, "that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe". Here, the final phase in the transformation of the concept of property to an exclusive and alienable right to a thing (including land, which is what Blackstone was addressing) as described by Macpherson (1987) is patent.

The concept of "property", in the centuries before the rise of capitalism, had a much broader scope. Used to refer to "the life, limbs and property of a man", it more clearly captured the sense of its origin in the Latin "proprius" and the French "proprete" -- "own", as much to connote necessary qualities of oneself as to things outside oneself that belonged to one. Over the centuries, the concept has become progressively narrowed. Macpherson lucidly describes three degrees of narrowing: first, the earlier connotation of property as being both the right to exclude others from the use or enjoyment of something and the right not to be excluded from the use or enjoyment of something came to refer only to the first of this pair. A second narrowing came in referring property not merely to own but the right to alienate that ownership. The third narrowing was from property as a right to the revenue from something owned to a right to the thing itself. Each phase is linked by Macpherson to stages in the development of capitalism. By the time of Adam Smith and other theorists of

market economy, "property was either 'perfect' and absolute or it was meaningless".[16] As we saw above, this entailed, among other things, a displacement of "coincident use-rights". "In the name of absolute individual property, the common and use rights of the 'lower orders' were eroded".[17]

In summary, the erosion of common rights and the drive to enclosure may be seen to have taken place through the erasure of claims based in customary use and their replacement by claims based on property rights. This and the narrowing in definitions of use, user and right may be seen in the case of Botswana to which I now turn.

IV The case of Botswana

The construction of "communal tenure"

As in other African territories of the British Empire, most of the land used by Africans in the Bechuanaland Protectorate (established in 1885) was described as "communal". There is now an extensive and sophisticated reappraisal within African studies of "communal tenure" and of "customary law", the larger context within which it fitted. Elizabeth Colson, for example, has described how the emergence of "customary" land law in colonial Africa was due to the colonialists' confusion of sovereignty with ownership and their conflation of different principles inherent in precolonial land systems (1971:184). She argued, too, that as land gained new value in a commercializing economy, there was a rapid increase in the number of disputes over land appearing before the "native" or "customary" courts. These led, in turn, to the development of "fairly comprehensive bodies of customary, though not traditional, law" in which "official stereotypes about African customary land law" were a component (pp. 196-7). The resulting "communal tenure" was "a reflection of the contemporary situation and the joint creation of colonial officials and African leaders", even though this "was unlikely to be recognized" (ibid; cf. Moore 1986).

In this vein, Lloyd Fallers defined customary law as "not so much a kind of law as a kind of legal situation which develops in ... contexts in which dominant legal systems recognize and support the local law of politically subordinate communities" (1969:3). This, of course, is a revisionist definition made possible by the rethinking of anthropologists and other scholars about the legal systems emergent in colonial territories. In practice, the colonial administrations took quite a positivist approach to land "law and tenure" -- as that which needed to be "compiled" and "restated". Martin Chanock has suggested that, during the thirties, colonial governments perceived "confusion" among Africans about what was "traditional law" (presumably because of the changes due to commercialization and other processes indicated by Colson; also see Berry 1993) and decided that it was imperative for customary law to be written down before it passed into oblivion with the senior generation of "tribal elders" (Chanock 1985:53-4). One of the first and finest examples of the compilation of

customary law was Isaac Schapera's Tswana Law and Custom (1938).

The prevailing attitude of colonial officers and other Europeans in Bechuanaland towards communal tenure was generally negative, seeing it as inherently anti-innovative and doomed to encourage over-use. This view, as we saw, was the accepted one of the English commons and it is pervasive in colonial records and in books written about colonial affairs such as Liversage's "Land Tenure in the Colonies" (1945). Invoking Prothero's views on the English commons to explain the situation in African "communal" lands, Liversage states that "no regulation whatever is practised. Consequently there is no incentive on the part of any individual to restrict the number of stock turned out by him. It is the desire of every individual to amass wealth in the form of livestock ... No individual has any incentive to reduce his numbers: his own action will be of no avail without corresponding action by others" (1945:13, 49). Such apparent prefiguring of Hardin's Tragedy thesis should not cause surprise nor be taken as a proof of the inherent correctness of such views. Rather, it reflects a common intellectual tradition. The missionary-cum-administrator, John Mackenzie, working among the Ngwato of Eastern Bechuanaland around the last quarter of the nineteenth century was dismayed, for example, by "the communistic relations of the members of a tribe" and wanted to introduce "the fresh stimulating breath of healthy individualistic competition" (cited in Dachs 1972). The presumption that "communal" forms of organization smothered individual initiative and prevented "improvement" and "progress" was widespread among later colonial administrators.

Several scholars have pointed out, however, that this was not a monolithic view that typified all administrations or all officers within a territory or that remained unchanged over time. Chanock, for example, states that the antagonism towards things communal and the allied promotion of individual property rights in the earlier colonial years later shifted towards "suspicion of individual land rights" for Africans and attempts to repress or contain them (1991:63). This seems to have been particularly the case in colonies with large white settler communities where laws regulating land as well as marketing and pricing came to serve the interests of the European settler farmers (in Southern Rhodesia for example; also in Kenya [Berry 1993:109]). An additional reason for colonial reluctance or antagonism to individualization of land rights and sales of land was the fear that the administrative hierarchy through which land allocation was deemed to flow would thereby be disrupted (Berry 1993:106). Here, we hear echoes of the explicit fears among the English gentry about the chaos of "levelling" ideas of property and fears among the new settlers in eighteenth century New York and New England that "the diffusion of property" meant "the degeneration of all public authority ... into an atomized chaos" (cited from a 1774 letter in Mensch 1982).

In Bechuanaland, one does not see a shift such as that described by Chancock. This, I suggest, is because the settler areas were a small part (though a better watered part) of the territory, and vast areas, mostly grazing land, remained the domain

of Africans. Thus, the competition between settlers and Africans over land was minimal and highly localized and did not figure centrally in the territory's politics as in Southern Rhodesia or Kenya. Moreover, as communal tenure was being produced "jointly" by the colonial officers and the Tswana elite, so a drive towards private property rights over water was underway among the elite. This was to have profound effects over rights to communal land.

Tswana modes of managing land and water

As keepers of livestock and cultivators of grain, the Tswana peoples were highly dependent on seasonal water courses and, in the drought prone areas of the Transvaal and Botswana, necessarily mobile. Not only did individual families move seasonally and contingently (depending on climatic and other circumstances) but entire polities (morafe, chiefdom or kingdom) did so. The conceptual model underlying Tswana use of land was that of concentric circles: at the center was the town (motse), the place of the ruler (kgosi), his court and public assembly place (kgotla). The town, which was the proper habitation of all followers of the ruler except for the lowest ranked group of hereditary servants (malata), was surrounded by arable fields (masimo), then by pastures (mafodiso) and the cattle-posts (meraka, which only the wealthy could afford) located in the open range (naga, veld, bush or forest), which also provided for hunting and which merged into a "no-man's land" between kingdoms.

The kgosi was responsible for ensuring rain and the fertility of the land through a cycle of rites; he kept the secrets of the rain gourd, he alone could approach the rain snake, he alone could obtain the services of famous rainmakers from the east. The kgosi was praised with names of Modisa (herder), Kgamelo (milk-pail), Mosadi (wife), images which capture the nurturing, protective role of ruler, as contrasted with the parallel images of Conqueror, Destroyer and Castrator of enemies. As Herder, the ruler ensured his people had the wherewithal to live and so provided them not with "land", for which no equivalent word existed, but with particular sorts of "land" -- fields to grow grain, bush to collect wood and other products, streams and springs for water, pastures for grazing livestock. In the larger kingdoms, the ruler delegated some of his authority over such resources to subordinates who were also called herders (badisa).[18]

The conceptual model of ruler and people was embodied in a cycle of rituals (the ruler "opened" and "closed" various seasonal activities, authorized the marking out of fields or their protection from evil intentions) and in everyday practices. At the same time, the entire system was also political. Descriptions by foreign travellers to the land of the Tswana in the eighteenth and nineteenth centuries indicate that the more powerful leaders (whether rulers of a kingdom or high ranking subordinates of the rulers) could exert considerable control over scarce water sources and their associated pastures and that the patterns of access to resources or the allocation of rights were part and parcel of inter-group and intra-group rivalries and contests.[19]

When the Bechuanaland Protectorate was declared in 1885, there were strong kingdoms in place along the eastern edge of the country. Their ruling elites were, in large measure, further strengthened by the practices of indirect rule and by the impossibility of factions fissioning off to create new mini-states, as in the past. The kingdoms became Tribal Reserves and, later, Districts.

Water development and communal tenure in the 1930s

In the 1930s, as mentioned above, the Administration retained Isaac Schapera to compile Tswana Law and Custom. Precisely as this was taking place, so the Tswana elite was mobilizing to promote private ownership of deep wells in the communal range. These wells or boreholes had proven themselves invaluable in ranches in neighboring South Africa and in the European freehold areas of the Protectorate. The Tswana elite, all owners of large herds of cattle, incessantly lobbied the Administration to provide boreholes to the African areas.

An examination of the sources of the period reveals that, in their push to develop private rights in the grazing areas, the Tswana elite followed a dual strategy. In their statements in the Native (later African) Advisory Council they portrayed the communal system as inhibiting "progressive" herd-owners, yet, through Schapera's compilation, it was described as flexible enough to allow for individual rights. Isang Pilane's statement in Council in 1930 that "our Reserves are communal property and nobody who is willing to progress can have freedom to use his progressive ideas" was typical of complaints regularly made by the Advisory Council representatives (chiefs or their delegates) at this period, as they lobbied for a program of water development. At the same time, these elite men -- "the senior men of the tribes" -- were telling Schapera that the communal system, in which land was held communally and open waters of rivers and pans were "common property", nevertheless allowed for "individual rights" (Schapera 1943:250). Anyone putting resources into drilling a borehole, digging a dam or putting up substantial buildings was "entitled to legal proection against encroachment" (1943:229) and owners of the new boreholes in the grazing areas were "entitled to the sole use of [the] water and to protection against trespass" (p.246). After pointing out that "even privately owned boreholes" were allowed by the Tribal Administration in the Kgatleng Reserve, Schapera concludes that "tribal law recognizes the validity of private rights" and the existence of such private property "strengthens the usual Native contention that there is adequate security of tenure" in customary law (1943:250). Other similar statements indicate that one of Schapera's aims was to counter certain preconceptions of the Administration about the "customary" system.

What is interesting here is that Schapera was playing the role typical of many anthropologists in providing ethnographic evidence to show how inappropriate certain official notions were. Yet, at precisely the same time, members of the Tswana elite were using these prejudices to lobby the Administration for the development of

water sources and, in particular, for the private ownership of such sources. With hindsight, one can see that the Tswana elite were playing both sides of the street: claiming flexibility in the communal system for investment yet also complaining about the obstacles to progress in that system. The former was played out through Schapera's compilation, the latter through the debates in the African Advisory Council.

We see in the Botswana case, as for others in Africa, that casting "communal tenure" and "common property" as "law and custom" was a joint creation of Tswana elite and colonial Administration (plus anthropologists). Moreover, the debate about communal tenure constructed it in opposition to private property. While that opposition was more implicit than explicit in the Advisory Council debates, it was played out more clearly in the lobbying for the new boreholes to be placed under the private ownership of groups called syndicates. To this extent, then, "common property" (or "communal tenure") was the product of the private ownership of resources rather than its precursor.

The dividing of the commons

From the 1930s through to the 1980s, most boreholes drilled in the grazing areas came under the ownership of groups of cattle-owners or of very wealthy individuals. The signal consequence of the proliferation of privately owned boreholes in communal land has been the shift of claims based on property rights from the water sources to land itself. The process has been as follows.[20] The permanent water source provided by deep boreholes has facilitated changes in herding practices, particularly a drastic decline in herding cattle between seasonal water points. This reduction in mobility entails a greater degree of 'fixity' of cattle and their owners to particular grazing areas around the borehole. Already in the 1930s, as we noted above, "investments" like the private ownership of boreholes had been described as giving "legal protection against encroachment" (Schapera 1943:229). Additionally, as more boreholes were drilled, the Administration tried to ensure a minimum distance of five miles between them, a procedure that served to define an area of control around each borehole. Later practices by the Land Boards under the independent government of Botswana, involving mapping points, measured distances and so on, have reinforced the notion that, in granting permission (and licence) to drill a borehole, not merely the borehole but an area of land is being allocated.

As the number of boreholes has increased in the grazing areas, so has the competition for grazing. This has been exacerbated by the fact that, especially in the small districts like the Kgatleng, boreholes have been drilled not only in the dry range but along rivers and in areas which are seasonally flooded. Up till the early 1950s, the Tribal Administration committees prohibited boreholes being drilled in such seasonal grazing areas but the pressure of demand for ever more boreholes, including among the elite from whom most of the committee members were drawn, led to these controls being put aside. By the late 1970s in the Kgatleng,

there was almost no land left in the grazing areas without boreholes. The new Tribal Grazing Land Policy introduced in 1975 failed to be implemented in the district precisely because the lack of "space" mobilized the majority of the population against measures to demarcate areas into ranches.

The outcome of the increasing competition over pastures (that is, grazing and water combined) is a progressive privatization of the grazing areas and a concomitant narrowing in the definition of who has rights to the communal range. This is seen first, in the growing exclusivity of the borehole syndicates. Referred to as a type of kgotla, the syndicate has been an incorporative organization during its earlier history. It has included three types of users of the borehole water and, hence, the surrounding pastures: the syndicate owners themselves, their dependants, and bahiri, people who pay fees to use the water. Since about the mid 1970s, there has been a trend towards reducing the number of hirers and towards narrowing the range of people who can be claimed by syndicate owners as their dependants. Many syndicate owners were explicit about these trends. They explained that there were too many people trying to graze cattle on the range and wishing to use the borehole water and pastures and that they needed to reduce the numbers of claimants by limiting inheritance of the ownership right to one son per owner and by reducing the number of hirers allowed.[21]

The sense that the syndicates tended to accumulate claims and needed to curb expansion was further exacerbated by a statement by district authorities. As part of the effort by district authorities to respond to the new Grazing Land Policy, they had declared that anyone with "traditional" or long-standing grazing rights (eg. handed down from fathers and grand-fathers) in an area should be accepted as co-owners by the existing syndicates. This caused a great deal of anger among syndicates and an outright rejection of the "rights" of hirers or others who, the syndicates asserted, were able to use the borehole only as a privilege.

Secondly, in some disputes brought before the Land Boards and courts, which pitted syndicates against other users of the range, decisions were being made that gave priority to the syndicates and other owners of boreholes, precisely because they had property rights. One such case concerned a borehole drilled alongside one of the main rivers in the district. In this case, the owners of the borehole syndicate claimed that other cattle owners were coming into the area during the wet season and grazing the pastures so that in the dry season when the syndicate owners had to keep their cattle near the borehole, the grass had been all eaten up. The incoming cattle owners declared their "traditional" right to water their cattle in a river and, willy-nilly, to graze along the river. There was disagreement among the members of the Land Board and the district officers who served as technical advisers to the Board. Some, including the chief, argued that the borehole syndicate had priority because without pastures their investment in the borehole came to naught. This gave clear priority to private property rights and pushed to bring rights to land in line with the private

property rights over water. Opposing this was the view that the range remained legally "communal" and that therefore all district inhabitants had a right to use it. Noone pointed out that this latter view was a product of the creation of "communal tenure" under the Protectorate and was entirely different from the precolonial Tswana system of the range being divided into areas under badisa (literally, herders) from whom cattle owners had to obtain permission to bring in their herds. In the event, the disputants agreed, in an ad hoc manner, to accomodate one another. Although many disputes were resolved, temporarily, in this manner, there were indications that decisions giving greater weight to property rights over "common usage" were increasing.

There is no space here to discuss these processes in detail nor to argue that, while they may be particularly acute in a small district like the Kgatleng, research in other areas of Botswana suggests that similar trends are occurring elsewhere as competition over land and water intensifies. For our purposes here, it is sufficient to reiterate that the gradual division of the commons in Botswana (though still in process) resembles that of England in entailing competition between categories of users some of whom become defined as "mere" users and others, because of property rights, defined as holding superior rights, and in this competition involving a progressive narrowing in the claims being allowed.

IV The Place of "Property" in Social Analysis

Against this brief discussion of the English commons and the communal range of Botswana, in which we have seen "property" to have been an emergent set of ideas and practices in social process, I want to pose the question: should we center "property relations" in our analyses? On one side we have anthropologists like Marilyn Strathern who warns against merging Melanesian (but by extension, other people's) formulations of claims with "the Western concept of private property" which regards "singular items [to be] attached to singular owners" and which "constructs the possessor as a unitary social entity" (1988:103). Her definition of property as "a relation between persons and things" is clearly that associated by Macpherson, Thompson and others cited with the modern form of capitalism. Strathern's position here is a classic one for anthropologists who are rightly cautious about transferring concepts from one group to another under the guise of "neutral" analytical language but with the consequence of distorting more than one is revealing.

On the other side, David Nugent recently recommended centering analysis on the concept of "property relations" precisely because, unlike "relations of production", it is able to capture "the institutional specificity" of non-Western societies (1993). Here is the other classic anthropological position: seeking ways to compare groups and societies. Despite the over-particularizing tendencies of some postmodern approaches, it is probably correct to say that for most anthropologists, the defining feature of the discipline is to occupy both positions simultaneously --

comparative studies which require some language in common as well as caution over the danger that the selected language may import inappropriate meanings.

Although I favor the attempts of anthropologists to ensure the incorporation of political economic dimensions into socio-cultural analysis and to "take into account .. issues of power and history" (Nugent 1993:336), I wish briefly here to suggest that "property relations" is a concept that imports more than it should into non-capitalist societies and cannot, therefore, do justice to their characteristics and internal dynamics.

Nugent is very well aware of the general problem of appropriate conceptual language and explains why, though espousing a marxist approach, he avoids basing his analysis on "relations of production". He explains that, although Marx's own use of "production" was much wider than today's narrower referent of the production of material goods, he agrees with other critics that it is the latter, modern notion that dominates the concept "relations of production". He therefore has turned to property relations which he defines very broadly, following Maine, Marx and Smith, as determining "what people are expected to do in their everyday lives, with whom and under what conditions they will do it, what they may claim of the fruit of their own labor, and what they must provide to others" (p. 340).

My objections to Nugent's proposal to center analysis on property relations are as follows. First, the definition of property relations is so broad that it seems to mean all social relations: "property relations refer to <u>relationships</u> among people that are <u>mediated</u> by material and nonmaterial elements of culture" (p. 341, original emphasis). His addition that the concept of property also "seeks out the nature of the mediation in the way that social persons ... define and redefine their relations in an unfolding history" would extend the concept to the entirety of society, culture and history. Thus, one loses the utility of a concept that may be more appropriately applied to a narrower referent than that suggested by Nugent.

Secondly, although Nugent recognizes "private" property to be the defining feature of capitalist society, he cites the defining feature of "property" as its being "first and foremost a <u>legal</u> concept" (p.339). In accepting this definition from the experts he quotes -- the eighteenth century political economy theorists, Adam Ferguson and Adam Smith, and a nineteenth century heir, Sir Henry Maine -- he surely elides, with these authors, the historical process we have just outlined in which property rights dislodged other rights inhering in common usage and in belonging to a place. Nugent is more concerned to distinguish "private property" (in which "rights to material objects are vested in ... individuals") from "social property" (in which "persons are jurally recognized not as autonomous individuals who own private property but as members of interdependent social categories", p. 340). Because his analysis turns on this distinction, which seems to be a replay of the commodity-gift opposition, Nugent fails to appreciate that the very notion of property, as he defines it, has the very same

problem he eloquently describes for "relations of production" -- that use of this concept entails "the reification of relations specific to capitalism and their extension to all social contexts" (p. 354, note 4).

Thirdly, although "social property" is distinguished from "private property", the use of property to refer to all social relations serves to conflate people and things, fails to identify whether certain things or persons are more construed as "property" or how specific acts of transfer more resemble gifts or commodities, and obscures how certain social relations (perhaps of marriage or residence or clientage) intersect with relations involving "property" or gifts or commodities. Let me give just two examples from Nugent's discussion of the Blackfeet economy where I believe an analytical centering on property relations proves to be more of a blunt instrument than one would like.

Let me give a brief synopsis of the central argument so that I can contextualize the examples. Before the entry of the buffalo horse as a preeminent property, the Blackfeet society was marked by "egalitarian relations" in which divisions of labor and authority were based on gender and age. The work of hunting was done cooperatively by adult men while adult women were obliged to dress the meat and skins on behalf of their fathers or husbands. Men had first claim to the animals they killed but were obliged to share the meat with their co-hunters and to distribute some to the women, children and elderly. With the entry and spread of buffalo horses, hunting became more of an individualist pursuit and a minority of men were able to accumulate horses and, thereby, followers and wives. The resulting inequality was produced by the new property intersecting with the prior social differences ("property relations") of age and gender. As a first example: Nugent comments that "the transformed political-economic structure" redefined kin ties and cites an earlier author on the way in which the favorite composition of a raiding party was of "brothers and brothers-in-law ... for they could thereby keep the horses in the family" (p. 347). But Nugent's focus on property relations appears to prevent him from asking questions about the types of marriages, the relations expected between affines (a man and his wife's brother, a woman and her husband's sister), and whether and how these were affected by the emergent inequality. It would seem that answers to these questions would throw as much or more light on the preferred composition of the raiding party than focussing so heavily on property relations.

Secondly, Nugent interestingly describes how the wealthiest men acquired many young men as followers, who were dependent on their patron for access to the buffalo horses and, hence, their chance to obtain wealth. These wealthy men also acquired many wives. The first wife sat on the right-hand side of her husband and exercized authority over the remaining wives who were treated as workers and even, in the words of contemporary observers, "slaves". Whereas adultery by the first wife was punishable by death or facial disfigurement (usually cutting off the nose), the subordinate wives were not punished when they took "lovers from

ıg the young men" of the band (p. 352). This was because the ;t wife's behavior reflected on her husband whereas that of the ɔrdinate wives "was of little import" to him. These inferior ɛs were punished severely only if they ran off with one of the ıg men.

Now, Nugent does not pose the question of whether these ɔrdinate wives were more like a property than the first wife. ;eems glossing all social relations and their rights and duties 'property relations" does not allow for close analysis of these ɔriminations. However, it seems to me that this set of ıtions could be analysed more deeply. Although the description ws the difference in status between first and other wives and link with the husband's position, it does not provide a ɛemic analysis of the behavior of the subordinate wives. For mple, one might suggest that the sexual liaisons between wives followers served the husband in a rather obvious way of viding him with a means of keeping the young men more patient in service until they were able to obtain their own wives. There many such parallels in Africa and elsewhere. To that degree, could argue that the sexual favors of the wives were ienated" as a "commodity" along the lines suggested in Thomas 91). This would not make the women "property" but it would gest that certain aspects of "social persons" were transferable certain conditions (cf. Thomas 1991, Strathern 1989, Appadurai 6). The gloss of "property relations" does not allow for such criminations.

In short, I suggest that the concept of "property relations" h obscures too much and assumes too much. This is particularly ortunate when, as Nugent so rightly suggests, the hropologist's task is to approach "problems of social nsformation ... from the point of view of the internal entialities of social forms rather than the unchangeable ences of timeless social structures" (p. 353).

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1.See Peters 1993 and companion essays in the same issue.

2.See Ciriacy-Wantrup and Bishop 1975; Godwin and Shepard 1979; Bromley 1992.

3.The words are those of peasants in Asturias cited by Fernandez 1987; for the Tigray, see Bauer 1987; for the English, see Prothero cited later.

4.Berkes 1989; Feeny et al. 1990; Fenoaltea 1988; McCay and Acheson 1987; McKean 1992; National Academy of Sciences 1986; Ostrom 1990.

5.The citations are from Thompson 1976:339; 1963:242; and from O.Rackham, The History of the Countryside, 1986:297 (as cited in The Ecologist, 22,4, 1992).

6.These lines come from: "Inclosure like a Buonaparte let not a thing remain It levelled every bush and tree and levelled every hill .... Inclosure came and trampled on the grave Of labours rights and left the poor a slave. ... Moors ... Where swopt the plover in its pleasure free Are vanished now with commons wild and gay...". (Cited in John Clare and the Bounds of Circumstance by Johanne Clare, McGill-Queen's University Press, 1987).

7.Cited in The Ecologist, 22, 4, 1992, from J. Collings 1908.

8.Both Davies and Sturt are cited by Snell, 1985: 166-8.

9.J.L. Hammond and B. Hammond (1911) The Village Labourer; similar opinions were expressed by G. Slater (1907) The English Peasantry and the Enclosure of Common Fields, and W. Hasbach (1908) The History of the English Agricultural Labourer. All cited in Snell 1985:139-140.

10.There is no room here to document the fact that there were many instances in which various "commoners" (by no means all poor) were able to prevent or stall the erosion of common rights and the enclosure of common resources even in "the great age of parliamentary enclosure, between 1760 and 1820" (Thompson 1993:110). Moreover, as Thompson points out, many of the parks and open lands found today throughout even heavily populated parts of England are there precisely because of earlier attempts by commoners to protect their rights. The point is only that, ultimately, most common rights were removed.

11.One among many examples is the report written by a Surveyor-General for Woods and Forests in the early eighteenth century in which he comments, concerning the Wychwood forest, "Landlord Nash at the Bull bought this year Ten Load" of timber sold by the forest keepers -- "'tis scandalous!" (Thompson 1993:103).

12.Apart from the works by historians cited in the text, see also the marvellously evocative story of the English village of Ulverton told by Adam Thorpe (1992) as a "fictional history" from 1650 to the present. The chapter on 1712 is titled "Improvements" and charts the thoughts and actions of a farmer experimenting with the new improved ways of agriculture. His diary begins: "My great-grandfather enclosed [this sixty acres] to sheep some hundred years ago but I till the greater part of it now, with no recourse to the Manor Court. Commoners are the harrow-rest to improved husbandry, is my opinion." This nicely shows the nibbling away of the commons by an inventive group of farmers that was far less visible than the grand appropriations of the Whig elite but, in total, probably as devastating to the open commons. Note, too, how "commoners" are being recast as a hindrance.

13.These are commentaries by authors writing from the end of the eighteenth into the mid nineteenth centuries, cited by Snell 1985:170-1.

14.This last statement is cited by Polanyi 1944:113-4 and quoted by Platteau (1991).

15.As in a 1682 report of a survey of a village in Warwickshire, where various forms of stinting are described, which says that the Lord of the manor keeps cattle but in such numbers "as to not oppress our Commons" (Thompson 1993:134).

16.Istvan Hont and Michael Ignatieff eds. Wealth and Virtue (1983: 25) as cited in Thompson 1993:162.

17.Cited by Thompson 1993:161 from G. R. Rubin and D. Sugarman eds. Law, Economy and Society, 1984:23-4.

18.The English translations of such terms inevitably draw them into a different world: modisa as governor (Schapera) or comptroller (Sansom 1984), king as trustee, patriarchal images rather than herder or milkpail or wife.

19.See, for example, Campbell 1815, Andrew Smith's journals of the 1830s (1975), and the testimony of John Mackenzie in 1883 on Tswana "rights to cattle posts [being] related to exclusive access to specific fountains [springs] or pans ..." as quoted by Kinsman (1980:8).

20.This story is told in much fuller detail in Peters (in press); also see earlier publications (1984, 1987, 1992).

21.While both strategies are proving difficult to put into action because of various claims made on owners, the first (inheritance of the syndicate ownership by only one son) is particularly so. The reasons are complex and cannot be explored here.