

A Place in the World:

*A Review
of the Global Debate
on Tenure Security*



FORD FOUNDATION

By Lynn Ellsworth

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Property rights have a profound effect on who benefits from forests.

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Foreword

By Michael Conroy

What does it mean to have “secure tenure” for a piece of farm land, forest land, or pasture land? And how important might “secure tenure” be for the creation of sustainable community livelihoods among the hundreds of millions of the world’s poorest people who are dependent upon land as the prime natural asset from which they might develop a livelihood? What relationship does the definition of “secure tenure” have to the creation, use, and defense of property rights?

These are some of the critical issues addressed by Lynn Ellsworth in this informative paper, one of a pair of papers on tenure issues related to forest lands developed by Forest Trends, Inc. at the invitation of the Ford Foundation. Drawing on more than 50 years of academic debate and the evolution of four distinct traditions of land tenure analysis, this paper sets the stage for its closely linked partner, a paper entitled *Deeper Roots: Strategies for Strengthening Community Property Rights over Forests: Lessons and Opportunities for Practitioners*, which is also published in this series.

Why is this work of special importance to the Ford Foundation? Why undertake this analysis at this point? What importance could it have for other funders and development organizations? Those questions provide the focus for this brief foreword.

For the past five years, much of the work of the Ford Foundation linked to the alleviation of poverty and injustice has been organized conceptually around an asset-building approach in which work at the level of local communities is an important facet. The asset-building approach to poverty alleviation provides a significant departure from other paradigms that focused primarily upon subsidy and transfer programs that temporarily raise the incomes, or the consumption levels, of persons deemed to be poor, without affecting significantly the determinants of that poverty (cf. Sherraden 1991; Oliver and Shapiro 1995; and Ford Foundation 2002). The asset-building approach builds the enduring resources – indeed, the assets – that individuals, organizations, or communities can acquire, develop, improve and transfer across genera-

tions. These assets include (2002, pp. 2-3):

- Human assets such as the education and other marketable skills that allow low-income people to obtain and retain employment that pays a living wage, as well as comprehensive reproductive health which affects the capacity of people to work, overcome poverty, and lead satisfying lives;
- Financial holdings of low-income people, such as savings, homeownership, and equity in a business;
- Social bonds and community relations that constitute the social capital and civic culture of a place and that can break down the isolation of the poor, as well as the webs of interpersonal and intergenerational relationships that individuals need as a base of security and support; and
- Natural resources, such as forests, wildlife, land, and livestock that can underpin communities and provide sustainable livelihoods, as well as environmental services such as a forest’s role in the cleansing, recycling, and renewal of the air and water that sustain human life.

When this approach is applied to communities that are dependent upon converting natural resources into sustainable livelihoods, it becomes a strategy for building the natural assets of these communities. The theoretical bases for building natural assets have been explored by Boyce (2001), Boyce and Pastor (2001), and Boyce and Shelley (2003). Boyce and his co-authors note that the application of asset-building strategies to natural assets is compelling because “strategies for building natural assets in the hands of low-income individuals and communities can simultaneously advance the goals of poverty reduction, environmental protection and environmental justice” (2001, p. 268). It countermands the conventional wisdom that the poor face an inescapable tradeoff between higher incomes and a better environment. And building natural assets can contribute not only increased income but also nonincome benefits such as health and environmental quality.

For more than 20 years Ford Foundation programs around the world have involved support for community-based forestry in its many forms and facets.

From significant support for joint forest management in India, where communities become the guardians of state-owned forests in exchange for limited sustainable use rights, to programs for improving community management of the 70% of Mexico's forest lands that they control, and community involvement in the low-impact restoration of federal forest lands in the United States, community approaches to forestry have been a hallmark of Ford Foundation work in many countries.

Ellsworth's analysis in this paper illustrates that there is no single form of tenure, no particular pattern of property rights, that is uniquely associated with the most effective management of forest lands. In fact, underlying property ownership regimes have been changing continuously in most countries over long periods of time. Of particular importance is her assertion that the increasingly influential neoliberal property rights school of analysis "over-emphasizes" the virtues of property rights defined in terms of market trading. Effective markets for land are often nonexistent or flawed.

Market-based approaches may create new risks to secure tenure, rather than alleviate them, and may lead to unfair and inefficient allocation of natural assets. Common property regimes provide some useful protection from those market forces, and they are valued because they lessen the risk of alienation of ownership by market forces.

Many of the most important values associated with the ownership and stewardship of natural resources are "nonmarket values," she notes. And some community-based property regimes are more capable than individualistic property rights regimes to capture the full set of values embodied in those resources. The values associated with tenure security and its importance to the alleviation of poverty in resource-dependent communities cannot be resolved, it would seem, by expert analysis, but perhaps as Ellsworth writes, "only by each society through [its] own political means."

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FORD FOUNDATION — NEW YORK: JUNE 2003

Market-based approaches may create new risks to tenure security, rather than alleviate them, and may lead to unfair and inefficient allocation of natural assets.

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A Place in the World

By Lynn Ellsworth

The nature of tenure security and what should be done about it have long been debated in the overlapping worlds of academia and international development. The arguments, concepts, and assumptions in these debates have influenced land policy around the world. They continue to do so and are now being freshly applied to the case of forests, where underlying ownership is often hotly disputed. This paper provides an overview and analysis of the literature on tenure security, paying special attention to arguments over what tenure security is and how it is related to the goal of helping communities build assets and improve their livelihoods – especially communities living in and around natural forests.

This literature review is a companion piece to “Deeper Roots: Strengthening Community Tenure Security and Community Livelihoods,” a paper based on case studies from India, Indonesia, Nepal, Philippines, South Africa, Tanzania, Bolivia, Brazil, and Colombia.¹

In this paper we first lay out the history of western notions of property rights giving special attention to natural forests. This history is important because there we find the original core concepts and arguments that still dominate theory and practice about tenure security. We briefly describe and compare four academic traditions, each of which has something to say about tenure security and livelihoods. These traditions – or “schools” – are: Property Rights, Agrarian Structure, Common Property, and Institutional. Each of these schools of thought focuses on a different facet of tenure security and in doing so has contributed to how property rights – including those related to forests – are seen in the real world.

The Property Rights school underscores the value to an economy of having tradable property titles. Its analytical attention is focused on

examining this value. The Agrarian Structure school draws our attention to troubling equity outcomes of an unrestricted trade in property titles. Someone of this tradition would urge us to consider the values that a middle class of asset owners, protected from tenure insecurity, bring to a democratic society. And in another analytical tradition, those in the Common Property school argue for the recognition and support of traditional, community-based property systems, many of which still operate in the world’s remaining natural forests. In that tradition, the commons is seen as a source of nontradable livelihoods for the poor. Moreover, the commons is seen as a thing that grants many people a place in the world. Finally, the Institutional school would urge us to pay attention to how the larger political economy is constantly reshaping property regimes – and then providing tenure security or not to those people who claim a particular property right.

None of these traditions is in fundamental disagreement with the others over the idea that various kinds of property or “tenure” rights ought to be secure, although they do often disagree profoundly on other points. What is important for this review is how they understand the very idea of “security” as well as how each tradition finds a different facet of security of tenure worthy of policy attention.

Acknowledgements This paper was produced by Forest Trends at the invitation of the Ford Foundation. The author is grateful for substantial contributions from Andy White. Helpful commentary on earlier drafts was also received from Owen Lynch, Daniel Bromley, John Bruce, and Augusta Molnar. Danièle Perrot-Maître and Chetan Agarwal also provided support for the case studies.

Definitions *of terms related to tenure have changed over time and continue to change. And usage varies widely among academic disciplines. Moreover, legal usage is frequently at variance with dictionary definitions and popular use. This situation makes picking out a definition for some terms a diplomatic task.*

Property: the Oxford English Dictionary (OED) says property is “a condition of being owned by or belonging to some person or persons, hence the fact of owning a thing.” Or, it can be “the right – especially the exclusive right to the possession, use or disposal of anything.” James Madison (cited in Ketcham, 1990) in a key argument added to this concept when he wrote: “property embraces everything to which a man may attach a value and have a right, and which leaves to everyone else the like advantage... hence a man may be said to have property in his rights.” Madison was arguing that one of the duties of government is to protect not just the movable property of its citizens (as Locke had argued), but also their other nonmarket values such as a right to justice. This issue comes up again in this paper in the latter sections.

Property regime: Institutionalists thinkers define a property regime as a social relationship among three parties. The three parties are the person with a right of any kind, the person who forbears from violating that right, and a third party (usually government or a court) who guarantees the right and obligation to forbear.

Commons, Right of Common, Access rights:

The commons is “the undivided land belonging to the members of a local community as a whole...land held in joint occupation, not in the lord’s domain which later came to be wastelands not already in the lord’s domain.” (OED). The OED also notes that there is a use of the term specific to the legal profession, being *the right of common*, which refers to a use or *access right* to another man’s land, examples being pasturing, collecting turf, fish or wood for fire or repairs.”

Common property: A scholarly distinction that refers to those commons that have managerial rules that regulate use of the commons (Bruce, 1998).

Tenure: The word has its origins in the Latin word ‘tenere’ meaning to hold or grasp. The OED says tenure is “the action or fact of holding anything material or nonmaterial”. The OED also allows for tenure to mean “terms of holding” or “title.” The former is typically employed in the academic literature. In a recent review paper, Devlin (2001) makes a useful distinction between tenure and property rights. She notes that when academic writers talk about “property rights” they tend to mean what William Blackstone did when he said property rights refer to “full and despotic dominion” over something, including the right to trade, buy, sell, mortgage, and use at will (Blackstone, cited in Thompson, 1991). However, when contemporary writers talk about “tenure rights,” Devlin points out that

they are usually implicitly referring to a *subset* of that despotic dominion, which in most cases means limited use or access rights to a resource such as a forest, as well as the duration of those rights over time and across generations. This paper follows Devlin’s lead on this.

Title: “a legal right to the possession of land or property; the evidence of such right” (OED).

Open-access resource:

a resource, the use of which is unregulated and unmanaged such that anyone may freely use it without distinction or hindrance.

Public or State property:

property owned by any level of government and distinct from a commons.

Feudal Forests and Britain's "New Forest" of William the Conqueror

Prior to and with the rise of the seigniorial system in the feudal era, much of Europe had vast tracts of dense forests inhabited by all manner of bark-strippers, hunters, collectors of forest products, charcoal-burners, blacksmiths, wood-ash dealers, bandits and religious hermits—all living at the margins of the community's and lord's powers. "Forest use was intense and unregulated" (Bloch, p. 8), very much like an 'open-access resource.' In fact, "the great forests of the early middle ages" were not clearly under the reign of the manorial system, being "isolated from communal life..." (Bloch, p. 8). Both lord and peasant also hunted and grazed cattle, pigs, and horses in the forests, so much so that a common unit of measurement of a forest was how many pigs it might sustain (Bloch, p. 7). From 1050 onwards, and intensifying in the late 12th to the end of the 13th century, enterprising lords throughout Europe initiated a period of large-scale forest clearances (assarts). New manors and villages were established relentlessly in what had once been forest and marsh. Forests soon came to be islands in a sea of agrarian land use. Many villages opposed forest clearances – "accustomed as they were to benefit from the grazing or the free enjoyment of the forest's wealth. So it was often necessary to sue them [the



Custom, as opposed to right of common, also allowed commoners to cut fern and gorse and raise bees in New Forest.

peasants], or buy them off, especially where they had the support of some local lord who shared their interest in forest privileges. The archives are full of records relating to litigation of this kind." (Bloch, p. 18). Some of those disputes were solved with violence against the peasantry. Villages opposing a forest clearance could be and were razed.

In the specific case of England, there is some evidence that prior to the Norman conquest in 1066, local lords tried to claim hunting rights in some forests. There was even an office of "forest warden." But as a conqueror, William took these minor Anglo-Saxon traditions to an entirely new level of property rights for the crown. By right of conquest, he declared about a third of England as "royal forest" for his use. It was called "New Forest." His seizure meant that he alone could have the income from all forest products in New Forest. It is useful to recall that the English forests were inhabited with villages as well as the usual forest inhabitants noted above. In fact, only about a third of the land in question was actually forested in the popular sense of the term. Many areas of it might be better described as thinly forested grazing lands and heath. William's act created a howl of popular outrage and generated legends such as 'Robin Hood' and 'The Tale of Gamelyn.' The seizure was thought unjust: "rich men bemoaned it and poor men shuddered at it" (Anglo-Saxon Chronicles cited in Rampey, 2001). Moreover, William created an entirely new "Forest Law" – outside the common law – that prohibited the locals from cultivating land or using the forest's products. The Forest Law was administered by a frequently corrupt "army of forest officials answerable only to the king" (Rampey, 2001). Their role was "to extract fines and collect taxes, providing a perpetual source of revenue for the Crown." Over time, commoners wrested back from their kings various 'rights of common' to use New Forest products such as the common of mast, marl, pasture, and turbary. Custom, as opposed to right of common also allowed commoners to cut fern and gorse and raise bees in New Forest. But to this day, New Forest remains Crown property (Rampey, 2001; Cooper, 2001).

History of the Concept of Tenure Security

“Security of tenure” is an idea that is embedded in grand philosophical, political and economic theories and beliefs about how our contemporary society came to be. Because these theories and beliefs concern the nature of government, justice, and economic systems, they are inherently controversial. So a bit of history is necessary to help us gain a perspective above the fray of argument. In this section, we see that most of the western concepts related to tenure security originated in an historical discussion about how Britain, Europe, and Russia were transformed away from feudalism. Property rights and tenure security played a role in that “transformation,” although the nature of their role remains contested.

Much of feudal Europe was characterized by variations on the manor or seigniorial system of organizing agrarian life. It featured a set of mutual obligations and duties between lord and the various classes of “nonlord.”¹ Although enlightenment philosophers liked to attack feudalism from a political rights point of view, not all the mutual duties and obligations were exploitative.

The manorial system arose after the fall of the Roman Empire in a lengthy melding of local and Roman custom with Germanic tribal traditions at a time when people felt a great need for physical security.² The manorial system solved both a security and an economic problem of organization so well, “it spread with the Frankish conquests into northern Italy, Spain, and later into the Slavic territories. The Normans took it into England in 1066. And from England, feudalism spread to Scotland and to Ireland [CDE/EB].”

In the manor, land was not traded to outsiders, but held by the “lord of the manor,” who might be a king, an ecclesiastic, a baron, or more often, a much lesser noble. The peasants resident in a manor cultivated land in one of many local variations of the open-field system. Land was

divided into strips and planted under collective management rules. Each peasant might have three strips: one for winter crops, one for summer crops, and a third for fallow. Land was sometimes traded among members of a manor, and in some places [as in parts of Russia], land was redistributed every few years using demographic criteria [White 1996, Bloch 1966].

The manor’s territory had several parts, each under different management and ruled by different ideas about property. For example, the *demesne* was the land of the lord for his own immediate use. The arable bits of it were often mixed in pell-mell (with shifting boundaries) with the arable land reserved for the peasantry. There was also meadowland (typically also held in common for additional pasturing of animals) woodland, and waste. The local woodlands and fishponds usually belonged to the lord, although there was again significant variation on this. “Wastes” were typically unused bits of land such as swamps, gullies, and distant forest. If fought over, they were property of the lord by virtue of his power, but this was not everywhere the case. Wastes were usually managed as an open-access resource and to some observers they got lumped in conceptually with the commons. Last, fallow land used for pasture could also be referred to as “the common” [Bloch, 1966].

The peasant typically owed labor service, a share of the crop, and military service to his lord. In turn, the lord owed the peasant military and legal protection. Most important for this paper, the lord could not take away the land – the principal means of livelihood from the peasant. Moreover, in times of poor harvest important lords were “to use their coin and credit to prevent starvation (CDE/EB).” In addition, there was often a very large set of locally varied and sometimes codified use rights to the different parts of a manor’s territory that meant peasants could and did supplement their livelihoods by collecting timber and

other resources from the lord's forests, the commons, and the wastes.

In some places, villages were even incorporated and had by laws under which the reciprocal rights and duties of lord and peasant were laid out. Land transactions, for example, might take place in a court of tradition rather than in the lord's courts – as long as outsiders to the manor were not involved. It is also important that unfree peasants could convert their in-kind service obligations to the lord for fixed rents. Eventually, they could buy their freedom as well. The manor also regulated exchange with markets, each manor acting (in a very rough analogy) like a shareholding corporation, producing various products, some of which were consumed locally, some of which were exchanged.

This deal between lord and peasant gave each person a geographic place in the world that could not easily be denied. It was a place that

could be passed on to children, although the land itself was not very tradable. This deal granted a secure place in the world. It marked the early meaning of “security of tenure.” For a feudal peasant, it meant that the means of life – a livelihood – in a specific place in the world would be granted him in exchange for predictable service to a specific person. Not all peasants were unhappy with that particular feudal arrangement (e.g., in Vendée in France prior to the French Revolution).

After the 12th century the feudal system and the deal for a place in the world slowly began to fall apart. In Britain, for example, the manorial and open-field systems were incrementally undermined by both political and market forces from the tenth century onward. Then, in the late 18th century in the name of productive efficiency, those forces culminated in violent physical and legal attacks by that country's powerful class upon the weak in the remnant commonages and open fields. That period featured the enclosing of unfenced open fields and commons. This created immense levels of injustice and suffering. A powerless, unenfranchised peasantry lost its last bit of commonages and many of its economic “rights of common” as England entered the late mercantile and capitalist eras (CDE/EB, 2001]. The peasants lost their place in the world. And they wandered. Many ended up working in cities or emigrating. Debate among historians on the causes and benefits of these enclosures is by no means resolved.

The nature of the “falling apart” of the feudal system and the exact “how of it” are still debated by historians, especially when it comes to figuring out the balance of market and nonmarket forces that were brought to bear to untie people from their feudal rights and place in the world. Many scholars now focus on how tenure rights to land moved from being secure and uncontested to insecure and contested.³ The idea was that things that were once nonmarket and not tradable (your right to be in a geographic place) became tradable in marketplaces,



In feudal Europe peasants could supplement their livelihoods by collecting timber from the lord's forests.

creating new winners and losers in the larger society. Some scholars study how things that could not be transformed into marketable commodities were simply discarded by society, often after lengthy political battles and economic processes. Some scholars even say that the creation of tradable property rights in fenced plots of land (which may or may not include forested land) was representative of a critical sea change that took place in the industrializing world's notion of property rights. And a few people even argue that tradable title in land was the single most important change that allowed capitalism to flourish as it did [North and Thomas, 1977]. That is a bit extreme, and it is important to note that this argument has usually been made without reference to accepted historical fact. But since the argument gets a lot of popular press, it is important to note that many historians and sociologists say that granting property rights such an elevated status in history grossly oversimplifies the record and neglects the role of a dozen other important factors – from technology to the use of force to the very deliberate efforts of those in power to create, structure, and nurture into existence the market economy we know today [Polanyi, 1944].

The rise of the environmental movement in Europe and the United States has added a new dimension to this debate that is especially relevant in this paper. While some of nature's values can be partly commodified and traded using Western-style individual property rights regimes – such as carbon or watershed services – many values such as “a place in the world” or “landscape beauty” cannot be so traded. Nor can religious or cultural values associated with a particular place. This raises a question: can people have rights in values that aren't traded or can't be completely traded? James Madison (see definitions of property on page 5) said we do have rights to such values—justice for example. And environmentalists have inspired themselves

As England entered the late mercantile and capitalist eras, a powerless, unenfranchised peasantry lost its last bit of commonages and many of its economic “rights of common.”

The peasants lost their place in the world.

from him. They argue that nonmarketable and intergenerational values originating in nature are real and need to be protected. They say that conventional market-based solutions to preserving these values – while sometimes useful – will not preserve enough of them. They believe that in order to protect more of those values, ownership of some of nature's nonmarketable values must accrue to government or to local communities, to be held in trust for the future.

These debates are relevant outside the world of historians of Europe and that of the environmental community. In many developing countries and in the formerly communist countries, all kinds of widely varying community property rights systems can still be found. Many survived colonial and communist attempts to remove them as well as the steady pressure of market and demographic pressures.⁴ Some scholars insist that these community-based property regimes are an obstacle to market development and productive efficiency. For them, the job of developers in those countries is to create a full Western-style set of property rights in all things, complete with land administration systems, titles, and deed registries. While nobody disputes the power of tradable title property regimes to unleash entrepreneurial energy, we

shall see in this paper that there are good arguments for developing new forms of modern property rights that are gentler to and more inclusive of the world's remaining community-based property rights systems, systems which after all provide many nonmarket advantages to those who are using them [Polanyi, 1944; Moore, 1944].

At the heart of all of these historical views and debates about property rights is a near-universal notion that a good property rights regime ought to grant people something called “security of tenure.” We have already seen that a feudal notion of what that phrase means is “a place in the world.” But today, it turns out that there is considerable variation among contemporary scholars about what “security of tenure” really means in the nonfeudal world. There is argument about who should benefit from tenure security, what its virtues are to a society, how to achieve it in the policy arena, and the role it plays in relating communities to markets and livelihoods. The next section reviews those debates, roughly classifying the great many academic ideas on the subject into four traditions or “schools of thought” based on the aspect of security of tenure that is thought to be important for policy making.

Security of Tenure and the Property Rights School

CONCEPTS AND ARGUMENTS

The Property Rights “School” is an old one in academia.⁵ When members of this school talk about property rights they mean individual, private, tradable titles in whatever resource is at hand. They believe that such titles are an indispensable precondition to economic growth and development and the cause of the prosperity of western countries. Moreover, property systems anchored in individual, tradable titles are (in their view) the best option around for managing property of all

kinds because they encourage efficiency in producing things.⁶ We will see later that the idea of efficiency itself is contested by many scholars with a different analytical vision of how the world works.

Members of the Property Rights school are often evolutionists who think that as soon as a population grows, a resource will get scarce and then everyone will spontaneously agree to create a private property system that honors individualized tradable title.⁷ At the same time, and in a bit of contradiction to the evolutionary character of much of their thinking, members of this school also say that governments in developing countries should do everything possible to hasten, assist, and nurture the creation of tradable private property rights in resources.⁸ Moreover, whatever can't be individualized in their view should become property of the State.

Property Rights people cite a famous story of psychological and philosophical virtue to recruit people into their school, a story based in the political economy of Jeremy Bentham and David Ricardo.⁹ To make a complex story short, it goes as follows: if everything is marked up with an individual title, the rare combination of a marketplace in proximity to “security of tenure” over things will spontaneously unleash pent-up entrepreneurial energy (or “greed” to use Bentham's word). Moreover, if everyone freely trades things based on individual comparative advantage, all will end up better off than they were before trading. And last but not least, the system of trading has the desirable and unexpected result that everyone will find a place in the world that leads to his or her own most productive, efficient use to society at large.

Property Rights scholars of this school go even further to say that even if two people make a trade and one loses out on the deal, the world is still a better place – provided the winner has the “potential” to compensate the loser. This notion is called “Pareto Optimality.” It should also be noted that “winners” in this analytical framework are

Tenure Security and the Case of Natural Forests

In most countries with an endowment of the world's remaining natural forests, the government claims most or all the forests as publicly owned. In many cases they are ignoring local claims to the forest. Forests in fact are subject to multiple, overlapping claims to their resources. Some of the people making ownership claims are not even local residents. This complex situation means that communities living in and around natural forests often have no security of tenure over the asset they may even think of as their own. This creates social justice problems in many parts of the world, not just for indigenous and traditional forest peoples, but also for many rural communities who are outraged to realize that their forest commons has been claimed by the government.

Why is state ownership so common? The first explanation is simply the bald fact that “state property” in many countries is a relic of monarchic, colonial, or communist times. And, forest management was often the last thing to get “localized” during the democratic revolutions of Europe. Hence it got exported during the colonial period. In developing countries the era of nationalism and the move to independence often did not change this colonial heritage in forest property rights.

A second reason often cited for state ownership of forests is that of “market failure.” This merits some explanation. Many economists adhere to the notion that when goods are not completely privatized and put into individual tradable title, the market can underproduce the good. Forests, for example, filter water, prevent erosion, provide landscape beauty, and conserve biodiversity. Unless these “things” or “functions” can be commoditized, priced, and actively traded, underproduction will result, and government ought to step in.

Supporters of this theory are also convinced that government is the sole entity capable of providing these environmental services. The implication is

that the rights of communities living in and around forests can be disregarded in the broader public interest. Some people of this view also argue that communities cannot themselves produce public good values so government must be the forest manager.

There are practical problems with these market failure arguments for state ownership of forests. The first problem is that in the real world (as opposed to the world of scholarly theorizing), government ownership doesn't really solve the problem of underproduction of nontimber forest values such as biodiversity or carbon. In fact, the track record of governments in managing natural forests for values other than timber is lamentable. Those not familiar with forestry should understand that governments everywhere typically contract out forests to timber companies in a system of notoriously ill-managed “concession” contracts. These contracts focus almost entirely on timber extraction. Many people would argue that government ownership of forests in such cases is really about who gets to profit from the timber, and not about addressing market failure or providing more environmental services for the broad public interest.

The second practical problem with the market failure justification for state ownership is that it ignores the social justice claims of forest-dependent communities. This used to be acceptable. But in a democratizing world, community claims to forest ownership are increasingly seen as legitimate – however troubling they may be because of the ethnic character of the claim or the lack of interest communities sometimes show in environmental stewardship. Important events are happening around the world with the rise of property rights claims over their forests by communities: their rights are in fact being recognized, although with significant limits.

thought to be more energetic and efficient than losers, because the trading game is supposed to reward them. In a famous variation on this story, some Property Rights people argue that when we don't attach tradable title to something, we will all race each other to grab it before the other one gets it [Hardin, 1968]. They say that in the ensuing free-for-all we will totally destroy the actual resource. Property Rights theorists think the only way we can save ourselves from such tragedy is to set up private property and individualized tradable title. This was once called (but is no longer) the "tragedy of the commons" hypothesis. In sum, the Property Rights story has many philosophical and political assumptions that are important to recognize.¹⁰ These are:

- Trading is always voluntary and never happens at sword point (as opposed to the case of the New Forest in the box on page 6).



- The ultimate goal of society and the property rights system is to produce ever more commodities.
- Uneven distribution of commodities among people doesn't matter, as long as those who win through the trading game have the potential to compensate the losers, although they don't actually have to do so for the trading game to be the best one for a society.
- Banks already exist and have a rule that they will use the title¹¹ to the land only as collateral for credit. No other system of collateral or credit is possible or even imagined in this story.
- Trading costs are the same for everyone. Everyone also has perfect information about everything, and no deals are made through lying, cheating, violence, or fraud.
- Laziness and inefficiency should be punished by the tradable title system and efficiency rewarded by it.

EVIDENCE

The Property Rights story may appear logical enough in the U.S. and in Europe, where it took 1,000 years of history to embed individualized tradable title of property into our legal system. But outside those countries, the belief that it has produced optimal outcomes appears wrong. This is because there are so many community-based property regimes with some vitality left in them and plenty of people who still want them to exist. For this reason, critics of the Property Rights school ask if the theory has any empirical basis. In trying to respond to this challenge, Property Rights theorists have had to vastly oversimplify matters in order to measure particular aspects of their theory. Hypotheses they try to measure are usually statements like:

- tradable titles in land create more output.
- tenure security means more labor and loan activity

(and hence by proxy more output).

- tradable titles mean everyone is better off.

All of these equations are hard to support in a definitive, once-and-for-all way using real-world data, so theorists tend to rely on vague correlations that are not inconsistent with their original story.

In one influential review paper of the evidence for the Property Rights story, the author [Deininger, 1999] cites a wide range of data from different countries in the world (see the box on page 15) to conclude: “there is broad agreement that secure individual land rights will increase incentives to undertake productivity-enhancing land-related investments” and that “establishment of such rights would constitute a clear Pareto improvement” [Deininger, 1999, p. 35].

The claim to “broad agreement” on this point may be overreaching. For some, the empirical work to date has simply been difficult, flawed, or inconclusive (see Place and Otsuka, forthcoming). Others interpret the data differently. For example, one review of the empirical evidence on tenure at the FAO (by someone who is not a member of the Property Rights school) summarized the problems with “the data” on tenure security by concluding: “the putative relationship between security provided by a modern land title and capital investment in land has simply not been established with sufficient precision to allow any explanatory value confronted with conflicting evidence” [Riddell, 2000 p. 6].

And another survey of the South Asian evidence about property rights concluded that: “strong evidence linking [tradable property] rights to production and investment is scarce for South Asia despite significant regional variation within the subcontinent” [Faruqee and Carey, 1997 p. 1].

A related problem in the empirical literature is the tendency to

Some Property Rights people argue that when we don't attach tradable title to a resource, we will all race each other to grab it before the other one gets it.

confuse correlations with causality and statistical significance with real-world significance.¹² And as Platteau [2000] points out, no matter what the shaky data actually says about the “individualized private title is best” thesis, it can almost never support conclusive policy pathways, given the institutional complexities of so many countries whose property regimes outsiders so want to change.¹³

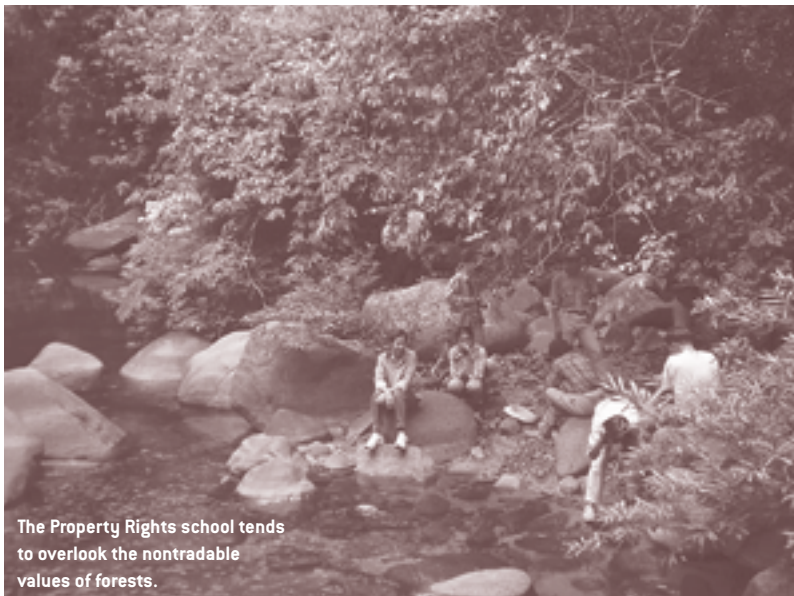
The fact is that the empirical evidence for the virtues and mechanics of the founding story of the Property Rights school is mixed for most parts of the world that don't share the legal history of Europe and the United States. Some data support the story. Some don't. And contradictory data can be found in the same place in different times. For example, in Kenya a tradable title system looked positive when it was first instituted, but in the long run, it didn't [see Bruce *et al.* 1994]. Some empirical studies also refer to data that can support multiple stories and theories [e.g., the case of Gavian and Fafchamps, 1996 or Besley, 1995].

On the tragedy of the commons hypothesis, the empirical work is more straightforward. There, scholars have been obliged to make a distinction between managed commons and open-access resources. It turns out that the prediction of tragedy may be reasonably accurate only for open-access resources, not for managed commons. The discussion of

the work of the Common Property school elsewhere in this paper elaborates on this point.

POLICY VIEWS

It is important to see that “tenure security” is desirable to members of the Property Rights school because it is a *means to the larger goal of reallocating assets* so as to reward the efficient and penalize the inefficient. From a policy point of view, the Property Rights school reduces security of tenure to the idea of a paper title that can be traded or mortgaged in densely operating land markets. And the policy implication is that we’d all do best by setting up privatized, individualized titling systems for whatever resource is at hand. Bringing that argument to forests, Property Rights theorists think that forests and land are meant to be



The Property Rights school tends to overlook the nontradable values of forests.

traded into their most efficient use rather than serve as places where nonmarket values are produced. In fact, nonmarket values of land and forests have no place in this worldview: they are invisible or relegated to the nebulous class of things called “externalities,” all of which can be sacrificed for the greater good of productive efficiency. Thus, forests are assets as long as their underlying values can be traded. Nontraded values of forests are not an asset class to members of this school.

Security of Tenure in the Agrarian Structure School

CONCEPTS AND ARGUMENTS

The Agrarian Structure school is a useful way to categorize an eclectic group of economic theorists, development policy analysts, and social justice activists who agree with most of the story that the Property Rights people tell, but who part ways on the idea that tradable title leads to a universal or optimal result, either from the point of view of productivity or of social values.¹⁴ Researchers and activists working within this tradition see benefits for society at large in the existence of a middle class of small farmers, artisans, or business people, especially when the majority of its citizens are rural and engaged in farm work. Followers of this school look at property rights and ask: what kind of agrarian structure do we want to see and what kind of tenure security can we arrange to favor that structure? Note that Agrarian Structure here refers to the distribution of farm size (or other resource-based assets like forests or commons) among farmers.¹⁵

In this view, tradable title can in some circumstances protect striving small farmers from predatory governments and corporations. This is because title can be fought for with a piece of paper in courts of law. Nonetheless, those of this tradition argue that tradable title is not automatically the small guy’s best friend: it can provide as much

insecurity of tenure as security. This is because tradable title easily exposes the small guy to market forces without subsidy, aid, or legal protection from natural disaster. For example, distress or “forced” sales of farms in times of family crisis or bad weather can send such otherwise efficient farmers out into the streets without a home. Agrarian Structure analysts say that such sales have nothing to do with efficiency, and that when it comes to land (or forests), this kind of trading in general will not necessarily lead to the most efficient people winning, especially since luck and deviousness often play a big role in cementing land sales.

Members of this school also point to the many places in the world where tradable title led to perverse accumulation of land by the wealthy few: a corporation, a hacienda owner, or an absentee landlord. This is called “costly inequality” [Carter, 2000]. It is so named because if you accept a highly unequal agrarian order, you lose out on all the efficiency that a middle class of farmers generates.

This group of scholars sees “security of tenure” as something beyond title. It is more the political will to put into place the means to assure the striving poor and middle class community members some degree of organized protection from unfettered market forces. To shore up their argument, they point to data that show that wealthy landowners tend to be less efficient per hectare or per person than small farmers.

A good number of scholars with a “Jeffersonian” frame of mind also fit within this Agrarian Structure tradition. To them, the costs of inequality are not just about losses in efficiency. They subscribe to a philosophical view that ownership of resources for communities has plenty of noneconomic virtues that we need as a society. These people cite studies that show how United States homeowners tend to be more civically involved, and that their children are less likely to drop out of

Is There Empirical Evidence for the Theory of the Property Rights School?

The Property Rights school does have some data in developing countries to back up its views, but they are hardly definitive. Much of these data were recently reviewed by a supporter of that school (Deininger 1999) and merit some attention. The author of the review cites as evidence for the virtues of tradable title the massive productivity leaps in China that took place recently after reforms allowed for individual production on collective land. That link between an individualized title system and economic virtue is not universally held. For example, one scholar of China points out that equally impressive gains in productivity occurred when China first went communist and collectivized its assets, a fact suggesting that it might be the size and locally perceived desirability of the institutional change rather than the type of institutional change that influences such productivity leaps [Sicular, 2000].

The same review also cites a study from a region in Ghana where faint evidence exists for part of the Property Rights story. That study featured three sites, but only one clearly supported the notion that secure tenure increases labor investments in agriculture, while many African studies not referenced support an opposite viewpoint. Other cases cited to support elements of the Property Rights theory can be found in the Amazon, Niger, Paraguay, and in Thailand. Yet, a closer look at these data shows that the Property Rights people may not be on solid ground, except perhaps for their research in Thailand. For example, in the Niger study, it turns out that the data there merely suggested that tenure security did somehow matter to farmers, a point nobody would contest (Gavian and Fafchamps, 1996). They do not, however, prove the underlying story of the Property Rights school. And in Paraguay, all the researcher found was that some farmers got more credit if they had title, but then again, credit access was unevenly distributed (Carter and Olinto, 1996), which was the main point of that bit of research.

school or be arrested [Rossi and Weber, 1995]. This strand of thinking about asset ownership as the basis of democracy goes back to Thomas Jefferson and to an earlier British political philosophy that owning land gave you a “stake” in the country or “a place in the world” that the landless could not understand.

Some legal scholars of this school would go further to suggest that widely diffused individual property rights “insulate political minorities from oppression by the rich and powerful and from the whims of legislatures and government agencies that too often serve only the needs of the powerful” [McEvoy, 1998 in Jacobs, 1998, and citing Reich, 1964 and Michelman 1981].¹⁶

POLICY VIEWS

In the international arena, advocates of the Agrarian Structure view criticize World Bank-promoted “market-assisted” land reforms, saying such reforms are too slow and fail at social justice goals. People working in the Agrarian Structure school advocate quicker and more comprehensive reforms [de Janvry *et al.*, 2001]. Yet, given the great many implementation failures of otherwise well-intentioned land reforms in Latin America and in parts of Asia, this group now debates how to “do reform right” in places like Zimbabwe, South Africa and Brazil where equalizing land reform remains a major social and political problem. Scholars here admit to a good body of problematic evidence that says that land reforms are often hard to gain political support for and end up with unpredictable, perverse outcomes that nobody wanted. This is because reforms are time consuming, difficult to do fairly, and easily undermined by incompetence, inefficiency, corruption, political conservatism, not to mention the many *legal* ways that the powerful have to halt the erosion of their power.¹⁷

Nonetheless, in the policy arena members of the Agrarian

Structure school continue to advocate land reform.¹⁸ They also support limits on the tradability of titles or on the actual nature of property rights (as in Nepal’s land reforms of the early 1960s). These limits are so that “costly inequality” doesn’t recreate itself over time as the wrong people buy and sell title. Note that these trading limits can be about use, stewardship of the underlying resource, or size of holdings. Agrarian Structure people also suggest that governments should provide an appropriate mix of subsidies and credit systems to support or favor the emergence of the “middle” resource owner.¹⁹

In this analytical vision, markets are recognized as valuable things which add value but also things that punish and reward *unfairly*. *Markets are sources of tenure insecurity*. The market makes for no guarantee that people can hang on to their assets and livelihood and at the same time supply the world with something other than their own free wage labor – (which it may not even want). Hence, this analytical tradition advocates control and regulation of markets to benefit asset ownership among a specific class of people. Regulation is needed to provide tenure security, not just paper titles.

Tenure Security and Common Property

CONCEPTS AND ARGUMENTS

A third academic and activist school has taken up the cause of a different type of property relationship, that of the commons. We can call this the Common Property school and by it mean that group of scholars influenced by the research emerging from members of the International Association for the Study of Common Property.

Members of this school do not argue with the Property Rights theorists on the notion that tradable title can catalyze entrepreneurial energy or with Jeffersonian scholars on the dangers to a democracy of

over-concentrated property ownership. Rather, Common Property advocates object to the crude and simplistic portrayal of “nonindividualized” common resources as things that are inevitably destroyed unless they are controlled by a system of individualized, tradable property titles.²⁰ They say it is essential to make a distinction between unmanaged, “open-access” resources and managed “common property.”

This group of scholars points out that the common resources of the world provide emergency and back-up livelihoods for the poor and hence need not all be privatized, lest like in England, the poor who depend on them end up without a place in the world, “strangers in their own land” [Thompson, 1991, p. 184]. And we are warned not to demonize the poor who depend on commons, as happened in England. Remember that there, the poor who survived in the world by virtue of their access to the commons had to be deemed vile and lazy by the powerful, so they could be uprooted and turned into “rolling stones, with no direction home.” And the poor had no say in the matter, since they could not vote and were not the policymakers and legislators of the day. As one famous ideologue of enclosing the commons (Vancouver) said: “The appropriation of forests would... be the means of producing a number of 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, wastelands, and forest.” [Vancouver, cited in Thompson [1991].

And indeed, Vancouver got his way without much trouble. The ancient common lands of England, Scotland and Wales vanished, and in the case of Scotland, the forests vanished with them.

Proponents of the commons have used both rational choice logic models and empirical studies to make their case.²¹ Their key arguments are listed in the box on page 19. Common Property scholars see

The poor who survived in the world by virtue of their access to the commons had to be deemed vile and lazy by the powerful, so they could be uprooted and turned into “rolling stones, with no direction home.”

virtues in common property that the Property Rights theorists don't.²² These are:

- The commons supports a physical and cultural space that strengthens social linkages among people across time – something that marketplace transactions alone cannot do.
- A commons can be the more “efficient” way to manage a resource, given physical attributes that can inhibit the use of full tradable title.
- A commons may be the only fair, practical or humane way to manage some resources, in the sense that leaving a common property regime unchanged often comes with fewer political and economic negatives than does changing it to a system of tradable individual titles.
- A commons often provides access to survival resources (mushrooms, dead wood, drought-tolerant plants, game, etc) for otherwise unpropertied people in search of a livelihood when other means have failed.
- The commons gives people “a place in the world” they might not otherwise have and thus gives them some small measure

of personal choice and flexibility in fixing their fate and in launching themselves into the wider world. The people affected are very often the poor and the marginalized, the very people whom organizations of economic development aim to help.

- Common property regimes tend to allocate many resources among many stakeholders under local concepts of fairness, using a combination of power, history, custom, and other non-market mechanisms [Swallow, 1997 and 2000]. For example, a forest – even though it is worth a lot in timber – may be allocated to the production of fallow, mushrooms, and spring water because the rights and needs of nontimber users are considered as important as those who would cut the timber and sell it. A local society that does this is weighing the



The Agrarian Structure school generally supports land reform, but admits it can lead to perverse outcomes.

value of the things inside the commons differently from the output-oriented and profit-maximizing society of the Property Rights world.

Common property advocates agree with Property Rights people that security of tenure is important. But they argue fiercely that **tradable, individualized** title is hardly needed to get most of the benefits attributed to tradable title systems. Under this view, membership in a group that has a secure claim is an equally viable way of obtaining tenure security. They also point out that title to land is not the only thing that works as collateral, as informal lending markets worldwide show and as successes like Bangladesh's Grameen Bank illustrate. The fact is that in many common property regimes in the world individuals have invested in improvements even though they didn't have tradable title to their resource.

EVIDENCE AND POLICY VIEWS

Critics of the commons ask: how resilient are common property systems in the face of market forces and population growth? And how easy is it to come up with robust management rules for the underlying natural resource? If such regimes are *not* resilient, then Common Property advocates might well be accused of being just as utopian as the Property Rights school. Unfortunately the data on the robustness of the common property regimes in the world can be used to support many sides of the question. In some areas, the commons has been under political attack and demographic pressure, but the commons survives. In others, a commons didn't survive at all, or it changed over time to adapt to new circumstances. In yet other places, entirely new common property rules have been built.²³ For example, in Quintana Roo, Mexico, [Bray, 2000] a commons is being rebuilt successfully,

while in the case of the rubber tappers groups in Rondônia, Brazil, success of a new commons is not so clear [Rosendo, 2000].

Perplexed by the range of outcomes in managing any given commons, one group sympathetic to the commons has tried to find ways to predict what kind of property regime is best for what resource and when. Scholars interested in making such determinations try to create predictor variables, also referred to as “design principles,”²⁴ with the intention of giving people prescriptive policy advice on how to create a commons. These variables characterize the resource and the group trying to manage it. For example, divisibility is supposed important for the resource while group size and heterogeneity are supposed to be crucial design variables for the managing group.

This particular academic project has so far met with mixed results. On the one hand it allows better and more precise description of specific commons situations. On the other, it appears that there are plenty of commons that have turned out all right in defiance of the design principles and predictor variables. This has led some to suggest that the design principles are not very useful [Stein, 2001].

A compromise view is that the design principles are just ways to reckon the forces for and against you when your agenda is either to create or revive a specific common property regime. If you have a lot of the principles on your side, your chances of winning the battle and setting up something sustainable are good. But if you don't, it still doesn't mean you can't win. It's just that the battle may be tough and long.

Common Property advocates point out that imposing individualized tradable title systems can make matters worse in terms of efficiency and equity, especially where there is communal management of a resource already in place. They urge government to find ways to support these property systems. For example, some are actively seeking legislation to

Key Arguments of the Common Property Advocates

- a) There are more property rights choices in the world than those described by the Property Rights school, from both a theoretical and an empirical point of view. In fact the real world harbors things that might loosely be classified as private property, state property, common property, or open-access resources, as well as property that combines characteristics of these types of property.
- b) A resource that has no owners and no rules about its management should be considered an “open-access resource.” Society can decide to leave some resources as open-access if it wants.
- c) A commons is often held under customary rights with historical claims, but a commons can also be created from scratch. Many can be found in urban areas. They are by no means “archaic.”
- d) Common property has a history, logic, and utility that makes it valuable today, even to urban societies.
- e) The physical characteristics of some resources (lakes, watersheds, oceans, rivers, etc.) can lend themselves to a common property ownership, although this turns out to be highly variable in the real world. What is a commons in one place can be private elsewhere, and what is state-owned in one place can be open-access elsewhere, and so on.
- f) Some commons are managed such that the underlying physical resource is sustained across generations, although not invariably so.
- g) Individual and state title to a resource has very often led to degradation of the resource or to hoarding of the resource. “Efficient” outcomes are not guaranteed by individual or state title. This means that such types of property regimes are not inherently superior to a commons in terms of the underlying sustainability of the resource.

support common property regimes and to recognize the rights of communities rather than individuals to own the forest they use and manage.²⁵

Common Property advocates also criticize the Property Rights theorists for attempts to dismember commons around the world, and they question the lack of the same supporting infrastructure (policies, courts, laws, credit, technical assistance) that is usually granted to defending individually held private property [Bromley, 1989 and 2000]. And instead of dismembering a commons, some members of this group urge that property that is now in public or government hands be passed back to communities where it can be managed as newly created local commons.²⁶

In sum, the Common Property framework emphasizes that the commons provides poorer members of a community with last-resort livelihoods – as well as security of tenure in the form of “a place in the world.” The unique contribution of this school to the security of tenure discussion is that security is not necessarily achieved only through formal titling systems, but can be amply granted within the many community-based property regimes that still exist throughout the world.

Institutionalists

CONCEPTS AND ARGUMENTS

The Institutional school features a multidisciplinary method of analysis that looks under the hood of assumptions and definitions other schools take for granted. In assessing resources and property regimes, one author explains the Institutional approach as follows:

“An alternative perspective starts from the politics of resource access and control among diverse social actors, and regards processes

of environmental change as the outcome of negotiation or contestation between social actors who may have very different priorities in natural resource use and management.” [Mearns, 2001, p.1]

Common Property advocates may share that view, and Institutionalists often sympathize with Common Property ideas. What separates the Institutionalists from the other schools is a research agenda that pays more attention to how society decides that something is either commons, state property, private property, open-access resource – or some combination of the four property types.

In another key difference, Institutionalists point out (persuasively) that no one type of property is either ideal, inevitable, best, most efficient, or intrinsically linked to the physical nature of the group, culture, or resource. They also argue that political power and the distribution of resource endowments at any point in time is more important than property type in determining who gets security of tenure and who doesn't.²⁷

To Institutionalists, property regimes are constantly evolving to reflect the endless negotiations and adjustments of a society whose values change over time, as does the relative power of different groups in society.²⁸ Of course the state of markets matters too, and Institutionalists delight in seeing how changing economic situations affect machinations over property rights. They observe that previously uninteresting resources can suddenly become valuable due to changing technologies and market conditions, thus leading to all kinds of claim-making over who owns it. As to predicting outcomes of all that contestation, Institutionalists say that an algebraic theory can't predict it: human creativity as well as luck, the weather, and warfare will all matter.²⁹

Institutionalists also see property rights as a social relationship among three parties (see definitions on page 5). In their view, many variables affect property regimes: historical power, demographics,

culture, the organization of society, the associated value system, relative prices, and the legal regime. All of these interact to explain how the underlying resource (forests, land, commodities) gets managed at any particular time.

One of the members of the school gave the following summary as an Institutionalist take on property and tenure:

“Property regimes after all are human artifacts reflecting instrumental origins... they take on their special character by virtue of collective perceptions regarding what is scarce (and hence *possibly* worth protecting with rights) and what is valuable (and hence *certainly* worth protecting with rights). Property is a social instrument and particular property regimes are chosen for particular purposes... New institutional arrangements are continually established to define the property regimes over land and related natural resources whether the regime be one we would call state property, private individual property, or one of common property. These institutional arrangements locate one individual vis-à-vis others both within a group (if there is one) and with individuals outside of the group” [Bromley, 2000].

The notion that property regimes “locate” individuals toward others is especially important. This is in fact a key strand of legal theory dating back to feudal times, when specific kinds of property were thought to give people (various classes of peasant, cottager, knight, and lord) a specific place in an ordered society [Rose, 1994]. This idea is at the heart of the “place in the world” promoted by the Common Property people.

Institutionalists say that tradable title is only part of tenure security. The larger issue they ask is: how defensible is any kind of property claim (tradable or not) in the face of the predations of more powerful people? History and current politics in any country provide us with abundant cases of how easy it is for the state to overturn claims that

Property is a social instrument and particular property regimes are chosen for particular purposes...

were once recognized as secure if someone wants to “grab” a resource that might be securely “owned” by someone else. For example, a government can systematically undermine a commons regime to favor logging companies or discriminate against an uneducated, unorganized peasantry or “indigenous tribe” with customary claims over an historical commons.³⁰ For this reason, Institutionalists argue that security of tenure comes from the ability to mobilize coercive power to enforce claims. In their view, this coercive ability matters as much if not more than the fact that you hold a piece of paper granting you title.

POLICY VIEWS

In the policy arena, this school is sympathetic to Common Property and Agrarian Structure ideas, but recognizes that policies emanate from a political economy and hence create specific winners and losers. Institutionalists favor a kind of policy analysis that looks at who might stand to gain or lose from any particular change in a property regime.³¹ They avoid pronouncing on what is Pareto Optimal or efficient, since such terms are seen as value-laden, biased, and utopian. In their view, good policy making involves deciding what kind of society we want to have in terms of our culturally specific notion of fairness.

Institutionalists ask us to think about the distribution of assets and income as well as to give some thought to what kind of world we want our grandchildren to inherit. Do we want to value only what we can

sell? Do we only want more things forever? We can choose, Institutionalists say, and in saying this they ask us to examine how we make such choices and how we set up rules and systems to do so. And the “we” is important. Institutionalists want to know who is doing the deciding and how that group’s power is influencing the decision.

As for policy recommendations relating to property rights, Institutionalists support the idea of an inclusive property regime that respects many forms of property—not just individualized tradable titles. Moreover, they argue that to defend property rights of any kind we need three things: government that works; the absence of predation by either government or private parties; and the absence of special interest lobbying that captures government and prevents it from deciding things fairly in the broad public interest. If all of those pieces of the puzzle are put together, then it is possible in the Institutional world that we could make our way to a widely shared prosperity. And to the Institutionalist, prosperity does *not* mean we’ll get to Pareto Optimal heaven.

These latter policy arguments come from Mancur Olsen, who wrote with pragmatism that these three conditions “do not guarantee perfect markets, the maximum socially useful innovation, or an ideal allocation of resources. Nor do they assure that there is an income distribution with broad appeal.” Olsen also suggested that these hard-to-obtain conditions are “most likely to be found in rights-respecting democracies where the institutions are structured in ways that give authoritative decision making as much as possible to encompassing interests.” And by encompassing, he meant the broad public interest as opposed to special interest lobbies.

In sum, the Institutional contribution to the security of tenure discussion is to point out that whatever security of tenure people have does not depend on title *per se* or on the bit of commons that

the poor may now have access to, but instead rests on a battery of legal and governance systems that reflect the values of the society, of which title and the existence of common property are just a reflection and outcome. Livelihoods of course depend on many of the underlying resources inside the property regime, a fact that just adds to the ferocity of the claims for the resource. Your ability to contest and defend claims to resources will then weigh heavily on your ability to earn a livelihood. Hence, for Institutionalists, the question in developing countries is not just about getting property rights clear and demarcated. It’s about how to build the rules of a political and legal system so that the government can effectively serve as the advocate of the broadest public interest in the midst of all that claim-making and contestation, while at the same time honoring all kinds of property. [Olsen, 2001].

A Summary of the Four Analytical Traditions

We have attempted to synthesize four of the most important scholarly traditions that address tenure security and how it affects community livelihoods. Each of the four traditions has contributed a valuable analysis of a facet of the concept called “security of tenure.” All have influenced tenure policy and land reforms in developing countries. And in reviewing the many ideas about security of tenure, this paper has noted that scholars differ in their conception of what security of tenure is, who should get it, its virtues for society, and how it is obtained.

Property Rights theorists reduce security of tenure to a legal claim to a tradable title in a piece of property. In their view, the virtue to society of this way of defining tenure security is that it kick starts a land market that rewards efficient producers of marketed values. Their policy prescription is to set up individualized tradable titles in all things.

Scholars from the Agrarian Structure tradition find that the market itself creates risks to tenure security that result in an unfair and inefficient allocation of assets. They urge regulatory constraints on land and asset markets to manage this risk. The virtue of doing so, they say, is to stabilize an agrarian middle class, a class that is vital to maintaining a meaningful democracy and civic life.

Researchers interested in Common Property enrich the idea of tenure security by noting the useful role that common property has in allowing the poor a place in the world that is less at risk from alienation by market forces. Common Property is also thought to be a fair way to manage many natural resources with physical characteristics that do not easily lend themselves to commoditization and individual tradable title. On the policy front, common property advocates make a case for more inclusive national legal systems that honor existing community-based property regimes and any remaining commons. The primary beneficiaries of doing so are poor rural communities whose livelihoods often depend on natural resources.

Institutionalist scholars contribute to the discussion by urging us to look under the hood of the concepts and to examine the institutional and political underpinnings of tenure security. Security of tenure, in their view, is the assurance that your property claims will be respected by other members of society. A third party with the ability to defend you effectively is necessary, especially if your property claims are challenged. This implies a social relationship among three parties in which property and kinds of property are built in a process of constant negotiation. For Institutionalists, security of tenure is a notion that is less about title and registration systems and more about emphasizing the need for functioning and transparent legal systems that benefit from a government that adjudicates fairly in the broad public interest. This is necessary so that those who think their

Institutionalist scholars contribute to the discussion by urging us to look under the hood of concepts and to examine the institutional and political underpinnings of tenure security.

place in the world is under threat can get a fair hearing of their case.

Implications and Conclusions

A number of conclusions and implications can be drawn from this review including:

- There is no convincing empirical evidence from any of the analytical approaches that one type of property or property right is inherently more efficient, optimal, or ideal, as the notions of what constitutes “efficiency,” “idea,” and “optimal” are themselves constantly changing in a given society.
- An extension of the above point follows. The empirical evidence shows that there is no single property regime that will lead to attaining any of the main goals of foreign aid: social justice, livelihood generation, sound forest management, biodiversity conservation, or economic prosperity. Such outcomes are situation- and site-specific, hard to predict, and in any case not necessarily enduring through time. This is because the powers of the various players contesting for security and various property rights are constantly changing, so the underlying property regime is changing all the time as well.
- The Property Rights school overemphasizes the virtues of

market trading when it comes to natural resources like land and forests. There are often no markets to begin with, or flawed markets in those countries. And where markets are active and perfect, the Property Rights analysis ignores many facets of tenure security that are of great importance: how property rights get created in the first place; the importance of nonmarket values like tenure security or “a place in the world;” the distribution of assets in a society; the relevance of the commons as a valid type of property in the modern world; and the importance of understanding the broader political economy that defines power, justice, and the very notion of property among people in a given society.

- Natural resources – especially land and including forests –



create many “nonmarket values.” These values accrue to individuals, communities, and the wider society. Many of these are not easily commoditized or traded in property regimes that emphasize individualized tradable title. Even when these rights can be defined and traded, it is not clear they ought to be, or if trading will result in the optimal production of the desired values. (A well-known example of these values in the world of forestry includes the environmental services that forests provide.) Other nonmarket values like “a place in the world” and tenure security can be added to that list of nontraded values. One of the problems we face is that while the importance of a “place in the world” value has declined in western society, it has not declined in developing countries.

- Many community-based property regimes continue to emphasize the nonmarket value of tenure security and a place in the world for their members. Do these nonmarket values constitute a form of property? And if so, do people have a right to them and does government have a duty to protect that right? These are critical questions this review has raised. The Institutional approach would suggest that these questions can not be answered by expert analysis, but only by each society through its own political means.

A last conclusion is an observation. A degree of convergence may be emerging within the scholarly world among the different theories and approaches regarding tenure security and property rights. The Property Rights group is beginning to consider equity arguments and the legitimacy of community-based property regimes, and many practitioners now adopt Institutional approaches to designing land policy to reflect the political economy. This convergence may facilitate

more concerted and more effective action to address property rights in those parts of the world where tenure insecurity undermines local livelihoods.

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Notes

¹ The peasantry was also divided into classes that included slaves, free and unfree peasants, depending on the nature of their relationship to the lord of the manor. The cottager was also an important class, often a household servant or a descendant of one. A cottager had a customary grant of a house and smaller plot of land for subsistence gardening. It is significant from a security of tenure point of view that in England there were frequent legal attempts to regulate the deal that cottagers got and to assure that each cottage came with at least four acres to provide the cottager with a minimal livelihood.

² For example, in the late Roman period, both slaves and free cultivators worked the large agricultural "villa" estates. This class division was then overlain with class concepts brought by the invading Germans, specifically, two new categories of people. First were the tribal people or "the karl" who were free tribal members cultivating their own land and who had to participate in civic functions such as policing and juries. Second were "freedmen" whose origins are more speculative – possibly freed slaves or remnants of a partly assimilated conquered people. Since they were not of the tribe they did not participate in civic functions like courts.

³ Not all feudal property regimes were horrible to peasants. In the Vendée in France, the local property regime had evolved in such a way that it accorded great stability to peasants, so much so that during the French Revolution the Vendée peasantry launched a counter-revolution to protect their "feudal" place in the world. Even the young Napoleon saw the virtue of their cause and refused to fight them down, choosing instead to lead the charge into Italy.

⁴ Africa is a place where this is well documented, from the Swynerton Plan in Kenya to various attempts throughout southern Africa to enclose the African commons [Duggan, 1988].

⁵ North and Thomas [1977] gave a powerful impetus to this school by applying property rights as a theory of change in studying economic history. North's latter work however is more complex and, in this reader's view, appears to defy categorization as a Property Rights advocate.

⁶ The classic statement of this is in Demsetz [1968]. For the case of forests, this kind of argument is made by Mendolsohn [1994].

⁷ It is worth noting that nobody offers serious empirical evidence for this kind of historical argument. They just make an "isn't it just logical?" argument rather than one anchored in an accurate accounting of history. See for example North and Thomas, [1977] or Hardin [1968]. Also, see Field [1989] for a thorough debunking of the North and Thomas argument about the evolutionary character of property rights.

⁸ Some scholars raise ethical questions about why outside developers need to give in to an urge to "fix" something as complicated and contentious as property rights in someone else's country, especially when it is not clear that the existing property system is "broken." This has been most remarked upon in Africa, but is the case for other places as well. Some say when it comes to tenure and titles, we might be better off abandoning a social engineering philosophy of development and letting property regimes in developing countries evolve in their own time without interference [Platteau, 2001].

⁹ See Rose [1994] for a critical version of this kind of storytelling.

¹⁰ Many staff at the World Bank tend to argue these points from a property rights perspective and make use of these philosophical ideas. See the papers in the bibliography by Deininger [1999, 2000, and 2001] as well as Deininger and Feder [no date] on the World Bank's Land Policy Network website or the paper by Feder and Feeny [1993].

¹¹ In the United States a movement of Property Rights activists has emerged. They subscribe to a particular legal school of thinking that says property means "sole and despotic dominion" over the asset. [Blackstone, cited in Thompson, 1991]. No unbundling of those rights or governmental restriction on property rights is possible. In their view, a person with title should have the right to do anything at all with his or her property, which can include destroying old growth forests, shooting endangered wolves, polluting the air, or blasting jet engine noise at the surrounding community (see essays in Bromley, 2000 for an elaboration, the papers in Jacobs, 1999 or those in Geisler and Daneker, 2000). In this American movement, any society-imposed constraint on sole and despotic dominion constitutes a "taking" of the value of their property. Partisans of this idea want government to pay compensation for such takings. This is the reverse of a common environmentalist position that the polluter should pay.

Notes

¹² See McCloskey (2001) for an elaboration on these habits within economics.

¹³ The China case is fascinating. Those who think tradable individual title matters a lot tend to cite the case of China's reforms that gave individuals residual rights to production. For example, one study of a county in China showed that those affected by the property reforms cleared more land and produced more things, although the extent to which land clearing is socially desirable was not mentioned (Lin, 1992; McMillan *et al.* 1989; and Jacoby *et al.* 1998). Sometimes this school cites Carter and Yao (1998), who found that Chinese farmers who had the right to transfer land tended to use more green manure, and Yao, (1998) who said that when farmers had transfer rights they tended to send family members off to work somewhere off-farm. This latter point is proof to theorists of this ilk that tradable title allows everyone to find his or her output-enhancing place in the world. On the notion that more titles allow people greater access to credit, they cite Feder *et al.*'s (1988) study of Thailand and Carter's (1997) study of Paraguay. The latter found that some farmers got more credit after titling (see also Carter and Olinto, 1996). They also cite their own collection of anecdotes that supports their case (Binswanger *et al.* 1995). Inconclusive studies also exist. Also, see Deacon (1994) who brings up a larger issue that stable political regimes are needed to get property regimes going in the first place. Those who think tradable title in land is not so important in creating incentives to work hard and invest and get credit and thus generate efficiency-enhancing outcomes tend to cite a great many studies, especially in Africa where nontradable title is a common situation. See for example Atwood (1990); Carter and Weiber (1995); Migot-Adholla *et al.* (1994). Others just find the real-life situations are more complex than the theoretical position of title = security. For example, Place and Migot-Adholla (1998) find that in a couple of districts of Kenya, farmers are motivated to get title not to increase investment but just to have a more secure place in the world. Platteau (2000) and (2001) provides masterful and exhaustive surveys of the African evidence on this point, undermining much of the Property Rights story. On the notion that trading in land does NOT lead to efficient outcomes, people cite reviews at FAO by Molina (1997) and Trivelli, (1997) and Riddell (1998). For a U.S. case see Gatzlaff *et al.* (1998).

For a summary of the contradictory studies showing a relationship between forest clearance and tenure security, see Godoy *et al.* (1998).

¹⁴ Many of this school in academia might also ally themselves with the Institutionalists on many issues (see elsewhere in this paper), but because of the distinct emphasis in their work on problems related to the distribution of land, I put them into a separate category. See the works in the bibliography by Michael Carter for an example of the kind of thinking of a development economist of this school. For a fascinating historical overview of two different reformists of this school in the United States New Deal era, see Gilbert and O'Connors (1998) chapter in the Jacobs book *Who Owns America?* The chapter in the same book by John Gaventa presents this kind of view for Appalachia. The Land Tenure Center and the associated faculty at the UW-Madison represent a good number of the members of this school, although again, it should be repeated that some would not necessarily claim membership in this school and in other contexts would find more comfort in the Institutionalists title.

¹⁵ It turns out that there is reasonable empirical evidence to show that middle farmers or "small" farmers do tend to make more efficient use of their land. Why this is so is still a research question. Some believe it is because of Chayanov's observation that small farmers are willing to work harder to keep their place in the world, since they value the independence more than just throwing in the plough and going off to a factory where they become part of a pool of "free" and "unlimited supplies of labor." Although there is some evidence for this point, it is not always consistent nor does it provide unshakable proof.

¹⁶ See Bromley (1989, 1992a, 1992b) for variants of the basic argument of this school. An historical view for how these kinds of arguments emerged in the U.K. can be found in Eversley (1910), Grove (2000), Ravenshen and Thompson (1991). Other overviews and summaries and key articles of this school can be found in McKean (2000), Ostrom (1994 and 1999), and Oakerson (1989). A nonacademic view from within this school can be seen at Open Spaces Society (2000), a group that also maintains a delightful website.

¹⁷ These analysts might be called the "social justice" members of the Agrarian Structure tradition. The activists among them point to the successful outcome of many of the New Deal land reforms in

the United States that effectively gave land title to tenants and sharecroppers in the rural South. One evaluation of those programs found that a generation after implementation, such reforms "had significant long-run effects, transforming a group of landless black tenants into a permanent landed middle class that ultimately emerged in the 1960s as the backbone of the civil rights movement in the South" (Salamon, 1979, cited in Gilbert and O'Connor, 1998).

¹⁷ See Thiesenhausen, 1997 for a review of the Latin American experiences or Martin (2000) for Southern Africa. Also look at Deininger's (1999) articles on the World Bank's market-assisted land reform website for a review of policies that are supposed to be justified by such difficulties.

¹⁸ Some Property Rights people do so as well, for different reasons. They ignore the social justice issues, and argue that land reform is "good for growth" (Deininger and Van den Brink, 2000).

¹⁹ It is also important to say that people of this school would not argue that a rural middle class need be maintained forever. They would recognize that technology change in agriculture and a deeply globalized rural economy may one day obviate the efficiencies that a middle class represents.

²⁰ See Bromley (1989, 1992a, 1992b) for variants of the basic argument of this school. An historical view for how this kind of argument emerged in the U.K. can be found in Eversley (1910), Grove (2000). Other overviews and summaries and key articles of this school can be found in McKean (2000), Ostrom (1994 and 1999), and Oakerson (1989). A nonacademic view from within this school can be seen at Open Spaces Society (2000).

²¹ Thompson's (1991) book has a chapter on the commons that eloquently summarizes and adds to this historical literature.

²² See also Berkes (1989), Murphree, (1997), Thompson (1971), McKean (2000), and Platteau (2001) for various statements on the virtues of common property.

²³ Readers can browse the archives of the annual meetings of the International Association for the Study of Common Property for many examples of all these various outcomes. Recently, Riseth (2000) reports mixed results as does Walters (2000). Senecal-Altrecht (2000) and Silva-Forsberg (2000) describe some successes. Wily (2000) and Palmer (2001) describe in great detail many recent legal changes in Africa that are start-

ing to recognize the many viable commons regimes in Africa.

²⁴ See Ostrom's (1990 and 1994) work on these. Schlager (1998) and McKay (2000) are examples of scholars trying to elaborate on the design principles.

²⁵ Lynch (1995) has the clearest statement of this advocacy position, used to good effect in Philippines and being seeded elsewhere in Asia and Africa.

²⁶ A good survey of the common property world as it relates to forests can be found in Arnold (1998). Note as well that some members of this school also object to the term "Commons" (see definitions in the introduction) and prefer the phrase "community-based property rights systems" or talk about "common pool resources" (Ostrom, 1990).

²⁷ Useful thinking from this school might be found in Bromley (1989 and 2000), especially the articles and essays in his book *Sustaining Development*. Also look at Bromley's (1994) articles, Olsen (2001) and of course Thompson's (1991) fascinating analysis of the rise and fall of the commons in U.K. Jacob's (1999) book is also a good place to get up to date. Douglass North's recent book (1999) cited in the bibliography also seems to this writer to belong in the Institutionalists school, despite North's long-standing affiliations with the transactions cost people within the Property Rights school. As for on-the-ground studies, a good example of a recent Institutionalists approach might be Southgate (2000), who looks at the jockeying that can go on to manipulate property rights in Ecuador. Singer (200) also presents a big picture Institutionalists view of tenure change. Sen (2000) might also be classed with this school, at least as a major influence. For an Institute of Development Studies -UK variant of institutionalism using the vocabulary of "entitlements" and rights borrowed from Sen, see Mearns (2000) and Bebbington, (1999).

²⁸ Even a feeble worker's union can suddenly become powerful when a load of strawberries arrives for shipment on a hot day. Such a day provided the impetus to the career of one of the U.S.'s most powerful labor leaders, Jimmy Hoffa (story described in Olsen, 2001, p. 97).

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²⁹ Institutionalists would appreciate the observation that Napoleon (as emperor) lost property rights over a whole world after Waterloo, and it is worth noting that he claims to have lost the battle because of unexpected rain that prevented him from moving his cannons close to the British, thus allowing time for the Prussians to arrive (who were working with the British in that battle); hence he could not fight each army sequentially as he had hoped (Herold, 1955). A more typical Institutional story is paraphrased from Bromley's 1989 book:

A rancher in a remote corner of Montana got up one morning and rode out across his vast estate. In one corner he found a City Man building a house.

Rancher: "Hey, you can't build here. This is my land."

City Man: "Says who?"

Rancher: "I do. I inherited this land from my father."

City Man: "How'd he get it?"

Rancher: "He inherited it from his father."

City Man: "How'd he get it?"

Rancher: "He fought the Indians for it."

City Man: "Fine. Then you can fight me for it."

³⁰ There, a coalition of indigenous people won "secure" legal claim to a mahogany-rich forest, but within five years the policies and legal system and dubious behavior of logging firms quickly led to an outcome where the logging companies and government managed to log out the actual resource with just a few payoffs to indigenous leaders. See Roper (2000) for the full story.

³¹ Boscolo (2000), with no particular affiliation with this school, gives an example of an analysis of this type related to forest concession contracts.

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Publication design:

MODINO GRAPHICS
212.431.4354
WWW.MODINO.COM
MODINO100@AOL.COM



Printing:

COLAHAN SAUNDERS CORP.

Paper/Soy Inks:

PRINTED WITH SOY INKS
ALL FIBER 100% RECYCLED
(50% POST-CONSUMER)

Design Interns:

WENDY CRUZ, BASILISA JIMINEZ, CATHY JIMINEZ

MARCH 2004



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