

The Failed Metaphysics Behind Private Property: Sharing our Commonhood

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Liberalism: The Implicit Tragedy of the Commons

Garrett Hardin is often cited for his 1968 essay, “The Tragedy of the Commons.” In this classic critique of common property management, Hardin gives the example of herders grazing their cattle on a shared parcel of land. He observes that these individual herdsmen, acting out of self-interest, will put more and more cattle in the pasture. This overgrazing, he says, will deplete or perhaps destroy the field’s limited resources of foliage and soil, which is not in the long-term interest of the group. The failure of such commons through disorganization and waste illustrates the need for external intervention, Hardin implies, whether through the private or public sectors. Yet numerous studies have shown that societies can successfully manage their resources using some form of collective property. Traditional communities which organize resources through customary practice, and modern social networks such as digital communities which rely on system architectures and cooperative standards, both demonstrate that tragedies of the commons are not inevitable. Despite broad differences in local circumstances, this research suggests, *common property can be effectively managed using informal norms*.

However, these analyses rarely explore the historical and philosophical contexts in which failed commons occur. They avoid the most basic questions. What exactly is the social nature of property? How does a property regime reflect the self-understanding of the people who use it? Why do individuals relate to property through shared assumptions about who they are? The study of resources, bodies, lives, minds and human interaction expands commons research from the realm of social analysis into the moral philosophy of the greater good. And the philosophy of what is good for society inevitably raises the question of the personal metaphysics behind property. What is the understanding of human nature in societies where failed commons occur? How do individuals rationalize a social belief system that encourages them to act against their own interests, as Hardin says, allowing their commons to fail? And why should we assume that property has but one meaning, which may be defined only within the context of liberal society?

This article focuses on the sacred cow of private property in liberal philosophy and politics and its catastrophic impact on the commons. Numerous liberal thinkers (mostly male) have attempted to base social systems, moral obligations and property rights in human nature using the laws of the natural universe (Figure 1). They share the blame for the devastation of the commons. No one has influenced the rules, institutions and concepts of modern individualism more than John Locke. It was Locke, the 17th century

Figure 1

Major Architects of Liberal Property Theory

Thomas Hobbes, 1588-1679
John Locke, 1632-1704
Charles de Montesquieu, 1689-1755
François Quesnay, 1694-1774
Voltaire, 1694-1778
Jean-Jacques Rousseau, 1712-1788
Denis Diderot, 1713-1784
Adam Smith, 1723-1790
William Blackstone, 1723-1780
Immanuel Kant, 1724-1804
Edmund Burke, 1729-1797
Thomas Jefferson, 1743-1826
Jeremy Bentham, 1748-1832
James Madison, 1751-1836
Friederich Schiller, 1759-1805
Jean-Baptiste Say, 1767-1832
Wilhelm von Humboldt, 1767-1835
David Ricardo, 1772-1823
Alexis de Tocqueville, 1805-1859
John Stuart Mill, 1806-1873
Herbert Spencer, 1820-1903
William Jevons, 1835-1882
Carl Menger, 1840-1921
Eugen von Böhm-Bawerk, 1851-1914
Thorstein Veblen, 1857-1926
Max Weber, 1864-1920
Ludwig von Mises, 1881-1973
Friedrich von Hayek, 1899-1992
Karl Popper, 1902-1994
Ayn Rand, 1905-1982
Isaiah Berlin, 1909-1997
Milton Friedman, 1912-2006
John Rawls, 1921-2002

philosopher and political scientist, who formulated the central tenet of liberalism: *that property should be organized through individual ownership by excluding others*. Locke's source code, both at the meta-level and physical level, is still driving our operating system. It repeats endlessly the 'empirical' story that nature intended the commons to be possessed through proprietary ownership. From the long view of social history and political philosophy, however, it's Locke's sacred cow of proprietary rights that has been devouring the commons, not Hardin's hungry cattle or their poor herders.

The validity of moral entitlements to property is one of the crucial questions of our time. It illuminates what may be called the *implicit* tragedy of the commons. 'Implicit' suggests that there is an underlying or contextual basis for property ownership which is not immediately apparent yet may have tragic consequences. This article maintains that many commons are programmed to fail because of the fallacious assumptions about human nature that are embedded within the rules and structures of modern society. The focus here is to isolate the philosophical and legal roots of property within the sovereign state, touching only tangentially on macroeconomics and not at all on multilateralism. (To do justice to these critical topics, we'll save them for another time). This is a different sort of discussion: an inquiry into the metaphysics and socio-political basis of property rights within the liberal system. To begin, we examine how Locke's philosophy determined his (and our) concepts of property and modern government.

Key to Locke:

As the Mind owns the Body, so a Person owns Property

The mind is a single mental substance, Locke contends, while the body is an aggregate of atoms comprising a variety of material substances which follow the laws of physics. Minds (mental substances which exist outside of space and time) are independent of bodies (material substances which exist in space and time). The mind is immaterial, independent and self-sufficient; but human bodies are forms of physical property, similar to land, houses or goods. Since the individual's mind is not dependent on the existence of other minds or persons, Locke concludes, people interrelate with one another only through their bodies.

Locke then applies this metaphysical model to political theory. In the state of nature, he says, before formal social organization is developed, human beings are unrelated, free and equal minds embodied in interaction with other physical bodies. Living in absolute freedom and equality, an individual may claim ownership of some part of the aboriginal commons by using her/his labor to make it into property. Yet, Locke cautions, few can really benefit from this freedom because other bodies continually interfere with the individual's property. Individuals have an inalienable right and duty to preserve the property they own: their land, dwellings, goods, and especially their bodies. A person's physical space should be protected from violation and occupation. Hence, the individual needs external rules to protect personal property from the hindrances of others.

This is why individuals create a social contract, Locke affirms. They surrender their natural rights to the supremacy of government. In return, the state pledges not to confiscate the individual's property, he says, because ***the only reason that government exists is to protect private property***. "The supreme power cannot take from any man any part of his property without his own consent," Locke writes in *Essay Concerning the True, Original Extent and End of Civil Government*. "For the preservation of property being the end of government, and that for which men enter into society, it necessarily supposes and requires that the people should have property, without which they must be supposed to lose that by entering into society which was the end for which they entered into it."

This creates a major contradiction in Locke's reasoning. His political premise was that people have the right to property on the basis of applying their labor to an unclaimed resource in nature. He says that life, liberty and property are inalienable rights. People are born with them. This means that when individuals give consent to government, the authority derives from the people. But this yielding of consent does not entail subjective interrelations with others, since Locke's social politics are bound by his metaphysics. As free, equal and unrelated individuals living in the commons of nature, one person's mind has no essential connection with other minds. *Only a person's body is the basis of group relationship. Hence, the state governs only one's body (property), but not one's mind (ideas, opinions)*. This has startling implications for political organization.

Devoid of intersubjective relations, an individual cannot give consent to government for the purpose of developing ethical, religious or political relations with others. One's intention cannot be to create a good society. Nor could the purpose of government be to ensure human, social or economic needs. In point of fact, Locke's 'government by consent' is not a means by which people can express their will through a majority vote, since the right of property always trumps the right of plurality. Rather, his view of democracy is completely determined by his metaphysics of the individual—a mental substance laying claim to the material body as its property. In effect, Locke says, *'Just as the mind owns the body, so a person owns property'*. Yet this tangled analogy undermines his argument for the existence of government. *Since the mind does not really own the body, this is not a valid foundation for the personal ownership of property. And because the metaphysical premise is false, so is the political conclusion: that sovereign government exists solely for the protection of individual property. Hence, the very purpose of modern government comes into question.*

Ownership & Dispossession:

How the Commons became Unconstitutional

Locke's dualism of the person as a mental substance and the body as its material property has created a kind of *atomism* in liberal democracy. In classical physics and chemistry, systems were simply the sum of their component parts. Applying this principle to human beings, liberal theorists saw individuals as comprised of

preferences and assets. These preferences and assets are in constant interchange among people through their social relationships. In this view, economics is a mechanistic system in which the minds of producers coordinate the *supply* (property, material resources) to meet the *demand* of consumers' bodies (utility, happiness). In the political sphere, the mind of *government* (policies, institutions) coordinates the *body politic* (votes, taxes). Over the past three centuries, Locke's concept of atomic mental and physical substances has effectively reduced people and things into independent, component parts within a social system of property and exchange relations. This remains the algorithm behind the self-interest motive in social and moral philosophy and public policy today.



James B. Quilligan speaking at the International Commons Conference, Berlin 2010

The mind/body dichotomy and the atomism of the individual self led to a new emphasis on reason, knowledge and science. This greatly advanced human and social progress. Yet enormous damage was done as this dualism led to the bifurcation of the categories of empirical knowledge upon which we have built our modern institutions. When physics separated from biology, moral philosophy from natural philosophy, and human sciences from natural sciences, human beings came to think that mind and nature are entirely distinct and do not work organically or synergistically. The mind/body split in liberalism, science and technology has thus resulted in an epistemological break in our mind/nature relationship. In losing our awareness of the interdependence of mind and nature, we have also lost our understanding of and responsibility for the commons. And this has had major implications for common property.

Locke and other liberal thinkers claimed that sovereignty was originally vested in the people. But people's rights to the commons were based on social precedent and seldom encoded into law. Feudal society was organized into estates, towns, guilds and churches. The commons existed on the margins of these institutions. Many of the peasants who lived on the commons worked for the lords of the estates or for local townspeople. Customary and traditional usage protected these common areas against claims of exclusivity without written proof of ownership. Since the commons really didn't belong to anyone, liberal theorists argued, the natural rights to such property could only be assured through the rule of law. And since all men were created equal, the theorists said, they must be equal before the law. Hence, both the small and large landholder would have the same rights to secure property guaranteed through the issuance of formal legal deeds. Under this new property regime, governments authorized the partitioning of village lands, pastures, forests and water sources by the 'free and equal individuals' celebrated in liberal theory.

Yet these individuals did not include commoners. Rather, they were the local landowners who granted themselves the right to enclose and reallocate the people's commons. Lacking formal title,

the impoverished commoners were persecuted for resisting enclosure and driven from their lands and means of subsistence. Customary rights were criminalized. Dissent and resistance were not tolerated. From the late 15th century onward, as the civil law of individual ownership preempted the accustomed rights of common ownership, the world has witnessed countless and continuous large-scale privatizations of the commons.

Liberalism's original philosophical and legal claim was that social systems and moral obligations stemmed from people's inherent natural rights. But liberal theorists endowed individuals with innate traits (fear of others, greed, self-interest) that were totally distinct and segregated from their own environments, societies and cultures. Liberalism's great social error occurred when Locke redefined the natural rights to common property as the prepolitical basis of private property. *The inalienable rights of the individual, derived from nature before the establishment of the state, were now vested in constitutional government and the rule of law.* Commoners were thus denied claims to their shared property through the private rights of property acquisition.

To maintain civil order and prevent social revolution, the liberal state still needed a 'soft' rationale for the regime of private property. This would substitute for the prior rights that the individual had claimed under natural law. So the philosophy of Immanuel Kant was invoked to demonstrate that private property had preeminent status commencing, not from natural rights, but through the ethical reasoning of the individual for the greater good of the world. Kant's *transcendental formalism* thus provided a universal justification for the modern superstructure of liberal social policy and private property. But this explanation for the preeminence of individual property rights did not reflect the ontological nature of human society. Because constitutional government was created expressly to preserve and defend the proprietary rights of individuals, as Locke insisted, *democratic majorities are incapable of altering the pre-existing rights of property.* These rights, upheld and reified by constitutional government, cannot be overturned by majority legislation in the interest of social needs or human rights.

And public property, which is state regulated, is authorized only to the extent that it does not impinge on the interests of private property.

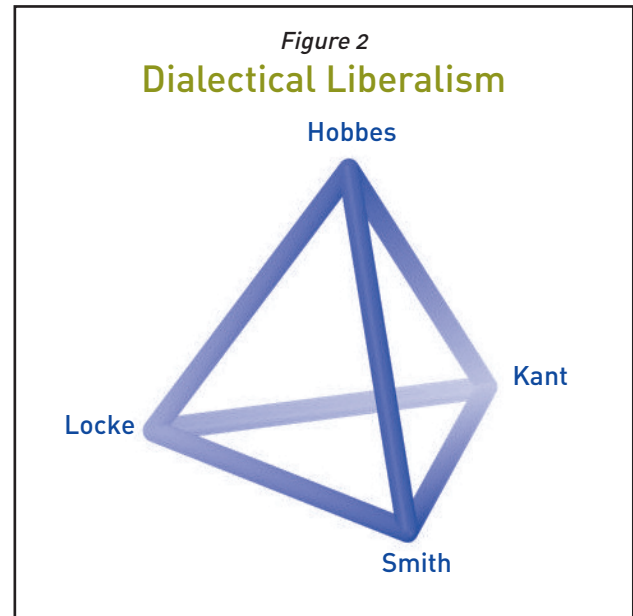
Beyond this, *nearly all autonomous rights to the commons are unconstitutional since state legitimacy is given almost exclusively to private and public property*. Hence, common property has little foundation in civil law. Claims for the commons are largely dismissed as pre-modern ideas, superstitions, or excuses for anarchy and piracy. Both natural and social commons are viewed merely as a passive field waiting to be acted upon—a *res nullius* in legal terms—something to be claimed, contractualized and developed as private property. But the aura of preeminence which private property holds in the modern political imagination and its institutional structures does more than dissuade the populace from organizing alternatives to private acquisition and ownership. *It veils the state's monopoly over the legitimate use of coercive powers to suppress the self-organization of common property and to punish those who violate the rules of private property.*

Market State: Who Added the 'Neo' to Liberalism?

Locke was not the only architect of liberalism. His theory of property holds the consensual center between the two major operating systems of the liberal social order. These poles are represented by Thomas Hobbes' political theory and Adam Smith's economic theory. Hobbes said that the self-interest of individuals who maximize their own welfare inevitably leads to social chaos and conflict. It was Hobbes who first described the legal use of state coercion—authority to command, exert force and restructure societal relations—for the protection of property. Smith said that the self-interest of individual producers and consumers competing for private goods and services automatically maximizes their welfare and that of everyone else. Thus, society enjoys a better allocation of goods and services through both property rights and exchange relations.

After the Industrial Revolution, these philosophies fused into a loosely coordinated dialectical system, with the state responsible for social control and the market for economic productivity. Unlike decentralized systems, which were said to be disorderly, inefficient and wasteful, the *dialectical liberalism* of the public and private sectors optimized efficiency through centralization. Although power shifted back and forth marginally between them, these two primary institutions were united in their commitment to freely transferrable and secure property, the division of labor and enclosure of the commons. And to grace this system with moral validity, Kant showed that liberalism expressed everyone's wish for the greater good of society, making it purposeful and inclusive (Figure 2).

That's how things stood until a century ago. But dialectical liberalism was severely crippled by the World Wars and Great Depression. When John Maynard Keynes' economic theory of effective demand seemed to rescue Western economies from disaster, a major shift to the public sector ensued. During the



Economic Miracle period (1947-1979) in Great Britain, Europe, the United States and elsewhere, a new social order emerged. It was founded on a promise to restructure the liberal system. Nations pledged to improve the material welfare of their people through economic stimulus, public education, expanded voting rights, social security and marginally higher wages. But these measures created an undercurrent in economic, social and political administration which modern capital found deeply troubling. The state was no longer supporting production as before. Property and production were becoming more socialized. Kant's transcendental formalism, which had provided a rationale for the state regulation of property, had no power whatsoever to drive markets. Communism was raging and dialectical liberalism seemed to have lost an engine. Stagnant growth and high prices engulfed the Western economies. The postwar order was floundering.

Liberalism had been developed in the pre-industrial era when the natural bounty of the land was the dominant form of property. Wealth could be generated through imposed scarcity and exclusionary property rights. But the use of coal and hydrocarbons changed the dynamics of production, finance and innovation. With the liberation of developing nations after colonialism and the spread of new forms of technology, value was still being created through land, natural resources and industry. But cultural, social and intellectual property was also creating value. These new kinds of property did not follow the principles of scarcity and exclusion. Unlike the (pre)industrial era, property now was highly mobile and often assumed immaterial forms. Yet these emerging patterns of wealth were so novel and counterintuitive, few people could recognize their actual nature.

A new alliance formed after World War II. The military/industrial/technological/financial complex had its own agenda for refurbishing liberalism. In the 1960s and '70s, this movement linked with free market economists and politicians who were

challenging the ideological premises of the Welfare State and Social Market. The joint platform of these groups was introduced to the public as *deregulation and privatization*. Control of the political economy shifted dramatically to the private sector in the 1980s. Modern technology, globalization, multinational corporations, mounting surplus capital, newly emerging economies, and the end of the Cold War fueled the mass acceptance of these policies. They included reducing governmental regulation and social programs, lowering the barriers to international trade and investment, increasing the extraction of natural resources and strengthening the rule of private property. The popular rhetoric was focused on limiting the size and power of government to allow the free market to flourish. This, it was said, would increase individual freedom, opportunity and ownership. But there was a twist: what the private sector intended was to buy and control government assets and activities and *to use the legitimate authority of the state to extend its constitutional order over global consumer society and common property*.

This new regime has been called *neo-liberalism*. The prefix ‘neo’ implies that a market-based emphasis has emerged as the social order swung from Keynesianism back toward its classical liberal roots. This suggests that we are still in an era of dialectical liberalism. But another term is being used to characterize this historical turn as something rather different from a pendulum shift in power. **Market State** describes what seems more like a role reversal over the past thirty years between the private and public sectors. Indeed, the business community has now taken up many of the social and cultural responsibilities that were formerly the concern of government, such as policing power, social problems, environment, personal health, public and adult education, and the fostering of culture through finance. And the state has embraced market dynamics and corporate principles of efficiency and management to a greater degree than before, marginalizing the role of representative government. As in dialectical liberalism, Market State policies remain unified through a mutual agreement on the social hierarchy of private property, the division of labor and enclosure of commons. But instead of the commons as the primary target of enclosure, the state is also targeted for privatization.

In consolidating ‘hard’ control over the government’s constitutional order and its legal monopoly on coercive power, the Market State has also formulated a ‘soft’ way of demonstrating the pre-eminence of private rights to property. Adopting terminology from the academic and activist counterculture, *the Market State has begun to identify itself as a commons of shared beliefs and practices among those who preserve and manage the resources of private property through constitutional rules*. (Documents from the World Bank, IMF, WTO, NATO, EU, G20 and Pentagon have used this coded language.) Indeed, because it constitutes the social order for managing all resources under its authority, the Market State may yet attempt to redefine everything within its domain as ‘common property.’

That’s the macro view of its grand objectives. But the Market State

is also undergoing a fateful upheaval from below. Private property, the linchpin between laissez-faire economics and politics, is facing an enormous crisis in functionality and legitimacy. The incentives behind property and production—surplus value and capital accumulation—are failing to provide goods and services to effectively meet the needs of the world’s people. At the same time, the neo-Kantian premise of the Market State—that public/private constitutionalism is a public good—has no credibility.

This crisis has several facets. First, the Market State believes that decentralized systems are disorderly and inefficient. It assumes that individuals and groups don’t know how to organize their own property, or simply cannot. The Market State is chronically incapable of recognizing the free and spontaneous forms of self-organization taking place in labor, knowledge, language, cooperation, social networks and governance. The denial stems from the Market State’s insistence that freedom flows only from the social hierarchy of private property. But this positivist ideology undermines the mutual respect and common purpose of its citizens, creating deep mistrust in the Market State.

Second, in a related point, the Market State prevents consumers from participating in production decisions. Bureaucratic rules and institutions and hierarchical distribution structures create a formal division between the people who produce goods and services and those who consume them. But when the users of resources are not the co-producers, their practical and applied knowledge of production is suppressed. They become disempowered and the resource itself deteriorates in quality and value. This forced separation of resource users from producers and providers has led to widespread disillusionment and an abandonment of collective responsibility throughout society.

Third, the emergence of the Market State has severely weakened the legitimacy of national government. The champions of private property claim to defend individual property rights in the name of universality of property for the masses of people. But the sovereign authority of private property was not valid to begin with, since it has always failed to represent the countless numbers of individuals who cannot afford to own property and never will. Under dialectical liberalism, the state had claimed its own legitimacy by legitimizing private property. Now the Market State, through its absolutism over the rules and institutions of private and public property, has made a travesty of sovereign legitimacy. *No social contract exists for the constitutional order of the Market State*. The people have no common charter for the provision of human needs, alleviation of poverty, preservation of nature, or rights to their commons.

Finally, it is Locke’s metaphysics of the person—the mind as a mental substance and the body as its material property—that remain the primary contradiction in the Market State. As this analysis suggests, the social hierarchy of property, division of labor and enclosure of commons are all externalized projections of the mind/body split in the individual. Under the spell of Locke’s code

that the individual mind must dominate the property of the body, the Market State strives to regulate and commodify social governance and social labor. Yet new forms of management and new sources of wealth are being organized beyond its exclusive control. Now that immaterial property and production are becoming an inexorable force in civilization, the Market State is facing an epochal challenge. As co-property and co-production magnify across the world, modern markets and sovereign states will become increasingly inefficient in providing and allocating resources to meet the basic needs of people. This incapacity of the system is already causing it to crack and rupture. At some point, a new social order will be imperative.

Claiming our Commonhood: Trusteeships of Common Property

Can humanity develop a democratic basis for property that is different from the one defined by Locke, Kant, Hobbes and Smith? What is the meaning of inalienable rights for the commons today? The current claims for natural rights—rights of nature, human rights, birthrights, rights for the greater good, and rights of common heritage—are all highly significant. Each has some validity based on the affirmation of a particular quality of the commons. Yet none of these types of rights expresses the intrinsic indivisibility of common property: *the commons as a preeminent and emergent realm shared by nature and society.*

There is a source of inalienability that has largely been overlooked: the phenomenon of a commons practice undertaken by a community on behalf of a resource and its users. The choice-based, deliberative actions of a group focused on preserving, producing and using a shared resource are both preexistent and evolving. Hence, a commons practice is simultaneously an ontological expression of *group being* and a social/political expression of *group becoming*. This brings us much closer to the non-dualism between nature and society that is missing in the current claims for natural rights. When *self-organizing preeminence* and *rule-guided emergence* are fused in a commons-based practice, the reality is one of spontaneous and autonomous order. This is not a 'natural right' or even a 'commons right,' since the term 'right' presupposes the need for formal validation through the liberal social contract, positivist law or sovereign government. Hence, to avoid layers of historical and current confusion over natural rights, the term *commonhood* is introduced here. ***Commonhood is the self-organizing and rule-guided practice of a community to preserve, make, manage or use a resource through collaboration.***

To demonstrate how commonhood arises, we return to the variety of institutional domains that foster and maintain collective property outside of the market and the state. People in traditional communities generate resilient and effective resource management based on local ideas, learning, deliberation and cooperation. Newly developing commons such as the internet also demonstrate similar properties of shared administration and value creation through reciprocal networks, social innovation and open designs. In both cases, the key is involving resource users in the

preservation, production and use of a common resource. When users are co-producers of the goods and services they receive and organize, their motivations, knowledge and skills become part of the production praxis, leading to new ways of interacting and coordinating natural, social and economic life. This collaboration between users, producers and suppliers over their shared property is the basis of commonhood.

The inalienable claims of commonhood—arising from and embedded within a commons practice that is independent of private ownership or state authority—are unconstitutional by definition. They are the non-dualist expressions of an era of natural and social commons, not of an era of liberal individualism. But this will change. Since the present form of government is based on the protection of private property rights, new checks and balances will be needed to give the commons institutional and legal protection against enclosure. There is only one way that states will recognize the integral claims of commonhood. ***The constitutional basis of the sovereign state must be entirely reformulated, giving central importance to trusteeships of common property.*** Trusteeship is not the same as ownership. Individual ownership gives exclusive control. Collective ownership, too, is subject to social hierarchy and abuse, since a co-owned property may be managed by a majority, exploited and divided, whether equitably or not.

Commons trusts do not own property. Trusts involve the participation of users and producers/providers in the preservation, production or use of a resource. They hold and manage this resource as a common property for existing and future generations. Empowering commons trusts to do this work is a tall order, but it is vitally necessary. Since the Market State has no interest in or constitutional responsibility for the commons, a new social contract must be written to give the commons and commons trusts a central role. *What is needed is a post-constitutional order and legal system that is premised on the autonomy of the commons outside of the public and private sectors.* This will mean challenging the present social order of proprietary rights through the practice of commonhood. And a key part of this change will be a shift in the flow of revenue from private to common property.

Recreating the Code: From Private Rent to Commons Rent

Under the present system of rent, individuals and corporations act as rentiers by acquiring various commons and holding their revenues privately. Economic rents are a medieval custom which was carried over through the age of liberalism until today. For centuries, the private rental of property has produced an outcry from many observers. Baruch Spinoza argued against the common property of land being rented to producers and called for the taxation of land rent. Economists from Adam Smith and David Ricardo to John Stuart Mill and Thorstein Veblen were also critical of the pre-industrial tradition of property rents earned from land. Henry George claimed that the squandering of rental income is a direct cause of social poverty. John Maynard Keynes went so far as to predict the 'euthanasia of the rentier' in some distant future. These commentators viewed land rent as

unearned income gained by landowners who do not continue to invest in their property, yet benefit from increases in its value. Many analysts have proposed replacing the taxation of houses and buildings with a tax on the land beneath them.

But today, it's not only land value that needs to be taxed. Before the 19th century, land was the dominant form of property. Since land was immobile and material, value could be created through scarcity and exclusive rights. At present, many other forms of natural and socially created wealth (labor, governance, ideas, languages, social networks) are challenging the concept of property based on scarcity and exclusivity. These mobile, immaterial forms of property prefigure a major adjustment in the balance of economic power. It's possible now to end the flow of rent to the private sector, which derives this unearned revenue from the enclosure of common property. Instead, society could create trusts that charge rent for the use of a variety of commons. This entails a shift from *private rent* (where common/public resources are privatized and rent remains in private hands) to *commons rent* (where revenues are used for the common/public benefit).

In such a system, each major resource would be represented by a commons trust. The trust would place a cap on the resource according to its sustainable limits, leaving some portion of the resource available for use. The trust would then charge private industry or state businesses and utilities for use of the resource. For example, a small rent may be placed on replenishable commons such as indigenous knowledge, education, intellectual property, music, arts, land, pastures, parks and gardens. Rent may also be assessed on depletable commons such as minerals, technological hardware, aquifers and the atmosphere. Rather than flowing to the private sector, this rent would flow to commons trusts. These rental fees would then be used to preserve, restore and manage the resource and ensure that revenues from the commons benefit everyone equally, especially the poor and marginalized.

In a society based on commons rent, the incentives of businesses and government would be roughly similar to today's: the private sector profits through the extraction and production of resources rented to them by the commons sector; and the state serves the interests of both the private and commons sectors. The difference in this new system is that wealth circulates more freely and equally through nature and society, rather than being captured by individual interests. This transcends the framework of the Market State by creating a much more representative balance of power and wealth between the commons, business and government.

Co-Property and Co-Production: The Emperor Has No Commons

Historians tell us that people have been in conflict over property rights since the beginning of the human race. At some point, instead of fighting with others for the access and use of property,



individuals decided that ownership and management of their resources in groups or communities would improve the lives of everyone. This was a major leap in human social evolution. Yet the negotiation of control over our many shared spaces remains contentious. The struggle between those who would preserve and those who would enclose the commons continues to the present day.

It's become evident that common property regimes often fail because of the *flawed assumptions about human nature* that are implicit in the superstructure of modern society (mind dominates body, people are greedy and dangerous, self-interest is a natural right). We understand now, at least, that property is not a material projection of an individual's body, but a set of variable, inclusive rights embedded in our interrelationships. Since liberalism's argument for exclusive ownership cannot be validated metaphysically, as this article maintains, many of the assumptions behind the property law of private ownership are also invalid. Based on a mistaken metaphysical premise, our forbearers created government to protect private property; and now the private sector has virtually taken over government through the Market State, creating an untenable and dangerous situation. The challenge to the present constitutional and legal order could not be more profound. In the hearts of growing numbers of people, the public trust has already been annulled. And in due course, the masses will be clamoring for a new social contract to restore their trust. The regime of inalienable private rights to property will be contested. A new epistemology of common property in politics, law, social policy and economics will be needed.

The first place to begin is economics. The liberal atomism of *supply and demand* economics (derived from the First Law of Thermodynamics) must be upgraded through the evolutionary dynamics of *stock and flow* economics (based on the Second Law). In this new operating system, flows of resources are automatically recycled from their resource stocks to wherever they are needed. When people are assured that their basic needs will be met the negative freedom of liberalism (exclusive property and defensive security) is turned into the positive freedom of co-creation

Figure 3

Cap and Rent Adjusting to a Commons-based Economy

- **Common goods** are protected to the extent possible for future generations through a cap on the sustainable limits of their use
- Some portion of these resources are rented to private enterprise for the production and consumption of *private goods* by the present generation
- The rents are redistributed by the state as *public goods*, to repair and restore depleted commons, provide a universal income, and benefit people who have been negatively affected by the extraction and production of their common resources

(inclusive property and human security). The individual no longer identifies with owning things but with sharing them. In so doing, the role of a full spectrum of all commons—intellectual, social, cultural, natural, material, solar—is acknowledged in every human interchange.

The modernist correlation between the mind/body split and the supply/demand split—sustained through Locke, Smith, Ricardo, Marx, Jevons, Freud, Keynes, Mises and Hayek—is now dissolved. The mind (symbolized in economics as the supply-side generated by resource producers and providers) is no longer in domination or ‘ownership’ of the body (represented as the demand-side generated by resource users). This breakthrough in human self-understanding can lead to a change in both our relationship with nature and in the social balance of power. Once the contradiction of the metaphysical mind/body split is resolved through commons-based economics, the contradictions of the epistemological mind/nature split, and the institutional self-interest/common interest split, will be far easier to unwind. A political culture of commonhood would flourish through communities of practice and trusteeships. Common goods, private goods and public goods would be realigned, creating new synergies for nature and society. *We may summarize this co-evolutionary adjustment as **cap and rent** (Figure 3).*

First, the commons are managed by trustees representing current and future generations and species. A cap on the withdrawal of each resource (replenishable or depletable) is established at a differential level between commons preservation and commons productivity. When this cap on resource extraction and use is set at sustainable levels, the social hierarchy of property and production fades away. Human relationships and systems are infused with qualities of *group being* (preeminence). These intersubjective virtues—trust, communication, cooperation, respect for multiple perspectives, conflict resolution, creativity, autonomy, liberation, benevolence, charity, generosity, altruism, sociability, camaraderie, friendship, loving understanding, civic

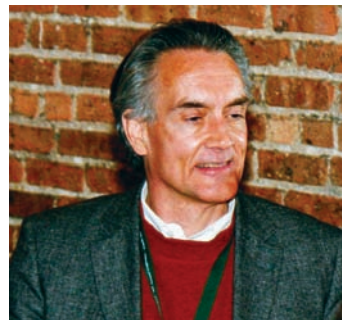
virtue, conservation and stewardship—allow us to reconceptualize ourselves, our relationship with nature, our social relations and our institutional designs.

Second, when the trust charges for the use of common property, the revenue currently derived from the privatization of common property is recovered. This reduces speculative hoarding and the need for taxing labor, income, sales and profits. The rent from the commons now goes into natural and social dividends, which dramatically changes the circulation of money and human energy in society. When rent is paid back to the people for the use of their commons, this engenders *group becoming* (emergence). Dividends from the commons restore the environment, benefit the poor, and generate an income for everyone. And this encourages new spending, consumption and investment in the private sector, such as green construction, industrial production and technological innovation.

In passing from private ownership to trusteeship, a new view of human life emerges through the co-evolutionary principles of being and becoming:

- **Cap the stock** - when commons are held in trust, preeminence (natural, social and individual well-being) is realized through the preservation and appropriation of resources
- **Rent the flow** - when commons dividends are shared by everyone, emergence (natural, social and individual development) is sustained through the allocation and use of resources

In sharing the commonhood of humanity, we are called to a post-constitutional order based on co-property and co-production. As the economic means of wealth generation shift from individual property to natural and social property, a new politics of freedom, equality and democracy will emerge to meet the needs of all people and species. A century ago, the objective of the workers’ movement was ownership of the means of production. Its goal was social and economic revolution. Today, the objective of commoners is production of the means of non-ownership. Our goal is commons trusteeship.



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TOWARD A COMMON THEORY OF VALUE

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