

LAND AND COMMUNITY:  
PROPERTY RIGHTS AND THE FUTURE OF RURAL LANDSCAPES

A Dissertation  
Presented to the Faculty of the Graduate School  
of Cornell University  
In Partial Fulfillment of the Requirements for the Degree of  
Doctor of Philosophy

by  
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January 2011

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LAND AND COMMUNITY:  
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Cornell University 2011

This dissertation is comprised of four separate articles describing four separate studies, all of which deal with property rights and problems of collective action in land use. Each of the studies addresses the same central question: How can the problems associated with fragmenting a landscape into separate spheres of control be avoided while still maintaining a wide distribution of private rights? Two of the studies are about cooperation between private landowners, and two of them describe situations of shared ownership. The first, which was located in Vermont, uses a mail survey to answer the question of whether conservation on private land is impeded by problems of collective action. It also explores the question of whether the public planning process can be an effective means for citizens to overcome these problems. The second study deals with cooperation between private landowners in Norway. It describes how two seemingly contradictory imperatives—coordinating wildlife management across large areas, while keeping benefits and control in the hands of local resource users—are resolved through a nesting of management institutions; and it identifies some of the key factors, both structural and cultural, that contribute to the success of this system. The third study looks at land reform in Scotland, which, rather than breaking large estates into many small holdings, facilitates the transfer of land into community ownership. Using historical analysis and in-depth interviews with contemporary land reformers, this study explains why community ownership makes

sense in rural Scotland today. The fourth study looks at the much older example of common property in Norway and offers those interested in Scottish land reform a glimpse at how well this type of ownership might meet their expectations. The study compares two similar Norwegian cases in order to understand whether community ownership makes a difference or whether it is sufficient for local users of the commons to have secure use-rights. A theme that emerges across all four of these studies is the significant and often unexpected role of the state.

## BIOGRAPHICAL SKETCH

Matthew Hoffman received his BA from the School for International Training in Brattleboro, VT in 1995; a certificate in ecological horticulture from UC Santa Cruz in 1997; and a MS from the department of Development Sociology at Cornell University in 2003. He lives on an old farm in southern Vermont, where he divides his time between roaming the hills and reading by the fire.

This research is dedicated to the people I met in Vermont, Norway, and Scotland whose institutions and activities are the subject of my work. I am lucky to have had the opportunity to spend time in these places; and it is with no small amount of humility that I attempt to describe what I have learned. I have tremendous respect for the people whose practices are described in these pages; and it is with gratitude for their generous help that I submit this dissertation.

## ACKNOWLEDGMENTS

I would first like to gratefully acknowledge the guidance of my advisory committee: Prof. Charles Geisler (chair), Prof. Pierre Clavel, and Dr. Gilbert Gillespie. The amount of time and thought that they have given to my work has been extremely generous. I will be indebted throughout my career to Prof. Geisler for introducing me to the sociology of property rights, for teaching me to think flexibly about common property and land reform, and for teaching me to find supposedly strange things hidden in plain view.

I would like to thank Prof. John Bryden for his guidance during the time that I was conducting research in Scotland; and both the Cornell Graduate School and the Mario Einaudi Center for travel funding during this time.

The year that I spent doing research in Norway was made possible by the Fulbright Program. While there I worked under the supervision of Prof. Erling Berge who spent a great deal of time teaching me about Norwegian tenure and property law. I would not have been able to research moose hunting without my coauthor Bjørn Egil Flø, whose sharp intellect has improved my understanding of many aspects of rural life. For additional help in understanding common property in Norway I am indebted to Prof. Hans Sevatdal and to farmer/scholar Sæbjørn Forberg.

Community Forestry and Environmental Research Partnerships at UC Berkeley provided funding for my research in Vermont, including a pre-dissertation fellowship and support for repeated conference travel. Patti Smith, staff naturalist at the Bonnyvale Environmental Education Center, has been a constant source of expert advice; and to Amrei Binzer at the University of Göttingen I am indebted for more kinds of help than I could possibly name, but especially for assistance with managing survey data.

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## CHAPTER 1

### **Introduction**

The spark of inspiration for the research described in this dissertation was first struck during a course on land reform that I took with Charles Geisler in the spring of 2003. As a lover of small farms and rural democracy, the idea of dividing large estates into many small holdings of course sat very well with me. But it occurred to me at a certain point that such a program stands in tension with the ecological imperative of managing landscapes as an integrated whole. I later came to understand how fragmented management can also be an obstacle to the satisfaction of human needs, such as economic development and effective land use planning. Wendell Berry's assertion that land "should be divided into small parcels among a lot of small owners" (1995: 49) turns out to be highly problematic. This is an uncomfortable thing to realize for anyone with a cultural affinity for the small private landowner. But what are the alternatives? Even those with no libertarian streak in them will, when they consider the failures of the state in terms of conservation and planning, begin to wonder if there isn't a third way. This is the core question underlying my whole dissertation: Is there a way to have the wide distribution of benefits that comes from diffuse ownership of private rights, without diminishing the land's value through fragmented management?

In this introduction I present a critique of the classical model of property and go on to theorize an alternative model intended to avoid some of the pitfalls of the classical one. I argue that the classical idea of a coherent bundle of rights allowing

title holders to use their property however they want is an obstacle to overcoming problems of collective action that arise when communities want to manage landscapes to produce such public goods as ecological functions and economic development. I then draw on the proprietarian tradition and its American incarnation in civic republicanism to theorize a model of property that protects private rights, but attaches to them public responsibilities by embedding them in a structure of democratic decision-making. Each of the case studies described in my research is a real-world example that fits this general model, and thus each of them serves as a test case that can shed some light on the degree to which it might serve as a model for property rights in the future. The more people realize how many of the benefits that landscapes provide are public goods, and the more they come to face the problems of collective action inherent in the provision of such goods, the more valuable this model will become.

When we gaze at a rural landscape—a windswept heath, perhaps; a hemlock forest where deer shelter in the winter; or a hay field descending to a wet area where red-winged blackbirds call from amongst the cattails—when we gaze at such a landscape, do we see property? We may see a bramble-covered wall along the edge of a meadow or running through the middle of a forest that once was pasture. If we are in the United States, we might see signs telling us that trespassing is prohibited; although we wouldn't find any such signs in either Norway or Scotland.<sup>1</sup> Whatever clues there may or may not be, we can be fairly sure that the land we are looking at is somebody's property.

If we go to the town clerk's office we can look at a local map showing property boundaries. It will be covered with intersecting lines, such that the land

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<sup>1</sup> In both countries the public has a right of recreational access on undeveloped private land.

appears to be composed of a large number of polygons that fit together like puzzle pieces. Each of these polygons has a name attached to it indicating who the owner is. Were we to ask how that person came to be owner, we would probably be told that they either bought or inherited the land from somebody else; and it might be possible to trace the land's history of voluntary and involuntary transactions back through time. But were we to ask what it means to own land in the first place, or how and why ownership came to be, we would be asking a much more difficult question—one that nobody at the town office may be prepared to answer.

### ***What is property?***

A property map does not describe the land in any greater detail than is necessary to identify it and to define its boundaries. The exact character of the land is not relevant to a person's ownership. The polygons on the map are only meant to describe spheres of prerogative. The concept of property refers not to things, but to rights regarding things. A property map doesn't tell us the owner's feelings about his or her land, as this would also be irrelevant. Ownership is not a relation between a person and a thing, but between a person and other people. When a person owns something, it means that they have certain rights regarding that thing, which other people have an obligation to respect. What are these rights of ownership? Neither the map nor the deed contains a list. Nor do they offer a complete list of all the rights that non-owners might have. If they did, it would have to be updated periodically, because property rights change over time with changes in legislation, common law, and local regulations.

The world is full of objects, and people are full of desires; but simply laying claim to an object, does not establish ownership. Property comes into existence when other people respect that claim, which they very often do. Formal recognition of

possessive claims decreases anxiety over security of possession and decreases potential for conflict. If there were no scarcity of things that people wanted, and if everyone was willing and able to stay in their own separate space making sure that the effects of their behavior didn't spill over into anyone else's sphere, then the idea of property would be rather simpler. However, not only do we live in a world of scarcity, we also live in a social world where many of the rights on which we depend require positive actions on the part of other people. Most of the objects and benefit streams to which we lay claim are products of a complex division of labor, and many of these we enjoy together with other people. The definition of private rights in a jointly occupied, jointly created world of limited resources is a complicated business.

Even if our biological nature drives us to make possessive claims and inclines us to respect other people's claims (Ellis 1985), yet it remains for each society to define what kind of claims will be respected, who may make such claims, and under what circumstances. Property rights have varied greatly between societies and throughout history. Different ways of defining and organizing property rights have profound effects on the history of a society and the day to day lives of its people. For this reason, those who are interested in the human condition and in social change often turn their attention to property rights, which Aristotle referred to as "the chief point of all, that being the question upon which all revolutions turn" (*The Politics*: 1266a37).

### ***What does property do?***

What are some of the effects that property arrangements have on society? Two of the most discussed relate to democracy and to economic development. It has long been claimed that democratic institutions depend on diffuse ownership. "That the equalization of property exercises an influence on political society was clearly understood even by some of the old legislators" –so said Aristotle in the fourth century

B.C. (*The Politics*: 1266b15). He goes on to explain that “democracies are safer and more permanent than oligarchies, because they have a middle class which is more numerous and has a greater share in the government; for when there is no middle class, and the poor are excessive in number, troubles arise, and the state soon comes to an end” (1296a14-1296a18). In 1831 Alexis de Tocqueville attributed the success of democracy in America to the degree of equality among the people. Daniel Webster observed that the early New England settlers

...were themselves either from their original condition, or from the necessity of their common interest, nearly on a level with respect to property. Their situation demanded a parceling out and division of the land, and it may fairly be said that this necessary act *fixed the future frame and form of their government*. The character of their political institutions was determined by the fundamental laws respecting property... The consequence of all these causes has been a great subdivision of the soil and a great equality of condition; the true basis, most certainly, of popular government (Goldschmidt 1978: 279).

Many of the Founding Fathers believed that the success of a free and democratic republic depends on the economic independence of its citizens. James Madison claimed, “The best distribution [of occupations] is that which favors... competency in the greatest number of citizens” (Schwarz 1997: 23). The idea of competency meant that a household owned sufficient property to provide for their basic needs without being dependent on the goodwill of anyone else. Competency could be achieved through the ownership of a farm, or by possessing the tools and skills necessary for a trade.<sup>2</sup> Jefferson and other Founders believed that successful democracy depends on the “civic virtue” of its citizens—and that civic virtue depends on competency. John Schwarz explains,

Virtue, to [civic]<sup>3</sup> republicans, meant in part the ability of an individual citizen to think and be willing to act in the public interest and for the good of the whole rather than out of private and narrow interest. Citizens could not be virtuous by definition if they either were economically dependent upon another individual, and thus subject to another’s will, or were destitute, and thus necessarily self-interested. In the eyes of

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<sup>2</sup> Thomas Jefferson believed that everyone had a right to farm the land. In a letter to James Madison dated October 28, 1785, he said, “The earth is given as common stock for man to labor and live on.”

<sup>3</sup> Schwarz uses the term ‘classical republicanism.’ I am using the term ‘civic republicanism’ instead in order to avoid confusion later on in my contrast between this and the classical model of property.

the revolutionaries, therefore, independence was an essential condition of virtue; a virtuous citizenry, in turn, was vital to the survival and success of self-government and a free republican society (Schwarz 1997: 25).

We will return to civic republicanism shortly.

Economists argue that property rights do two things to promote the efficient use of resources. First, investment and conservation are encouraged when the rewards and costs of decisions are brought home to the decision-making owners. Second, the right of alienability enables trade. It is believed that these two functions of property will cause resources to gravitate to the most efficient users, resulting in greater wealth creation overall (Anderson and McChesney 2003). From this perspective, the initial allocation of property rights might be considered less important than making sure that ownership is clear and tradable.

Property arrangements can also confer benefits on some people at the expense of others. Because property is fundamentally about relationships between people, rather than between people and things, shifting property institutions will likely result in, or be the result of, shifting power relationships between people. Sometimes it is the *distribution* of property that affects these relationships. Ownership of land, for example, can bring with it the power to extract rent, services, or fealty from those who don't have land of their own. Sometimes it is the *nature* of property that affects power relationships. The establishment of fee simple ownership and clear title, for example, facilitates a government's ability to assign and collect taxes (Scott 1998), which in turn privileges certain land uses—i.e., those that are likely to produce revenue.

Thus, while in a certain sense it is impossible to see property—since property refers not to the land itself but to a sphere of rights—we can readily see the effects of property arrangements on the landscape. Not only do land uses change according to the preferences of different owners—pasture on one side of the property line, forest on the other—how people use the land is also affected by how society defines the bundle

of rights called ownership. Does the owner have secure tenure, or is any investment in the land at risk of being lost? Is the owner allowed to build a shopping center, or is the destruction of farmland prohibited? Can the owner subdivide the land? How we define what it means to own land produces lasting effects both on the landscape and on the character of society.

### ***The classical view***

Anyone who has served on a public planning and zoning commission, or who has attended the hearings of a development review board, has probably listened to at least one angry citizen declare “It’s my property and I can do whatever I want with it!” This popular view of ownership has its roots in the classical conception of property, which tends to assume one easily identifiable person having complete control over a well-defined material sphere. While many variations on this situation are readily accepted, this is still the baseline assumption to which we default in the absence of any further specification. Such a person is said to have title; and the establishment or identification of clear title is thought to be a useful way of organizing and adjudicating conflict regarding property. The classical conception of property is about boundaries in the world of things—this is mine, and that is yours—as well as complete freedom of action with regard to those things that we own. This view of property has been criticized on the grounds that it is both inaccurate and dysfunctional (Freyfogle 1996; Singer 2000).

### ***How the classical model is inaccurate***

There are a variety of ways in which the classical model of property is considered inaccurate. I will begin by listing each of these in brief; then in the following paragraphs I will go into each of them in greater detail. The first way in



which the classical model is inaccurate is that it describes ownership as a coherent bundle of rights belonging to the titleholder. Legal realists, on the other hand, point out that these rights may be divided up among many people, not all of whom are title holders. Second, whereas the classical model thinks of property as belonging to either individuals or the state, a great deal of property is held by neither individuals nor the state. Third, the classical model assumes that the value of property is created by the labor that the owner invests in it. Others claim that property values are socially created. Fourth, whereas the classical model regards property rights as sacred and unchanging, legal historians claim that property rights change over time, and that justifications for each of these changes are made on the grounds of instrumentality. Lastly, the classical model portrays property rights as being absolute and uncomplicated. Contemporary legal scholars, on the other hand, depict property rights as highly contingent on other public and private rights. They also point out that when property disputes occur between owners, each of their own property, as well as between the holders of rights to a single property, the identification of title is not very useful to dispute prevention or resolution.

*Property rights are divisible, and often intangible.* A horse is not easily divisible without compromising its value, but property rights regarding that horse are. One person might hold title to the horse, but other people may have legal rights regarding race winnings, stud services, or other uses. Additionally, the owner may be limited in her use of the animal by laws that prohibit horses on highways, or which forbid cruelty to animals. Similarly, the ownership of land is often complicated by easements, rights of way, mortgages, rights of first refusal, zoning regulations, and other legal claims that can leave a title holder with a far lesser form of ownership than the “sole despotic dominion” described by Blackstone.

Max Lerner suggests that in America of the 18<sup>th</sup> century, actual property forms were not so distant from the classical idea of property. Most of the property rights that people had did refer to actual things over which they could exercise some control (Lerner 1957). Today, important forms of property are becoming increasingly intangible. Still,

In our everyday language, we tend to speak of these rights as if they were attached to things. Thus we “deposit our money in the bank,” as if we were putting a thing in a place; but really we are creating a complex set of abstract claims against an abstract legal institution (Grey 1980: 70).

In “The Disintegration of Property,” Thomas Grey argues that property, as popularly conceived, is disappearing. It is coming to be replaced by a complex system of claims that do not necessarily relate to things (Grey 1980). It would be wrong to assume that prior to the 19<sup>th</sup> century property rights were private and absolute. The feudal system, which classical liberalism was attacking, was based on a highly contingent form of property ownership. All estates were held of a higher lord, on the condition of loyalty to that lord. Additionally, at the village level, some important property use rights (such as grazing on the commons) were held collectively. Charles Reich argued in the 1960s that a new form of feudalism is arising as government largess replaces private ownership as a significant source of wealth. Largess includes not only benefits, transfer payments, services, and subsidies, but also jobs, franchises, contracts, and the allocation of professional and other occupational licenses. While these things are all important sources of wealth, they are not secure property rights. Any of them might be lost without the same due process normally required to deprive citizens of their property. Rather than saying we should do away with government largess, Reich suggests that we should establish definite rights regarding this largess. These rights, which he calls “the new property,” would be protected by procedural safeguards (Reich 1964). John Umbeck suggests that even the simple ownership of tangible things would be better understood if we thought of property as a variable bundle of

rights, rather than dominion over a thing. These rights are necessarily limited by the rights of others. “When I buy an automobile,” for example, “I am actually buying certain rights or a set of alternative uses from which I am allowed, as the owner, to choose. If the rights to the use of the car were without limit, there would be no property rights for anyone else. I could use the car to kill or injure anyone unless they paid me not to, and in this fashion could deprive everyone of their property rights” (Umbeck 1981: 56).

*The dichotomy between public and private property gives an incomplete, and often inaccurate, picture of the forms that property takes.* By drawing our attention to the many private rights that individuals have regarding public property, as well as the many public rights that affect private property, Charles Geisler has called the usefulness of this distinction into question. The alienability and taxability of grazing rights on public land, for example, give them a strong resemblance to private property. In downtown Baltimore, fifty percent of the privately owned homes sit on land that is owned by the city, to which the homeowners pay a ground rent. From the other side, “private land does not have to undergo a title change to become quasi-public.”

Public sector taxation, spending, and regulation all blur public and private distinctions. Many other forms of government action condition the use, value, and disposition of private holdings as well, including public planning, impact assessment, loans, improvements, and a gallery of legislation which, directly or indirectly, separates ownership from control (Geisler 2000: 68).

In addition to blurring the line between public and private property, Geisler describes a number of estates that are not exactly public or private. These include common property regimes, Indian lands, corporate property, and land belonging to utilities (Geisler 2000).

*Property is social.* Thorstein Veblen criticized the classical idea that private ownership of nature is justified by individual labor. He points out first, that production is a cooperative effort on the part of a whole society, and second, that the

power relationships created by property tend to associate labor with a *lack* of ownership (Veblen 1898). C. Ford Runge *et alios* have elaborated on Veblen's first point. Despite all the controversy over "takings" cases, wherein government regulation is accused of decreasing private property values, far less attention has been paid to "givings"—situations in which government actions raise private property values. This happens, for instance, as a result of zoning regulations, provision of public infrastructure and services, public investment in research, and regulation of trade and interest rates (Runge, Duclos, and et al. 2000).

Another sense in which property can be social is when it forms an integral part of community life, not as a commodity to which someone possesses alienable title, but in the way that Karl Polanyi described land, as "an element of nature inextricably interwoven with man's institutions... organizations of kinship, neighborhood, craft, and creed—with tribe and temple, village, guild, and church" (Polanyi 1957: 178). For most of human history economic behavior has been embedded in personal relationships and social institutions. Economic exchanges were also social exchanges. The employment of labor and land as inputs to production was less subject to market mechanisms. Rather, production and exchange activities were often motivated by a desire for social rewards and were generally governed by social institutions rather than market mechanisms. Lewis Hyde talks about the importance of gifts in cementing community relationships: "...a group may form, cohere, and endure when property circulates as a gift, and it will begin to fragment when the gift exchange is interrupted or when gifts are converted into commodities" (Hyde 1983: 76). Because meaning is socially created, the classical idea of property as an isolated relationship between a person and a thing presents the risk of things becoming meaningless.<sup>4</sup> By

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<sup>4</sup> This parallels Weber's concern that *Zweckrational* behavior is coming to dominate every aspect of western culture. The tragedy of *Zweckrationalität* is that the actor who is constantly calculating (and for this reason reducing things to their quantifiable aspects) comes to regard everything as a means-to-

decommodifying things however, and re-embedding them in social institutions and personal relationships, they can become meaningful and provide greater satisfaction.

*Property serves instrumental purposes and its definition changes over time as society's needs change.* The classical view, which presents property rights as natural rather than socially constructed, is reflected in American culture by the idea that property rights are sacred, and therefore unchangeable. Historically, this is inaccurate (Freyfogle 1996; Friedman 2001). The early 19<sup>th</sup> century saw the beginning of a trend that ran counter to the established principle that people could only use their property in ways that neither harmed their neighbor, nor interfered with their neighbor's right to the quiet enjoyment of their own property. Jurists responsible for this trend sought to protect owners' rights to use their property intensively, seeking also to protect owners from liability for the effects of such use. The distributional effects of such decisions were very much in favor of the private sector industrial development that America was experiencing. During the Great Depression, and even a little bit earlier, the pendulum began to swing back the other way, with courts ruling against intensive land use rights when they threatened the public interest. Beginning in the 1980s there has been a counter-offensive by intensive land use interests, centered mainly on the idea of "takings". Nineteenth century courts reinterpreted the longstanding principle that one must use one's property in such a way as to avoid causing any harm. They downplayed the harms that land use might cause to a particular neighbor, choosing instead to consider the net harm or benefit to society at large. The special privileges and immunities granted to intensive land users were justified by the supposed public benefits of industrial economic development. Even as judicial views change regarding the public good and the purpose of private property, instrumentalist arguments have

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an-end, thus losing sight of ultimate ends. Of things that might have provided satisfaction as ends-in-themselves he or she comes to ask, what use are they?

remained the dominant form of justification for competing definitions of property rights.

*Property rights are contingent.* The contingency of property rights is made apparent by nuisance law, which limits an owner's right to use property in ways that interfere with other people's rights. The possession of title is in no way a license to do as one pleases. The rights of ownership are also limited by extensive regulation, as well as by the public's rights of taxation and eminent domain. Private property rights are further limited by the entitlements of non-owners. Joseph William Singer (2000) offers us the example of public accommodation laws, which make it clear that ownership of a restaurant does not allow one to refuse service to a black customer.

One might not like these limits, and many of them could be removed, but the idea of property rights as absolute is a logical impossibility. A property model that defines ownership as "the right to do whatever you want with what's yours" falls apart as soon as we consider disputes *between* owners, such as might arise when one person uses his or her property in a way that interferes with someone else's use of their property. Judgments in such disputes cannot be characterized as either pro- or anti-property; they inevitably protect some property rights as the expense of others. To say that one person has a right is to say that other people have a responsibility to respect that right—a condition that imposes limitations on people's behavior. When everybody has a similar right, then everybody shares corresponding responsibilities. It is these responsibilities (to refrain from interfering with people's rights) that give rise to rights in the first place. This is why responsibility (i.e., restraints) must attach to ownership, and why certain restraints are a protection, not a diminishment, of property rights. Eric Freyfogle puts it well:

Aside from its factual inaccuracy, the absolute-ownership myth simply makes no sense when we apply it to an actual piece of land. ...How "absolute" is my ownership if I cannot protect myself from interferences by neighbors: from the pollution of my groundwater, from the disruption of animal migration patterns that cross my land, or

from upstream drainage practices that unnaturally flood my tract? Unless I can halt inconsistent uses by neighbors, I have few rights that really count. Yet, if I can limit what my neighbors do, have not their “absolute” rights been constricted? And if I can limit what they do, cannot they in fairness similarly limit what I do as well (Freyfogle 1996: 178)?

The lines that simultaneously limit and protect—indeed, which create and define—property rights have to be drawn somewhere; the question is where. This is an important question to discuss, one that hinges on what it is we want property to *do*. But the discussion can’t happen if people don’t admit that there are any lines to be drawn.

### ***How the classical model is dysfunctional***

I mentioned above the risk that when property is detached from social relationships it may become meaningless, and thus lose its ability to motivate or satisfy. Here I wish to focus primarily on two economic functions of property—the internalizing and allocative functions—and problems associated with the division of property amongst many owners. John Umbeck defines the internalizing function of property:

*Individual ownership of resources, or a system of private property rights, will bring to bear on an owner all of the economic consequences from the use of his property. If there are no costs of contracting, and if exclusive and transferable rights are assigned covering all economic goods, then all the economic gains or losses accruing to other property values as a result of an individual’s use of his property will be brought to bear on him (Umbeck 1981: 56).*

The devil, of course, is in the details. It is very difficult, if not impossible, to meet both of these conditions. The myriad effects arising from each of our actions are often difficult to control, much less commodify. And how do we determine whether they are positive or negative externalities?<sup>5</sup> If my neighbor can overhear me playing my piano, should I be charging her for the performance, or will she charge me for the nuisance? In order to limit the production of harmful externalities, the public has

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<sup>5</sup> Externalities are costs or benefits that fall to parties outside the firm, in the absence of a transaction.

always sought to regulate private land use to a certain degree. Even if it were possible to eliminate all externalities, this would not necessarily be a good thing. Freyfogle points out that many of the “positive externalities” of certain land uses are the ecological functions of a healthy landscape, essential to all life. Management of these functions cannot be fragmented over many small properties, but rather needs to happen at a landscape level. For this reason, Freyfogle disagrees with privatization as a solution to the “tragedy of the commons” (Freyfogle 2003). Privatization creates more boundaries, and thus more problems of externality and transaction cost—the very tragedy that we are trying to avoid. The question is: how do we create secure private rights to land, ones that generate adequate motivation and reward, without fragmenting all aspects of landscape management? How can users of the land cooperate as a problem-solving community to generate the public goods that markets can’t provide?

The allocative function of property presupposes its ability to internalize the effects of choices, and is based on the right of alienability. The transferability of title is supposed to make property gravitate toward those owners who will use it most efficiently. This is the function of markets. Markets however are criticized not only on account of externalities, but also because imperfect competition<sup>6</sup> prevents market mechanisms from carrying out their allocative function properly. Without any limits on accumulation, the property right of alienability creates the opportunity for some individuals to acquire enough property, and thereby non-market powers as well, to distort the operation of markets. In many countries where land reform has taken place, it has been necessary to forcibly dispossess large land holders of their property, distributing it to more efficient small farms. If markets and private property really

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<sup>6</sup> Imperfect competition is when a single firm is large enough to affect prices; the extreme case of which is a monopoly.



operated to distribute resources to the most efficient users, we would not expect to see thousands of acres in Scotland devoted to hunting rather than farming; nor would we expect to see farms in the United States operating at sizes many times beyond what efficiencies of scale demand.

The concentration resulting from alienable property rights tends not only to distort markets, but also to create unequal power relations (which can further distort markets). In 1851 Herbert Spencer observed that if

...the whole globe may become the private domain of a part of its inhabitants; and if, by consequence, the rest of its inhabitants can then [exist] only by consent of the landowners, it is manifest that an exclusive possession of the soil necessitates an infringement of the law of equal freedom. For men who cannot [live] without the leave of others cannot be equally free with those others (Spencer 1970: 104).

Aldo Leopold echoed this sentiment almost a century later in his *Sand County Almanac*, asking “Of what avail are forty freedoms without a blank spot on the map?” Singer provides us with an answer to Leopold’s question by making a distinction between title and entitlement. One does not require title to have rights regarding property. Accepting Singer’s answer means rejecting the classical idea of absolute ownership.

Related to the issue of public goods mentioned above is the inability of markets to overcome the tyranny of small decisions and other problems of collective action. “The tyranny of small decisions” is a term coined by economist Alfred Kahn to describe how many small decisions taken over time by many people can add up to outcomes that none of those people would have voted for had that outcome “ever been presented for their explicit consideration.” In this way, “the consumer can be victimized by the narrowness of the contexts in which he exercises his sovereignty” (Kahn 1966: 24). Kahn is speaking of individual consumers, but the concept applies equally well to our political decisions about how to regulate property and markets. One can imagine, for example, communities all across the country each permitting a

supermarket to be built on their last piece of farmland, each assuming that they will be able to import food from other communities. Another classic problem of collective action is the plight of dairy farmers. Overproduction of milk has created low prices that threaten to put farmers out of business. In order to make the same amount of money at a lower price, each farmer responds by adopting practices that increase their production and lower their per-unit cost of production. As everybody increases production, the price continues to fall. It is obvious to all the farmers that as a group they need to decrease production, but any farmer who does this unilaterally will be put out of business.<sup>7</sup>

Dividing a landscape amongst many owners causes these kinds of dilemmas to multiply and makes it difficult to address large scale problems and goals. Mark Fiege tells the story of how serious weed problems in Montana in the early 20<sup>th</sup> century challenged the idea that a landscape can be divided into discrete spheres of interest. Spread by wild animals, irrigation systems, machinery, vehicles, and the wind, exotic weeds rapidly invaded fields, crowding out crops and reducing profits. Farmers who refused to control weeds on their property infuriated their neighbors, but nuisance law could not adequately deal with the problem: In 1920 botanists declared that it was “almost impossible for a man to keep his land free from certain weeds ...unless there is concerted effort to the same end by all farmers in the immediate neighborhood” (Fiege 2005: 8). By the late 1930s agricultural production had been curtailed on thousands of acres. Farmers responded by creating informal groups through which they cooperated to eliminate weeds. In 1939 legislation was passed enabling communities to create districts in which there would be expanded public power to control weeds. Fiege tells how “a hybrid geographic space—a kind of common

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<sup>7</sup> Donella Meadows offers a discussion of this situation based on a System Dynamics study by Philip Budzik, concluding that the government should intervene to limit production (Budzik 1975; Meadows 1991).

ground—began to appear in the midst of their otherwise separate parcels of land.”

The mobility of weeds across property boundaries “began to open a landscape defined less by linear divisions than by the shared experience of ecological connections. That ecological landscape presented opportunities for neighbors to work together to overcome mutual problems” (Fiege 2005: 2). Indeed, throughout the ‘30s and ‘40s Montanans exhibited a general trend toward collective tenure with the formation of districts for soil conservation and especially common grazing.

Another problem of fragmented ownership, and one that nuisance law is also unable to solve, concerns land uses (or other behaviors) that by themselves are harmless, but which can add up to serious threats when enough people engage in them. Freyfogle warns,

When too many fields in a watershed are plowed, or too many fields are drained, or too much wildlife habitat is altered, or too many homes are built in an area, or too much impervious pavement distorts hydrologic patterns, the ecological status of entire landscapes can be degraded (Freyfogle 2003: 221).

By the end of the 19<sup>th</sup> century, excessive timber cutting in Maine had resulted not only in ruined scenery, but also in silted rivers with altered flow patterns, reduced fish stocks, local climate change, and economic decline. Asked by the state legislature for an advisory opinion in 1907, the Maine Supreme Court declared unanimously that the legislature had a right to regulate private property in the public interest—including land uses that in isolation could not be considered a nuisance—and that the legislature had a right to do this without having to compensate owners (Freyfogle 2003).

The classical idea of property is about boundaries. It suggests that when we look at a map and see a polygon of crisp black lines with someone’s name in it, we are to understand that this person and no other has control over what goes on in that space, and that they and no other have a right to any benefits arising from that space. The web of lines, with names hanging in the spaces, describes a fragmentation of benefits and control. Nature, on the other hand, ignores human boundaries. The vast and

varied landscape cannot be divided up in practice or else it would cease to provide the many benefits on which our lives depend. These benefits include clean air and water, a stable climate, waste assimilation, and biodiversity (Olson 1999). These ecological functions, which in a settled landscape depend on management decisions, are public goods and cannot be provided by markets. Provision of these goods requires other institutions for motivating and coordinating the management decisions of all the land owners.

### ***Looking for an alternative***

So far I have raised several criticisms of the classical model of private property in land. I have discussed the impossibility of confining people's interests to any small parcel, as well as the inadequacy of markets to satisfy those interests. At this point, some readers may think it obvious that we should turn to public property. But that is not the direction I'm headed. I am interested in whether we can have private rights regarding land and natural resources without the problems of the classical model. At this fork in the road I'll take a moment to justify my path to those who don't see why we should worry about having private rights at all.

First, public property may be fine; but since there are so many people who want at least some private rights regarding property, I think it at least worth asking whether there is any way to make this work. Second, public property has its own long record of failure in terms of environmental protection and economic development. Third, there are numerous benefits to private property that we don't want to lose. These include economic incentive, psychological need for a sphere of personal control, the joy of sharing, or the importance of competency for good citizenship. Fourth, failures of democracy can make public ownership resemble monopoly private ownership, with all the attendant abuses, inefficiencies, and injustice. Fifth, and most

important, just as there is no completely private property, neither can property be completely public. To the extent that any individuals have secure rights regarding public property, we have something that begins to resemble private property rights; and thus we have not escaped the question of how these should be managed. I offer these five points, not in an attempt to dissuade anybody about the value of public property, but only to justify my inquiry regarding how private rights might be better arranged.

We do not have to go far to find examples of private property greatly at variance with the classical model. Many of them are hidden in plain view. Because the popular conception of property in America so closely resembles the classical model, it's surprising to realize how little resemblance this model bears to the reality of property in America today. Condominiums, land trusts, utilities, and zoning all represent significant departures. Yet it is difficult to identify a coherent philosophy that might serve as an alternative to the classical view of property. In an effort to do that, let us go back to the civic republicanism of late 18<sup>th</sup> century America.

From the perspective of civic republicanism, the purpose of property is to promote good social order. This view forms a part of the "proprietary" tradition (Alexander 1997; Rose 1994), although it also departs from that tradition in at least one significant way. Proprietarianism suggests that each person should have those things that are necessary for them to fulfill their role in society. For example, it is right that the janitor should have a broom, and that other people should not be allowed to take or damage the janitor's broom. Such an arrangement is necessary for the janitor to be able to do his or her job for us. Yet by attaching property rights to particular roles, rather than to people, an important contingency arises. It is not appropriate for the janitor to destroy the broom or to make off with it in dereliction of

duty. If the janitor wishes to quit, he or she must leave the broom for the next person who fills that role. Similarly, in order for society to be fed, the farmer must have secure possession of farmland, as well as a certain amount of discretion in management. It is not inconsistent with this model for the farmer to sell the fruits of his or her labor. What would be inappropriate, however, is for him or her to destroy the land or, perhaps, to leave it idle. We are still discussing private property, but whereas the classical model says that property exists for the benefit of the owner; proprietorism says that property, even private property, exists to serve the public good. The way in which civic republicanism departs from traditional proprietorism is in the strong emphasis that civic republicanism places on equality. The reason for this is a belief that successful democracy requires “competency” on the part of its citizens. In order for a person to act in the public interest, it was believed that he must be neither destitute nor dependent. A certain amount of property was considered appropriate to the role of citizen.

By the beginning of the 19<sup>th</sup> century a growing tension emerged between civic republicanism and what we have been calling the classical model, which views property as a commodity (Alexander 1997). These two competing views of property represent two different visions of society. To the civic republicans, property enabled citizenship, and the public realm was supposed to be a place where people cooperate to solve common problems. From the property-as-commodity perspective, property exists to enable individual freedom, and the public realm is a place where we compete in defense of our private interests. Civic republicans believed that when individuals fail to exercise their property rights in a manner consistent with the public good, the government has a right to intervene. From the property-as-commodity perspective, however, government should never interfere with private property rights.

As the industrial revolution gathered steam throughout the 19<sup>th</sup> century, and the public good came to be defined in terms of economic growth, courts increasingly ruled in favor of industries that stood accused of causing harm. Freyfogle describes how a split occurred between common and statutory law (Freyfogle 2003). As the courts became increasingly permissive of intensive land use, and the harmful effects of industry became more acutely felt, legislatures began to regulate land use more aggressively.<sup>8</sup> This simultaneous expansion of private rights and public power obscured the fact that private property rights are inherently limited by other people's rights—that they are in fact *created* and defined by limitations on other people's freedom of behavior—making it appear instead as if they are threatened only by government interference.

Law and government would be set apart from ordinary people and given a new, more hostile image. The mutual reliance of individual and community would decline, and liberty would be seen more as immunity from governmental interference and less as freedom to engage with other community members in collective self-governance (Freyfogle 2003: 80-81).

The tension between proprietarianism and the classical model of property evolved into a conflict over the right of government to regulate private property in the public interest. Private property was in fact heavily regulated throughout the 19<sup>th</sup> century (Novak 1996), but the *role* of private property drifted toward that of commodity.

During the 20<sup>th</sup> century, the willingness of government to regulate has varied greatly; but the public role of private property (and of private citizens) has remained obscured. Growing alarm over the seriousness of environmental problems has prompted some jurists to call for a new stewardship ethic to guide land use—as well as legislation and courtroom decisions to enforce this ethic (Freyfogle 1996; Karp 1993). This places responsibility squarely on the individual. Yet the inadequacy of nuisance

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<sup>8</sup> This corresponds perfectly to Polanyi's description of the "double-movement" that results from transition to a market economy (Polanyi 1957). It also illustrates a significant flaw in the classical model: competitive individualism demands authoritative intervention, thus undermining the very freedom that it seeks to increase.

law and the importance of collective action in solving environmental problems suggest the need for additional solutions.

Wendell Berry speaks of “an economics of cooperation rather than competition,” but believes that land “should be divided into small parcels among a lot of small owners” (Berry 1995: 5, 49). Brian Donahue, on the other hand, believes that we should move away from private ownership. He rejects the Jeffersonian ideal of “widely dispersed private ownership of land by independent yeoman farmers,” because

Far more often than not, private ownership of land in rural America has not meant an abiding commitment to community and place. It has been a means to accumulate wealth and eventually to cash out” (Donahue 2003: 38, 40).

The property-as-commodity version of ownership, described by Donahue above, indeed represents a tragic frustration of the Jeffersonian vision of private property enabling good citizenship. Yet William Simon, in his treatment of “social-republican property,” describes a type of private ownership that would encourage commitment to community and limit the ability of people to treat land as a commodity.

The distinctive feature of social-republican property is that it is held by private individuals subject to two types of conditions—one requiring that the holder bear a relation of potential active participation in a group or community constituted by the property, and another designed to limit inequality among the members of a group or community (Simon 1991: 1336).

These conditions function as restraints on alienation and accumulation and might enable Berry’s Jeffersonian vision to meet with Donahue’s approval. This critical revival of civic republicanism might also suggest a viable alternative to the classical model of property rights.

At this point I’ll attempt to restate the problem in brief. On the one hand, private property rights are desirable for reasons both political and economic, as well as personal. On the other hand, a division of the land into separate spheres of “sole despotic dominion” is highly problematic. Thus we require property institutions that



protect private rights to a certain degree while at the same time recognize everyone's interest in the whole landscape and enabling people to overcome problems of collective action in landscape management. To put it another way, *we need institutions that establish secure private rights within a landscape-wide management scheme that is democratically decided upon by the rights-holders.*

Haim Darin-Drabkin suggests something like this when he describes a model of community ownership mixed with individual use rights.

The liberal concept of universal application of individual rights in the sphere of land should result, due to the interrelatedness of different land uses, in the transfer of *ownership* rights to the community in order to assure for everyone individual land-use rights... [This would enable] planning the use of land according to the long-term needs of society... Obviously such a transfer should be done simultaneously with the creation of institutional means for allocating land-use rights for the whole population... (Darin-Drabkin 1977: 420)

This radical-seeming proposal is fairly consistent with the civic republican tradition. When Darin-Drabkin speaks of “land-use rights given to individuals but ultimate ownership reserved for the use of future generations,” he seems to echo Thomas Jefferson’s assertion that “the earth belongs in usufruct to the living.”<sup>9</sup>

Darin-Drabkin’s suggestion represents one possible alternative to the classical model of ownership; but it is certainly not the only one that would meet my criteria of having diffuse private rights in a landscape where management is coordinated in some democratic fashion. Each of the studies presented in this collection explores a variation on this theme, and each sheds light on different questions that arise in the attempt to balance public and private interests in the land. Two of the studies are about cooperation between private landowners, and two of them describe situations of shared ownership. The first, which was located in Vermont, uses a mail survey to answer the question of whether conservation on private land is impeded by problems of collective action. It also explores the question of whether the public planning

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<sup>9</sup> Letter to James Madison, September 1789.

process can be an effective means for citizens to overcome these problems. The second study deals with cooperation between private landowners in Norway. It describes how two seemingly contradictory imperatives—coordinating wildlife management across large areas, while keeping benefits and control in the hands of local resource users—are resolved through a nesting of management institutions; and it identifies some of the key factors, both structural and cultural, that contribute to the success of this system. The third study looks at land reform in Scotland, which, rather than breaking large estates into many small holdings, facilitates the transfer of land into community ownership. Using historical analysis and in-depth interviews with contemporary land reformers, this study explains why community ownership makes sense in rural Scotland today. The fourth study looks at the much older example of common property in Norway and offers those interested in Scottish land reform a glimpse at how well this type of ownership might meet their expectations. The study also compares two similar but different Norwegian cases in an effort to understand whether community ownership makes a difference or whether it is sufficient for local users of the commons to have secure use-rights. A theme that emerges across all four of these studies is the significant and often unexpected role of the state.

Property, including private property, is inherently social: it is a set of prerogatives that are socially defined. When we look at property, what we are looking at is a set of relationships. Understanding patterns of land use is a matter of understanding the social relationships in which land use is embedded. The papers in this collection all explore alternatives to the classical model of property. This is not primarily a legal exercise, but rather a study of social institutions. Each of the alternatives represents a way of embedding private rights in some kind of structure that makes them responsive to other people's rights and which allows rights-holders to

communicate and make decisions about their land use practices. To say that property is a set of relationships is not far from saying, as Aldo Leopold said, that land is a community to which we belong. As people define and redefine the meaning of property, they are shaping and reshaping the meaning of community. When we gaze at an expanse of grass and trees, our sense of what sort of place it is will vary depending on whether it is called a commons, an estate, or a parcel. The question of whether land is a commodity or whether it is “an element of nature inextricably interwoven with man’s institutions” (Polanyi 1957: 178) is inseparable from the question of whether human relationships are primarily governed by markets or whether they too are bound up with “kinship, neighborhood, craft, and creed.” The following chapters present a variety of ways in which human relationships and rights to land are bound up in various institutions. Taken as whole, they illustrate both the challenges and opportunities for having diffuse private rights without fragmenting the landscape.

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## CHAPTER 2

### **The Planner's Dilemma**

#### A Tragedy in Two Acts

#### ***ABSTRACT***

This paper describes a single case-study carried out in a small Vermont town. The purpose of the study was two-fold: first, to determine whether citizen commitment to conservation is impeded by problems of collective action; and second, to evaluate how well the public planning process serves as a tool for overcoming these problems. The first of these questions was answered by means of a mail survey, which found that landowners are strongly in favor of conservation and would be most willing to make conservation commitments if their neighbors agreed to do the same. Several months after the survey was conducted, however, the passage of a new conservation-oriented town plan met with strong opposition. Opponents of the plan tended to view the planning process as a contest between the Planning Commission and landowners, rather than as a venue for cooperation between neighbors. Much of the resistance was rooted in a cultural conception that private property rights are absolute in their ideal form, being limited only by the state and always to the landowner's misfortune. The ability of public planning to help people achieve desired land use outcomes may depend less on procedural innovations and more on advancing the understanding that landowners can benefit from mutual restraint and, more fundamentally, that property rights are not God-given but evolve as a product of public deliberation.



## ***INTRODUCTION***

The provision of landscape-level public goods such as scenery or adequate wildlife habitat requires coordination among many landowners. This paper examines how problems of collective action can stand in the way of such coordination, even among landowners who value these public goods. It is based on a single two-year case study in a small Vermont town. The study proceeded in two phases and contains two kinds of empirical data: a mail survey of all households, and a period of “participant observation” during which I attended public meetings throughout the contentious process of adopting a new town plan. The mail survey was designed to determine whether an expansion of landowner commitment to conservation could be expected to result from an increase in public education or whether such commitment is inhibited by problems of collective action. Survey results indicated that most landowners already care about conservation and that the chief incentive they need to commit to conservation on their own land is a mutual agreement with other landowners. A newly proposed town plan, however, with goals closely matching the desires of most survey respondents, met with strong opposition. During the second phase of the study I sought to understand why.

The woods and fields that compose a typical Vermont landscape provide many public benefits for which landowners are not, and cannot be, rewarded in the market place. These include, for example, scenic views, watershed maintenance, wildlife habitat, cultural significance, and a basis for tourism. About ninety-five percent of Vermonters in a recent poll say that they value the working landscape, making it the

highest ranking value in that study (Council on the Future of Vermont 2009). This finding is consistent with the concern that Vermonters have shown in other polls regarding sprawl (Smart Growth Vermont 2009). And yet, at the same time that Vermonters articulate appreciation and concern for the landscape, it is rapidly being destroyed. During the last half of the 20<sup>th</sup> century Vermont lost over two million acres of farmland and more than ten thousand working farms (The Vermont Forum on Sprawl 1999). Between 1982 and 1992, while the population of Vermont grew by less than ten percent, the amount of developed land increased by more than twenty-five percent (Yacos and Wilhelm 1999). Nearly forty percent of this newly developed land was formerly cropland and pasture (The Vermont Forum on Sprawl 1999).

It is clear both that Vermonters care about their landscape and that this landscape is threatened by their choices. The fact that both of these things are true demonstrates that caring is not enough. There are obstacles that come between an individual's values and the actions that he or she might take to protect those values. This paper is about those obstacles as they pertain to the protection of rural landscapes. There are two factors in particular that undermine a landowner's willingness and ability to contribute to the protection of a landscape that he or she cares about. First, many of the essential functions or benefits of rural landscapes can't be provided on any particular small parcel in isolation, but rather must be managed on a large scale. This may diminish the incentive for a landowner to act without the cooperation of other landowners. Second, many or most of these benefits have the nature of public goods. This means that a landowner's investment in conservation will go unrewarded by the marketplace. Thus the protection of rural landscapes is threatened by two problems of collective action: one between landowners, who must cooperate in their stewardship; and one between members of the general public, who need to compensate landowners, but who instead have a tendency to free-ride on the

conservation investments of others. In the remainder of this section I will first explain how problems of collective action affect landowner decision-making and why these problems need to be a central concern for conservationists. Then I will introduce the community in which my empirical study took place.

Nearly three quarters of the forest land in the northeastern United States is privately owned, with an average parcel size of about 22 acres (Kittredge 2005). Such a highly fragmented pattern of landownership is problematic for managing ecosystems as an integrated whole. Many important ecological functions, from hydrology to habitat, need to be managed on a large scale (Forman and Godron 1986). Likewise, many of the challenges that landowners face, such as invasive plant species, are nigh impossible to manage on one property in isolation, due to their mobility across property lines (Fiege 2005). Small parcels are poorly insulated from the effects of surrounding land use decisions. The difficulty of managing the content of natural areas without any control over the context suggests the necessity of landscape-level conservation strategies (Noss 1987). Patterns of land use matter. The contents of a landscape, such as woods, fields, and roads, will function differently or have different effects depending on how they are arranged in relation to each other (Olson 1999). Adverse effects of local resource use on large ecosystems may not be immediately apparent at the local level (Herring 1990); and practices that may not seem very harmful in isolation can add up to serious threats when enough people engage in them (Freyfogle 2003).

Fragmented ownership, when combined with the need for landscape-level management and the public goods nature of the benefits, can result in a situation where “individual forest owners are captured in a prisoner's dilemma” (Glück 2000: 181). Imagine that the presence of wild turkeys is something that the people of a

given area greatly desire and that it costs something for a landowner to create or maintain turkey habitat. Let's also say that it is not adequate for only a small number of landowners do this—in order for there to be turkeys, lots of landowners need to maintain habitat. Let's also say that if only a few people don't maintain habitat it won't make any difference; there will still be turkeys. The problem then arises at the level of each landowner's decision making. Even if every landowner would gladly pay the cost of maintaining habitat on their property for the sake of having turkeys in the area, each might reason: "If I undertake to maintain habitat and not enough other people do, I'll have paid the cost and there won't be any result. Conversely, if most other people do maintain habitat, then there will be turkeys whether I contribute or not." When the basis for decision-making is minimizing cost and weighing the probable impact of one's actions, rational landowners are likely to hang back from making any commitments to habitat protection. The tragic result is that none of the landowners will get to enjoy the sight of turkeys, even though each of them would be willing to contribute to habitat if only they could trust others to do the same. It is interesting to note the reversal here, from the suggestion that privatization may be necessary to avoid a "tragedy of the commons" (Hardin 1968; Smith 1981), to a recognition that where it is impossible to internalize the effects of decision making, some mechanism of cooperation needs to be established in order to avoid a tragedy of fragmentation.

The resemblance that private land use decision-making bears to a prisoner's dilemma game has long been recognized in the planning literature. Davis and Whinston take "the fact that the value of any one property depends in part upon the neighborhood in which it is located" as their point of departure for using game theory "to explain how interdependence can cause urban blight" (Davis and Whinston 1961: 107). Mandelker made the same observation: "In any deteriorating urban area, it is

against the self-interest of any one property owner to rehabilitate his property unless adjacent property owners do so as well” (Mandelker 1965: 27). McMillan applies this analysis to the problem of open space preservation:

Decision makers appreciate the value of open space and recognize that all would be better off if everyone preserved some open areas in their developments. Yet, due to the publicness of the benefits open spaces offer, an individual decision maker can gain more if he fully develops his own property while others continue to maintain open areas. But, if he is the only landowner to preserve open areas while others develop fully, he will be severely disadvantaged. Each decision maker is enticed by the potential benefits of being the only one to develop fully and prodded by the fear of the loss if he is the only one to maintain open areas. Hence, no open space is forth-coming since it is not to the advantage of any small decision maker to set aside open areas without the assurance that others will do likewise (McMillan 1974: 411).

Because the gains that a private landowner stands to make by developing open space are so large compared to his or her share of the public loss, there is the potential for a marked divergence between a landowner’s preferred outcomes and his or her contribution to those outcomes. In the absence of any mechanism to internalize the effects of private land use decisions, “the piecemeal nature of private development is typified by a series of individual maximizing decisions the product of which the decision-makers themselves consider unsatisfactory” (McMillan 1974: 411).

This divergence between landscape preference and personal choice is clearly evident in Vermonters’ housing decisions. According to the annual Vermonter Poll, about two-thirds of Vermonters think that low-density, automobile-oriented development outside of existing town centers is becoming a problem in Vermont and that action should be taken to stop it. When asked where they think that new residential development should occur, nearly ninety percent of respondents said that it should be located in existing towns rather than in the countryside. However, when asked where they would like to live if money were no object, nearly two-thirds of these same respondents said that they would purchase a house in countryside (Smart Growth Vermont 2009).

Many aspects of rural land use are plagued by dilemmas of this kind. Dairy farmers, unable to collectively reduce production, each respond to low prices by increasing their production in an effort to lower their per-unit costs and to benefit from a greater volume of sales—thereby driving prices still lower (see Meadows 1991). Another example is to be found in the nexus between property taxes and development. In some places, the leading reason for the sale of undeveloped land is property tax pressure (National Agricultural Statistics Service 2005). At the same time, one of the main factors behind rising property taxes is increasing development (Brighton and Northup 1990; Brighton and Hausauer 2002). These vicious circles are everywhere; and the study described in this paper shows how the protection of wildlife habitat on private land is similarly threatened, not by a lack of knowledge or caring on the part of landowners, but by the lack of an effective mechanism for cooperation.

In the town that is the focus of this paper, an effort is underway to make a town-wide plan for the protection of biodiversity. This project, organized by the town Conservation Commission, is inspired by the report of the Vermont Biodiversity Project (Thompson 2002). Its efforts are guided both by this report and by a manual issued by the Fish and Wildlife Department (Austin et al. 2004). These documents lay out conservation goals for the entire state but leave it up to local communities to implement strategies that will achieve these goals. At the time that this study was undertaken, this was the first town attempting to implement a biodiversity protection plan. Members of the Conservation Commission have worked with volunteers to inventory and map places of ecological importance, including such habitat elements as vernal pools, wetlands, mast stands, and deer yards. Based on this information, the Commission is creating a detailed conservation plan for the town. Recognition that

the area is at high risk of habitat fragmentation due to increased housing development (Stein et al. 2005) has imparted a sense of urgency to the work.

One of the maps created as part of this project places a white circle over every house, such that spaces more than six hundred feet from any house are left green. This makes it possible to identify contiguous areas of undeveloped land that might serve as core wildlife habitat, and also to evaluate connectivity between these areas. In some places, the thin ribbon of green connecting one habitat area to another is narrow enough that the construction of a single house would eliminate it. This is problematic because many species need to range over large areas in order to satisfy their needs. Effective preservation of wildlife habitat, therefore, is not something that can be practiced on a parcel by parcel basis. It is something that needs to be organized at a landscape scale.

The great challenge facing implementation of a town-wide conservation plan is the fact that the landscape to which it applies belongs to hundreds of private owners whose cooperation is necessary for its success. The hope is that landowners will donate easements to the development of “a regionally integrated system of conserved lands,” and in other ways commit to accommodating the needs of wild nature. What is going to make them willing to do this? The main idea has been to run an educational campaign that will teach landowners the importance of protecting biodiversity. The apparent assumption is that active landowner support for the plan will hinge on whether or not they favor its goals. But even if most landowners are in favor of the conservation plan, it does not necessarily follow that they will actively support it. This is because of the frequent divergence discussed above between the shared goals of a group and the incentives faced by each member as an individual.

The expectation with which I undertook this research was that education is not the sticking point, but rather that landowner commitment to conservation planning is

undermined by problems of collective action. When this expectation was borne out by the survey results, I developed another, perhaps more naïve expectation: that if landowners are informed about their mutual interests and have the opportunity to communicate face-to-face, problems of collective action arising from isolated decision-making can be overcome by landowners willing to make mutual commitments about conservation on their land. This may potentially be true; but such a process has difficulties and complications of its own. Attempts to bring residents together in neighborhood groups fell flat for lack of participation; and the passage of a new conservation-oriented town plan was vigorously opposed. Act I of this paper presents the survey results, revealing both widespread support for conservation and a willingness on the part of landowners to participate in conservation agreements with other landowners. Act II describes the contentious public hearing process for the adoption of a new town plan. In the discussion section that follows I try to make sense of why the plan met with such opposition and speculate about what would be necessary to advance conservation planning in the future.

## ***METHODS***

The study took place over a two-year period in a Vermont town of about two thousand people. The town was chosen for being a place where the question of landowner commitment to conservation is of immediate practical concern and where, consequently, the Conservation Commission and other citizens were interested in collaborating on this research in a participatory fashion. It is an area of high biodiversity, lying where the northern and southern limits of many species' ranges overlap; but it is also an area at high risk of habitat fragmentation due to increased



housing development (Stein et al. 2005). At the time that this study was undertaken, this was the first town attempting to implement a biodiversity protection plan following the recommendations of the Vermont Biodiversity Project.

The primary purpose of my study was to determine whether the willingness of landowners to go along with town-wide conservation planning is impeded by problems of collective action, as opposed to a lack of awareness or caring about conservation issues. A secondary and unanticipated aspect of the study was the opportunity to see how well the public planning process can serve as a mechanism for overcoming problems of collective action. The study proceeded in two phases and contains two kinds of empirical data.

The first phase was the distribution of a survey with questions about recreational access, biodiversity conservation, and development. The survey was intended to evaluate whether the satisfaction of local landscape preferences is impeded by problems of collective action. It contains questions asking respondents how aware they are of certain threats to recreational access, biodiversity, and farmland; how much they care about these issues; and, most importantly, what would make them willing to contribute to the protection of these things.<sup>10</sup> The survey was sent to all local households plus those of non-resident landowners—about nine hundred in all. Surveys were also available at the town clerk's office and upon request. Forty percent of the surveys were returned in usable form.

The second phase of my project began shortly after the survey research was finished, when the town Planning Commission completed their draft of a new, significantly more conservation-oriented town plan and a public hearing process for it began. This presented the opportunity to ask the following question: can the public planning process—containing, as it does, opportunities for public engagement and

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<sup>10</sup> Please contact the author for the complete survey or for the complete survey results.

mechanisms for mutual commitment—can this process be a solution to problems of collective action in land use? I answer this question based on a period of “participant observation,” lasting more than a year, during which time I attended all of the public meetings and hearings related to the new town plan, took notes on the public discussion, and spoke informally with as many people as possible.

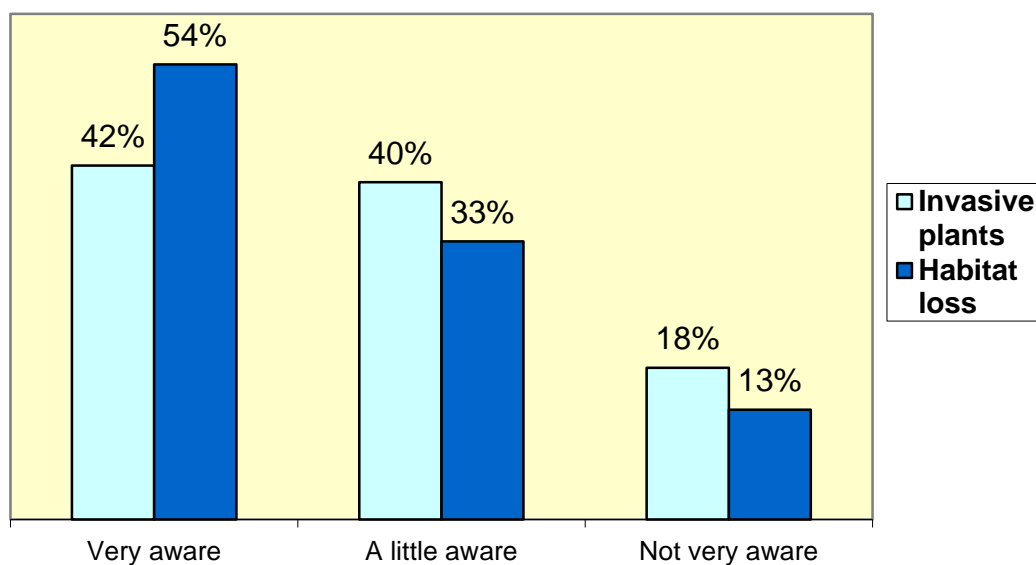
### ***ACT I: THE SURVEY***

Respondents to a survey carried out by the Planning Commission in 2002 identified “natural beauty” and “rural atmosphere” as the town’s two leading assets, demonstrating similar values to those of Vermonters state-wide (Council on the Future of Vermont 2009). Ninety-two percent of respondents to the Planning Commission’s survey said that they would like to see large undeveloped tracts of land in the town protected. The values expressed in response to the survey I carried out in 2009 are consistent with these previous surveys.

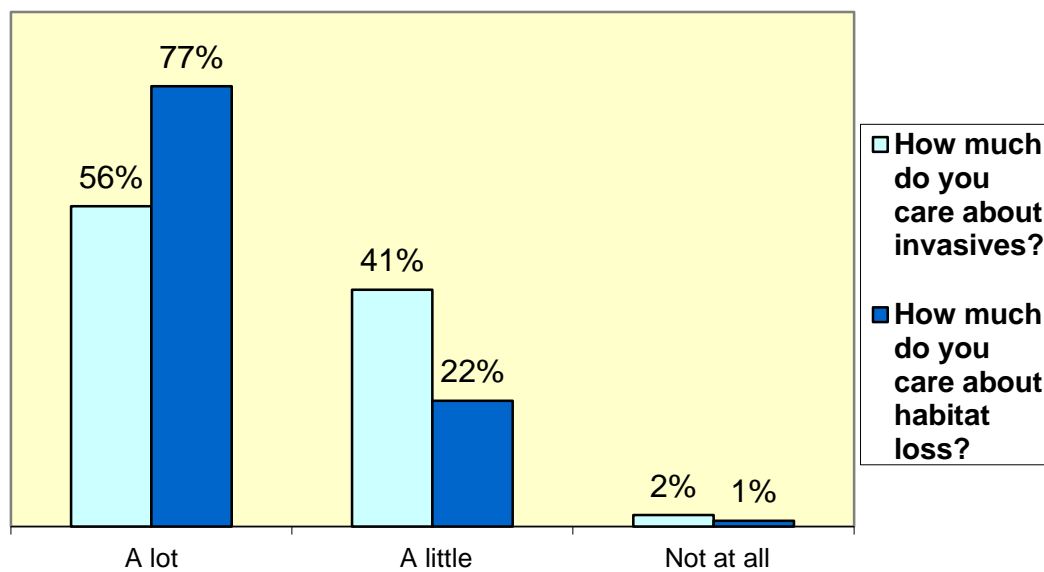
Responses indicate that most people are at least moderately well aware of conservation issues and that they care a lot about them (see Figures 2.1 and 2.2).<sup>11</sup> More than three quarters of respondents said that they care “a lot” about the loss of adequate habitat for wildlife.

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<sup>11</sup> Questions and response categories depicted in the charts are in many cases rephrased and condensed for the sake of space. They are not necessarily a verbatim representation of how the questions or response categories appeared on the actual survey.

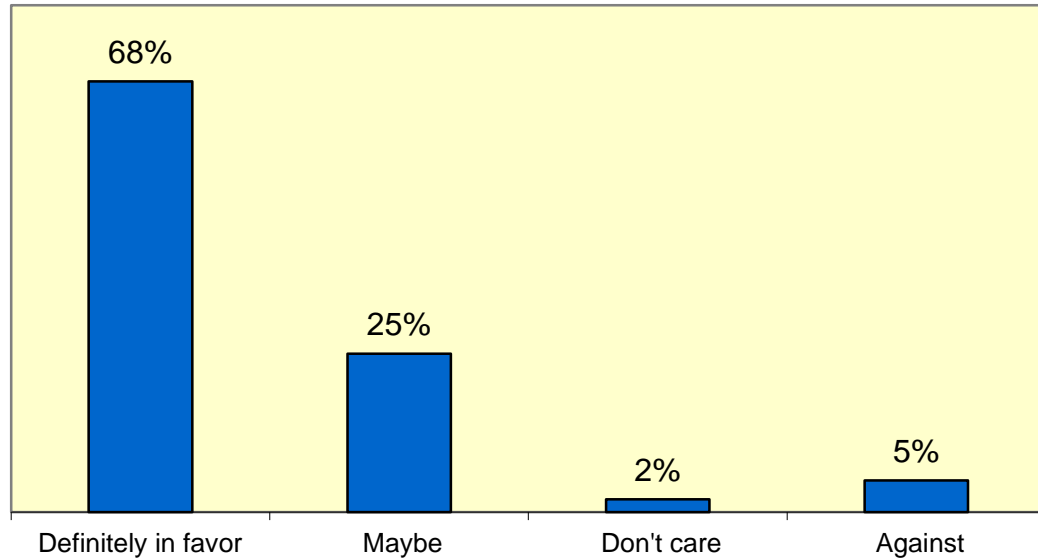


**Figure 2.1** Awareness of invasive plants and habitat loss as local problems.



**Figure 2.2** Degree of caring about invasives and about habitat loss.

When respondents were asked to “consider the following goal: That all native animal and plant species have the habitat they need to live here in [the case-study community],” more than two thirds said that they were “definitely in favor of that;” while only seven percent either didn’t care or were “against having that kind of goal” (see Figure 2.3).

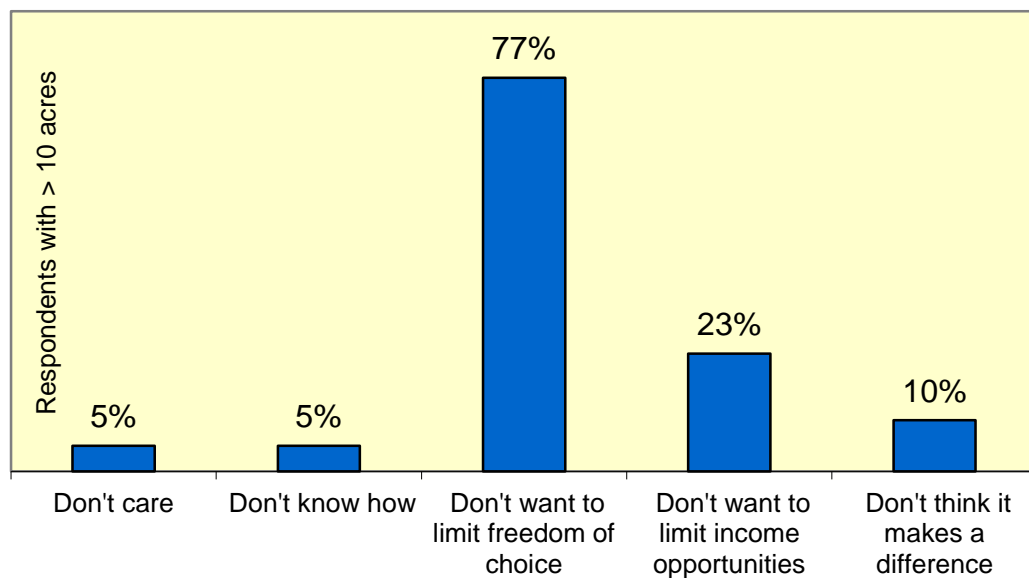


**Figure 2.3** Agreement with the goal of having adequate habitat for all native species.

The distribution of responses from landowners with greater than ten acres was almost the same as above, with sixty-three percent saying that they are “definitely in favor” and twenty-seven percent saying that they “might be in favor.”

Asked whether they would be “willing to commit to preserving wildlife habitat on [their] own land,” sixty-three percent of these landowners said “yes” and twenty-four percent said “maybe.” At first glance, this might seem to indicate that there is no problem of collective action, since the distribution of responses indicating what people are personally willing to contribute matches their desired outcomes. These expressions of willingness to contribute, however, are currently only a latent

orientation. The fact is that there are only twelve parcels of land in the town that are protected and, despite several public informational meetings on the subject, the local land trust has not been contacted by anybody from this town during the past two years. It might be suspected that if the question were rephrased such that “would you be” was changed to “are you,” and the vague term “commit to” replaced with “make a permanently binding legal agreement for,” the distribution of responses would shift more heavily to Maybes and Nos. The primary reason given by landowners for not committing to habitat preservation is that they want to keep their options open (see Figure 2.4).



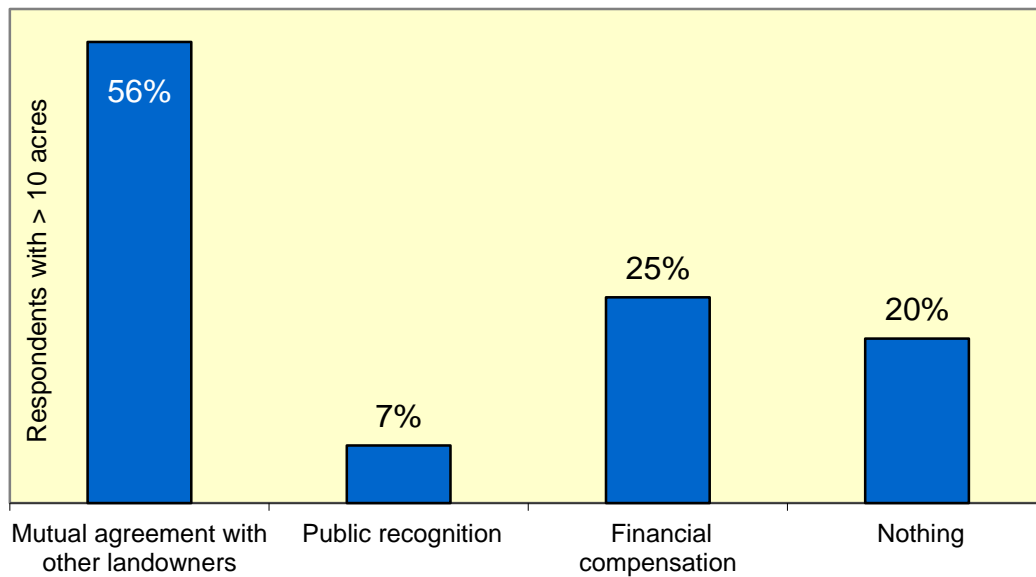
**Figure 2.4** Reasons for not committing to habitat preservation. (Respondents were permitted to indicate more than one choice.)

Once we know that landowners are aware of conservation issues and care about them, the main thing we want to find out is what it would take for them to commit to conservation on their own land. The most important question on the survey in this regard is this one:

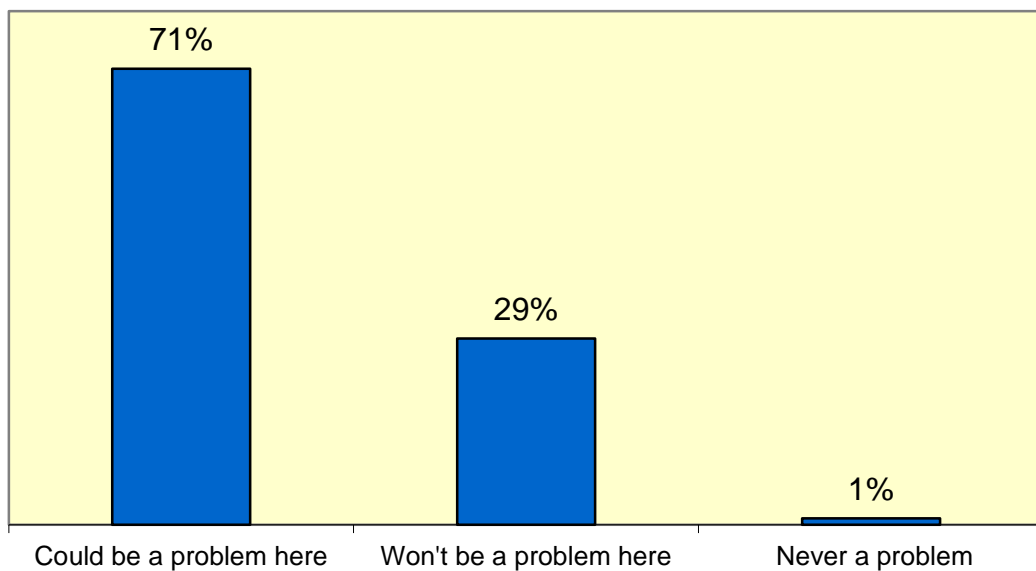
Which of the following, if any, would make you more willing to commit to preserving wildlife habitat on your own land? Check all that apply, and please circle the most important one.

- ☐ An agreement with a large number of other landowners who have all promised to preserve habitat on their land if I do on mine.
- ☐ Public recognition.
- ☐ Some financial compensation (but not the full development value).
- ☐ Other \_\_\_\_\_
- ☐ Other \_\_\_\_\_
- ☐ I'm not willing to make commitments about what I do with my land, period.

The most important incentive landowners identified was the first one, a mutual agreement with other landowners. This box was checked by more than twice as many respondents as the next most important incentive, financial compensation (see Figure 2.5). Out of those respondents who circled a “most important” incentive, seventy-nine percent indicated that a mutual agreement with other landowners would be most important to them, while twenty-one percent circled financial compensation. When all respondents (both landowners and non-landowners) were asked whether they would be willing to contribute money to a fund that compensates landowners for protecting habitat, forty percent said that they would, while another thirty-four percent said that they would like to if only they could afford it.

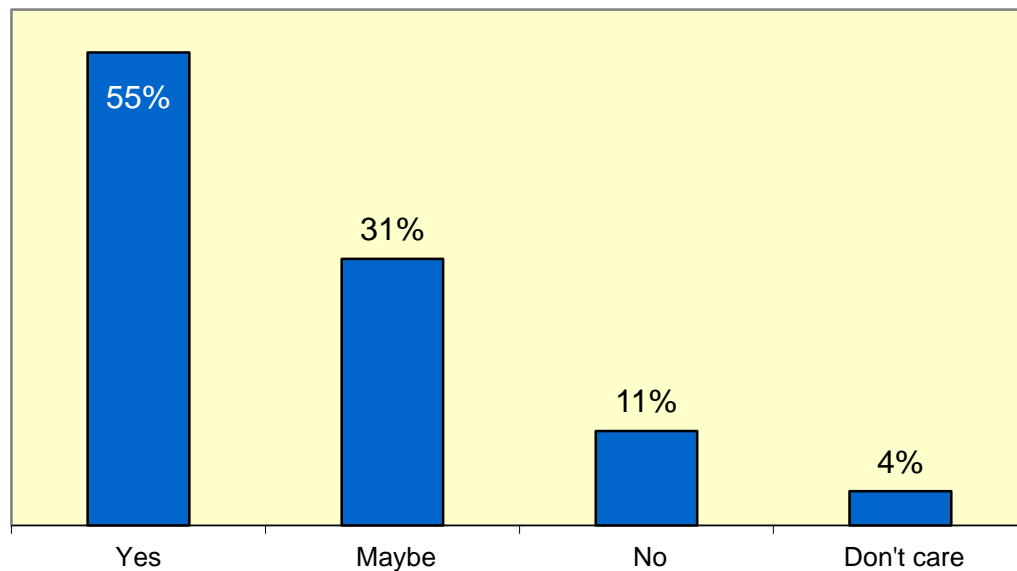


**Figure 2.5** What would make you more willing to commit to habitat preservation on your land? (Respondents were permitted to indicate more than one choice.)



**Figure 2.6** Views on Sprawl.

Responses to questions about sprawl also indicate high levels of concern; but people seem wary regarding conservation easements and hesitant to donate either money or development rights. Most respondents think that sprawl<sup>12</sup> could become a problem in the town (see Figure 2.6), and most of them would like to see more landowners put conservation easements<sup>13</sup> on their land (see Figure 2.7).



**Figure 2.7** Would you like to see more conservation easements in the town?

The response of landowners with greater than ten acres to the question of whether they would like to see more conservation easements in the town closely matches that of respondents overall, with fifty-three percent saying Yes; thirty-four percent saying Maybe; nine percent saying No; and four percent saying that they don't care.

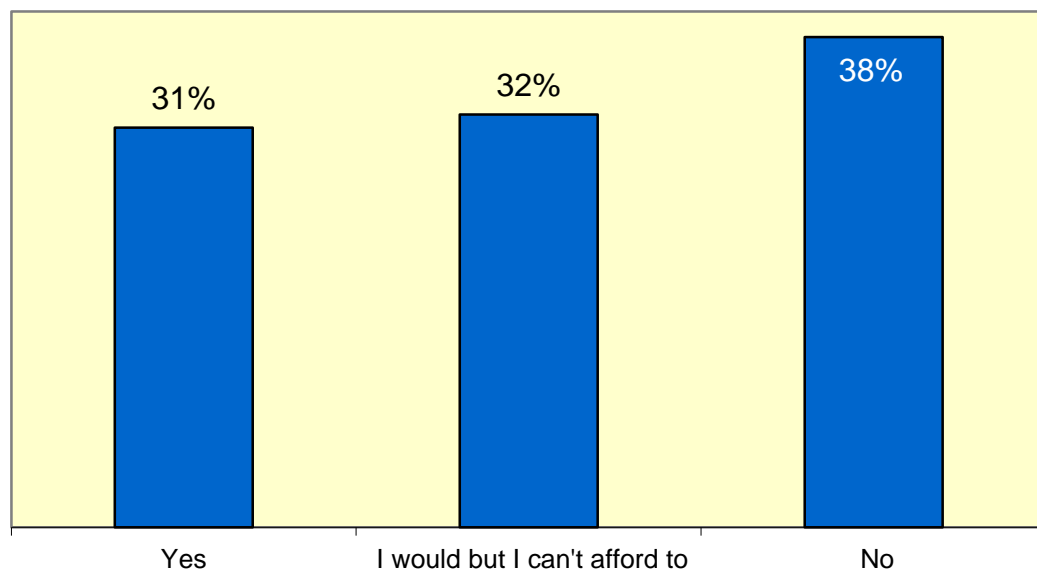
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<sup>12</sup> The survey describes sprawl as a situation where there is “so much dispersed residential and commercial development outside of village centers that the natural environment and rural atmosphere are threatened.”

<sup>13</sup> The actual phrasing of the question summarized in Figure 7 is: “A conservation easement is a voluntary legal agreement between a landowner and a land trust which permanently limits what may be done with a piece of land. Some property owners in [the town] have donated or sold conservation easements to protect their land from future development. Would you like to see more landowners in [the town] do this?”



When people were asked whether they would be willing to donate money to a fund that supports the purchase of conservation easements, however, the distribution of responses shifts conspicuously toward the negative (see Figure 2.8); and despite the interest on the part of most landowners in seeing more conservation easements in general, most of them are either hesitant or unwilling to donate easements themselves (see Figure 2.9).

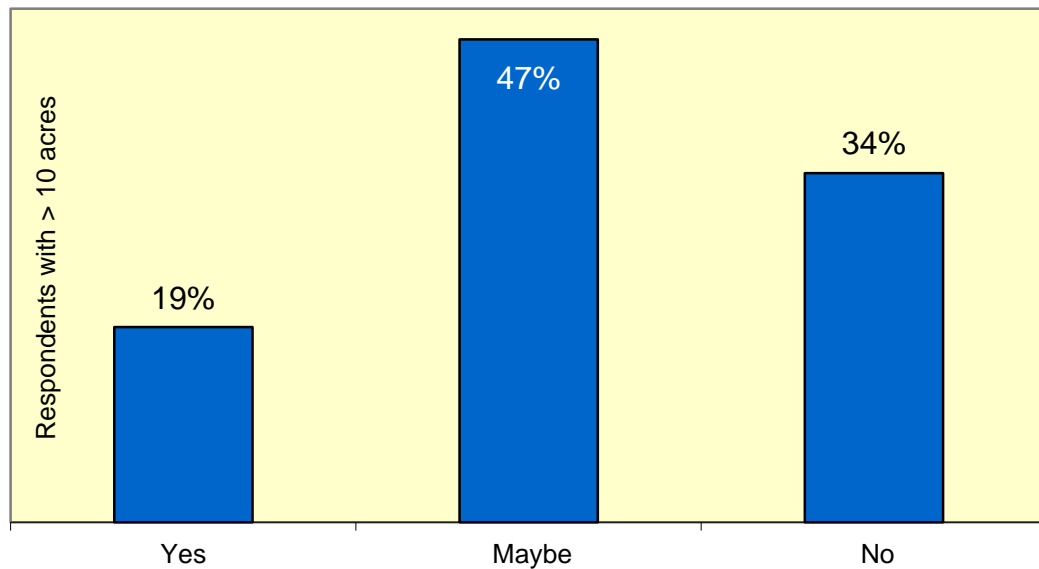


**Figure 2.8** Would you donate money to support more conservation easements?

When asked what would make them more willing to place a conservation easement on their land, the leading answer was “more information” (sixty-two percent). The second and third most common answers were a mutual agreement with other landowners<sup>14</sup> (forty-five percent) and financial compensation (forty-three percent). Only three percent of respondents indicated that public recognition would make a difference to them (see Figure 2.10).

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<sup>14</sup> The actual phrasing of that response category is “An agreement with a large number of other landowners who have all promised to donate easements on their land if I do on mine.”

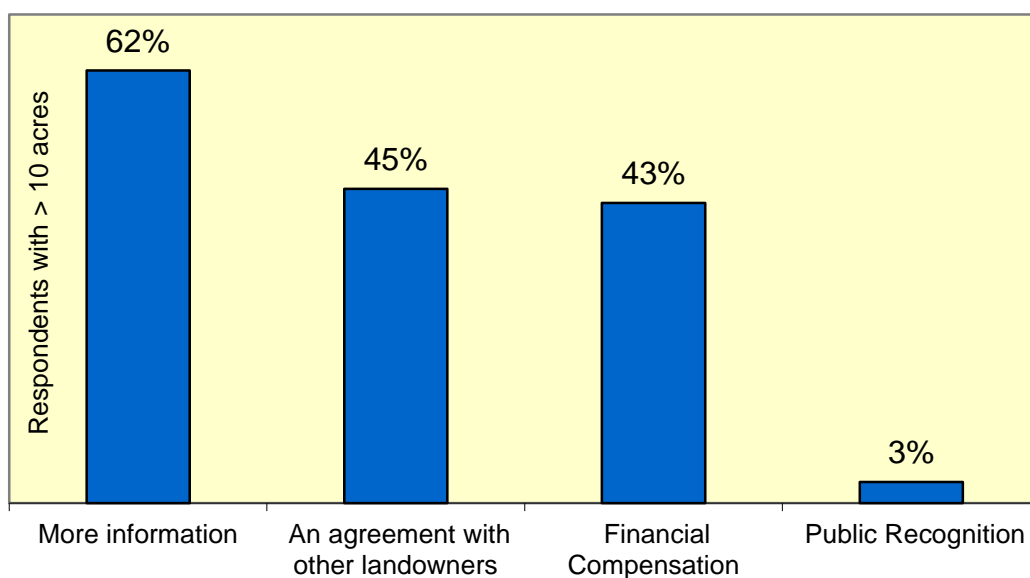


**Figure 2.9** Would you consider donating a conservation easement?

If the views of those who responded to this survey are even approximately representative of the population as a whole,<sup>15</sup> the Conservation Commission may well have concluded after this phase of the research that most people in the town already care a lot about the landscape and are worried about its future. It would appear that most people want to see development limited in some way and wildlife habitat protected. Most of them indicate at least a latent willingness to contribute to habitat preservation. Some landowners say that they would be more willing to commit to conservation in exchange for financial compensation—a requirement that it may be possible to satisfy, since a large percentage of respondents indicated that they would be willing to donate money to this purpose. The most significant finding, however, is that it matters to landowners what other landowners' intentions are when they are considering conservation commitments, and that this appears to be even more important than money.

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<sup>15</sup> Based on comparison with the 2000 census data for the town, older people of higher income and higher education are slightly over-represented on the survey.



**Figure 2.10** What would make you more willing to conserve your land?

## ***ACT II: CIVIC ENGAGEMENT***

Following completion of the survey, a public meeting was held at the grange to present the results along with some background information on land use trends in the area and to provide a forum for public discussion. The meeting was attended by about two hundred people. After the presentation, people broke into three different groups to discuss recreational access, wildlife conservation, and development. Those interested in continuing to work on these issues were asked to put their names on a contact list; but efforts to organize working groups failed to gain any momentum due to a lack of participation.<sup>16</sup>

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<sup>16</sup> See Appendix for a description of these efforts.

Not long after my public presentation of the survey research, the Planning Commission began a public hearing process for the draft proposal of a new town plan. This new plan was very conservation-oriented and included a number of significant changes from the old plan. Among these were the specification of maximum densities, such as one unit per twenty-seven acres in the newly redrawn conservation areas; the identification of wildlife travel corridors; and the decrease of commercially zoned land along a major roadway. In light of the difficulties encountered organizing voluntary working groups, the question presented itself whether the public planning process might be a solution to problems of collective action around land use, containing as it does numerous opportunities for public discussion and a mechanism for mutual commitment in the form of zoning bylaw.

At the time the survey was being written, board and commission members who were in on the process predicted that although many people might be in favor of conservation and opposed to sprawl, most would certainly be against any regulatory measures for dealing with these issues. Survey responses, however, indicate that people in the town are more accepting of regulation than public officials think. In response to the question “Do you think that residential and commercial development should be regulated by the town to prevent sprawl,” sixty-nine percent of respondents answered Yes; twenty-three percent said Maybe; and only eight percent said No. Responses to the question “What would you think of the town regulating land use in order to promote habitat preservation and connectivity” were a little more mixed, with thirty-six percent saying that they were “definitely in favor” and thirty-eight percent saying that they were “maybe in favor.” Fifteen percent said that they were “probably against” the idea; and eleven percent were “definitely against” it. Based on these results, one might expect that the new town plan would be generally well received.

Any optimistic expectations, however, were in for some bruising. At the first public hearing, about a hundred people showed up, many of whom were strongly opposed to the plan. One long-time landowner was nearly in tears as he voiced his concern that he wouldn't be able to build houses on his land for his children. A lawyer threatened that the town would be faced with "takings" lawsuits; and several people complained that the town cared more about salamanders than about people. Even the zoning administrator asserted that it was a violation of people's civil liberties to tell them where they can or can't build their houses. Many people had only recently become aware of the new town plan and were upset not to have been involved in its creation. They wanted to know why the Planning Commission hadn't talked to them about it earlier. "Pick a time and a day and I'm there," said one landowner. "Let me in on the game and I'll play ball." Exasperated Planning Commission members explained that over the past several years they had organized numerous meetings and working groups in an effort to encourage public participation in the planning process. Asked why they hadn't gotten involved earlier, people said they didn't know it was important at the time and that they don't have time to go to many meetings.

After receiving written comments and discussing each part of the proposed plan over the course of several public meetings, the Selectboard sent it back to the Planning Commission with a long list of suggested changes and things that they thought the Commission should reconsider. The Planning Commission in turn organized a series of work sessions to which the public were invited in order to reexamine each part of the proposed plan. Attendance at these sessions and at regular Planning Commission meetings was good, with a dozen to two dozen people coming to regular meetings that were previously unattended by non-Commission members, and between a hundred and two hundred people at the public hearings that were to follow. Despite this increase in participation, and despite the fact that most of what

people said they didn't like was removed from the plan (e.g., any reference to minimum lot sizes), opposition only grew.

At the next public hearing, opposition to the plan gravitated from specific grievances, many of which had been addressed, to a more general antipathy. Some speakers thought that the town should get rid of planning and zoning altogether. "You can't tell people what to do on their own land," one woman said. "It's not right. It's just not right." Prolonged applause followed another speaker's assertion that "to take even one landowner's rights away from him is *wrong*." Many people insisted that the new plan should not be any more restrictive than the old plan. Some said they relied on their land to provide for their retirement, and that they had long been expecting to be able to sell parts of it for residential or commercial development. They felt that to restrict their ability to do this where it had previously been allowed is tantamount to robbery, depriving them of much of their land's value. Others claimed that they have no intention of developing their land and don't see why they need to be told what to do by the Planning Commission. In the words of one man, "You are saying to the landowner, we don't trust you to do the right thing." Another man at a different meeting made the same complaint, "What this plan is saying is that the Planning Commission doesn't *trust* the landowners." Some landowners felt insulted by the idea of restrictions which seemed to imply that the Planning Commission, instead of honoring them as good stewards of the land, was casting them as a threat. Some owners of large undeveloped areas also resented what they perceived to be an asymmetrical transfer of benefits. Those people who went ahead and developed their land in the past not only get to retain the benefits of that decision, but are more likely to be allowed additional development; while those who have refrained from developing are now targeted for restrictions. "I don't tell other people what to do with

their land,” one farmer said, “what right do they have to tell me what to do with mine?”

Believing that the Planning Commission had run amok, or at least overstepped its bounds, a regular crew of residents and landowners began attending meetings in a watchdog capacity. “It’s not until the people show up with pitchforks,” one woman declared, “that the Commission will do what the people want.” In the year following the first public hearing, several seats on the Planning Commission turned over, and one of them went to a leading organizer of opposition to the proposed plan. He and others circulated a petition calling upon the Selectboard to throw out the proposed plan and to readopt the old one from 2004. They gathered almost two hundred signatures; and at public meetings it was spoken of as common knowledge that everyone in town was against the plan. As the Planning Commission prepared to submit their revised version of the plan to the Selectboard, one of the selectmen made it clear that the board would not be comfortable approving it in the face of so much community opposition. When it was pointed out that the known opposition represented only about fifteen percent of households, the selectman explained that the board cannot suppose the existence of a silent majority in favor of the plan. They can only go by the statements they receive in public meetings and during the period for submission of written comments; and it was their impression that the majority of these were in opposition to the plan. The Planning Commission decided to submit the revised plan anyway and a Conservation Commission member circulated an email telling those in favor of the plan that their active support was needed. At the next public hearing, support for and opposition to the proposed plan seemed more balanced, at least in terms of numbers, although the opponents were more vocal and impassioned. Rather than passing the proposed plan, the Selectboard decided to make more changes and to

schedule another public hearing. As of this writing, the old town plan has long since expired and the new one has not yet been approved.

## ***DISCUSSION***

What makes the destruction of Vermont's landscape a tragedy is that it is happening as a result of Vermonters' own decisions and despite their professed desire to protect it. Most Vermonters say that they value the working landscape and that they are concerned about over-development (Council on the Future of Vermont 2009; Smart Growth Vermont 2009), but on the whole their public and private choices fail to reflect this. During the 1980s, the amount of newly developed land per new resident was more than twice the national average, higher, for example, than in either New Hampshire or Colorado (Olson and Olson 1999). And yet, in a comparison of voter-approved tax and bond measures, Vermont has one of the lowest levels of public spending for the preservation of open space—only *ten cents* per person for the period 2001-2003, compared to \$32.55 per person in New Hampshire and \$174.35 in Colorado (Kline, Alig, and Garber-Yonts 2004). While Vermonters say that they are concerned about automobile-oriented development and want to see more compact settlement patterns (Smart Growth Vermont 2009), per capita car use in Vermont has risen much faster than in the rest of New England or even California (Johnson 2005). When highway construction expenses in Vermont set a new record in 2010, the governor and other officials hosted a “paving celebration” (Reformer 2010). If Vermonters are sincere in the love they claim to have for the landscape and in their desire to protect it, why do they each make choices that contribute to its destruction? Why do they fail to collectively take measures for its protection?



It is clear that in the community where my case study takes place most people do care about the landscape. In 2002 a Planning Commission survey identified “natural beauty” and “rural atmosphere” as the town’s two leading assets; and ninety-two percent of respondents said that they would like to see large undeveloped tracts of land in the town protected. In the survey I conducted in 2009, more than half of respondents said that they are “very aware” of habitat loss as a problem, and more than three-quarters of them care “a lot” about it. More than two-thirds said that they are “definitely in favor” of all native animal and plant species having the habitat they need to live in the area. Thus there does not appear to be a lack of awareness or a lack of caring on the part of most people regarding these issues; and since this is not the sticking point, an educational campaign is not likely to have much effect on people’s behavior. People are already in favor of conservation, and many of them indicate a latent willingness either to donate money or to commit to conservation on their own land. The question is: why don’t they? And what would get them to actually do it?

The sticking point appears to be the incentives faced by individual people when they consider whether or not to undertake actions that if taken collectively would lead to mutual gains. In the absence of any mechanism for mutual commitment, most people appear to be unwilling to take initiative or to risk acting unilaterally. When landowners were asked about their reasons for not committing to habitat preservation, only five percent said that they don’t know how to go about it, and only five percent said that they don’t care. More than three-quarters said that they don’t want to limit their freedom of choice. When asked what would make them more willing to commit to habitat preservation, the most common answer by far was *a mutual agreement with other landowners* (see Figure 2.5). This idea of mutual commitment turned out to be a much more important incentive even than financial compensation. When people were asked specifically about placing conservation

easements on their land, a mutual commitment with other landowners ranked only slightly higher than financial compensation as an important incentive. In both questions it is clear that it matters to landowners what other landowners' intentions are when considering conservation commitments. It seems equally clear therefore that promoters of landscape conservation need to work with groups of landowners together rather than with individual landowners one-at-a-time—and that in order to get more landowners to commit to conservation, some mechanism of mutual commitment is needed.

In “The Tyranny of Small Decisions,” economist Alfred Kahn describes how many small decisions taken over time by many people can add up to outcomes that none of those people would have voted for had that outcome “ever been presented for their explicit consideration.” In this way, “the consumer can be victimized by the narrowness of the contexts in which he exercises his sovereignty” (Kahn 1966: 24). The ability to present land use outcomes for people’s explicit consideration is one of the chief arguments in favor of planning. In the case-study community, the occasion of updating the town plan presented the opportunity for people to engage in a dialog about the future of the landscape and to commit to a common vision—one to which they would be bound by zoning bylaws enacted through their mutual consent. This would seem to be the perfect opportunity for them to achieve the landscape preferences that most of them expressed on the survey.

Instead, the proposed revisions provoked an angry backlash that brought the planning process to a halt and, as of this writing, has left the town without any plan currently in effect. This backlash was entirely unexpected by the Planning Commission and continued to gain momentum even as its demands were being met. Many residents were mad at the idea that anybody could tell them what to do with their own land. The very mechanisms of mutual commitment that could enable them

to achieve their shared goals came to be seen by many as restrictions on their liberty, imposed on them by some outside force.

Many public hearing attendees echoed the views of one man who asked, “Why should I be in favor of anything that restricts what I can do with my land?” He and others didn’t seem to appreciate the reciprocal nature of these restrictions or see any way in which they might benefit from them. Many people complained that regulation, any regulation, would lower their property values by limiting what they could do on their land. It did not appear to be understood that regulation is intended protect people’s property values by limiting what their neighbors can do. The difference in perspective described here is not a question of selfishness versus public-mindedness, but rather a matter of seeing how one’s own interests may be intertwined with those of others. To understand how land use regulation can be beneficial to landowners—indeed, to understand how agreeing to the regulation of any kind of behavior may be beneficial—people need to shift from asking “What does it mean for me if I have to follow rule x?” to asking “What does it mean for me if everyone has to follow rule x?”

Another thing that did not seem to be appreciated was that the community can take ownership of the planning process and use it to achieve shared goals. Instead, there was a widespread perception that planning is a tool for the government to impose its interests on the community. While this has often been the case (Scott 1998), it is not an apt description of planning in a small Vermont town. Nevertheless, at the very first public hearing, one opponent of the proposed plan stood up and told the Planning Commission (on which he would later take a seat) “You need to stay out of our lives.” This and other similar statements express and serve to reinforce the idea that the planning process is a conflict between the Planning Commission and landowners, a conflict in which the Commission is pursuing interests of its own and in which landowners are bound to lose something if the Commission achieves anything. The

unfortunate effect of this discourse is that it obscures the fact that there are naturally conflicting interests between landowners, which it is the purpose of planning to resolve. Once the landowner-versus-government dichotomy took hold in people's minds, it became difficult for them to see the planning process as a way for neighbors to come together to resolve their conflicts and to pursue mutual gains.

Another reason that some people perceived the planning process as an antagonistic intrusion on their lives is that they were not involved in it early on and it took them by surprise. One positive result of organized resistance to the proposed plan is that the number of people attending planning meetings increased dramatically. Often this was the result of opponents of the plan making rounds of phone calls prior to meetings to solicit attendance. There was also an increased interest on the part of opponents in volunteering for the Commission. Both meeting attendance and participation on the Commission, however, were done in a watchdog capacity: trying to put the brakes on the process and to whittle down the plan, rather than trying to understand the land use problems that the plan was attempting to deal with and to craft better solutions to those problems.

There was a clear perception on the part of the public that it is the job of the Planning Commission to author the plan, and that the purpose of public meetings is for community members to complain about parts of the plan that they don't like. The Planning Commission tried, apparently inadequately, to get the message across that the plan is meant to be the product of a process of public engagement and that people are expected to show up to planning sessions in order to work constructively on something that is understood to be a work in progress. A frequent exchange at planning meetings involved one or another community member standing up and threatening to attend every meeting from then on—followed by a Commission member trying to explain that this is exactly what was wanted. There is some ironic

humor in a group of citizens showing up at the town clerk's office to protest government and not realizing when they get there that the only government is them. In the long run, this heightened level of civic engagement will surely be a good thing. In the short run, however, the increase in participation doesn't seem to have increased satisfaction, as most new participants don't feel that they have anything to gain from the plan, but are only trying to protect themselves from losing something because of it.

One important role for education might be to give people a better understanding of planning and why it is sometimes necessary to cooperate in large groups. Almost every survey respondent indicated an understanding that what their neighbors did could have an effect on them. What may not be so well understood is that while contracts, litigation, and legislation can solve some of the problems that arise when our interests and actions extend beyond our property lines; there are other problems and aspirations that require sitting down as a community to talk and make agreements. If, for example, I wish that my neighbor would cut down some of her trees so that I may have a better view, I can make a contract with her to that effect and simply pay her to do it. Alternatively, if she is doing something that impairs the use and enjoyment of my property, I could try taking her to court. Both contract and litigation, however, in order to be useful tools, require that it is within my neighbor's power to either create or withhold the harms or benefits with which I am concerned. This is not always the case. Many harms and benefits are cumulative, resulting from the combined actions of many people, none of whom are capable of either halting or guaranteeing the outcome.

If a particular action is always harmful and there is never any reason why it might sometimes be desirable, then the state legislature can simply prohibit it. We don't need planning for this. Likewise, if there are actions that we want to limit overall, but it doesn't matter when or where they occur to the permitted degree, these

too can be regulated by the state—for example, auto emissions. Yet there are other land use outcomes we might wish to pursue or avoid that have more to do with the spatial arrangement of uses than their overall degree. People want both houses and factories and wild spaces, but arranged such that each can perform its function best and without interfering with other land uses. If people want walking or bike paths in their community, it is necessary for them to sit down to discuss with each other where they want the paths go, and to negotiate as a group with all the landowners whose property they would run through. Not only is this type of project beyond what markets and legislation can provide, neither is it something that a group of planners can do on their own. In order to have a clear idea what people really want, what they are willing to contribute, and how a proposed project is likely to affect people, it is necessary to have a process of public deliberation.

One thing that became clear in the case-study community was that in order to have a successful public planning process, people have to be open and receptive to that process and willing to participate. This means that the Planning Commission needs to structure the process to be as inclusive and participatory as possible. Being open to the process does not mean that people have to share the same goals. It is to be expected, for example, that landowners will have concerns about how a path across their property will disturb them; and they will have demands about how much compensation they will want, et cetera. Addressing these kinds of concerns is just what such a process is for. Where things fall apart is when some people, for fear of having other people's interests imposed on them, either refrain from participating or try to halt the process. And this is of course what people will do if they don't trust that the process is going to respect their interests. In the case-study community, people rallied to prevent the passage of a proposed town plan not because they disagreed with the vision it expressed, but because they were afraid that they wouldn't like the means

for achieving that vision. The selection of means is supposed to happen later during another participatory public process when the zoning bylaw is written and other non-regulatory measures are considered. But opponents never wanted to get to this stage without first making sure that nothing they cared about would be on the table. The reason for this was frequently expressed: They didn't trust that the process would respect their interests.

The unexpected thing that needs explaining is why a community would fail to grasp—even vigorously reject—the opportunity to mutually commit themselves to goals that on a survey they expressed strong agreement with. So far I have discussed resistance to the proposed town plan in terms of cultural antagonism to regulation and as a failure to understand the role of planning; but there are a few other angles from which this resistance might be considered. First, before speculating about the apparent discrepancy between the survey results and public reaction to the proposed town plan, it is worth revisiting the numbers. A likely estimate is that those who are actively opposed to the plan—that is, those who signed the petition or showed up to speak against it at public meetings—represent about sixteen percent of households. This percentage fits within the percentage of survey respondents that either didn't care about habitat loss or only cared a little, and easily fits within the thirty percent that did not think that sprawl could become a problem in the town. Eight percent of survey respondents were against the town regulating land use to prevent sprawl, and twenty-three percent were unsure about this. Since fifteen percent of respondents were “probably against” the town regulating to preserve wildlife habitat, and eleven percent were “definitely against it,” there is not necessarily any inconsistency in the objections of those who signed the petition or expressed their discontent at meetings. What we do not know is whether opposition to the plan is limited to this minority. Most people have not publicly expressed their opinion one way or the other.

An interesting feature of the debate is that, because the voices of opposition to the proposed plan appeared to be in the majority out of those who attended the hearings, it came to be widely assumed that an equally large majority of the whole town shared their views. This not only gave a great deal of momentum to their movement (whose members frequently express themselves on behalf of “the people of this town”), it also had a substantial impact on the deliberations of the Selectboard, which was reluctant to approve the new plan without community support. Thus perception of public opinion had a major influence on the process. Perception, however, is the operative word. After the most recent public hearing, for example, even supporters of the proposed plan came away with the impression that most everybody in the room had been opposed to it, which was indeed what the newspaper reported as well. Of the thirty-six people who spoke, however, sixteen were in favor of the plan and fourteen were against it (with six merely asking a question or telling a story). At the previous meeting, nineteen people had spoken in favor of the plan and ten in opposition. The reason why most people’s sense of these meetings was so different than this tally is that many opponents of the proposed plan stood up to speak multiple times, spoke with passion, and were answered by loud applause. Most of those who were in favor the proposed plan spoke only once and were generally more subdued in their tone and in their applause.

We do not know whether there are many people who are anti-sprawl and who want there to be adequate wildlife habitat in the town but who are also against the proposed town plan. It is probable that there are some, and so it is worth considering a few possible explanations why this might be the case. Based on the concerns people have expressed in public meetings, the leading reason for opposition is probably the considerable loss of potential income that could result from future zoning changes, the burden of which would not be spread equally throughout the community. A person



who at some time in the past purchased land with the explicit understanding that they would be allowed to subdivide it and to build a few more houses, and who paid a price reflecting this understanding, is going to feel that they are giving up a lot of the value of their land if they agree to a regulation that prohibits them from building or subdividing. For many in the case-study community, this loss of value would have a major impact on their lives, including their ability or their children's ability to remain in the community. Even those who would be willing to give this value up in the context of a mutual agreement must perceive that the enactment of zoning bylaw does not spread the burden of sacrifice evenly. Some parcels of land will bear greater restrictions depending upon their size, location, and attributes. Worst of all, people who went ahead and developed their land in the past retain all the benefit of having done so, while people who didn't develop are now called upon to forego that opportunity. There has been no discussion during the planning process of any mechanism for compensating those who will bear the burden of greater restrictions. Consequently, those people feel that they are being robbed and it is no wonder that they are upset. It seems possible that the proposed plan might have been better received had it included the provision that property value losses would be shared by the whole community.

Another explanation for resistance to restrictions on development might be that thirteen percent of survey respondents are unaware of habitat loss being a problem and thirty percent of them don't believe that sprawl will be a problem in the town. Each of these respondents might therefore believe that if they go ahead and develop their land they will be the only ones to do so. If they are sure that nobody else will defect, as it were, in the absence of restrictions, they would want to retain the ability to do so themselves in order to get the most optimal outcome possible. The risk in this strategy

is not very great since they have an easy exit: if the town does become more developed than they like, they can always sell their property and move elsewhere.

A final obstacle to planning for the future might be the short timeframe of people's lives compared to the long timeframe in which the benefits of planning or the consequences of a failure to plan take effect. Although seventy percent of survey respondents say that they will remain in the town for the rest of their lives, more than sixty percent of respondents with greater than ten acres are fifty-six or older, and more than a third are sixty-six or older. It is hard to apply the wisdom of making short-term sacrifices in exchange for long-term benefits to those who, due either to mobility or age, will not be around to reap those benefits. Thus, while it is all too often the case that future generations are saddled with the costs of decisions made by present generations for short-term gain; it may be appropriate to find ways to pass the costs of landscape protection on to future generations if this is what is required to make it happen, since they are the primary beneficiaries.

## ***CONCLUSION***

The survey portion of the research described in this paper confirms the expectation with which it was undertaken: that most people in the study community already care about the landscape and are well aware of the threats it faces. Education on these points, therefore, does not seem to be what is most needed in order to get people to contribute to landscape protection. There are, rather, problems of collective action that come in between people's preferences and their personal choices. The incentives faced by individuals acting unilaterally are quite different than those faced by people making mutual commitments in a group; and many survey respondents

indicated a greater willingness to commit to conservation in the context of a mutual commitment with their neighbors. The organization of mutual commitments in a group, however, is no easy task. Even getting individuals to participate presents collective action problems of its own.

All of this would seem to suggest a good rationale for public planning, which can provide both a forum for public discussion and a mechanism for mutual commitment in the form of zoning bylaw. That some citizens are deeply skeptical of planning is hardly surprising, for it has been different things at different times. Planning can be a bureaucratic, administrative process by which a central authority imposes rational order on the built environment; but it can also be a participatory, democratic process that brings people together to discuss and plan for the future of their community. The challenge for planners is to make this second vision of planning a reality. To do this, they will have to overcome deep-seated cultural opposition to the idea of regulation and help people to understand the important role of land use planning in solving problems that are beyond the reach of markets, courts, and legislatures.

In order to be an effective tool for overcoming problems of collective action, the planning process needs to be participatory. But the more that it becomes so, the more opportunity there is for people to obstruct it. In the case-study community, the leading obstacle to constructive public participation was the idea that the process was a contest between landowners and the Planning Commission, in which any restrictions on land use would be a loss to landowners. Planners need to help people to understand that there are inherent conflicts of interest between different types of land use, and to help people see the planning process as a place for landowners to work out these conflicts for their mutual advantage.

To facilitate this process, new mechanisms may be needed to distribute the costs and benefits of land use restrictions more fairly. Zoning is most easily applied when it reinforces existing land use patterns; but it is a very poor form of planning that is incapable of altering current patterns when it is perceived that these will cause problems in the future. The difficulty is that changes in the zoning bylaw distribute benefits and costs unequally across the population. Those who stand to lose a lot have a great deal of incentive to expend effort trying to block the changes, while those who are the recipients of more widely spread public benefits have comparatively less incentive to actively support the changes. All of this contributes to maintaining the status quo and, even were fairness not a consideration, suggests the need for a more equal distribution of the losses and gains resulting from the impact of public regulation on property values.

Efforts to mobilize Vermonters in response to the threats facing their landscape need to take into account that the problem is not a lack of awareness or caring, but a failure of the civic processes that would enable cooperation around shared goals. Just as the incentives for unilateral conservation efforts are inadequate, so too are the incentives to participate supportively in collective efforts. The challenge for planners is not so much to arouse people's sympathy for conservation, but rather to structure a process that provides adequate incentives for people to engage with other members of their community in negotiating their commitments to a shared vision of the future.

## ***APPENDIX***

One of the efforts to organize working groups in the study community had to do specifically with hunting access. Vermont's tradition of open recreational access to

private land is on the decline as more and more landowners “post” their land with signs that either forbid any trespass or that just forbid hunting. Eighteen percent of survey respondents are hunters, and many of them feel that the diminished availability of places to hunt is a problem. It would appear from the survey that this is a resolvable problem. The two leading reasons given by landowners with greater than ten acres for limiting access are “to prevent property damage or litter” and “personal safety.” Fifty percent of them are also concerned about liability. When asked what would make them more willing to allow access to their land, almost three-quarters said “a well-understood code of responsible conduct among the users.” About a third said that a mutual agreement with other landowners would make them more willing; and about a third said that they would be more willing if access could be restricted to local residents. Only five percent indicated that financial compensation would make a difference to them. Based on these responses, the idea of a local hunting club was suggested, in which membership would be restricted to residents, as well as non-resident landowners. Members of the club would adhere to a well-publicized code of conduct emphasizing safety and respect for property; and landowners would be encouraged to allow club members to hunt on their land. The club would also make landowners aware of the extent to which Vermont statutes protect them from liability. Two preliminary meetings were held with leading members of the local hunting community who expressed interest in this idea and who said that they would contact others who might be interested. Numerous follow-up phone calls, however, were unproductive of any further meetings and the idea was dropped.

The Conservation Commission put somewhat greater effort into the organization of neighborhood groups to cooperate around conservation. The consulting naturalist who created the biodiversity inventory report for the Commission identified five areas in town as being the most important from a conservation

perspective. For each area, a list was created with the names of all the major property owners. The original idea was that within each neighborhood a conservation-minded landowner would host a meeting at which neighbors could discuss their conservation goals and practices, look at a map of the entire area to see how each of their parcels fits into a larger landscape mosaic, and agree on ways to coordinate their conservation practices in order to achieve functional patterns at a larger scale. Members of the Commission expressed a concern at this stage that not too much should be said about easements or other forms of commitment, for fear of scaring people off. Some initial conversations were held with a few interested landowners, but the neighborhood meetings never happened. About a year went by, during which time it was decided that although the idea of getting landowners to cooperate across property boundaries in their habitat management sounds good, there is not in fact anything that they really need to do to manage habitat in most cases except to refrain from ruining it. This means that an avoidance of discussion about long-term conservation commitments leaves little of importance for landowners to talk about. A better tack, it was decided, would be to try to identify those landowners in each neighborhood who really care about conservation (even if they have reservations about what they would be willing to commit to), and to bring them together to talk about a conservation plan for their area. Part of this conversation would be to explore the idea of mutual commitments of some sort. At the time of this writing, the project of organizing neighborhood groups is being revitalized, partly by the added incentive of a small grant for mapping.

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## CHAPTER 3

### **Private Rights and the Public Trust**

Nested institutions for wildlife management in Norway

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#### ***ABSTRACT***

In a landscape of fragmented private ownership, the need to coordinate game management across large areas presents special challenges for farmers and nature management agencies alike. This paper describes how a unique Norwegian institution, the *jaktvald* (hunting management area), achieves landscape-level management while maintaining a tradition of local control. These two seemingly contradictory imperatives—coordinating wildlife management across large areas while keeping benefits and control in the hands of local resource users—are resolved through a nesting of management institutions and the devolution of decision-making to the lowest possible level. The state in this case serves to facilitate inter-local cooperation. Information about jaktvald was gathered through interviews with staff at the Norwegian Directorate for Nature Management, with wildlife management officials at the municipal level, and with hunters between the fall of 2007 and the spring of 2008. The bulk of the information about how jaktvald are organized at the local level comes from a case study in central Norway.

## ***INTRODUCTION***

When natural landscapes are fragmented into many privately owned parcels, the management of wildlife and their habitat is made difficult by the need to coordinate decision-making amongst numerous stakeholders. This is especially challenging in the case of species such as moose that range over very large areas. The issue of scale lies at the heart of two apparently conflicting trends in wildlife management today. At the same time that ecologists are calling for nature management to happen at larger scales, there is also a growing movement in favor of decentralizing management by putting more control into the hands of local resource users. In this paper we explore how these two seemingly contradictory imperatives can be resolved in the case of moose management.

In Norway, hunters play a very active role as managers, and there is currently a trend toward strengthening the authority of local actors over wildlife resources (Daugstad, Svarstad, and Vistad 2006). At the same time, there is a desire to increase the spatial scale at which management planning is done. Recent changes in the organization of Norwegian *jaktvald*, or hunting management areas, attempt to combine multiple hunting-grounds into larger management areas without taking control away from local hunting teams. How can wildlife management be coordinated across larger areas while still keeping benefits and control in the hands of local resource users? In our description of how this works we seek to identify the role of each of the institutions involved and to understand both the procedures and the incentives that bring them to work together. We also consider the role of culture and social capital in facilitating cooperation.

### ***The need for landscape-level management***

Forested landscapes provide, or have the potential to provide, a wide variety of benefits other than timber. These include aesthetic and cultural values; rural economic development; and vital ecosystem functions such as watershed maintenance and the conservation of biodiversity. In the forestry literature, the term “ecosystem management” is being used to place a greater emphasis on forest ecology. The term became widely used by the early 1990s, reflecting both improved scientific understanding and changing public values (Cortner and Moote 1999). Definitions of ecosystem management stress the importance of ecological integrity and privilege the maintenance of conditions, including biological diversity, over outputs (Grumbine 1994).

Highly fragmented patterns of landownership are clearly problematic for managing ecosystems as an integrated whole. Where the land is divided into many private holdings, each may be too small for the landowner to achieve his or her management goals when making decisions in isolation. Many important ecological functions, from hydrology to habitat, need to be managed on a large scale (Forman and Godron 1986; Dramstad, Olson, and Forman 1996). Likewise, many of the challenges that landowners face, such as invasive plant species, are nigh impossible to manage on one property in isolation, due to their mobility across property lines (Fiege 2005). Small parcels are poorly insulated from the effects of surrounding land use decisions. The difficulty of managing the content of natural areas without any control over the context suggests the necessity of landscape-level conservation strategies (Noss 1987). Patterns of land use also matter. The contents of a landscape, such as woods, fields, and roads, will function differently or have different effects depending on how they are arranged in relation to each other (Olson 1999). Adverse effects of

local resource use on large ecosystems may not be immediately apparent at the local level (Herring 1990); and practices that may not seem very harmful in isolation can add up to serious threats when enough people engage in them (Freyfogle 2003).

For these reasons, it is often desirable for private landowners to cooperate across property boundaries. The possibility of such cooperation, however, is threatened by problems of collective action. Because many of the benefits of good forest and wildlife management cannot be internalized on small parcels of land, there is a temptation to free ride on other people's stewardship by stinting on one's own conservation efforts. Recognition that these benefits have the nature of public goods has led some scholars to suggest that they be managed as commons (Uphoff 1998; Glück 2000). It is interesting to note the reversal here, from the suggestion that privatization may be necessary to avoid a "tragedy of the commons" (Hardin 1968; Smith 1981), to a recognition that where it is impossible to internalize the effects of decision making, some mechanism of cooperation needs to be established in order to avoid a tragedy of fragmentation resulting from privatization.

### ***The need for community-based management***

Because so many aspects of nature need to be managed at a landscape level, it may at first glance seem easiest simply to have a superior authority dictate how land and wildlife should be used (Ophuls 1977). In practice, however, the interests of a leviathan tend to differ from those of local communities (Scott 1998); and putting too much power in the hands of the state can lead to a decline of local management institutions and result in the degradation of natural resources (Pretty and Ward 2001; Wittman and Geisler 2005). In the estimation of Mark Baker and Jonathan Kusel, "There is a broad consensus that the dominant [state-centric] paradigm of forest management... with its associated bureaucratic and technocratic structures, has, for

the most part, failed to steward forest ecosystems and maintain vital communities” (Baker and Kusel 2003: 2). In response to this, proponents of “community forestry” are calling for more local and democratic management. According to Robert Lee and Donald Field, “A new paradigm for managing forests is forming. State-controlled forestry is in decline and community control of woodlands is on the rise” (Lee and Field 2005: 4).

The two leading arguments in favor of community-based natural resource management are that it provides better environmental stewardship (Brosius, Tsing, and Zerner 1998; Uphoff 1998; Rice 2001; Vedeld 2002; Bryden and Geisler 2007), and that it creates opportunities for local economic development (Gunter and Jodway 2000; Treue and Nathan 2007). These two arguments are tied together by the idea that local benefit is a necessary condition for sustainable local management: to effectively devolve control over a resource, local users/managers need to have enough right to benefit from the resource that there is an incentive for them to manage it sustainably (Meinzen-Dick and Di Gregorio 2004; cf. Murphree 2009). The application of this principle is exemplified by Zimbabwe’s wildlife policy. “As long as wildlife remained the property of the State,” Simon Metcalfe explains, “no one could invest in it as a resource. Consequently, management effort on commercial and communal rangelands was being put into domestic livestock” (Metcalf 1994: 2; see also G. Child 1996). Following the devolution of wildlife management, revenues went to local communities (B. Child 1996) and the decline of both animals and habitat was either halted or reversed depending upon species and location (Taylor 2009).

Local compliance with large-scale planning efforts is likely to be greater when localities can participate in the planning process than when a plan is imposed by the state (Geisler and Martinson 1976). Scientific expertise is not enough. The ecosystem management literature recognizes that management choices are embedded in a

framework of human values and stresses the need for a participatory approach at the community level (Grumbine 1994; Cortner and Moote 1999).

In Norway, at the same time that nature management officials are trying to increase the scale at which some wildlife species are managed, they are also promoting more local involvement in game management. This latter policy is based on a recognition that landowners, whether they are recognized as managers or not, are the ones whose decisions most affect wildlife, (e.g. through forestry and hunting), and that they therefore need to have a more actively responsible role.

Although local control is increasingly presented as a solution to the failures of the state, attempts to devolve resource management face a number of challenges and have often been unsuccessful (Shackleton et al. 2002; Wittman and Geisler 2005; Fabricius and Collins 2007). Perhaps the most serious criticism of devolution is that a myopic focus on local conditions and interests will ignore the effects of local decisions on other areas and generally obscure how localities are interconnected in larger systems (Herring 1990, 2001).

### ***“Nesting” different levels of management***

We see that there are compelling reasons why many aspects of woodland management should happen at scales large enough to encompass multiple private ownerships; while at the same time a growing number of scholars are cautioning that management should not be put in the hands of the state, but rather left principally under local control. At the local level this problem may be solved through the cooperative management of resources. The literature on common property regimes provides a wealth of examples of successfully managed local commons (Bromley and Feeny 1992; Burger et al. 2001; Eggertsson 1993; McCay and Acheson 1987; Netting 1981; Ostrom 1990; Stevenson 1991). *But what if the scale at which a resource needs*



*to be managed encompasses multiple localities?* Scaling up the commons presents something of a puzzle. On the one hand, Brian Child advises, management units should be “small enough that all households can participate face-to-face” (B. Child 1996: 377). On the other hand, expressing his reservations about local management, Ron Herring observes that “overlapping/overarching commons situations... necessitate larger scale cooperation than is possible in the face-to-face communities that are conducive to cooperation” (Herring 1990: 88).

To resolve this problem it has been suggested that local institutions should be “nested” or “layered” in larger structures that can coordinate their activities (Berkes 2008; McKean 2000; Ostrom 1992; Ostrom 2004; Rose 2002; Turner 2007).

Margaret McKean explains,

Institutions for managing very large systems need to be layered with considerable devolution of authority to small components to give them flexibility and some control over their fate. Some forests, grazing areas, and irrigation systems may have to be managed in very large units, but at the same time the persons living near each patch or segment of the resource system need to have substantial and secure rights in the system to have the incentive to protect the portion near them. ...The need to manage a large resource system as a unit would seem to contradict the need to give each of that resource system's user communities some independence. Nesting different user groups in a pyramidal organization appears to be one way to resolve this contradiction, providing simultaneously for independence and coordination (McKean 2000: 48).

The best known examples of nested institutional management for a common pool resource are irrigation schemes, such as the Spanish *huertas* (see Ostrom 1990), but the literature on nested institutions for wildlife management is sparse. The following case study of moose management in Norway is intended as a contribution to this literature, and serves to illustrate how such nesting or layering of institutions can satisfy both the need for landscape-level management and the need for local control. Our study describes the Norwegian system and seeks to identify the critical elements on which its functioning depends.

## ***METHODS***

Because this study sets out to answer a “how” question—how the jaktvald works—a case-study method was selected and data was gathered via loosely-structured in-depth interviews with key informants. These included staff members at the Norwegian Directorate for Nature Management; wildlife management officials at the municipal level; judges from the land consolidation court (*Jordskifteretten*); and hunters. Interviews took place between the fall of 2007 and the spring of 2008. Most of the information about how jaktvald are organized at the municipal level comes from a single case study in central Norway.

The moose hunting tradition is most strongly rooted in the northeastern valley, the Agder region of southern Norway, and the Trøndelag region of mid-Norway. These areas are where the adult men participate most in hunting—more than thirty percent—and where the culture of moose hunting is strongest. This is where you find “moose towns,” where moose hunting dominates all aspects of life for at least the first two weeks of hunting season (Flø 2008).

For our case study we selected a municipality in Trøndelag that was the first one anywhere to restructure their jaktvald in the way described. Because they were the first, and not simply copying someplace else, we hoped to more clearly discern the causes behind the restructuring. Being the oldest, they have also had the longest amount of time for difficulties to surface and to reflect on how well their system works. The management system in this municipality is widely regarded as successful and has served as a model for other municipalities. Interviews in other locations and with state officials confirm that this case is typical in its organizational structure. We therefore hope it will make a good point of departure for future research.

The following pages are divided into two main sections. In the first section we describe the landscape, laws, and practices that form the basis of moose hunting in Norway, followed by a description of how the modern jaktvald, or hunting management area, came into being and how it is organized. In the second section we attempt to identify some important factors that undergird how the jaktvald works. This section is divided between institutional factors and cultural factors.

### ***THE CASE OF NORWEGIAN JAKTVALD<sup>17</sup>***

Norwegians will understand what we mean if we say that this paper deals with outfield management; but for others this term may require some explanation. The Norwegian farm is divided into two spheres of activity, the infield (*innmark*) and the outfield (*utmark*). The infield is the area closest to the house and farm buildings. It is intensively managed and receives the most investment. It is typically composed of fenced fields with planted crops. The outfield, on the other hand, is less intensively managed and receives less investment. It is usually composed of rough hill grazing or forest. To the urban gaze, the outfield may appear as scenic wilderness, but to the farmer it is very much a part of the farm. It contains important resources and its appearance is the result of centuries or millennia of human management.

The infield is a private sphere; but the outfield is less so, both in terms of ownership and activity. Its exact legal status can vary. In some parts of Norway the outfield is owned collectively by local farms. In other places, the outfield is owned by the state but managed collectively by local farms who share use rights. In still other places, ownership of the outfield is divided amongst individual farms. Yet even where

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<sup>17</sup> *The word jaktvald, like moose, is both singular and plural.*

ownership of the outfield is divided, it is common for farmers to cooperate in management, e.g. by letting their animals graze together. No matter who owns the outfield, recreational access (which includes hiking, for example, but *not* hunting) is unrestricted. In the area where our case study is located, the outfield is mostly forested and is divided amongst numerous private owners.

*Hunting rights in Norway belong to the landowner*, and may be leased but not sold (Viltloven 1981)—i.e., although the hunting rights may not be alienated from the property, landowners may sell hunting permits, and this is often an important source of income. It has long been common for landowners to share hunting opportunities with local people who don't own land. Large areas of state-owned and common land are also available to the general public to hunt for a fee. Although hunting rights belong to the landowner, wildlife itself belongs to the state as a public trust. Permits for shooting specific numbers and types of animals are allocated to landowners on an annual basis.

All hunters, including landowners, must pass a hunting proficiency test and for big game an annual shooting test, as well as pay an annual hunting license fee. Each of these requirements must be met in order to hunt legally, but they do not confer the right to hunt on any piece of land—for this one must have a permit from the landowner. Additionally, there are laws related to firearms and ammunition, the use of dogs, open and closed seasons, and other hunting-related matters.

There are four levels of governance in Norway that relate to hunting: the Ministry of the Environment; the Directorate for Nature Management; the County Governor's office, which is the representative of the state at the regional level; and the municipality. Power is currently being shifted downward through these levels, as will be described a little further on.

Moose hunting in Norway is a social activity. While hunters of red deer on the steep slopes of the west Norwegian fjords, and reindeer hunters on the high mountain plateaus of southern Norway epitomize the idea of the lone hunter, moose hunting in the deep forests of central and southeastern Norway is done in groups, where cooperation is necessary for success. There is a certain amount of regional variation in how the moose hunt is done, but typically hunters are organized into teams, called *jaktlag*, of five to fifteen hunters and at least one or two dogs. Hunters take up posts in agreed upon locations and the moose are driven toward them with the aid of a dog. The Norwegian moose dog (*elghund*) is usually kept on a leash. Once the dog picks up a moose's trail, the dog and handler drive the moose toward the shooters who are waiting at their designated posts. Today, members of a hunt often use radios or mobile phones to communicate. In the event that there are multiple moose in a drive, being able to communicate the age and sex of any that are shot lets the other hunters know how many are left in the quota. The practice of hunting in teams is an old one.

The area in which one team hunts is called a *jaktfelt*. The term *jaktvald* refers to a hunting management area. It used to be the case that a *jaktvald* was the same area as one *jaktfelt*, or one team's hunting ground, which generally covered several adjacent properties belonging to team members. Today, a *jaktvald* may encompass half a dozen *jaktfelt*, although the number of teams, each hunting in their own separate area, remains about the same. The difference is that these teams must now cooperate in making a unified management plan for the larger area.

The old *jaktvald* were defined by the *bearkrets*—the area within which everyone would traditionally be invited to a wedding or other major social event. This and other social considerations, rather than any biological criteria, defined the old

vald. After the Second World War, landowner cooperation was formally institutionalized by a new act on hunting and game management (Jaktloven 1951). This act established a system of permits and defined how many hectares a jaktvald needed for each moose permit. Since most properties were too small to be eligible for a moose permit, the new act had the effect of pushing landowners who were not already cooperating to form jaktvald. Some jaktvald became larger as previously non-participating farmers joined, and those that satisfied the minimum size were registered and could apply for permits. The newly formalized jaktvald were still the same size as one team's hunting area. During the past ten years, however, the state has been encouraging jaktvald to combine into larger units. Figure 3.1 shows the size of an average jaktfelt in our study area compared to the size of the new jaktvald. It may be seen that the new management areas contain, on average, the hunting grounds of four teams. There are twelve such management areas within the municipality.

Average private landowner's parcel size
200 hectare = 2 sq km = 494 acres
Average jaktfelt (area used by one hunting team)
800 hectare = 8 sq km = 1,977 acres
Average modern jaktvald (management area)
3200 hectare = 32 sq km = 7,907 acres
Area per which a single moose permit is allocated
100 hectare = 1 sq km = 247 acres

Private parcels in our study area are a bit larger than the average for Norway. The municipal Forestry and Environment officer for this area says that every jaktfelt has to be between 5 and 10 km<sup>2</sup> to be 'effectively' hunted, depending on topographical conditions.

**Figure 3.1** Average size of jaktfelt in study area compared to that of jaktvald.

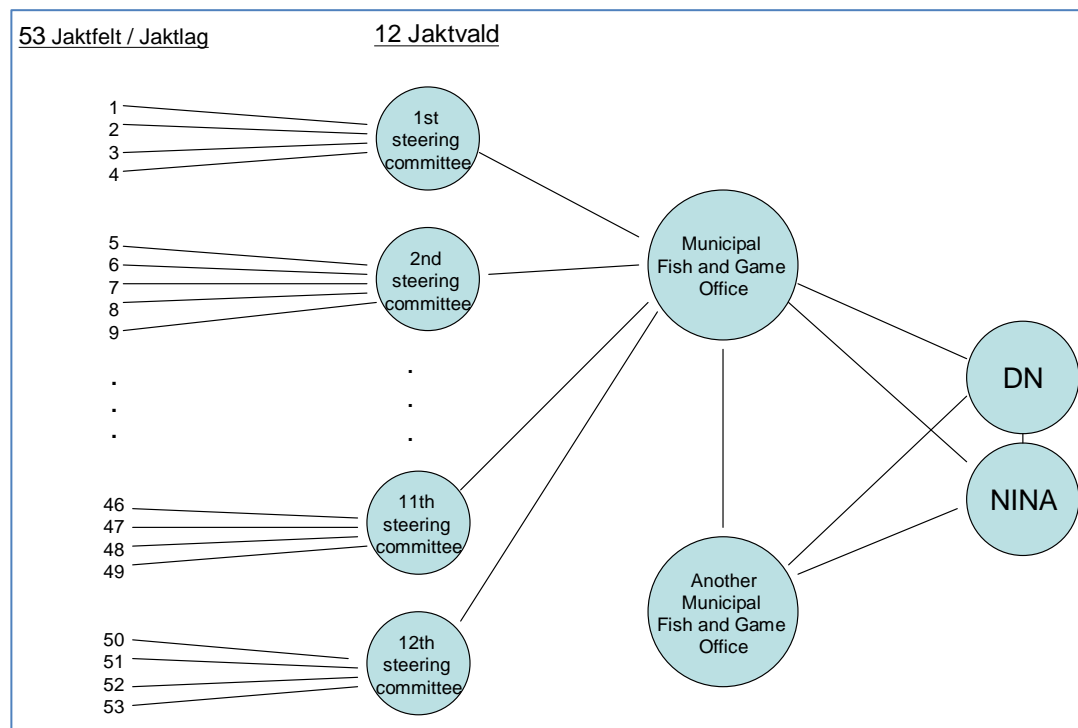
Possibly as a result of new hunting legislation, the moose population began to rise after the Second World War (Rysstad and Gåsdaal 1999), and interest in moose hunting also increased, both among land owners and the non-landowning rural population. The value of the meat is significant, both culturally (Brottveit 1999) and as a part of people's diets (Aagedal 1999). As landowners became more aware of moose as a valuable resource, they began to think more about moose management.

The need to manage moose at scales much larger than individual properties creates the need for cooperation between landowners and turns the moose population into a commons. The practice of managing moose as a commons at the local level is an old one. What is new, beginning in the late 1990's, is the effort to weld local commons into larger ones. The Norwegian Directorate for Nature Management wants to encourage larger management areas and through their criteria for allocating permits is creating the incentives to make this happen. As the scale of management increases, new forms of organization are required for sharing information and making decisions. What follows is the story of how these changes came about in one municipality. The municipality in question was the first to reorganize their moose management in this way and has served as a model for other municipalities.

Back in 1984 the *fylkesman* (the office that represents the state at the county level) in our study area decided to establish a "deer region"—not necessarily as a management area, but as a geographical area of reference for discussion. This was done in response to a perceived need for better communication about deer management across administrative boundaries within the county, i.e., between municipalities. In 1992 the municipality in which our case study is located took the initiative to reorganize their jaktvald. Working with the forest owners' association they organized a course on making forest management plans, which was directed at

private landowners. This course put a great deal of emphasis on moose management and the idea that a forest is more than just trees. Landowners were made aware of the importance of moose as a resource; and just after the course, some landowners took the initiative to merge their jaktvald for more effective management.

In 1990 there were 53 jaktvald in the municipality, about the same as the number of hunting teams. Today there are 12 jaktvald, even though the number of teams hasn't changed. Figure 3.2 illustrates how these hunting teams (jaktlag) are organized into larger jaktvald and how these relate to the municipality and to state-level organizations.



DN = Directorate for Nature Management  
NINA = Norwegian Institute for Nature Research

**Figure 3.2** Organizational structure for moose management in study area.



It is common practice for each hunting team to elect an official leader, generally the person who leads the team in actual hunting activity. This person is normally that team's representative to the jaktvald steering committee. Every jaktvald is governed by a steering committee made up of one representative from each team within that vald. In our case study, the representative is always a landowner, but this could be different elsewhere. Each jaktvald steering committee has a chair who communicates with the municipality. The municipality has a "forestry and environment" officer whose job it is to communicate with the jaktvald steering committees. In our particular case study, there are four municipalities that cooperate in a regional arrangement which manages much more than just hunting, e.g., farm regulations, forestry, wildlife, and other land use related issues. Under this arrangement, the forestry and environment officer has responsibilities spanning all four municipalities. This cooperation in governance is pursued because low population levels in these municipalities make it more cost-effective. On the steering committee for this cooperative arrangement are two representatives from each municipality's governing board.

In addition to encouraging larger jaktvald, the Directorate for Nature Management is also encouraging longer-term planning. Both of these things reduce the administrative burden. In exchange for their willingness to cooperate in the formation of larger jaktvald and the making of multi-year plans, hunters receive a larger number of permits and greater decision making powers. Long-term planning allows them greater flexibility in their management from year to year, and the process gives them considerable leeway to shape herd characteristics according to their preferences.

Even though the actual hunting still takes place in small groups and within each team's hunting area, now the teams cooperate in their management planning and

application for permits at the expanded jaktvald level. Each jaktvald makes their own management plan and submits it to the municipality. The municipality approves the plan in accordance with general criteria set by the Directorate for Nature Management and issues permits to the jaktvald for the number of bulls, cows and calves specified in the plan. The jaktvald then distributes these permits amongst its several teams, and each team hunts within their own area (jaktfelt). Toward the end of the season there may be some trading of permits between jaktfelt within the same vald. This ability to redistribute quotas spatially in accordance with how the animals are actually distributed in the landscape is part of the increased flexibility that hunters appreciate.

Hunters in Norway play a very active role as managers. Every hunting team gathers and reports information on the size, weight, age, sex, and locality of each moose that is shot, as well as reporting any “seen moose.” The leader of the hunting team submits this information to the municipality. Habitat conditions, browsing damage to the forest, and other data are also reported by the landowner. The municipality enters all this information into a database, which is accessed by the Norwegian Institute for Nature Research. The research done by the Institute informs the Directorate for Nature Management as they formulate the guidelines by which the municipalities approve jaktvald management plans. Each jaktvald writes a statement at the end of the hunting season regarding the health of the moose herd and suggesting any changes they think should be made to the 3-year management plan. Thus there is a two-way flow of information. *The hunters gather the data that is needed to do the science that informs their own management planning.*

Higher-level government agencies meanwhile have shifted to serving as a resource that facilitates local and inter-local management. The need for jaktvald to have their management plans approved in order to get permits gives the state and the municipality a certain amount of control. The intention behind this control at the

national level is to set the basic parameters of good stewardship that protect wildlife as a public trust. At the municipal level the intention is to encourage cooperation for effective management. Most of the decision-making and management activity is still left to the hunters. In this way, benefits from the resource (and thus the incentive to manage it responsibly) remain in the hands of local user groups whose activities have the greatest effect on the resource; while at the same time, the nested institutional structure provided by state and local government facilitates the cooperation of local user groups at large spatial scales in order to achieve more effective management.

### ***UNDERSTANDING THE JAKTVALD: UNDERLYING FACTORS***

A central tenet of community-based natural resource management is that cooperation depends on close social ties and shared values. These community attributes and their importance in this context are often captured by the term ‘social capital’ (Pretty and Ward 2001; Pretty 2003). Agrawal and Gibson dismiss the importance of community in this respect, directing us instead to focus on institutional design. Most communities of resource users, they claim, are better characterized by multiple and conflicting interests than by shared norms and values; and for this reason their success depends on the formal rule structures governing resource use (Agrawal and Gibson 1999). The most valuable point raised in this regard is that shared norms and values, even where they do exist, do not by themselves ensure cooperation. From Olsen (1965) to Ostrom (1990), this recognition of the problems facing collective action justifiably directs our attention to how incentives are structured as we seek to understand the choices facing individual actors. But this does not mean that we should dismiss the importance of community. There are more incentives in life than those

defined by formal rules; and it is a weak definition of moral community that places the focus merely on shared norms and values rather than on the social relations that steer people toward compliance with shared norms and values. Cooperative behavior might be expected to increase when the activity in question is embedded in dense networks of social engagement that foster trust and reciprocity (Axelrod 1984; Putnam 1993); that bring informal social rewards and sanctions into effect; and in which meanings and identities are created that shift the nature of certain actions from rational instrumentality to being ends in themselves. To the extent that identical institutional arrangements may vary in their performance from place to place, our understanding of institutional success must take more than just formal rule structures into account. The following analysis is therefore divided into two parts: first, a discussion of formal institutional factors; and second, an attempt to identify some of the cultural factors that support how the jaktvald works.

### ***Institutional factors***

Before commenting specifically on the institutional structure of jaktvald, it is worth taking a brief look at the national political context in which recent changes to wildlife management have taken place. As part of a general trend in Norway to strengthen local responsibility and authority for managing natural resources, the state has devolved much of the responsibility for nature management and conservation to local government with the aim of generating increased local involvement (Falleth & Hovik 2009). Part of the motive for this seems to be the great success welfare policy has had decentralizing social service delivery. In the late 1990s, the Directorate for Nature Management began promoting more local involvement in game management, and in 2002 produced new regulations for the management of moose, deer, and beaver (Direktoratet for Naturforvaltning 2002). These provide guidelines for organizing

sufficiently large management areas and for cooperation between landowners and the different hunting teams in making management plans and organizing the hunt.

It was not only the Directorate for Nature Management that wanted to reorganize outfield management, but also the agricultural ministry and the farmers and forest owners. The decline of small-scale agriculture has led to calls for diversification, including agritourism. Consequently, the idea of utilizing the fish and game resources in the outfield as a source of income for landowners has come increasingly to the fore. In order for this to happen it seemed clear that something had to be done with how landowners organized themselves (St.meld. nr.19 1999-2000: 119). Together, the agricultural ministry, the farmers union (Bondelaget) and the forest owners union (skogeigerlaget) started several projects to address how the management of outfield resources is organized, and this included thinking about the commercial development of game resources. In just a few years, hundreds of new jaktvald were established and many of the old ones reorganized to fit the new regime.

It has been stressed that nested management systems need to be based on a principle of subsidiarity (McKean 2000; Marshall 2008). This means that decision-making power should be decentralized to the lowest possible level, and that resource users at this level should have enough right to benefit from the resource that there is sufficient incentive for them to undertake responsible management. At least in the case of our study community, Norwegian jaktvald meet these criteria. The institutional relationships illustrated by Figure 2 and described in the section above may aptly be described as a nested management structure characterized by subsidiarity.

Yet there is another institutional factor not mentioned in the chart. At the heart of the Norwegian system is a division of property rights that sets up a balance of interests between landowners and the state, compelling them to work with each other.

As we have mentioned, landowners are the sole holders of hunting rights; but the exercise of these rights is dependent on permits issued by the municipality according to guidelines determined by the state, which holds wildlife in public trust. This division of property rights creates a legal basis for both the private and the public interest to be expressed regarding wildlife.

When asked why landowners should have any role in game management, wildlife professionals in Norway uniformly replied that landowners are the only ones who *can* manage wildlife, and for that reason they ought to be the ones that do. Wild animals graze and shelter on the landowner's property. All of the land use decisions that the owner makes have an effect on the herd, whether intended or not. It is therefore important that landowners make these decisions with responsible purpose. Norwegian wildlife officials expressed perplexity as to how the state can manage wildlife on private land in a place like the northeastern United States where landowners control both habitat and hunting access but don't have any incentive to provide either.

The incentive for Norwegian landowners to manage wildlife responsibly stems from the mix of property rights mentioned above. Because hunting rights are tied to landownership and include the right to profit from the sale of hunting permits, landowners have a strong incentive to manage wildlife as a resource. Yet because landowners need to apply on an annual or semi-annual basis for permits in order to exercise these rights, the state and municipality are in a position to influence management. This is done chiefly with the aim of getting landowners to work together at larger spatial scales and to manage within the bounds of sustainability. The state in this instance is not taking away local benefits or control, but rather providing needed information and a structure, including incentives, for local groups to cooperate

for their mutual benefit on a scale at which problems of collective action might otherwise be insurmountable.

### ***Cultural factors***

Moose management is embedded in dense networks of social interaction that affect the choices people make. Moose hunting teams are comprised primarily of local residents and often include non-landowners. Non-local team members generally have some connection to the community, such as having grown up there or being related to one of the landowners. Current attempts to commercialize moose hunting sometimes come into conflict with tradition and can stress the relationships between hunters, especially between landowners and non-landowners (Hompland 1999; Gunnarsdotter 2005; Flø 2008). These relationships are revealed in May Britt Hovland's discussion of how tradition can stand in the way of commercialization. Hunting, she claims, "has a social basis in local communities. The implicit social contract often receives higher priority than the economic value of selling hunting rights" (Hovland 2002:1). A large percentage of men in moose hunting areas are hunters (SSB 2009), and participation in the hunt can be an essential part of masculine identity formation and connection to place (Bye 2003, 2009). In particular communities, more than 80 per cent of men may participate (Aagedal 1999; Flø 2008). Even amongst non-hunters, the hunt is widely regarded as a special occasion and is the topic of excited conversation for months beforehand. The way the meat is distributed varies from team to team, but it commonly follows a pattern of social ties extending beyond the circle of hunters and landowners (Brottveit 1999; Aagedal 1999).

Social relations at the level of the team play an important role in governing hunters' behavior. There is a strong tradition of hierarchical organization in the team, at least in our case study area. When hunting, the leader decides where to hunt, which

animals will be shot that day, who will take what posts, when to stop, et cetera. Prior to the hunt these things are discussed by the group, but once the hunt is in progress the leader says what to do. The leader's ability to lead effectively depends heavily on his social standing. Typically the leader is one of the most respected and experienced hunters on the team. Skills and knowledge however are not the only important elements in the jaktlag hierarchy. Landownership is also an important factor. Some jaktlag have rules requiring that the leader be a landowner. Another important element is ownership of a dog. A well trained dog is an essential part of the successful hunt, and having one can do much to strengthen a hunter's position in the hierarchy. Yet none of these things are as important as interpersonal skills and leadership ability. As one hunter put it, "He can be as skilled a dog handler as he wants, and he can own as much land as any, but in the end everything boils down to his ability to gain trust and handle small conflicts and make decisions."

Beginning around 1990 there seems to have been an increase in consciousness amongst the hunting teams regarding ethical hunting behavior. Respondents were not sure what the reasons for this are, but several hunters and administrators mentioned it, and a closer examination of this change would be a worthy topic for further investigation. The following story illustrates how social sanctioning enforces this burgeoning ethic and also highlights the important role played by the team leader. A hunter told about something that happened to him several years previously. He had been posted along the edge of an open boggy area when he saw a moose almost 200 meters away. This was a very long shot, but he was confident in his marksmanship and took it. Luckily, he hit his mark; but during the evening supper at the cabin the team leader made a speech in which he made it clear that he and the rest of the team thought the shot was too long. "I was extremely disappointed," the hunter recalled. "I was waiting to be praised, and instead they told me that I had jeopardized their day by



taking too high a risk.” By sanctioning the hunter, the team leader also gave a warning to other potential long-shooters that the jaktlag would not accept such behavior. Sticking to the quota, only taking animals of the right age and sex, also seems to have become an important virtue, the exercise of which requires a great deal of self-control. According to one hunter, “It is the shot you hold back that makes you a man, not the shot you fire.”

As much as social relations at the team-level exert an important influence on individual hunter behavior, good working relationships between hunters, administrators, and researchers seem to be an important part of scaling management up to regional levels of integration. The simple organizational structure depicted in Figure 3.2 could not function without high levels of trust between individuals at different levels. Hunters, for example, need to be trusted to report accurate information; and to do this they need to trust that the researchers are doing important work and acting in their interests.

When we asked the municipal forestry and environment officer in our study area what percentage of missed shots and wounded animals he thought actually got reported (as is required), he replied, “one hundred percent.” Pressed upon this point, he said that he was sure he could trust the hunters in his jurisdiction completely. One of these hunters, a jaktvald leader, said of this same administrator, “He is easy to like, and always willing to listen to our views.” This hunter was also pleased by his interactions with NINA researchers. “They are good about sharing their knowledge with us, and they listen to us when we don’t agree with them.” Several interviewees commented on how good the NINA researchers are about getting out and interacting with hunters. For the jaktvald leader quoted above, government research is nothing remote from his own interests: “We have always wanted to be involved and to take part in it. ...For the farmers, the knowledge that the researchers at NINA have is just

as important as the knowledge that the people at Ås [the agricultural university] have. The game resources are a part of the farm just as much as the cows are. And today it seems like these resources are becoming even more important.”

For Norwegian farmers, cooperation in outfield management is nothing new. For centuries they have managed grazing areas collectively. In some cases these areas are actual commons, but in many cases they are areas of adjacent private property that farmers manage as if they were commons. It seems likely that experience with these management traditions contributes to the ease with which private landowners in Norway have taken to cooperating around moose management. These cooperative traditions, and the embedding of management structures in personal relationships that foster trust, seem to play an important role in facilitating how the modern jaktvald works.

## ***CONCLUSION***

The main point of this paper is that it is possible to reconcile local control with the need for management at scales encompassing multiple localities. As the example of Norwegian jaktvald illustrates, these two seemingly contradictory imperatives may be resolved through a nested management structure, which is facilitated by certain institutional and cultural factors.

Because game is a mobile resource, landowners readily perceive the need to cooperate with their neighbors in management. There is a long tradition in Norway of managing outfields collectively. Hunting is just one of many activities around which landowners cooperate. Others include grazing, irrigation, forestry and fencing. Cooperation at the level of the lag/felt would happen without the state—and did in

fact—as a natural result of landowners, many of whom already manage common resources, seeking to manage yet another resource in common. The value of the state’s role emerges in the attempt to put together larger-scale management areas. Various authors have claimed that this may be done without compromising local control, by “nesting” or “layering” local institutions in larger structures, provided that a principle of subsidiarity devolves benefits and control to the lowest possible level. Our study supports these claims and discusses some of the structural and cultural factors that contribute to the success of this model.

The inter-local cooperation required to scale management up to greater geographic spaces is the product of a division of property rights that leaves local hunters with sufficient interest and control to take responsibility for carrying out management activities, while at the same time compelling them to work together in their management planning. They are compelled to do this by their need to get permits from the municipality based on the submission of their joint plan. Personal relationships play an important role both in governing individual hunter behavior at the local level and in generating the trust necessary for cooperation between levels of management.

The organizational structure that we have described is fairly standard for Norwegian jaktvald, at least as far as moose hunting goes, but to really understand how cultural and other factors affect management success it would be beneficial to do a multiple case study comparison of jaktvald throughout Norway. It may be that some jaktvald work better than others; and whether this is due to differences in local culture, demographic factors, slight institutional variation, or other variables remains to be seen.

Something that has been mentioned only briefly in this paper is the commercialization of moose hunting. As noted earlier, part of the motivation for

reorganizing outfield management is to facilitate the commercialization of hunting so that game resources can provide an additional stream of income to farmers and woodland owners. As was also noted, commercialization has the potential to create tensions within the jaktvald—especially between landowners, who benefit, and non-landowners, who may lose hunting opportunities or be obliged to pay. So far, the commercialization of moose hunting has been minimal; but since social relationships appear to be of central importance to how jaktvald function in practice, the potential disruption of these relationships by markets for the hunting experience is something to keep an eye on.

Questions of land use involve a balancing of private rights and the public interest. The field of community-based natural resource management continues to expand as professionals recognize the need for local resource users to take greater responsibility in management and to enjoy greater benefits. As we also become increasingly aware of the need to manage natural resources at larger scales, there will be a growing tension between calls for devolution and the need to scale up management. The case of the Norwegian jaktvald makes it clear that it is possible to resolve this tension by nesting local management groups in larger structures that facilitate inter-local cooperation. Future research should aim to improve our understanding of factors affecting how well such nested structures work.

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## CHAPTER 4

### **Why Community Ownership?**

#### Understanding Land Reform in Scotland

##### ***ABSTRACT***

In 1999, the Scottish Parliament convened for the first time in almost 300 years, and during their first session passed the Land Reform (Scotland) Act 2003. The most striking feature of this Act is the community-right-to-buy provision. In response to long-standing popular discontent regarding highly concentrated land ownership in the highlands and islands, this Act enables communities to buy out the large estates where they are located. Transfers of this sort have also been happening prior to 2003 and outside the provisions of this Act, enabled by both private fundraising and the Scottish Land Fund.

A central feature of Scotland's land reform is the transfer of land into community ownership. This is remarkable in light of the fact that so much of the international development literature and policy related to land reform emphasize the importance of diffuse private ownership and the need for landowners to hold fairly complete bundles of property rights. Therefore it behoves us to take a close look at the Scottish land reform and to ask, 'why *community* ownership?'

That question is answered in this paper based on interviews with members of nine communities where land has been transferred into community ownership. These interviews are supplemented by interviews with staff members of the government agency responsible for helping communities to buy land. Interviewees were asked,

among other things, what their community's goals are and how community ownership is expected to help them fulfill these goals.

Land reform in Scotland is neither concerned with agricultural efficiency nor does it touch greatly upon either the division of the soil or the tenure security of small holders. It is best understood as an expansion of rural democracy—enabled by the transfer of large estates, where people live as tenants, from concentrated private ownership to community ownership. Community ownership is intended not only to encourage the development of resources that private investors might otherwise ignore; but, more importantly, to make sure that development happens in a way that benefits the local community. Whereas increased private entrepreneurship might generate increased wealth but not necessarily benefit the local community; community ownership aims to make sure that wealth generated from the land remains within the community; that the benefits of development are evenly spread; that needed services are provided; that the population is maintained; and that resources are managed for the long-term benefit of the community.



## ***INTRODUCTION: Land Reform and Rural Development***

*“In the opinion of some, the regulation of property is the chief point of all, that being the question upon which all revolutions turn” (Aristotle, *The Politics*: 1266a37-1266b3).*

Since Aristotle penned these words in the 4<sup>th</sup> century BC, thinkers of all political stripes have continued to regard property relations as central to the civic and economic character of society. Consequently, as Aristotle suggests, attempts to generate change often focus on the distribution of property rights. The term “land reform” is used to refer to any sweeping change in the distribution of rights regarding land. Usually land reform means the breaking up of large estates and the distribution of land to peasant farmers, either by giving them each their own private parcel or through the creation of collectives to capture economies of scale. The reason for land reform is ostensibly to improve the lives of peasants by throwing off the yoke of landlord oppression and by stimulating economic development through more intensive land use.

Although there is a growing appreciation for the value of traditional tenure systems and community-based land distribution, the dominant philosophy of land reform in academic and policy circles has long been one that advocates the creation of widely held private ownership (Deininger and Binswanger 1999). The early American political tradition considered diffuse private ownership of land fundamental to a healthy democracy (Goldschmidt 1978; Schwarz 1997; see also Aristotle *The Politics* 1266b15, 1296a14-1296a18). Today it is chiefly advocated as an economic development strategy. Large landlords often underutilize their property, either by using it extensively (as opposed to intensively), e.g. for grazing, or by disregarding it altogether. Small farms, on the other hand, are regarded as efficient producers

(Binswanger et al. 1995; Prosterman and Hanstad 2003) and a source of rural employment.

Reforms do not always involve land changing hands. In some cases it may be a matter of altering or simply clarifying the rights of those already using the land. Improved security of tenure is supposed to encourage farmers toward long-term investment, and clear title is expected to gain them greater access to credit. The combination of clear title and alienability is intended to facilitate efficiency-enhancing transfers (Deininger and Binswanger 1999; The World Bank Group 2001). Simply put, when the rewards and costs of land use decisions are brought home to the decision-making owners, and when ownership may be freely traded, it is expected that resources will gravitate to the most efficient users, resulting in greater wealth creation overall (Anderson and McChesney 2003; O'Driscoll Jr. and Hoskins 2003). This market-based philosophy of land reform places great emphasis on the importance of property rights that are not only clear and secure, but also private and represent a sphere of unfettered control. It is argued that individuals should hold complete bundles of property rights because complete control allows for greater entrepreneurial activity; and that people who hold "thin bundles" are less likely to invest in property or to take good care of it (Boudreaux 2005).

There is far from complete agreement however that the foregoing model of private property rights is the best one. It is not always efficient for property rights bundles to be kept whole. The multiplicity of interests in land are often better served by markets for "partial interests," such as timber and grazing rights, or the sale of development rights for conservation (Wiebe and Meinzen-Dick 1998). In places where highly fragmented use rights to the same piece of land already exist, it may be better to devise a system for documenting these than to try to gather them all into one ownership bundle (Pienaar 1999). Common property regimes have been well-

defended in the development literature (Bromley and Cernea 1989; Runge 1986) and market-based land reform has been attacked for failing to lead to increased investment (Thiesenhusen 2001); for failing to provide farmers with secure tenure (Binswanger et al. 1995) or access to markets for land (Ghimire 1999); and for being generally unable to improve the lives of small farmers in the absence of technical assistance, access to markets, affordable credit, public infrastructure and social services (Ghimire 1999; Lappé et al. 1998; Pontifical Council 1998).

In light of these debates, the community land movement in Scotland should be of special interest. On the surface, the reasons for land reform seem typical enough: highly concentrated ownership of rural land, a history of injustice at the hands of landlords, and an acute need for economic development. But when one considers the tenure security already afforded to crofters by reform legislation in 1886 and subsequent amendments, and when one inquires into the specific aspirations of communities that have acquired land, the Scottish land reform reveals itself as having relatively little to do with agriculture. “Land to the tiller” is hardly an apt description of tenure changes in Scotland today. Contemporary reforms in Scotland involve not only farmers, but entire communities. And the most conspicuous aspect of these reforms is the transfer of land to community ownership, such that the community organization becomes the landlord. The relationship that farmers and shop keepers used to have to the laird is now the relationship that they have to the community organization. The significant difference, in principle, is that the landlord is now a democratic organization of which they are members. Because this stands in such stark contrast to the emphasis that so much of the land reform literature places on the importance of private property, we are led to ask of Scottish land reformers, “why *community* ownership?”

***BACKGROUND:*** A short history of rural tenure in Scotland including the recent land reform and the academic discussion surrounding it.

### ***Historical background***

In order to understand the land reform movement in Scotland today, one needs to know the origins of crofting tenure and how land ownership in the highlands and islands came to be so concentrated. The key points in this story are the demise of the clan system; the rise of sheep farming; the highland clearances; the decline of sheep farming; the rise of sporting estates; and the legislation and continuing unrest that followed the Napier Commission. Knowing this story is important, not because the land reform movement is backward-looking—which it isn't—but because the forces that have shaped rural Scotland's history are still in motion today, and it is to these forces that land reformers must respond.

The Scottish clan was, in principle, a large extended family of which the chief was patriarch. The chief allocated land to his inferior family members in exchange for their loyalty and for rent which might be paid in kind. These tacksmen, as they were called, in turn sublet most of this land to lower ranking clansmen, likewise in exchange for service and rent. This system was never designed to provide the chief with very much money, since agricultural production was oriented more toward subsistence than toward markets. Tenure arrangements under the clan system formed the basis for military organization, not for business. The land occupied by the clan was not seen as the chief's private property, but rather as the common heritage of all clan members; and his power was that of a sovereign rather than that of a landlord. The chief was responsible for the welfare of his "children," the clan members, and the honor that he and his tacksmen enjoyed was based on this responsibility.

By the early 18<sup>th</sup> century clan society was changing. Often the sons of chiefs were educated in Edinburgh and England; they married lowland or English women who were accustomed to fine dresses and drawing rooms; and when these sons became chiefs they wanted houses in the city and all the fine things that the people they associated with had. Compared to the English gentry, and even to the rising merchant and professional class, they seemed very poor indeed. Many clan chiefs became absentee landlords and began to see their clansmen as tenants. They looked to their lands as a source of income, which they were eager to increase. The clan system was finally eliminated in 1746 after the Jacobite rebellion met defeat on Culloden Moor. In the year following the battle, the British government passed a series of parliamentary Acts designed to crush highland culture. The wearing of kilts and tartans became illegal, and the military basis for clan society was eliminated as clan chiefs were stripped of all their powers except the right to collect rent. Thus it was under the force of both cultural and legal change that the relationship between chiefs and clansmen shifted from one of familial responsibility to a landlord-tenant relationship. A late 18<sup>th</sup> century traveler to the highlands observed that the landlords, “to support their dignity squeeze everything out of [their tenants] they can possibly get, leaving them only a bare subsistence. Until this evil is obviated,” the traveler declared, “Scotland can never improve” (Prebble 1963: 18).

Because the collection of rents does not require the intermediate ranks on which military organization depends, the role of the tacksman became obsolete. Leases for tacks that had long been considered hereditary were put up for competitive bidding and many tacksmen left for North America, often taking their people with them. The desire of landowners to maximize income from their land led to the employment of professional estate managers. The price of wool was very high, but in order for sheep farming to be profitable, it needed to be done on a large scale.

Southern sheep farmers were eager to rent land in the highlands and it was soon realized that a great deal more rent could be collected with less trouble from a small number of sheep ranches than from thousands of subsistence farming tenants. Valleys that once held several townships and numerous small farms would come to be occupied by a pair of shepherds, their dogs, and thousands of sheep. The landlord's need to get rid of the highland people led to what has come to be known as the Clearances.

The early clearances did not involve the forced emigration that later became emblematic of this period. On the contrary, landlords were at first eager to prevent emigration and succeeded in getting Parliament to pass an Act to this purpose (Hunter 2000). At the same time that the price of wool was rising, the price of kelp was too; and the kelp industry in the Hebrides and on the northwest coast needed a large labor force. Proprietors wanted the people whom they evicted from the fertile inland valleys to settle along the coast and to take up work harvesting seaweed or in the nascent fishing industry. Small plots of land were allocated along the rocky shore, each of which was deliberately too small to provide a family with subsistence. This, in combination with high rents, was intended to force people to work in the new industries (Bangor-Jones 2001). This allocation of land created the holdings that make up today's crofting communities.

When the price of kelp fell in the second decade of the 19<sup>th</sup> century, forced emigration began. Transport ships were sent to coastal communities, and in some cases men and women who tried to hide or flee were hunted down and taken aboard in chains (Prebble 1963). Eye-witness accounts of evictions during the clearances testify to their brutality, with the recurrent image being that of the factor and his men turning families and elderly people out of their houses, often in harsh weather, and then setting the thatched roofs on fire (MacKenzie 1883). While these events seem to have

proceeded for the most part without resistance, there were several instances when crowds of women tried to block the distribution of eviction notices. On one of these occasions they were horrifically beaten with clubs by the police (Prebble 1963). In the end, the glens were emptied and the highlanders found new homes in the forests of Canada; the hills of Appalachia; the deserts of Australia; the slums of Glasgow; and, for those who remained, along the rocky coastline in what are the crofting communities of today.

Many clan chiefs sold their land, either to other gentry or to wealthy businessmen. Some of these lands changed hands rather quickly. The Isle of Barra, which had been home to the MacNeils for forty generations, was sold twice in one year—first to a speculator, and then to Colonel Gordon of Cluny who forcibly expelled most of the population (Prebble 1963). In the 1880s wool prices dropped precipitously and sheep farmers were no longer willing to pay high rents. Fortunately for landowners at this time, the shooting of grouse and deer was becoming extremely popular sport among the upper classes. Highland estates were let, sold, and increasingly managed specifically for these activities. By 1893 sporting rents contributed, on average, 44% of the rental income on highland estates (Jarvie and Jackson 1998). The highlands were becoming less a site of agricultural production and more an upper-class recreational area where the imagery of clan society added romantic flavor to a landscape viewed as scenic wilderness. The lives of most people living in the highlands and islands however continued to be ones of poverty and hardship, and toward the end of the 19<sup>th</sup> century there were increasing incidences of rural unrest.

In response to crofter agitation and growing public awareness of persistent poverty in the region, the Napier Commission was appointed 1883 to conduct a public inquiry into the conditions of crofters and cottars in the highlands and islands.

Hearings were held in many locations and people were finally able to make their voices heard. The testimony of one Angus Mackay speaks for the views of many: The land our forefathers lived upon...is now under deer and sheep...while we are huddled together in small townships on the seashore... We want more land, security against eviction, compensation for improvements, and fair rent (Willis 2001: 97). Each of these demands except the first was satisfied. The Crofters Act, passed in 1886, guaranteed crofters a fair rent, ownership of the improvements on their crofts, and protection from eviction. An amendment to the Act in 1891 formalized crofters' rights to common grazing land. *Thus modern crofting tenure is a result, first, of settlement patterns created by the clearances and, second, of subsequent legislation for the protection of crofters.*

What the Crofters Act did not do was to address the need for more land to be made available. In the decades to come, land shortage was the primary grievance driving widespread unrest in the highlands and islands. Cottars, who had no formal access to land, were especially unsatisfied by the Crofters Act. Land-raiding, rent strikes, and clashes with police occurred throughout the Hebrides. In some cases, crofters and cottars occupied land from which their parents or grandparents had been evicted (Hunter 2000; Willis 2001). Although troops were dispatched to keep the peace, public opinion was on the side of the crofters and the government was now more interested in helping than in suppressing the crofting population. In the 1890s the government began investing money to promote economic development and to make more land available, but progress was slow. Unrest continued through the 1920s as men returning from WWI demanded the land to which they had been given reason to believe their service would entitle them (Leneman 1989); and a steadily declining fishing industry and falling stock prices continued to exacerbate the plight of cottars and crofters alike.



Although more than 2,000 new crofts were created during the first half of the 20<sup>th</sup> century (Hunter 2000), most land in Scotland to this day remains concentrated in large estates. Going by figures collected in 1996, it has been calculated that 57% of all private land in Scotland is owned by one hundredth of one percent of the population (Bryden 1996). Half of the privately owned rural land is divided amongst 343 individuals in parcels of 7,500 acres and larger; and one quarter is owned by 66 landowners in estates of 30,700 acres and larger (Wightman 1999, 2009). The association of this highly concentrated pattern of land ownership with a lack of rural development (e.g. Bryden 1999) has been the source of persistent calls for land reform.

As early as the end of WWI, the redistribution and resettlement of land where Clearances had taken place “was almost universally admitted to be the only real solution to Highland problems;” and in 1917 the British government declared, “Everyone is agreed that the people of the Highlands must be placed in possession of the soil” (Hunter 2000: 255,265). And yet it was not until the late 1990s, with the prospect of political devolution and Scotland again having her own parliament, that sweeping changes in land ownership seemed possible. In 1997 a Land Reform Policy Group was established to examine land ownership in Scotland; to assess possibilities for land reform; and to make recommendations for action on this issue to the new Scottish Parliament, which in 1999 convened for the first time in almost 300 years. During its first session the Land Reform (Scotland) Act 2003 was passed. The most remarkable feature of this act is the Community Right to Buy, which allows communities of fewer than 10,000 persons to register an interest in land and thereby to have a preemptive right to buy that land should it come up for sale. Crofting communities may force a sale without waiting for the land to come onto the market (for details see OPSI 2003). In order to register an interest in land, communities have

to meet a number of requirements, including the formation of a community organization that is a company limited by guarantee<sup>18</sup> with a board of directors elected by the members. In communities taking advantage of the act, all residents have the right to be members. Several interviewees and correspondents emphasized to me that the community land movement does not center entirely on this legislation. A number of community buyouts occurred prior to 2003 and others outside the provisions of the land reform act.<sup>19</sup>

### *Academic discussion in the lead-up to land reform*

“The vision for land reform,” as expressed by the Land Reform Policy Group in their recommendations for action to the Scottish Parliament, “is to remove the land-based barriers to the sustainable development of rural communities” (LRPG 1999). While this statement has been criticized for being vague (Wightman 1999) it does at least make clear that the goal of land reform is rural development, and that current patterns of land ownership are viewed as an obstacle to this goal. Yet even if there is a general consensus on the need for development and on the centrality of land to this process, it remains an open question what form this development should take and what sort of property relations are best suited to bringing it about.

The need for land reform is frequently framed in economic terms, sometimes with minimal reference to social justice. Macmillan (2000), for example, claims that

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<sup>18</sup> A company limited by guarantee is a form of corporation in the UK that does not have shareholders. Instead, it has members, who are protected by limited liability. A company limited by guarantee does not distribute profits, but rather must put any surplus toward its mission, which will be defined in its articles of incorporation. This is a very typical form of incorporation for not-for-profit organizations in the UK.

<sup>19</sup> In all cases, financial and technical assistance for communities who wish to acquire land is available from the community land unit of Highlands and Islands Enterprise, the government’s economic development agency for the region. Funding to assist with community buyouts originally came from the Scottish Land Fund, a division of the national lottery; but the availability of future funding is in doubt (heraldscotland 2009). Community efforts to buy land have at all times had to rely heavily on private fundraising efforts.

government interference in property relations is justified when market failures occur; and he lays out a case for land reform in Scotland based on the need to correct market failure. Large landowners have been criticized for a lack of concern with economic development, either failing to grasp or actively suppressing development opportunities. Tenants are often either prevented from taking initiative, or else lose their incentive due to the landlord's ability to capture their gains (Bryden 1996). The first consultation paper of the Land Reform Policy Group reported that the current system of land ownership in Scotland inhibited enterprise (LRPG 1998).

Bryden puts an interesting twist on this point, and one that bears closely upon the question of why community ownership. "We have paid too much attention to the growth of individual enterprises," he says, "and too little to the development of the public goods on which the development of enterprises and communities both depend" (1996). These public goods might be tangible facilities and services, or they might be intangible social relationships. Following Putnam (1993), Bryden suggests that the clientelist social relations stemming from concentrated landownership undermine the social capital necessary for community development. Bryden and Geisler claim that the land reform movement in Scotland responds to this by placing community front and center, making community-building and the generation of social capital a primary goal (2007).

Land reform in Scotland might be as much about democracy as economics. "The issue today," says Dewar, "is still power: power to control the lives of others" (1998). MacGregor also frames the development case for land reform more in terms of democracy in rural planning than in terms of economics per se.

The impact of the land tenure system goes far beyond land use. It influences the size and distribution of an area's population; the labour skills and the entrepreneurial experiences of the population; access to employment and thus migration; access to housing; access to land to build new houses; the social structure; and the distribution of power and influence. In many areas of rural Scotland, large land owners play a crucial role in local development: they are the rural planners (MacGregor 1993).

Francis and Anderson (2003) also blame concentrated land ownership for ineffective local planning.

The assertion of rights to land is often bound up with claims of ability to exercise good stewardship (Bryden and Hart 2000), that is, an ability to take good care of the land in the interest of others. Taking care of the land is also understood to mean taking care of the folk who are a part of the land (Bryden and Hart 2000; McCrone 1997). As the last vestiges of feudalism fall away from the Scottish landscape, there is concern that land will be treated only as a commodity—as something with no public value, but only private value; as something with no special meaning and requiring no special treatment (Mather 1999). To counter this, Hunter argues that “land ownership should be conditional on the observation of a land use code” that requires owners to comply with social and environmental standards (1995). The justification for such a code is argued by MacGregor (1993) in his comparison of two perspectives on landownership: the individual rights perspective, according to which an owner’s freedom to do as he likes with his property is unlimited by anything but the property rights of others; and the social rights perspective, according to which an owner’s rights may be circumscribed by society for the public good. He argues in favor of the second perspective on the grounds that property rights are created by society to suit the needs of its members; and as these needs change over time, property rights must also change. Bryden (1996) adds to this the observation that many rural development opportunities, and thus land values, are based on public goods created by society; thus society should be able to capture at least part of this value.

Stewardship discourse can tend toward the paternalistic, and in so doing fails to address the root issue of power. Even the assertion that the public has a right to some say about how private land is managed, as well as a right to capture the publicly created value of that private land, doesn’t say anything about who the public is and

what their agency should be. Bryden (1996) warns that ownership of land by the state is “just as likely to create new forms of oppression as to remove the old ones,” a sentiment in keeping with much of the literature on community-based natural resource management (Brosius et al. 1998; Rice 2001; Uphoff 1998; Vedeld 2002).<sup>20</sup> Land reformers in Scotland today want to create a new alternative to concentrated private ownership—one that avoids the pitfalls both of state ownership and of what MacGregor terms the “individual rights perspective.” Bryden and Hart (2000) argue that land reform is fundamentally “a change in the balance of power between individual property owners, communities and the state,” the goal of which should be “the extension of democracy and democratic practice.” Land reformers in Scotland today believe this goal will be achieved by shifting more power to communities. Two ways that this shift might happen are through increased community ownership and through increased community involvement in participatory rural planning processes (LRPG 1999).

The Scottish Land Reform raises a myriad of questions. Why community ownership instead of fragmented private ownership? Why community ownership instead of state ownership? Why a community trust instead of local government? Why community ownership instead of just increasing the democracy of land use planning? How significant can land reform be given the declining role of agriculture as a means of livelihood? If a private landlord can’t turn a profit on a sporting estate, how can this be a valuable asset for the community? Is land reform really an important path to rural economic development, or is it primarily about correcting historical injustices? I will give consideration to all of these questions, but the central

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<sup>20</sup> Recognizing the tendency for a divergence of interests between the state and local communities (Scott 1998), the community forestry movement, for example, calls for more local and democratic management. “There is a broad consensus that the dominant paradigm of forest management [by the state]... with its associated bureaucratic and technocratic structures, has, for the most part, failed to steward forest ecosystems and maintain vital communities” (Baker and Kusel 2003: 2).

focus of my inquiry is guided by the debate in the land reform literature regarding the importance of private property rights for economic development. Accordingly, I am asking why community ownership should play such a central role in this land reform. The foregoing discussion provides a sampling of what Scottish academics have said about land reform. The rest of this paper concerns itself with the perspective of Scottish people who have been active in community land purchases and why they think what they are doing makes sense.

## ***METHODS***

It is not the purpose of this paper to attempt an evaluation of how successful land reform efforts in Scotland are. Not only is it too early for such an endeavor, it is also the case that these efforts may be frustrated by any number of factors independent of whether or not they are a good idea. This paper therefore seeks not to evaluate, but to make sense of community ownership as a type of land reform. The purpose of my inquiry is to understand, from the perspective of those involved in community acquisition of land, why community ownership makes sense for them given their goals and circumstances. Why, in contrast to so many other land reforms, do we have a push for community ownership in Scotland? What lessons can be drawn at this point, either for Scottish land reformers or regarding community development in general?

To answer these questions I conducted loosely-structured, in-depth interviews in nine communities where land has been transferred to community ownership. These interviews took place in the spring of 2007 and late summer 2008. Interviewees in these communities were all either involved in the buyout at the time it happened or were working for the community organization at the time of the interview. These

interviews are supplemented by interviews with staff members at the government agency responsible for helping communities to buy land. In addition to these formal interviews, on which my analysis is based, my understanding has been greatly enhanced by numerous informal discussions with crofters, community development workers, and natural resource managers, as well as by the many helpful responses I've received to email enquiries directed to government agency staff and to people involved in community buyouts.

The communities where my interviews took place represent a variety of community ownership situations. In two locations, ownership of the estate passed to the local community in the early 20<sup>th</sup> century. In each of the other cases, community ownership came about in the 1990s or later. Thus out of the more recent cases, some of them are pre- land reform legislation, and some of them are post. In one of these more recent cases, membership in the trust is open only to crofters. In all other recent cases, membership is open to everybody in the community. The geographic location of these communities is the northwest coast of Scotland and the islands that lie west of this coast. The one exception is a community near the central east coast.

In my analysis I identify trends that emerged across cases. In reporting these trends, it would be misleading for me to write that respondents in four out of six communities identified such and such a problem; for to do so might imply that respondents in the other two communities do not feel that this thing is a problem. Interviewees were not presented with a list of yes/no questions, but rather spoke at length in response to open-ended questions. The fact that interviewees in certain communities made a particular statement, and that others elsewhere did not, does not mean that the others hold an opposite view. If they do, I report that separately. They might agree with the statement if asked about it specifically; or it might not be relevant to their case. The diversity of cases means that not all questions are relevant to all

cases. Instead of reporting the ratio of responses as if they were survey results, I have opted for simply reporting what was said in each community on a particular topic. Because I had the opportunity to conduct more and longer interviews in some communities than in others, thus allowing for more things to be said, the sorting of statements was done by location and not by interview. When I say that a particular view or concern is “common,” I mean that it surfaced in interviews in at least three different communities.

Interviews were not tape-recorded, and my notes do not in all cases reflect the exact wording used by interviewees. When reporting statements made during interviews, I use quotation marks to indicate an exact quote. In places where statements are reported without quotation marks, it is almost an exact quote. During the course of interviews I frequently repeated significant statements to interviewees for verification and further comment. In many cases I made follow-up contact with interviewees, often in light of subsequent interviews, in order to verify and to get additional information on significant information.

***SUMMARY OF INTERVIEWS:*** a description of the trends and differences among a number of community ownership cases, as well as the respondents’ perspectives on these

### ***Precipitating events and community goals***

Although the general goals of community organizations in this study are all very similar, the immediate catalyst for forming an organization and taking steps toward community ownership of land has varied from place to place. Some of the events that have precipitated this move include the threat of an estate being broken up



by private sale; the passage of the land reform act; a perceived need for planning; the lure of funding opportunities; and the desire to pursue various economic development projects.

By far the most commonly stated goal for community organizations in this study is *to manage the land for the long-term benefit of the community* with an emphasis on economic and social development. The other two commonly stated goals are environmental conservation and the retention of population, especially young people, through the creation of increased employment opportunities and affordable housing.

### ***The role of community ownership in achieving these goals***

Communities face the double challenge of both generating development and making sure that the benefits of development are captured by the local community. One crofting community bought their land because they wanted to do a forestry project that the landlord refused to approve. Another community wanted to set up a community wind farm. In the latter case, the landlord wasn't against the project, but without community ownership it would be the landlord rather than the community that would benefit. In both of these cases interviewees emphasized that their community wants to be able to invest in the common grazings and to be able to capture the benefits of that investment. It was said that, whereas in the past crofters' rents were never re-spent on the estate, now this money would be reinvested for the common good. In a third community I heard a similar description of how community ownership is supposed to affect development: The benefits derived from any development will remain within the community. Money won't leave and it won't be dispersed as dividends. It will be reinvested.

In one interview, the development possibilities enabled by community ownership were contrasted with those of national economic development policy. National policy, the interviewee said, doesn't affect all areas equally. Community ownership, on the other hand, helps to create economic development policy that is relevant for a particular area.

Another interviewee explained that community ownership is also necessary in order to develop resources that outside investors wouldn't find worthwhile. Such neglected resources might not necessarily be unprofitable, only less profitable than other investment opportunities elsewhere. A local community might want to develop these resources in order to generate employment, to create a multiplier effect in the local economy, or to provide needed services to community members.

Even, and perhaps especially, where resources are valuable enough to attract outside investment, community ownership may be wanted in order to steer how development happens. Here is how one community has structured their relations with private investors in the context of a particular project. This community has an ambitious plan to develop their waterfront with the construction of housing, additional wharfage, a fishing pier, and a fish processing plant. This development would be carried out by private developers who would lease the land, and whose activities would be subject to restrictions in their leases. The land is owned by a community trust, which is a company limited by guarantee, governed by a board of directors elected by the members. By owning the land, through their trust, the community can initiate this development and control how it happens. They will also benefit by taking partial ownership in the new businesses. The businesses will pay rent to the trust. The trust is set up like this: There is a holding company that owns assets, such as the land. This company is owned by the trust's membership, which is open to everyone in the community (annual membership fee £1). There are also a number of trading

companies owned by the trust, which are for-profit businesses. Thirdly, the trust wants to start an investment company to receive all the profits and to invest them in new businesses. People would be encouraged to invest in the company, and the company would seek to make productive loans.

In several communities, buyouts were motivated in part by a concern about ownership becoming fragmented. In one case, the estate was going to be broken up and sold to multiple private landlords. In another case, there was concern that land reform legislation would lead to multiple smaller-scale buyouts, and that fragmenting the estate in this fashion would undermine its development potential. A third community wanted to make sure that the benefits of development would be spread evenly throughout the community. In one place, tradition was also mentioned as being important: “It’s been a whole estate for a long time.”

The asset most frequently mentioned as needing to be kept whole is the sporting, i.e., the hunting rights and the ability to manage game. Also important are the common grazings, of course, and the ability to effectively manage drainage and carry out pest control. Some assets such as wind power could effectively be developed in one spot; but, without community ownership, the benefits wouldn’t be evenly spread, although many of the detriments would. Having all assets held together is supposed to discourage the development of some resources in ways that would devalue others. Where multiple small buyouts were a possibility, there was a concern that these areas would be set against each other in competition for development.

If not the most frequently mentioned concern, the need for affordable housing was perhaps the most passionately spoken of, usually with specific reference to young people. Affordable housing and employment opportunities are bound together in

people's perception as the two things that are needed to maintain the rural population. This is a concern because when the population gets too low, rural communities begin to lose services. Without enough people, there will be no shops, no post office, no school, no doctor, and diminished public transportation. Hence the concern among local people that holiday home buyers don't outbid young families who want to stay in the community. In one case, maintaining housing affordability for young people was given as the chief reason for community ownership of land. In this case, when new housing is built, they plan to create new crofts. In another community, new housing is going to be rental housing, reserved for needed workers rather than vacationers. In the case where an estate was bought by a government-funded agency and divided into multiple small holdings, the central purpose was to facilitate the ability of young families to stay on the island. According to one staff member at Highlands and Islands Enterprise, places with community ownership experience greater population retention.

The issues of housing and population retention are tied in part to the issue of absenteeism on crofts. Interviewees complained that many crofts go unworked while people who want a croft can't get one. When the active crofter population falls below a certain point, there may be too few people for gathering sheep, to support needed services like a veterinarian or feed store, or generally to maintain a vibrant crofting community. For this reason, one community expressed a desire to have more control over the sale, lease, and assignation of crofts. But the powers of a community trust as landlord are circumscribed in the same way those of a private landlord are.

Several communities mentioned the importance of community ownership for long-term planning. In one community there had been tension between county-level planners and local farmers over the location of new houses. The planners wanted to

condense housing, but this would have meant putting houses on arable ground. Community members wanted to locate new houses on land unsuited to agriculture, following a more dispersed settlement pattern. “We didn’t set out to become community owners,” an interviewee in that community said. “We wanted to be able to do long-term planning; but without having control of the land, we tended to focus on crops and cattle, not community development.” With community ownership, the interviewee said, the neighborhood could make a vision for their future and try to set up a situation that is conducive to crofting in the long-term.

Several interviewees stressed that whereas private investors tend to look for short-term gain, the community trust looks at the long-term. One example of this is a community trust that has refused to accept one-time payments for utility way-leaves, insisting instead on annual payments.

It was apparent from talking to people in communities where buyouts had occurred that the land is important not only as a basis for economic development, but also as a tie of belonging to place and a source of identity. The reaffirmation of this connection with the land and its cultural meaning has, according to community members, generated a substantial increase in civic engagement and enthusiasm for community projects.

Speaking of community development in the context of a community buyout, one interviewee said that it feels worth making the effort when you own it. “There’s a bit more pride in it.” Another member of that same community said that the buyout released a great deal of community energy. With community ownership, he said, you get communities coming together a lot more. Before, each crofter only dealt individually with the landlord. Now they have to come together and a lot of new ideas

come out. “A lot of people are a lot more interested in what’s going on now than when we had a private landlord.”

“There is a feel-good factor,” I was told in another community. It’s really something to be involved in something on your own doorstep, to feel like you can make a difference. The buyout also generated more interest in crofting: At that time some crofts were changing from father to son. The sons hadn’t been so interested, but the buyout got them more interested. It sparked a little more community spirit and interest for the future. The only communal things we did before were the gathering and shearing. The buyout helped to bring people together.

One staff member at Highlands and Islands Enterprise said that feelings of ownership and belonging are greater in places where there is community ownership; and this opinion was shared by a community interviewee who said that a lot of the new buyouts have generated renewed enthusiasm about living in the places where they have taken place. Another HIE staff member said they see a stronger sense of cohesion and empowerment when communities control their own assets.

While community ownership has generated a great deal of excitement in some communities, not all community members are equally swept up in it; and in two communities such excitement has either stalled or been lacking altogether. These two cases will receive special attention in the Discussion section below. Among the other cases, one of them is unusual in that only crofters can be trust members. This was one of the earliest community buyouts, occurring prior to the Land Reform Act. Where more recent buyouts have occurred, the entire community has a right of membership in the community landowning organization. Even so, interest among non-crofters has sometimes been lacking. In the largest community ownership case, the trust has 750 members out of a potential 3,100. I was told that there was some confusion about who is eligible for membership. Many members of this community mistakenly believe that

only crofters are eligible; and many non-crofters have not paid much attention to the buyout, perhaps because they feel that it doesn't affect them. In another community, although membership here too is open to all residents, so far only crofters have joined. Again, it was said that non-crofters probably don't feel affected; although a strong desire was expressed to engage the non-crofting part of the community. In a community with a more recent buyout, 60% of the population are members of the trust, including some people from non-crofting households.<sup>21</sup>

It is easy to summarize why respondents believe that community ownership is an important strategy for achieving these goals. Six things were commonly mentioned. The two most common were to keep the benefits of development local and to ensure reinvestment in the community. Community ownership of land is also seen as necessary in order to prevent fragmentation of assets; to keep housing affordable; to enable long-term planning; and to instill pride and generate civic energy.

### ***Why a community trust instead of local government?***

Coming from a place like Vermont, where direct democracy is practiced at the town-level and where towns collect taxes, provide services, and own land and other

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<sup>21</sup> The population of the estate is 2000, and trust membership stands at 1,200. The number of crofts is 617; but some crofters own more than one croft. I estimate the number of crofters to be 600, since I am told that 70% of the population are non-crofters. It is important to note that a crofter is a person who owns a croft—his or her spouse does not count amongst the crofting population even though she or he is living a crofting lifestyle. Thus, in the case of this community, the trust membership of 1,200 could easily be composed entirely of people living on crofts, since there are 600 crofting households, each of which might furnish two or more members. I only know that this is not the case because I have been told that there are fewer than 1,200 people living on crofts in this community. I do not know the number of non-crofting households or the number of people who are not living on crofts, except that the latter figure is something more than 800. I am using this example to point out some of the complexity that must be borne in mind when looking at crofting figures and generalizing about “the crofting population.” If half the population of a town are crofters, it may yet be the case that nearly all of the households are crofting households and nearly everyone may be living on a croft. Also, the number of crofts will not correspond exactly to the number of crofters, since multiple crofts may be held by one person. The active crofting population might also be smaller than the number of crofts due to high rates of absentee ownership.

assets, I had to ask why the community land movement in Scotland should all but reinvent local government in the form of community trusts, and where the actual local government was while this was going on. Interviewee responses to this line of questioning were unanimous in saying that the smallest level of government, the community council, is completely powerless. The next level up, the regional council,<sup>22</sup> was said to be too remote to be either democratic or to be a proper venue for local people to deal with local issues. Because taxes are paid to the regional council, community councils are without money; and I was told that there is no precedent for them to own land. Some people said they felt that they could participate more effectively in the community trust than in local government; and it was also said that the government was viewed as something apart. People wouldn't feel like they really owned the land if the government owned it; and then the pride of ownership that was generating increased civic activity would disappear.

A staff member of Highlands and Islands Enterprise also pointed out that there is an emerging desire on the part of public bodies to transfer the ownership of land to community organizations, with the expectation that these organizations should be companies limited by guarantee.<sup>23</sup>

### ***Crofting and community ownership***

The centrality of agriculture to land reform in other parts of the world prompts the question of what agriculture has to do with land reform in Scotland. The answer is not clear cut. For one thing, agriculture is rapidly disappearing as a way of life in

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<sup>22</sup> This was the term used by some interviewees. The Local Government etc. (Scotland) Act 1994 replaced regions and districts with "unitary authorities." The area that the interviewees are referring to—the entire Highland area, for which there is one council—was not significantly altered by this legislation. There is also one council for the Western Isles. A short description of how local government is structured is provided in the discussion section.

<sup>23</sup> The Forestry Commission, for example, which is the largest landowner in Scotland, has programs for promoting community ownership (see Forestry Commission 2008, 2009).



Scotland. It frequently came up in interviews that many or most crofters in a given area were not actively grazing.<sup>24</sup> In one community I was told that fewer than half the crofters had any stock. In another community it was said that much of the commons is never grazed and that the number of active crofters had dwindled to such an extent that in one township<sup>25</sup> there was but a single grazer. On another estate I was told that each of the common grazings had only a couple of people on them, and that some of the townships had neither grazing committee nor clerk. People just grazed without discussion. Taking a closer look at one of these townships, I found that out of twenty crofters with rights to the commons, only two to three people were actively grazing. Each of these remaining grazers had many more sheep on the common than the number they were each officially allowed (called their *souming*). The soumings were said to be far too small to provide any significant income. “Why is the government promoting crofting?” one shepherd asked, “It’s a practice that’s disappearing. The prices are so low it doesn’t make sense anymore.” He went on to say that when the subsidies stop, the gates will close on the estate and it will grow up to brush. The most common complaint of shepherds was about the lack of local slaughter and finishing facilities. Two people also complained about predation. Many interviewees spoke of their concern for the future of crofting and for the vibrancy of the crofting community, which they saw to be threatened by absenteeism and the decline in agricultural practice.

Despite the apparent decline in crofting as a form of livelihood, it remains central in many people’s minds to the community land movement. (One cannot speak of land reform and Scotland without thinking of the crofters’ war, the Napier

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<sup>24</sup> This finding agrees with the loss of salience described by Brown and Slee (2002).

<sup>25</sup> Estates are typically composed of multiple small townships, and grazing is organized on a township basis. Thus, typically, there is not one commons for an entire estate, but rather multiple commons, each associated with a particular township and the crofts of that township. Each township has its own grazings committee and a grazings clerk to administer its commons.

Commission, and the Clearances.) As mentioned above, non-crofters tend to be less actively involved in community buyouts than crofters. The land, one crofter explained, has more than just economic value; it is also a tie of belonging to place. In one crofting community I was told that even non-grazers take an active interest in the commons through their grazing committee. They participate in forestry grant schemes, maintain peat roads, control bracken, and maintain fences. The main thing that drives participation, I was told, is people's feeling about the land. And it must also be remembered that the reason why some communities have bought their common grazings is so that they can put them to other use than grazing. One community bought so that they can pursue a wind power project. Another community did so to be able to plant trees. This second community is also interested in wind power, and hopes that these sorts of projects will attract the interest of non-crofters. Two other communities are also considering wind power, and one has restored an historic golf course located on the commons. Several are developing the sporting rights as a business. The commons have many potential uses; and while agriculture may be in decline, there are other ways that communities hope to benefit from the land's resources.

When I first conceived this research, the main thing I wanted to learn was how community ownership would support local agriculture. Because many of the benefits of small-scale agriculture have the nature of public goods (for example, scenic cultural landscapes) they are unrewarded by markets and require other forms of support. The importance of these non-commodity benefits has received growing recognition (Europa 2008; Shucksmith 2008); and at the same time, Scotland's local food movement has also been gaining momentum. It seems to be an auspicious time for revitalizing small farm agriculture; and community ownership of land may be uniquely well-suited to this purpose due to its ability to internalize the "positive

externalities” of small farms. For these reasons, and considering the high multiplier-effect of small farms (Grubinger et al. 2005; Hoffer 2000), I would expect to see agriculture high on any rural development agenda. In my study, however, this turned out not to be the case.

There were two questions that I asked in every community regarding agriculture. The first of these was ‘how does community ownership encourage sustainable land use on the part of crofters?’ The answer to this was the same everywhere: The crofter’s obligation to maintain his or her croft in good condition comes from the Crofters Commission, not from the community-as-landlord. The second question I asked was ‘how will community ownership benefit agriculture?’ Interviewees mentioned the ability to reinvest rents and to capture the value of alternative uses for the grazing commons (such as wind power); they said that it would be easier to balance conflicting interests such as grazing, deer management, and forestry; and they spoke of increased enthusiasm for the future. But in most cases these answers followed an interval during which interviewees said ‘hmmm’ and furrowed their brows in thought. It seems in fact that community ownership does very little at this time to promote agriculture directly; and there is little effort either to connect local consumers to local producers or to promote a local food system.

During an interview at Highlands and Islands Enterprise, the point was made that community ownership helps crofters by generating the economic development necessary to create jobs. It was emphasized that there is no expectation that crofting should be a complete source of livelihood; and that this is why the focus is more on the provision of supplemental employment than on increasing the viability of agriculture.

### *Challenges and prospects for the future*

Because each of the people I interviewed in communities were either involved in the buyout when it happened or were working for the community organization at the time of the interview; my observations must be understood as limited to how those who are actively involved with community ownership feel about it as a strategy for achieving their goals, and what difficulties they have encountered in pursuing this strategy. Challenges that were mentioned include absenteeism amongst croft owners; inadequate funding; a lack of developable assets; the declining importance of grazing; a lack of public participation; and a lack of agreement in the community.

A staff member at Highlands and Islands Enterprise who works with land-owning community organizations talked about what he sees as their biggest challenges: generating enough revenue, coping with volunteer burnout, overcoming community apathy, and being able to afford a manager.

In all of the case study communities except for two, interviewees were very positive about the future of their community and about the future of community ownership generally. Out of the two communities where positive energy was lacking, one had recently experienced frustration on the road to community ownership but still had hope for the future. The other was completely negative. These two exceptional cases will be discussed further in the following section

In sum, while local events leading to a decision to pursue community ownership have varied from place to place, the stated goals of community organizations are all very similar: to manage the land for the long-term benefit of the community, with an emphasis on economic and social development. Community ownership is seen as necessary in order to keep the benefits of development local; to ensure reinvestment in the community; and to prevent the fragmentation of assets.

The creation of community organizations (companies limited by guarantee) for the purpose of owning land and serving as a venue for community decision-making is a necessary alternative to local government fulfilling this role because local government does not exist in Scotland, at least not at the same level that the community buy-outs are taking place. Lastly, land reform in Scotland is unusual in that it seems to have little to do with agriculture. The size of agricultural holdings is left unchanged and there is little effort at present to increase opportunities in the agricultural sector. The aim instead is to generate rural economic development and in that way to expand employment opportunities more generally. Buy-out communities face a number of challenges; but, with exception of two cases that will be discussed below, they are optimistic about their own futures and about the future of community ownership.

## ***DISCUSSION***

Traditionally, land reform has meant a redistribution of the agricultural land held in large private estates, in order to improve the lives of rural poor by providing them with access to land as a means of livelihood. In 19<sup>th</sup> century Britain, the argument for land reform as a means of alleviating hunger was very strong.

To look over the fence of [a] famine-stricken village and see the rich, green solitudes which might yield full and plenty spread out at the very doorsteps of the ragged peasants was to fill a stranger with a sacred rage and make it an unshirkable duty to strive towards undoing the unnatural divorce between the people and the land (Hunter 2000: 252).

There is frequently an expectation that the redistribution of rights to land will result in an intensification of production and a concomitant rise in living standards (Prosterman and Hanstad 2003). When the question is one of small farms versus extensive grazing or private hunting grounds, the link between redistribution and productivity is clear—

so long as productivity is not equated with the ability to return a profit. But by the start of the 19<sup>th</sup> century, agricultural economists were already talking about “the advantages of committing the cultivation of the soil to the hands of a few” (Mackenzie 1810: 126); and it was the profitability of sheep grazing that led to the clearances.

A focus on increasing production (or worse, profitability), rather than on increasing rural peoples’ ability to claim a share of what is produced, fails to get at the root of rural poverty—a point starkly illustrated by the numerous famines that have occurred alongside massive food exports (Ponting 2007). The adoption of high-yield crops in the 1960s, which many believed would put an end to hunger in the third world, went hand-in-hand with more concentrated land ownership, leading to greater rural poverty and the persistence of hunger (Lappé et al. 1998).<sup>26</sup> Because the pursuit of greater agricultural productivity may not only be divorced from, but harmful to, the improvement of rural well-being, it seems best to keep the issues of farm productivity and rural livelihoods separate;<sup>27</sup> and in so doing to acknowledge the possibility that a land reform with little apparent effect on agricultural production may yet be valuable to small farmers and to rural people generally.

The preconception with which I approached this research was that land reform in Scotland was, at least in part, intended to help small farmers—or more precisely, small farm agriculture, which is what I thought crofting was. Consequently, I was perplexed by what little effect community buyouts have on agriculture and crofting tenure. The reason for this seems to have partly to do with the gains that crofters

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<sup>26</sup> Strains of wheat were developed in Mexico, and later rice in the Philippines, which put more growth into the grain rather than the stalk, greatly increasing the potential yield per acre. These new developments, hailed as the Green Revolution, came with a number of strings attached. The new high-yield varieties depended on a great deal of input, such as careful irrigation and the regular application of fertilizer and pesticides. The credit to obtain these things was beyond the reach of many small farmers, who were driven off their land as increased production made prices fall and farmers who invested in the new technologies sought to expand (Lappé et al. 1998).

<sup>27</sup> Even while acknowledging that small farms may often be more productive than large ones (Binswanger et al. 1995; Bray 1994; Prosterman and Hanstad 2003; Rosset 1999).

already made at the end of the nineteenth century, and partly to do with the real nature of crofting and crofters' needs, which are not exactly as I had supposed.

One classic goal of land reform is to encourage investment by providing farmers with secure tenure. The relationship between these two things, and indeed their mutual absence in the highlands, was already a source of comment in the early nineteenth century (e.g. Laing 1837). The truth of this relationship seems to have been born out when, shortly after the Crofters Act of 1886 guaranteed fair rents, protection from eviction, and ownership of improvements, a royal commission in 1895 observed that this had "led to vigorous efforts towards improvement," both in regard to cropland and to housing (Hunter 2000: 247). Does this mean that the provisions of the Crofters Act of 1886 were sufficient; or should crofters have been given full ownership of their crofts? It appears, at least in terms of tenure,<sup>28</sup> that the provisions of this act were sufficient; as is evidenced by crofters' lack of interest in owning their own crofts when this option was extended first to some of them by the Congested Districts Board in the early 20<sup>th</sup> century (Hunter 2000) and then to all crofters by the Crofting Reform (Scotland) Act 1976. The rights that crofters have are so close to those of full ownership that most see little reason to change their tenure status. Indeed, by doing so they fear they would lose certain advantages, such as the ability to apply for grant money available only to crofters. What is more common is for crofters to remove just their house site from crofting tenure in order to obtain a mortgage or, somewhat less often, for an additional house site to be carved off and de-crofted, either for sale or to provide housing for family.

Given the security of tenure already provided by the Crofters Act and subsequent legislation, which crofters have apparently found satisfactory, one might

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<sup>28</sup> It has been mentioned above how the failure to make more land available led to prolonged unrest among both crofters and cottars.

wonder what more there was for land reform to accomplish. But in the late 20<sup>th</sup> century the Highlands were still regarded as a backward region in need of economic development (Carter 1974). It has been argued that the fragmentation of farmland into so many tiny crofts exacerbates this problem by standing in the way of more efficient farming techniques (Gillanders 1968). This argument comes off sounding similar to those made by the “improving” landlords responsible for the clearances; but that doesn’t mean that it is wholly untrue. The claim that crofts should be amalgamated into economically viable units is given some weight by the tendency for active crofters to hold multiple tenancies, or at least to work multiple crofts by means of various informal arrangements; as well as by the wholesale abandonment of agricultural activity by many crofters. At the end of the 19<sup>th</sup> century the original Crofters Commission actually recommended that the majority of crofters should be “gently” removed from the land so that the smallest crofts could be combined into economically viable units (Hunter 2000). Had this recommendation been heeded, agricultural production might have been improved; but it is difficult to say that the displaced population would have been better off. The example of the Green Revolution, or that of agriculture in California (see Walker 2004), should make us wary of equating increased agricultural production with improved rural wellbeing. Even before modern agriculture could give us such examples as these, a Scottish writer in the 1830s commented that while it is

...a favourite and constant observation of our agricultural writers that these small proprietors make the worst farmers; [it is also true that] a population may be in a wretched condition although their country is very well farmed... (Laing 1837: 36-37).

This writer (and former Scottish landlord), Samuel Laing, was impressed when traveling in Norway with how much better-off the Norwegian farmers were; and he attributed this specifically to the widespread ownership of private property. Here, he said, were “the highland glens without the highland lairds” (1837: 36).



The common sense of the majority of mankind would apprehend ... that the forty families in these two or three [Norwegian] highland glens, each possessing and living on its own little spot of ground and farming well or ill as the case may be, are in a better and happier state ... than if the whole belonged to one of these families ... while the other thirty nine families were tenants and farm servants (Laing 1837: 38).

It is interesting to see that the question of appropriate farm-size, judged in terms of rural development rather than merely by output, is much older than Goldschmidt's (1978) classic treatment of it. But in pursuing this question at such length I am leading us a little bit off the mark; for I have been talking about crofts as if they were nothing more or less than small farms.

Now it is time to make the point that so many people had to make to me before it finally sunk in: that “small farms” is not a very apt description of what crofts are or were ever meant to be. As explained above in the description of how crofts came into existence, they were never intended to be commercially viable small farms. On the contrary, they were deliberately designed to be incapable of providing a family with more than a bare subsistence, if even that. Government assistance to crofters in the latter half of the 20<sup>th</sup> century, coming as it did in the form of agricultural improvement grants, betrayed “a lack of insight into this central reality of crofting life” (Hunter 2000: 284).<sup>29</sup> What crofters need are jobs. This sentence was uttered by almost every person I talked to who was in any way connected to crofting life. Agricultural modernization and the consolidation that goes with it would run counter to this need; and any measures that reduce the number of people on the land would exacerbate the problem of dwindling population and the consequent loss of services. This, then, explains why the community land movement today touches very little upon agriculture and leaves the tenure of individual crofters virtually unchanged—why its primary

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<sup>29</sup> The Committee of Inquiry on Crofting reminds us in their final report that “Crofting is so much more than simply agriculture.” On average, 70% of a crofter's household income is from non-croft based activities (Shucksmith 2008: 41). Accordingly, the Committee's vision for the future of crofting acknowledges that “most of their incomes will tend to come from non-agricultural activities” (Committee of Inquiry 2008: 3).

emphasis is on generating economic development that will supplement rather than enhance farm income.

Once agriculture has been removed from center stage, we are left with the question of why land reform, and why community-ownership in particular, are regarded as the means to economic development. To have control over real estate is to have control over the opportunities for economic development—the power not only to stifle or encourage development, but also to claim whatever benefits it produces. By taking ownership of the land, communities hope to encourage the development of land-based assets and to capture the benefits of this development. This does not always mean making money. It is important to keep in mind that development is ultimately about the provision of needed goods and services, which is something that does not always go hand-in-hand with opportunities for profit. This brings us to the question of why economic development should, at least in part, be a community project and not just an outcome of private entrepreneurship.

There are two classes of benefits provided by a business such as a village shop. It generates profit for the owner and it provides needed goods and services for the people of the village. Classical economic theory tells us that the desire for profit leads people to provide needed services to others, and that the opportunity to pursue profit in the context of a market should be sufficient to ensure that people's needs get satisfied. Under this philosophy, civic-mindedness becomes unnecessary because “in selfishly pursuing only his or her personal good, every individual is led, as if by an invisible hand, to achieve the best good for all” (Samuelson and Nordhaus 1992: 40). It was a Scotsman who became the father not only of a new science, but of a whole new ideology for the organization of society when he wrote,

Every individual is continually exerting himself to find out the most advantageous employment for whatever capital he can command. It is his own advantage, indeed,

and not that of the society, which he has in view. But the study of his own advantage naturally, or rather necessarily, leads him to prefer that employment which is most advantageous to the society (Smith 1776: Book IV, Chapter II).

Fewer than 20 years after Adam Smith penned these words, profit-seeking landlords began the process of displacing Scotland's rural population to make way for sheep. Nevertheless, the philosophy that Smith expressed went on to become a guiding force behind rural development and land reform, such that the promotion of widely held private ownership became the norm (Deininger and Binswanger 1999).

The *proviso* that private property be widely held is an important one in order for it to function the way it is supposed to. The functions of private property, as mentioned in the introduction, include enabling democracy through citizen competency and independence (Schwarz 1997) and fostering economic development. Economists argue that private property does two things to promote the efficient use of resources. First, investment and conservation are encouraged when the rewards and costs of decisions are brought home to the decision-making property owners; and second, the right of alienability enables trade, which causes resources to gravitate to whoever can use them most profitably, resulting in greater wealth creation overall (Anderson and McChesney 2003). Unfortunately, the elegance of this model doesn't carry over to real life, due to imperfect markets and the inability to control externalities; and its application in the context of land reform has been widely criticized (see introduction). While neither I nor anybody that I spoke to in Scotland is against private property, it became clear that other forms of ownership are also necessary in order to efficiently develop assets in a way that meets communities' needs.

Let's return to the example of a village shop. From a development point of view, the important function of a village shop is to provide needed goods and services to people in the area. If the profit that such a shop might generate for a private owner

is sufficient to maintain the shop's existence, all is well. But village shops and other amenities are closing all over rural Britain, a circumstance that is especially hard on people in remote areas. In 2009, four hundred village shops closed their doors (Davies 2009); while in the same year, pubs were going out of business at a rate of 39 per week (Brignall 2009). The closure of a local establishment, sometimes upon the owner's retirement, is not necessarily due to an absolute lack of profitability; but may result simply from the business being less profitable than other investment alternatives. An individual "exerting himself to find out the most advantageous employment for whatever capital he can command" is not going to keep a remote petrol station open merely for the convenience of the people who rely on it if he can instead open one in a much busier area. The government operates on a similar plan. Between 2007 and 2009, the Post Office's Network Change Programme resulted in the closure of 2,500 Post Office<sup>30</sup> branches (Post Office 2010b), despite public outcry (Drury 2009; Harrison 2009)—a move that one MP said would be the death knell for many communities (BBC News 2007) as the loss of postal customers could lead to a loss of business for the village shops where branches are located. The number of post office branches has fallen from 25,000 in 1960 (Shankleman 2007) to about 12,000 today (Post Office 2010a). Thus the issue of maintaining services in rural communities is not a question of private enterprise versus public ownership, but one of local communities looking after their own needs. And this is exactly what is happening, as shops, pubs, and petrol stations are increasingly coming under community ownership in an effort to keep them open and serving the communities that rely on them (Brignall 2009). Today there are more than 230 community-owned

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<sup>30</sup> "Post Office Ltd is a wholly owned subsidiary of Royal Mail Group Ltd and operates under the Post Office® brand. Managing a nationwide network of around 12,000 Post Office® branches, we are the largest Post Office network in Europe and the largest retail branch network in the UK handling more cash than any other business" (Post Office® 2010a).

shops in the UK, including fifteen in Scotland, most of which have opened since the year 2000 (The Plunkett Foundation 2010; see also <http://www.communityretailing.co.uk>).

Not only do community land-owning organizations in Scotland want to encourage the development of resources that outside investors might not find worthwhile, they also want to make sure that the community can control how development happens and that the benefits of development stay in the local community. There are two ways that the mobility of capital can adversely affect poor communities: the constant hemorrhaging of surplus leaves communities without adequate capital to invest in development (Gunn and Gunn 1991); and the consequent need to woo outside investment leads communities to orient themselves toward the creation of an attractive business climate rather than the pursuit of community development goals (Shuman 1998; Stoecker 1997). The first of these two points is something of which communities where I conducted interviews are very much aware. Interviewees in most of these communities spoke specifically about how community ownership would allow them to re-invest rents, wind farm revenue, or other income back in the community. Several interviewees pointed out that this could and sometimes did happen under “a good landlord,” but that having such a landlord was a matter of luck and not design—thus making community ownership necessary sooner or later. Particular business ventures, as for example, those that might be involved in the case of the community that plans to redevelop their waterfront, might be privately owned and managed; but community ownership of the real estate enables the community to guide the development process and to capture some of the income that will result from public investment. This is especially important in recognition of the fact that although tourists may only be spending their money in a hotel at the waterfront, they are probably coming to an island or highland area to hike through and

photograph the crofting landscape, which they have a statutory right to do free of charge (OPSI 2003). This observation highlights the interconnectedness of different development opportunities (e.g., how would wind farm development affect tourism?) and the need to take a holistic perspective in managing development. In the case where a large community buyout was spurred on by a desire to prevent multiple smaller buyouts, there was concern about making sure that some assets not be developed in ways that could conflict with the development of other assets. Interviewees in other communities spoke of the importance of being able to develop assets that are landscape scale and can't be fragmented (such as the sporting), and the need to make sure that the benefits of development are spread evenly throughout the community.

In the lead up to land reform legislation, increased community involvement in participatory rural planning processes was spoken of as a possible means of achieving land reform goals (Dewar 1998; LRPG 1999). The foregoing discussion makes one reason clear why more participatory planning cannot be a substitute for changes in ownership: local communities want not only to guide how development happens, but also to capture the benefits of that development. There is also reason for skepticism regarding the likelihood of improved democracy in the planning realm, and this has to do with the shortcomings of local government in Scotland. Interviewees spoke of the powerlessness of their community councils, and of the remoteness of the lowest effective level of government.

Local government in Scotland has undergone a number of changes during the 20<sup>th</sup> century. In 1890, thirty-three county councils were created, which remained in place until 1975. Parish and town councils were eliminated in 1929 when their powers and responsibilities were transferred to larger subdivisions of the counties. The Local

Government (Scotland) Act 1973 (effective 1975) replaced the county councils with nine regional councils and three island councils. These regions were divided into a total of fifty-three districts, each with its own district council. The Highlands were one region, composed of eight districts, and the Western Isles had their own council. Community councils were brought back into being at this time as a means of communicating local opinion to higher levels of government, but they were not given any power, responsibility, or resources. The Local Government etc. (Scotland) Act 1994 (effective 1996) replaced regions and districts with thirty-two “unitary authorities” or “council areas,” of which the entire Highland area is one, and the Western Isles are another (ONS 2009). The council area for the Western Isles is called *Na h-Eileanan Siar*. Figure 4.1 shows the land area and population for each of these places.

	<u>Land Area</u>	<u>Population</u>
All of Scotland	77,925 km <sup>2</sup>	5,168,500
Highland council area	25,659 km <sup>2</sup>	219,400
Eilean Siar (Western Isles council area)	3,071 km <sup>2</sup>	26,200

**Figure 4.1** Land area and population for Scotland, the Highlands, and the Western Isles (GROS 2009).

When people speak of local government in Scotland, they are referring to unitary councils such as that which serves the entire Highland area. Community councils exist only to communicate local opinion to higher levels of government, not to govern in their own right (ONS 2004), which is something they have neither the resources nor the power to do. Although community councils have been applauded as

an important feature of democratic life in Scotland, they have also been criticized for being non-representative; and on these grounds they have frequently been ignored by unitary authorities (McIntosh and et al. 1999; ONS 2004). According to *The*

*Commission on Local Government and The Scottish Parliament*,

It could be said that Scotland today simply does not have a system of local government, in the sense in which many other countries still do. The 32 councils now existing are, in effect, what in other countries are called county councils or provinces; and there is no structure of local government in which individual communities have their own councils... (McIntosh and et al. 1999: Chapter 6, Line 155).

Regarding this observation, the Commission writes “We state that simply as a matter of fact. We see no merit in turning the clock back” (McIntosh and et al. 1999: Chapter 5, Line 156); and indeed, the Commission recommended against re-establishing local government, principally on the grounds that it would be too much trouble. In its response to the Commission’s report, the Scottish Government expresses the opinion that the need for community councils has been diminished by the emergence of new ways for community members to make their voices heard, as well as by new avenues for social action, including community ownership (The Scottish Executive 1999).

Thus we see the convergence of several strands of logic. The development aspirations of local communities and the challenges they face explain why some sort of public ownership of land is preferable to private ownership either fragmented or concentrated; while the nonexistence of local government at the community level explains why ownership and management of land is better placed in the hands of a community trust than those of the “local” authority.

Two of the communities that I visited did not share in the excitement that land reform was generating elsewhere. In one of these communities, positive energy is lacking altogether. Here I was told that common ownership doesn’t really do anything for anyone. “What I’ve learned about community ownership,” one interviewee in this



community told me, “is that it doesn’t really work.” In the other community, the process seems merely to have stalled, and may be expected to regain a modest level of energy with a change in circumstances. What is to be noted about both of these communities is that land tenure deviates significantly from the typical model of community ownership found in each of the other cases.

The more negative case is an estate that was purchased by the Congested Districts Board in the very early 20<sup>th</sup> century, having been an area of acute unrest during the Crofters War. The crofters were each offered the opportunity to buy their crofts, with the effect that they ceased to be crofters and became owner-occupiers. There is no landlord; and there is no community ownership of the land that the crofts sit on. These “crofts” are actually freehold private property; but they do come with rights to common grazings and a share in some common assets, which primarily include the estate farm (which is run by a manager) and a shooting lodge (which is generally under long-term lease). Any profits from the management of these assets are distributed to shareholders as dividends. It is permissible to have multiple shares, and in that way to have multiple votes. Management of the estate is the responsibility of a committee that is elected at the annual meeting of shareholders. Not everybody in the community is a shareholder. If somebody breaks off a piece of their croft to sell as a house site, the new buyer does not get a share in the estate. There are about fifty such people with no interest in the estate. Out of 147 shares, only twenty to thirty people come to the annual meeting. Most shareholders are absentee; and many of the houses are empty for much of the year, being used only as holiday cottages. There is no community development agenda.

The community that I described as being stalled is the one where an estate was purchased by a government-funded agency with the intention of transferring it to community ownership. The purchase happened amidst heated controversy and despite

a certain amount of local opposition. Six small holdings have been carved out of the estate farm's inbye, four of which were occupied at the time of this research. About six years after the purchase, a community trust was formed in order to take ownership of the estate. Membership in the trust is open to all local residents, not just those who occupy the six holdings. About four years after the trust was formed, there came a point when it seemed that ownership was finally going to be transferred to the community; but (according to interviewees) at the last minute the government wouldn't let the deal go through. "Frustrated" and "feeling burned," the trust and its board of directors decided to take a break. At the time of my interviews the trust was inactive, although hope was expressed for progress in the indefinite future. Interviewees repeatedly stated that the whole process has been driven by the agency that purchased the estate. "The only kind of model that works," one of them told me, "is one where an existing community has come together to pursue a common vision."

The exceptionality of these two cases seems to underscore the importance of community, and to indicate that either too much state control or too much individual ownership may be deleterious to the civic processes that are expected to drive community development. In the more recent case, it is a public agency rather than the community that has ownership; and the agenda has been focused more on providing affordable housing to a small number of families than on delivering broader community benefits. In the older case, we find an actual example of the hypothetical situation that I posed to interviewees when asking them why there should be community ownership in the form of a trust. 'Why not just divide the estate up,' I asked, 'making each crofter a freeholder on their own croft, with an undivided interest in the commons?' Interviewees said that while this may have been helpful prior to 1886, it would be of little benefit to crofters today. Worse, such an arrangement would tend to hinder rather than facilitate the pursuit of community development

goals. I was told that whereas a trust is bound to look after the long-term interests of the community, individual freeholders just look after themselves. In specific reference to the older case, I was told that people don't have a vested interest in the community. "The estate is just a commercial thing. Most shareholders don't even live there." The interviewee told me that this situation was avoided in his community by allowing all residents to be members and by requiring residency of all members. A number of interviewees also pointed out that where there is a trust, community members don't receive dividends on shared assets—the money is reinvested in the community.

In one of the very first conversations I had about the community land movement in Scotland, it was suggested that community ownership is being pursued simply because "that is what is on offer," as per the land reform act. This is clearly not the case. Not only have a number of buyouts occurred prior to and outside the provisions of the land reform act;<sup>31</sup> but the decision to pursue a community buyout is generally made with other tenure choices on the table. The most important of these by contrast is the right of crofters to buy their own crofts for a nominal fee and to become owner-occupiers—a choice which relatively few crofters have taken. In each community I visited save two, interviewees made it clear that the path of community ownership was deliberately chosen in order to help them achieve their community goals, and for reasons that made sense in terms of their circumstances.

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<sup>31</sup> In one of my case studies, the pre-legislation buyout happened not only in the absence of public funding, but also without charitable support that might have been said to influence their choice of tenure. The funding for the buyout came entirely from the crofters themselves, with the exception of some support from the local development agency for legal costs.

## ***CONCLUSION***

When the clan chiefs turned into landlords and the Scottish landscape became private property, a tension was created with the old and deeply-held belief that the land was a common heritage (Hunter 2000). Thereafter, the step from regarding land as a source of income to treating it as a commodity in itself may have been a small one, but the implications were far reaching. Valleys that once had been places of belonging for members of a community became objects to be leased or sold to whoever could put them to the most profitable use. The people, thus displaced from any claim to resources that would enable them to provide for themselves, were cast upon the emerging market for labor.

The term ‘improvement’ seems to have had similar rhetorical value at the dawn of the 19<sup>th</sup> century to that which ‘development’ sometimes has today. While implying such universal benefits as must accrue from advancement along a natural trajectory from worse to better, it specifically meant the orientation of land use toward markets in order to maximize economic productivity. In the lowlands and in England this led to the modernization of agriculture; while in the highlands it resulted first in the extensive grazing of sheep, and then in the creation of sporting estates. In both cases the benefits of improvement were not universal, accruing as they did mainly to property owners.

While it has been argued that highly concentrated ownership (MacMillan 2000) and restrictive legislation (Gillanders 1968) have prevented the operation of market forces in Scotland; the case is also made that the history of Scotland, at least since the mid-eighteenth century, has been greatly shaped by these forces (Carter 1974). There is truth to both claims, and the student of Polanyi (1944) will be inclined to view the history of Scotland as a clash between those who have wanted to create

free markets for land and those who have wanted to intervene in those markets. That the commoditization of land has been destructive to rural communities is a recurring theme in the literature of Scotland's community land movement (MacAskill 1999; McCrone 1997; McIntosh et al. 1994). Land reform in Scotland, however, is not, and does not purport to be, anti- private property. What it does claim is that other forms of property are needed in addition to private and state property; and it makes a strong case for the importance of community property.

The case for community property has partly to do with encouraging the development of resources that are likely to be neglected by mobile capital in favor of better investment opportunities elsewhere; but mostly it has to do with making sure that development happens in a way that benefits the local community. The celebration of private property as a driver of productivity can ignore how patterns of ownership affect both the distribution of wealth and the types of goods produced. A land reform concerned only with increasing wealth from the land through the promotion of individual enterprise could easily fail to improve the general well-being of local communities. For this reason, community ownership, rather than focusing narrowly on increasing wealth, aims to make sure that needed services are provided; that the population is maintained; that wealth generated from the land is captured by the community; that the benefits of development are evenly spread; and that resources are managed for the *long-term* benefit of the community. In pursuing this agenda, community ownership organizations are not trying to stifle private enterprise, but rather to create conditions under which local enterprise that will benefit the community can flourish. In doing so, they seem to be responding to the words of John Bryden (or at least to a shared perception of what he perceived) when he said, "We have paid too much attention to the growth of individual enterprises, and too little to

the development of the public goods on which the development of enterprises and communities both depend” (1996).

Land reform in Scotland is interesting because it doesn’t break up large estates or redistribute land. The scale of management in most cases remains about the same. What is changing is the degree of local, democratic control over how land is used. In the words of Bryden and Hart: “The issue in land reform is the extension of democracy and democratic practice” (Bryden and Hart 2000: 8). Community ownership, by establishing local democratic control over land use, is intended to enable communities to capture the benefits of development and to be in control of their own futures.

It was apparent from talking to people in communities where buyouts had occurred that the land is important not only as a basis for economic development, but also as a tie of belonging to place and a source of identity. The reaffirmation of this connection with the land and its cultural meaning has in many places generated a substantial increase in civic engagement and enthusiasm for community projects. In this way, community ownership represents not merely a shift in the distribution of benefits arising from land use, but redefines the meaning of land—away from being merely a commodity—and in so doing redefines people’s relationship to each other, recreating community and resulting in an altered landscape of possibilities for development.

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## CHAPTER 5

### **Community Commons in Norway**

#### The Role of Common Property in Outfield Management

##### ***ABSTRACT***

Forests have the potential to generate a wide variety of non-commodity benefits such as wildlife habitat, avalanche protection, local economic development, watershed maintenance, and scenic beauty. The provision of these benefits, however, can be threatened by fragmentation of management and by the public goods nature of the benefits. The research described in this paper uses the case of community commons in Norway to examine the proposition that common property can be an effective means of protecting the public benefits of forest and rough grazing land. It finds that while common property does provide a good way for farmers to manage large areas of land as an integrated whole, the degree to which these commons will contribute to local economic development depends on whether they are locally owned and on the rules governing the use of surplus. Particular attention is given to the role of the state, which appears to be more beneficial in its regulatory capacity than as a landowner.

##### ***INTRODUCTION***

When we think about what forests and grazing areas provide for society, we may be apt to think about the timber, milk, wool, and meat that the people who

manage these areas can sell in the market place. But there are other benefits as well. Naturally-vegetated landscapes protect air quality, assimilate waste, provide habitat for biodiversity, and maintain water quality and supply (Libby and Stewart 1999). Forests contribute to the prevention of flooding and erosion, and in mountainous areas are necessary for avalanche control. The high multiplier-effect of small-farm agriculture makes it an important component of rural economic viability (Meter and Rosales 2001; Green and Hilchey 2002; Grubinger et al. 2005); and the scenic and recreational values of both forests and farmland contribute greatly to the quality of rural life (Willis et al. 2003; Hilchey et al. 2008).

Despite the high value that people place on these benefits (e.g. Willis et al. 2003); we cannot be confident that they will continue to be provided. Their provision is threatened by fragmented management and by the public goods nature of the benefits, both of which give rise to problems of collective action. Fragmentation is a problem because most of the benefits mentioned above cannot be provided by any one farm in isolation, but rather are the combined product of many landowners. Many important ecological functions, from hydrology to habitat, need to be managed on a large scale (Forman and Godron 1986; Noss 1987; Dramstad et al. 1996). Likewise, many of the challenges that landowners face, such as invasive plant species, cannot be dealt with on small parcels independently, due to their mobility across property lines (Fiege 2005). Patterns of land use also matter. The contents of a landscape, such as woods, fields, and roads, will function differently or have different effects depending on how they are arranged in relation to each other (Olson 1999). Adverse effects of resource use on large ecosystems may not be immediately apparent at the point of use (Herring 1990); and practices that may not seem very harmful in moderation can add up to serious threats when enough people engage in them (Freyfogle 2003). For all of

these reasons, the fragmented and uncoordinated management of rural land can undermine many of its potential benefits.

The public goods nature of these benefits is also problematic. Because there is no way to exclude people from enjoying scenic views or enhanced air and water quality, it is difficult to make people pay for these services in the market place. Consequently, there is little financial incentive for landowners to provide these services however much they may be desired. Ecosystem management, for example, requires a shift of focus away from the production of commodity outputs and toward the maintenance of conditions that foster the integrity of ecological processes (Zinn and Corn 1994); but it is only the production of commodity outputs that the market rewards. As land managers employ production methods that enable them to remain financially competitive, the non-commodity benefits of forest and grazing land decline (Olsson and Rønningen 1999; Selvik 2004). In places where there is pressure on forest land for conversion to other uses it may be impossible for forests to continue to exist based on timber sales alone (Kline et al. 2004; D'Amato et al. 2010). “This gap between public good value and private profitability has become an increasing obstacle to the effective overall management of the private woodland resource. Unless the public good elements can be either given value in the market place or appropriately supported by policy, a continued reduction in public good values seems inevitable” (Slee 2006: 2).

The situation of a private woodland owner trying to decide whether or not to invest in the provision of public goods has been likened to a prisoner’s dilemma game (Glück 2000), in which woodland owners are likely to be punished for acting unilaterally in the public interest unless there is some mechanism for mutual

commitment between them.<sup>32</sup> While the intervention of an external authority may seem like the simplest solution (Ophuls 1977), in practice the interests of a leviathan are likely to differ from those of local communities (Scott 1998). Putting too much power in the hands of the state can lead to a decline of local management institutions and result in the degradation of natural resources (Lynch and Alcorn 1993; Pretty and Ward 2001; Wittman and Geisler 2005). In response to a perception that state forest management has “failed to steward forest ecosystems and maintain vital communities” (Baker and Kusel 2003: 2), proponents of “community forestry” are calling for more local and democratic forest management (Brendler and Carey 1998; Lee and Field 2005). In order to overcome the problems of collective action that inhibit the production of public goods, Glück (2000) suggests that forest resources might be most effectively managed as common property regimes (see also McKean and Ostrom 1995; Gibson et al. 2000). When large forested areas are managed as a single unit by local community members who share in the benefits and control, we might expect there to be improved opportunities for overcoming problems of fragmentation and for internalizing positive and negative externalities. In this way, common property regimes may offer a way of achieving community-based forestry’s aim of moving “beyond the polarization between commodity production and ecological goals” (McCarthy 2002: 1) without relying heavily on state intervention.

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<sup>32</sup> There are two ways in which the woodland owner’s investment might go to waste. First, on a small property, the attempt to provide a public good may be ineffectual without similar efforts being made on neighboring properties. Second, if the investment makes it impossible to compete with other forest commodity providers, the woodland may gravitate to other management or to other uses. Thus we can begin to perceive the necessary scope of a mutual commitment among woodland owners. First, it must involve enough land of sufficient contiguity that the public goods in question can actually be provided. Second, it cannot be so large that it becomes impossible to organize woodland owners or, significantly, to organize public commitment to protecting what are mostly local public goods.

## **BACKGROUND**

In order to understand common property in Norway, it is necessary to understand how the Norwegian farm is organized spatially. Typically, it is divided into two spheres of activity, the infield (*innmark*) and the outfield (*utmark*). The infield is the area closest to the house and farm buildings. It is intensively managed and receives the most investment. It is typically composed of fenced fields with planted crops. The outfield, on the other hand, is less intensively managed and receives less investment. It is usually composed of rough hill grazing or forest. To the urban gaze, the outfield may appear as scenic wilderness, but to the farmer it is very much a part of the farm operation. It contains important resources and its appearance is the result of centuries or millennia of human management.

A farm's infield is generally a sphere of private ownership and private activity. Outfield, on the other hand, is often shared by multiple farms. Much of this land might be termed 'commons' if we define 'commons' broadly to mean resources regarding which there are arrangements for shared use and management. There are a variety of different ways in which ownership or use-rights in the outfield are organized. Some of these arrangements are referred to as commons in Norwegian (*allmenning*), while others are not called commons but might still be considered as such under our broad definition.

Formal arrangements for managing outfield resources as commons have existed in Norway since the early Middle Ages, appearing in customary law in the 10<sup>th</sup> century and in statutory law during the 13<sup>th</sup> century (Sevatdal 1998). Since those times the commons have undergone many changes—in ownership, in the relative importance of the resources they contain, and in the laws governing their use—but they remain to this day a vital way of managing resources in the outfield.

When approaching the study of Norwegian commons, it is essential to remember that the various rights regarding resource use on a piece of land can be divided amongst various parties—for example, one party might have the right to harvest timber, while another party holds the grazing rights—and that these use-rights do not depend on ownership of the land. A farm with grazing rights in a particular area is not necessarily one of the owners of that area. Thus, historically, the ownership of some commons has changed hands (passing, for example, from the Crown to wealthy merchants) while many of the use-rights have remained in the hands of local farmers. The actual owner of a piece of ground has a claim to the ‘remainder’, or whatever rights are left over after all other claims have been accounted for. The value of this remainder can vary over time as new uses for land are discovered.

Three of the most discussed types of commons are—and this is by no means an exhaustive typology—state commons, community commons, and land owned in common between farms (see Sevatdal 1998; Grimstad and Sevatdal 2007).<sup>33</sup>

In the case of state commons, the land, originally Crown land, is today owned by Statskog, a state-owned forestry company (Berge et al. 2002; Statskog 2007). The grazing rights in state commons, and the right to both firewood and timber for on-farm use, belong to the local farming population. Any commercial logging of surplus timber is done by Statskog, who also manages hydropower, commercial tourism, mining, or any other uses of the land that do not fall within the rights of the local community. There are two types of locally-elected board for managing local use-rights in state commons. One of these is the Mountain Board, which is elected by the

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<sup>33</sup> ‘State commons’ is a direct translation of the Norwegian *statsallmenning*. The term ‘community commons’ is used here to refer to *bygdeallmenninger*, or *bygd* commons. The word *bygd* means ‘rural community’. Sometimes this type of commons is referred to as a ‘parish commons’ in English. I have chosen not to use this term in order to avoid any implied association between these commons and either the local church or the local public administration. ‘Ownership in common between farms’ is a legally precise translation of *sameige mellom bruk*, which refers to a set of arrangements that are not called commons at all in Norwegian but which nonetheless fit our broad definition.

municipal council (Norwegian statute 1975 §3) to manage grazing and other resources that are predominantly above the tree-line (Grimstad and Sevatdal 2007). The other is a Commons Board, which is elected by and from among the use-rights holders to manage rights of common in the forest (Norwegian statute 1992b §1). Hunting and fishing are managed by the Mountain Board for the benefit of the whole municipality (Grimstad and Sevatdal 2007). It is important to note that use-rights in the commons are tied to particular farms, and are spoken of as belonging to these farms rather than to particular people. These rights cannot be alienated from the farm; but a farm must be in active agricultural operation in order for its owner or lessee to exercise that farm's rights in the commons (Norwegian statute 1975 §2; Norwegian statute 1992b §2). Today there are 195 state commons in Norway, covering a total area of more than 26,600 square kilometers, in which approximately 20,000 farms hold use-rights (Sevatdal 1998). Seven of these state commons are managed as if they were community commons (Grimstad and Sevatdal 2007).

Community commons are owned by the local farming community. It is not necessarily the case that all local farms have a share in the ownership;<sup>34</sup> but they do all have use-rights similar to those enjoyed in state commons, as well as the right to participate in the governance of the commons. Community commons are managed by a board that is elected by and from among the owners and use-rights holders (Norwegian statute 1992a §§3-1, 4-1). The board is responsible for hiring a commons manager, and this person is generally a qualified forester (Norwegian statute 1992a §3-5). As the foregoing citations indicate, much of how community commons are

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<sup>34</sup> “*Bygdeallmenninger* are commons where the ownership rights belong to at least half of the agricultural properties that from old times have use-rights in the commons” (Norwegian statute 1992a §1-1, translation mine). Commons in which fewer than 50% of the local farms share in the ownership would be termed ‘private commons’—an historical situation that is now “mostly extinct” (Berge et al. 2002: 10; see also Berge and Tretvik 2004). In most cases today, community commons are jointly owned by all of the local farms.



organized and managed is guided by special legislation to this purpose, the 1992 Community Commons Act (Norwegian statute 1992a). As in state commons, use-rights are tied to farms. They cannot be sold or leased apart from the farm; and to exercise them a farm must be an active agricultural operation. Use-rights are based on need, which in practice means that resources in the commons are for on-farm use only; i.e., a farm is entitled to as much firewood as it needs for its own use, but may not sell firewood from the commons. Larger farms may therefore make greater use of certain resources than smaller farms. Although farms might gather firewood on an individual basis after checking with the commons manager; all logging of timber is done on a collective basis (Sevatdal 1998). That is to say, with the exception of some firewood harvesting, logging activities are not carried out by individual farms, but rather happen under the supervision of the commons manager, with the actual work being done either by employees of the commons or by a private contractor. Many community commons have their own sawmill; and each farm's right to timber from the commons takes the form of a discount when buying lumber from the mill (Grimstad and Sevatdal 2007). Because the land in a community commons is owned by local farmers rather than by the state, it is these farmers who have the right to benefit from the development of hydropower, the sale of surplus timber, tourism (e.g. the leasing of cottages), and other commercial land uses. Profits from these activities go first toward the maintenance and improvement of the commons, and are not normally disbursed as dividends to the owners. Surplus funds are often invested in new businesses that are owned by the commons; or they may be used for community projects, such as electrification or the building of a community hall (Grimstad and Sevatdal 2007). Hunting and fishing are managed by the commons board for the benefit of the whole community. There are 51 community commons in Norway, covering a total area of

5,500 square kilometers, in which approximately 17,000 farms have use-rights (Sevatdal 1998).

Land owned in common between farms (*sameige mellom bruk*) differs from community commons in a number of ways,<sup>35</sup> the most significant of which is that use-rights do not belong to all local farms, but only to those that are the owners. Owners do not necessarily have equal shares (Sevatdal 1998). As with the other commons, a farm's share may not be alienated from the farm; but in this case it is not necessary for a farm to be occupied or in agricultural production in order to maintain its rights. Farms that own property in common may choose to establish a board for the sake of management (Grimstad and Sevatdal 2007). Land owned in common between farms does not generally include productive forest, but more usually pasture and other resources above the tree line (Grimstad and Sevatdal 2007). More than 50,000 farms have a share in commons of this sort; and in the mountainous regions of southern Norway this is the main form of ownership (Sevatdal 1998).

The research described in this paper makes use of two case studies. One of them is a community commons, and the other one is a state-owned commons that has been managed since the late 1940s as if it were a community commons. There are about four hundred farms with use rights in each of these commons.

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<sup>35</sup> Berge (1993; 1998) emphasizes the distinction between 'joint ownership' and 'ownership in common'. (See Berge 1998 regarding the significance of this distinction.) What we are calling commons, i.e. *allmenninger*, are technically a form of joint ownership.

## ***METHODS***

In order to understand how community commons coordinate the use and management of outfield areas in Norway, and to understand the role they play in promoting conservation and community development, a case-study research method was used. Semi-structured in-depth interviews were carried out with forest managers, farmers, and local officials in two commons in eastern Norway during the spring and summer of 2008.

The choice of these two commons was based on the distinction between them, which is that of ownership and residual rights. In the case of the community commons, the land is owned by local farms. In the case of the state commons that is managed as if it were a community commons, local farms have specific use and management rights, but the land is owned by the state. Community forestry advocates place a strong emphasis on the importance of local control; and the distinction between these two cases was intended to help me understand whether local ownership is important or if secure local rights to use and management are sufficient.

The community commons in this study turned out to be an unusual case in that only a slight majority of the farmers are owners, and not all of the owners' shares are equal. In most community commons, all the farmers are owners and each of them has an equal share. Also, most commons are not permitted to distribute profits. Any surplus is supposed to be reinvested. The community commons in this study, however, does distribute some profit to the owners; although it is emphasized that this is of secondary importance and that the main priority is stewardship of the rights-holders' common assets. The unusual nature of this commons was unintentional as far as the study is concerned, but it turned out to be helpful as a further illustration of how ownership matters.

Some of the questions that I asked interviewees were about how the commons is organized. This information is summarized in the section above. Most of my questions were aimed at understanding what sort of benefits the commons provides and how it provides these benefits. In order to avoid asking leading questions at the beginning, all interviews opened with general questions about management goals and, especially, why there should be commons at all. Detailed questions came later. A number of trends emerged from the responses to early questions; and these trends guided my analysis and provide an outline for the findings below.

The main questions posed by this paper are: Do community commons protect natural resources; and how do they do this? Do they generate economic development; and how? Does ownership matter; and how does it matter? What is the role of the state, and what effect does it have? The answers to these questions add up to an evaluation of the proposition that collective local control over outfield resources is beneficial in terms of conservation and community development.

## ***FINDINGS***

Interviews in both locations made it clear that commons in Norway are not simply a hold-over from the olden days, but vital institutions for outfield management today. The two main reasons given by all interviewees for having a community commons are efficiency of management and keeping benefits local. What follows is a summary of what interviewees said about these two things, as well as their comments on stewardship, participation in commons management, and how the use of common resources is changing.

### ***Efficiency***

For forestry, grazing, and hunting, interviewees told me that it is more efficient to manage large areas as a whole. One forest manager said that if every farmer had his own share of the forest it would amount to twenty-three hectares apiece. He said that cutting timber is too expensive to do on parcels that small and farmers would lose the economies of scale necessary to log profitably. All logging in community commons is done collectively. Attempting to divide the vast and rugged grazing land up with fences would also be extremely expensive and would interfere with the movement of wildlife. Many game species cannot be effectively managed on small parcels of land; nor can hunting be easily commercialized in small areas. This is a significant point because in one of my cases hunting has become the leading source of revenue.

Economies of scale in commons management apply not only to resource extraction, but to processing as well. In one location where farmers set up their own sawmill and planer more than a century ago, I was told that such a project would not

have been possible without a formal commons: Just a few farmers wouldn't have been able to afford it; and four hundred farmers would never be able to make decisions without a board. Because a small sawmill can be uneconomic, several commons will sometimes share a larger one.

This tendency to cooperate is widespread and continuously manifesting itself in new projects. Farmers in the community commons case have formed numerous cooperative ventures apart from the commons itself. These include a cooperative slaughterhouse; a cooperative workshop for fixing machines; a cooperative pig breeding facility;<sup>36</sup> and a local branch of the national dairy cooperative. A number of dairy farmers have also pooled their cows into a single herd, which they keep in a highly modern facility, each taking the various responsibilities in turn—an expensive venture that might not earn them any more money in itself, but which does provide each of them with more time to devote to other activities.

The question of efficiency was nowhere in my interview guide, but nobody failed to mention it as an essential factor. Forestry, grazing, and wildlife management would not only be inefficient if the outfield were not managed as a commons, they would be commercially infeasible.

### ***Keeping benefits local***

A recurrent theme in the responses to questions about how the commons contributes to local economic development was the importance of local ownership. Several interviewees said that state-owned commons don't put any money into the local economy, but "send it all to Oslo" instead. Community commons, on the other hand, "think more locally" and try to create jobs.

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<sup>36</sup> Nine hundred sows are bred at this facility before being distributed to thirty different farms where the piglets are actually born. At eight weeks of age the piglets are distributed to an even larger number of farms to be raised.

The case of the state commons that is managed as a community commons occupies a middle ground between these two. When it was managed as a state commons, the farmers each logged individually and were only entitled to firewood and building materials according to their needs for on-farm use. The surplus was logged by Statskog. Since it came to be managed as a community commons in the late 1940s, all of the logging has been done under the management of the commons board. The timber gets processed at a mill that is cooperatively owned by the farmers; and the farmers get a discount when they buy from the mill. Most of the lumber gets sold to the public and the proceeds get reinvested in the mill and other projects. Managing a state commons as a community commons, however, does not provide a community with all the benefits of an actual community commons; and this is due to the difference in ownership. In a community commons, income from hunting, hydropower development, cabins, and other resources goes to the community. In a state commons this revenue goes to the state, even when the forest is managed by a local commons board.

According to a municipal official responsible for economic development, community commons work to keep benefits in the local economy through a commitment to local reinvestment. The community commons in this study owns or has a share in several local businesses,<sup>37</sup> including a sawmill that employs twelve people; a company that employs eighteen people manufacturing pre-fabricated cabins; and a company that sells tools and building supplies.

Some community commons, because they are not permitted to distribute profits, will not only offer discounts on building materials, but actually subsidize

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<sup>37</sup> This highlights a difference between community commons and land owned in common between farms. Community commons are incorporated as juridical persons that can own property and employ labor. Land owned in common between farms is not recognized as an entity in itself for tax or cadastral purposes, which is why it is difficult to quantify this type of land tenure (Sevatdal 1998). Each co-owner's share in land owned in this way is counted as part of that owner's estate.

building and maintenance activities on member farms. In one community commons for example, if a farmer builds a new fence (on his or her own farm) he or she can recover fifty percent of the cost from the commons; the installation of drainage pipes is reimbursed at thirty percent; and various other building and construction activities are each similarly subsidized at their own rate. Such rebates and grants are only given for activities in keeping with the legitimate agricultural needs of the farm.

The two key points that continually came up in discussion of how community commons contribute to local economic development were, first, the statutory obligation of the commons to reinvest profits; and second, the ability of a locally owned commons to explore new uses for the outfield, which in a state owned commons is a right that falls to the state.

### *Stewardship*

It is difficult in Norway to evaluate how common property affects forest stewardship. The reason for this is that regulation by the state has an equalizing effect on forestry practices across all tenure types. All forest owners, for example, are required to have a management plan, the substance of which is partly determined by law. It is also obligatory for all forest owners to deposit a certain percentage of timber sales revenue into a Forest Trust Fund, which they can later draw upon to pay for forest stewardship activities. (See Norwegian statute 2005.) Most questions put to commons managers about forest management goals or conservation were answered with reference to regulations from the state.<sup>38</sup>

Nevertheless, interviewees did speak about differences in management based on ownership. Scale is recognized as being important, since it is easier to set aside adequate land for protection and to accommodate wildlife mobility when working with

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<sup>38</sup> For a discussion of Norway's long history of forest regulation see Berge and Tretvik (2004).



large areas. Proximity of the owner to the forest was also thought to be important; and some interviewees thought that the increasing degree of forest ownership by “city people” resulted in worse management. I was told that a community commons invests more in the forest than either private woodland owners or the state, and that this is because the commons has a different philosophy—one described simply as the farmer’s imperative to leave the land in better condition than he finds it. One forester told me, “Wherever there is a community commons, the forest is better managed than in a state commons.” Asked if he knew of any research demonstrating this, he replied that such research is “not necessary; it’s obvious to all.”

Of course one of the questions with which I approached this study was the Hardin-inspired one of how individual users are prevented from abusing the commons. In both cases I was told that there’s never any problem in this regard. The reason for this appears to be how little discretion individual rights-holders have regarding resource use.<sup>39</sup> Both of the commons have a professional manager; forestry is heavily regulated by the state; and individual use of the forest is limited to cutting firewood with permission from the manager. In both commons grazing intensity was not high enough to be a matter of concern.

### ***Participation in management***

There are approximately four hundred farms with use-rights in each of the two commons where I conducted interviews. Many of these farms are quite small. Because use-rights in the commons depend on a farm being in active operation, the number of rights-holders has been in decline as the changing structure of agriculture

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<sup>39</sup> That said, it should also be noted, for example, how often in Norway one is trusted to leave money in a box for things like coffee or remote toll roads. The persistence of such a practice suggests that theft and stinting are not significant problems—and, by extension, that responsible resource use in the commons might be due to cultural factors as well as a lack of individual opportunity for abuse.

has tended to squeeze small farms out of production in favor of fewer, larger operations.

In both case-study locations I was told that the main way that individual farms participate in management is by voting in the election of board members. Most farmers are not directly involved in the formulation of management plans for the commons—a task which falls chiefly on the commons manager. “Some members are active and some aren’t,” one manager told me. Those that are active serve on the board, come to the annual meeting, and call on the phone more often. “Others I’ve never seen in twenty years.”

Despite the lack of active participation on the part of most commons members, I was assured that they take a strong interest in management decisions and that they make themselves heard when there is something they don’t like. Occasionally an issue will cause a political flare-up, such as happened recently when the community commons imposed a fee for fishing and small game hunting, which had previously been free.

I mentioned that the community commons in this study is an unusual case in that only a slight majority of the members are owners, and not all of those owners have an equal share. Also, there is some distribution of profits, which is not permitted in most community commons.<sup>40</sup> Thus, although all the farmers have the same use-rights and the same political rights in the commons, they do not in this case have identical interests. This situation has occasionally created tension, with differences in opinion about management priorities split along owner/non-owner lines (the smallest shareholders aligning with non-owners). Tension between owners and non-owners is supposed to revolve around whether money is distributed as profits or reinvested in the

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<sup>40</sup> It was said (by an owner) that were it not for the hydropower lease, which provides a significant income to the owner farms, there would be little difference between owners and use-rights holders.

commons. I say ‘supposed to’ because this insight was expressed by interviewees outside of the commons we are talking about. Those who were living in the case-study community made some reference to past tensions, but did not seem to think that there was currently any problem in this regard.

It’s important to note that some forms of cooperative resource use happen at scales smaller than the whole commons. One farm that I visited shares a centuries-old irrigation system with three other farms. Participation in maintenance activities happens intermittently when there is a need for it. The farmer said that he only communicates with his neighbors about irrigation once or twice per year; although they would quickly be in touch were a problem to arise. It was clear that the amount of cooperative activity that went into maintaining this system had declined somewhat compared to previous generations, partly due to the fact that the farmers can now pump water from the river. I asked him if he thought that technology was putting an end to cooperation. He didn’t think so. “These dams were the cooperation of the nineteenth century,” he said. “Today we have the [cooperative dairy].” He patted the mobile phone in his pocket, on which he would be alerted the moment he was needed for anything at the automated dairy barn he shares with four other farms. “The cooperative spirit isn’t dead; the projects just change over time.”

### ***Changes in how the commons is used***

Timber in Norway is managed mostly in even-aged softwood stands that are harvested in small clearcuts and then replanted. Recent decades have seen tremendous changes in the technology used for harvesting timber;<sup>41</sup> and these changes have had a major impact on employment opportunities in the forestry sector. Sixty years ago, the community commons in this study employed seventy to eighty people cutting timber

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<sup>41</sup> Approximately ninety percent of timber harvesting in Norway is fully mechanized (LMD 2007).

in the winter. By 1990 this number was reduced to fifteen; and today there are only three. A similar decline has been experienced in the case of the state commons that is managed as a community commons. In both cases this is due to increased mechanization in the harvesting process.

When asked why they would adopt technology that eliminates jobs, one forest manager told me that they had to in order to keep out of the red. They were the last commons to adopt big machines; but the price of lumber was falling and the cost of labor was rising, making it impossible to compete. Most of the lumber (sixty to seventy percent) gets sold outside of the commons. I am told that in some commons, private contractors are used for harvesting and other management activities, and that “technology and economy are driving this outsourcing.” The mills are also employing fewer workers. At the time of these interviews, one mill had recently cut its workforce from thirty or forty workers to somewhere between twelve and fifteen due to the high cost of employing labor. At a different mill I was told that whereas in 1954 the value of one cubic meter of timber was equal to four days wages, today one cubic meter of timber will pay only two- to three-tenths of a days wage.

Interviewees did not think that there was any immediate need for generating more employment; but they were concerned about attracting more people to settle in the community, and were particularly worried about the loss of young people. I was told that young women especially want to leave because there is less work for them in the primary sector, and that this in turn makes rural areas less appealing to young men.

In the state commons that is managed as a community commons, the most important use is grazing. This commons provides pasture to several thousand sheep and hundreds each of cows, horses, and goats. In the community commons, however, grazing is no longer of great importance. Here the most important sources of income are hunting, cabin leases, and forestry, in that order. It was frequently said that as

agriculture declines, the commons must find new ways to remain a valuable resource for the community.

The researcher who goes out upon these commons with a notebook and folding chair in order to see how use-rights holders respond when one of their number begins to overharvest a resource is going to be sitting there a long time. To the extent that individual use of resources does occur, it is at the discretion of a professional manager. Timber extraction is carried out by either a private contractor or a small number of commons employees under the manager's direction; and in both cases it is according to a harvest plan strongly influenced by national legislation. Just as most farmers are not actively involved in the day-to-day harvesting of resources from the commons, neither are they regularly occupied with management decision-making, which is something that falls to the professional staff and board of directors. The collective nature of how the commons is managed is a large part of the rationale for its existence. In the case of forestry, individual harvesting of the shared resource would scarcely be more efficient than dividing it into separate parcels. In other cases, such as game management, the harvesting may be carried out individually, but the management still needs to be unified. The benefits of efficiency seem to accrue equally to both of the commons in this study. What sets them apart is how the land is owned and the effect this has on opportunities for local economic development. In the particular state-owned commons featured in this study, local farmers are able to benefit fully from the forest resource; but because they do not own the land, they cannot make any claim on emergent uses such as cabin rentals or power generation. The community-owned commons on the other hand is able to capture the benefit of any new uses for the land. The more that people's needs change, both locally and in the global market, the more valuable this flexibility becomes. Finally, the requirement that surplus from the

community commons be locally-reinvested makes this institution an important driver of local economic development.

## ***DISCUSSION***

Norway, with its various types of common property, provides a fascinating example of how a country may have diffuse ownership of rural land without the loss of landscape function that might result from fragmented management. Community commons in particular are able to provide integrated management for large areas of forest and grazing land belonging to hundreds of private farms in a way that maximizes the productivity of these areas while keeping the benefits of that productivity local. This study's examination of cases where ownership deviates somewhat from the typical community commons serves to highlight the important role that ownership (*vis-à-vis* use-rights) plays in the distribution of benefits over time.

Common property of all kinds in Norway maximizes the benefit of outfield areas by combining enough land to obtain a scale at which landscape functions are preserved and resources can be managed efficiently. The economies of scale achieved by community commons have enabled them to generate more income from forestry, to carry out more reforestation, and to spur the creation of more new businesses than any other type of forest tenure (Bjørkhaug 1999). Hunting, which in my community commons case has become the leading source of revenue, would be nearly impossible to commercialize on individual small properties. Because the management of big game needs to happen at large spatial scales, it is common in Norway even for individual private landowners to cooperate in neighborhood groups when making game management plans (see Hoffman and Flø 2010). Similarly, even where grazing

land in the outfield is divided into individual private properties, farmers frequently manage this land as if it were a commons, letting their animals graze together rather than undertaking the trouble and expense of stringing fences across the rough terrain. This kind of passive cooperation can happen informally; but, as one interviewee emphasized when talking about the sawmill in his commons, getting several hundred farmers to invest in a large project requires a more formal mechanism of commitment, as well as a steering committee and a process for participation in decision making. Projects such as hydropower are interesting because, although the energy is generated at one particular location, the water necessary for this to happen drains from a much larger area. By having this entire area under a single management regime, a suitable flow of water for power generation can be maintained, while ensuring that the benefits from the project get widely distributed—or would be widely distributed if ownership in the commons were widely shared.

While integrated management is important for maximizing the total benefit that can be obtained from outfield areas; the issue of ownership bears heavily on how that benefit is distributed. Bjørkhaug (1999: 11) asks, “To what degree is the dichotomy between local and non-local property owner relevant for value added to the local community where the property is situated?” Her research indicates that community commons generate the greatest amount of commercial activity; but she attributes this mostly to their size, leading her to suggest that individual private forest owners would do well to pool their holdings in some way. This is likely true; but it appears that the form of ownership itself is also important. In the study described in this paper, the case of the state commons that is managed as a community commons makes it clear that the question of ownership has a big effect on the distribution of benefits. Having a commons board is an improvement over individual use, in that it enables both collective management of the forest and collective reinvestment in

projects like the sawmill; but so long as the ground is owned by the state, income from hunting, hydropower development, cabin leases, and other forms of development goes to the state rather than to the local community. The perception is that it all “goes to Oslo.”

It has been argued that “No other form of management has done more to create wealth and employment locally in the rural districts in relation to its resources and output than has that of the [community] commons” (Finsveen 2000: 5). If this is true, it is easy to see why: wealth generated by community commons must be reinvested in the commons rather than distributed as dividends. It is required by statute that sufficient funds must first be set aside for the protection and improvement of the commons, after which additional surplus may be invested in processing facilities and other projects for the benefit of the community (Norwegian statute 1992a §3-12). Even in the unusual case featured in this study, which does distribute dividends, such distribution is of secondary priority to reinvestment. Businesses that are owned or partly owned by this commons play an important role in the local economy.

In each of my case studies, however, the ability of the commons to provide employment appears to be undermined by changes in technology, which in turn are driven by changing markets. The mechanization of timber harvesting has nearly wiped out employment in the woods. Interviewees did not perceive this as a problem, due to the steady decline in population; but it does highlight the hazard of participation in global markets, which reintroduce the dynamic of a prisoner’s dilemma game. The commons is now competing with other timber producers that do not share its commitments, in an effort to sell timber to a pool of buyers that have no interest in maintaining the local public goods that stewardship of the commons can deliver. This situation suggests that common property as an arrangement between producers may not be enough. Maintaining the full public benefit of the commons may also require a



commitment from the broader population of beneficiaries to either purchase or subsidize its products.

As times change, the relative values of different resources in the commons change as well. Where timber and pasture were once the most important resources, recreational hunting, the lease of holiday cabins, and the generation of hydropower have become leading sources of revenue. And as the value that society places on different resources shifts, the significance of ownership becomes more apparent. Community commons, because they own the land, are able to capture emerging new values. Communities that only have use-rights in state owned commons don't have this same ability; and this limits the potential for these commons to contribute to local economic development. The unusual case of the community commons in this study also illustrates how unequal ownership amongst commons members can result in an unequal distribution of benefits. All members have equal use-rights in terms of grazing and timber; but the value of these rights is declining. The revenue from new forms of resource use, such as hydropower generation, goes only to those farms that are the owners of the commons.

The symbolic importance of the commons was mentioned repeatedly during interviews with members of the community commons. I was told that many farmers take a great deal of pride in the commons, and that membership can be an important part of a farmer's identity. It was also said that the commons is tied to local identity and contributes to pride of place. It was clear in both cases that the commons is not an outdated hold-over from the olden days, but an essential institution for managing the landscape today. In the words of one farmer, "If we did not inherit the commons from the past, we would have to invent it for the future."

## ***CONCLUSION***

In complete contrast to the suggestion that individual ownership of resources is necessary to avoid a “tragedy of the commons” (Hardin 1968; Smith 1981), this paper affirms the view that because many of the benefits of good forest and wildlife management cannot be internalized on small parcels of land, it may be best to manage them as a commons (Uphoff 1998; Glück 2000) in order to avoid a tragedy of fragmentation. At the very least it may be said that the joint ownership of forest and grazing land by a few hundred farms does not necessarily result in the over-use of these resources; nor does it stifle enterprise. On the contrary, community commons in Norway have managed outfield resources sustainably for centuries, using the wealth they generate to foster the growth of local enterprises that add value to raw materials through processing.

In light of the community forestry movement’s opposition to state control (Baker and Kusel 2003; Lee and Field 2005) it behoves us to make specific note of the significant role played by the Norwegian state in community commons management. The way that a community commons operates, from the election of its board to the ways it may expend revenue, is determined by statute. The commons themselves were not created by statute—the law itself acknowledges that the use-rights of farms are founded on ancient custom—but they are today regulated by statute. Forestry is also highly regulated everywhere in Norway; a fact that makes it difficult to compare the conservation practices of community commons to those of other tenure types, at least from a silvicultural perspective.

Regulation, however, is not the same thing as ownership; and one thing we can say is that the issue of state ownership versus community ownership makes an important difference in terms of community development opportunities. This becomes

especially apparent over time as uses for the commons change. In the state commons, the benefit of new uses goes to the state. In the community commons, the local community is able to capture the benefit of new uses.

In sum, community commons accomplish two important things. First, they provide integrated management for large areas of outfield, which is beneficial both in terms of efficiency and from an ecological perspective. Second, they keep the benefits of resource management local through local ownership and a commitment to reinvestment.

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## CHAPTER 6

### CONCLUSION

Each of us has interests that are widely dispersed across the landscape. The scenery that we enjoy is composed of many different people's private property and shaped by the decisions they make. The deer on one person's land depend on the neighboring properties as well for food and shelter. The river that flows through a valley and village finds its source in the forest above, where the rains are stored up and slowly released. Were this forest to be removed, the once steady flow of clean water would fluctuate between destructive flooding and a trickle at the bottom of a dry stream bed. Perhaps the people who live downstream and who depend on this river for their drinking water, for fishing, or to power their mills—perhaps they have never given a thought to the forest above. Perhaps they have never given a thought to the property of any of their neighbors and have always said, "You mind your business and I'll mind mine. If either of us wants something from the other, we'll make a deal." Perhaps they do not realize how interconnected everybody's business is, and the complexity to which this gives rise.

When a downstream person realizes their interest in the forest, what can they do? If the forest is divided into many small parcels of ownership, they won't be able to sue any of the owners for cutting down trees, because the actions of any one owner don't have a significant enough impact. For this very same reason it would be useless to pay any particular owner not to cut down trees. If there were but a single forest owner, and a downstream person, a mill owner for example, were considering paying that person to protect the forest, the mill owner's incentive to do so would be

undermined by the realization that everybody else downstream would benefit from the investment. Other mill owners that don't have to operate with that cost would put the forest-protector out of business. If somebody were collecting contributions toward forest protection, many potential contributors might reason that either enough other people will contribute or they won't, and the likelihood of one more contribution affecting the outcome is pretty small. In any case, they can wait and see and maybe contribute later.

The situation with which people up and down this river are faced is that they all have an interest in the same thing—the forest's contribution to a healthy river system. They would each like to be able to have a secure claim to this benefit. What sort of arrangements would make this possible? No matter how much we might like the idea of individual private property, we have to admit that there are some things for which this type of ownership doesn't work well: specifically, things in which many people have an interest and which can't be divided up without a significant loss in value. On a certain level, the solution to this problem is easy: things that multiple people want and which can't be broken-up need to be shared. This answer is most easily applied when we are talking about a particular group of individuals who all might hold title, jointly or in common, to an easily defined resource from which they all want to harvest the same kind of benefit(s). For example, a tennis court or a pasture; and in the case of the latter, we are thinking of it only as a site of grass production and not as a cultural landscape, a means of carbon-sequestration, or habitat for birds. This dissertation does not need to argue that common property is a viable alternative to the classical model, as the success of many long-functioning common property regimes has been well documented elsewhere (Bromley and Feeny 1992; Burger et al. 2001; Eggertsson 1993; McCay and Acheson 1987; Netting 1981; Ostrom 1990; Stevenson 1991).

But in some respects, common property is only a small conceptual leap away from the classical model. It is a shift from one easily identifiable owner to a group of easily identifiable owners; but these owners still might share between them a complete and sacred bundle of rights to a particular resource or to a particular piece of land with which they will brook no interference from society. Such an arrangement, if well organized, may be the solution to some problems of collective action in rural land use; but it does not obviously apply to others. In the example given above, of a river and a forest, most people in the valley and the village do not need to share in the ownership of the forest; they only want it to be managed in a way that maintains the health of the river. The forest owners in turn have an interest in anything people downstream are doing that might interfere with fish, whose spawning runs bring nutrients back to the forest. Most of these people may also have an interest in other forms of wildlife and their habitat needs; in the protection of farmland to ensure local food security; in the appearance of their surroundings; in recreational access to undeveloped land; and in countless other benefits that are affected by the decisions of landowners. Our interests are scattered so broadly across the landscape that to address them within the framework of common property requires a concept of commons that can be scaled up to include entire communities and entire landscapes. This seems to risk crowding out private ownership—unless we acknowledge that people may have secure claims regarding particular resources without actually owning those resources.

Two key points come into play here. The first is that the bundle of property rights usually associated with ownership can be broken apart. It is not necessary to acquire a farmer's land, for example, in order to prevent him or her from building on it. A neighbor or an organization can simply acquire a conservation easement on all or part of the land, leaving title with the farmer but limiting his or her right to develop. Similarly, a group of people could purchase the hunting rights or trail easements from

a large number of landowners and in this way begin to knit together fragmented landscapes for recreational purposes without concentrating ownership. A second and related point is that the owner is not the only person with rights regarding a piece of property. The general public may also have rights. Singer (2000) uses the example laws preventing discrimination in places of public accommodation in the United States to illustrate how the rights implied by an owner's title are limited by the entitlements of others. In Norway and Scotland, all persons have a right of recreational access to undeveloped land (Norwegian statute 1957; OPSI 2003). Landowners do not have the option of putting up 'no trespassing' signs. In Norway, public rights of access have existed since ancient times; but in Scotland they are new, having been established by the Land Reform Act in 2003. The examples of Scotland and of the United States (where public accommodations law was articulated by the Civil Rights Act of 1964) show not only how the rights of ownership may be limited by society, but how these rights and limitations change over time. To describe the public's rights as sticks that have been removed from the property owner's bundle is to create an image that privileges the rights of land ownership, making it seem as if the property owner has been deprived in some way and may be deserving of compensation. One could just as easily describe these rights as sticks in the bundle of citizen's rights; for it is not only landowners who have rights.

The need for arrangements through which people can achieve secure protection for shared interests that are spread broadly across the landscape, while still leaving individual rights as intact and diffusely held as possible, invites us to think very creatively about property rights in general and about commons in particular. In the case of the Norwegian jaktvald, or hunting management area, the land in question is divided into numerous parcels of private property. Hunting rights go with ownership of the land, but landowners do not own the moose. It is as if the moose were a river

flowing across the land, and being a landowner comes with the right to draw off a certain amount of water, although the exact amount might vary from year to year. Because the health of the moose population is affected by the actions of all landowners and cannot be effectively influenced by any particular landowner, they all have an interest in what the others are doing and participate in arrangements for managing the population cooperatively. It is significant that the moose do not belong to the landowners. Like all wildlife, they are held in trust for the people of Norway by the Norwegian state. Although hunting rights belong to the landowners, permits from the state are required in order to exercise these rights. These permits are allocated once the landowners have submitted their cooperatively-made management plan—which explains the otherwise surprising fact of landowner cooperation: they need to do it in order to get their permits. The ability of the state to withhold hunting permits in the event that a management plan should be deemed unsatisfactory allows the larger public interest in moose to be protected. In this example we see how a sort of commons can emerge on private property through the cooperation of private landowners in managing a resource, without any real estate actually held in common. The landowners each have a usufructory right to the same resource and have created an institution that enables them to manage their overlapping claims.

The word ‘commons’ may have too great a tendency to conjure in people’s minds the image of a thing, like a pasture, that may be shared or divided, and in so doing to divert attention away from the fact that the focus of concern in commons dilemmas is an outcome, a fate that is shared by a group of people and which is the cumulative product of each of their separate actions—actions that might just as easily take place on their own private property as on shared property. The example of dairy farmers each producing more milk in response to low prices that are caused by overproduction might be referred to as a tragedy of the commons. Using the word

‘commons’ in this context creates a simpler and more immediate image of the situation than referring to it as a prisoner’s dilemma game. Indeed, one of the earliest uses of the commons analogy was to describe conditions in a labor market (Lloyd 1833). But when we speak of ‘tragedies of the commons’ in reference to natural resource management, we have to be careful not to let the word ‘commons’ lead us to thinking of a piece of ground over which ownership is shared. Just as property is not a thing, but a set of relationships; we mustn’t think of common property as a thing, but rather as a set of relationships for managing behaviors that affect a shared set of benefits.<sup>42</sup> Once we define it in this way we can adjust our gaze and begin to see common property, or the need for common property, in a wide variety of situations—essentially anywhere that people are faced with problems of collective action resembling a prisoner’s dilemma game. But we mustn’t let the imagery of a grazing commons lead us to assume that the solution to these problems in natural resource management necessarily has to do with the way that ownership of land is distributed. The case of moose management in Norway makes it clear that it does not.

The example of moose management, at least as I have presented it, is fairly simple because it involves only one resource that is providing one type of benefit to a well-defined group of people who all hold similar rights regarding that resource.<sup>43</sup> Far more complicated is the imaginary example discussed earlier of a river flowing through a valley and a village from its source in the forest above. Different people rely on this river for different things, and neither the benefits it provides nor the

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<sup>42</sup> It’s also important in this regard to look at relationships in practice, and not only as they are legally defined. In Norway it is often the case that separate but contiguous parcels of private grazing land are managed as if they were a commons; while some commons in Scotland have become *de facto* private property where the number of users has dwindled to one.

<sup>43</sup> The example could, and should, be made considerably more complicated by introducing the interests of non-landowning hunters; of forest owners concerned about the effects of browsing; of the general public as expressed by state agencies; and of many other members of Norwegian society whose interests are in some way bound up with moose and the resources on which a healthy moose population depends.

sacrifices required to preserve these benefits fall equally on all interested parties. It is a situation that closely resembles my case study in Vermont, where it was verified that problems of collective action are a significant obstacle to the achievement of a shared preference for a less developed, or less haphazardly developed, landscape. There do not currently appear to be any adequate institutional arrangements that might enable people to cooperate around this goal; and the question arose, why couldn't the public planning process serve this function? One might even naïvely suppose this to be its *raison d'être*. The utility of planning as a tool for this purpose, however, was hampered in the case study community by people's beliefs and expectations regarding property. These beliefs and expectations closely resemble the classical model of property, and were held by landowners and planners alike. However little resemblance these beliefs bore to the legal reality, the effect they exercised on the planning process was decisive.

McKean and Ostrom suggest that in order to maximize the value of their own land, individual owners will want to make sure that their neighbors "make compatible and complimentary uses of their parcels." In other words, "owners of individual... parcels may have an interest in the mutual regulation of land use." They go on to suggest that "zoning and urban planning are actually the creation of common or shared property rights in choices over land use and the vesting of those rights in the citizens of a municipality" (1995: 8). Geisler makes the similar observation that "land use regulation is a collective property right in the bundle" (2000: 70). From this perspective, Jefferson's idea that the land belongs to all might find expression, neither through equal division nor sharing of the soil, but through the public having a legal interest in all private land use.

The idea of land use planning as a form of mutual agreement between landowners (and other citizens) would seem to offer a good way for them to cooperate



in pursuit of shared goals. But this is not the way people in my Vermont case study viewed planning. Instead, it was seen as an encroachment on the interests of landowners and, as more than one person put it, a violation of their human rights. The cultural dominance of the classical model has crippled our understanding of property in two ways that make it difficult to innovate. First, we have come to believe that ownership is supposed to be a sphere of complete control. This makes it hard to accept that those without title can have any rights regarding a piece of land. Second, we are led to see property rights as the outcome of a contest between individuals and the state. This perspective makes it hard to see that the rights of individuals are limited by the rights of other individuals, and that planning can be a way for people to negotiate these limits to their mutual advantage. For planning in the United States to fulfill its potential, these cultural barriers must be addressed. Rather than bowing to the popular conception of private property rights, planners should take pains to counter it with a discourse aimed at dissolving the hard shell of classical ownership and creating the space and flexibility needed for more innovative property arrangements. Civic republicanism may offer a moral high ground in terms of property rights rhetoric; and it may also be useful to employ imagery of shared landscapes knit together by natural processes and borderless human activity.

In Darin-Drabkin's (1977) model and in many of the Scottish cases where community buy-outs have taken place, individuals hold private use rights (they might own a house, for example) but the land itself is owned by the community. This allows the community interest to be expressed regarding private land use. Mutual regulation through democratic land use planning might be a viable alternative to shared

ownership; but this would require that the absoluteness of each private owner's sphere of control be relaxed enough to make room for the claims of others.<sup>44</sup>

A major concern of landowners in the Vermont case study was that the costs of regulation would be distributed in ways that are not only unequal but unfair. They feared that restrictions on land use would affect different property owners differently and cause some of them to lose a disproportionate share of value. They are almost certainly right about this, and it presents us with a difficult puzzle. Even those landowners in the study who agreed that wildlife habitat should be protected were angry at the unfairness of imposing restrictions on those who had practiced good stewardship, by zoning undeveloped areas as conservation land, while rewarding those who had already destroyed habitat by zoning their land for further development.<sup>45</sup> While it is certainly possible to devise mechanisms for transferring value, either between landowners directly (e.g. by establishing a market for development rights) or in the form of payments from the town to those whose opportunities are being restricted (payments that might be funded in part by increased taxes on those whose opportunities are being expanded); the real puzzle will be figuring out the extent to which this ought to be done. This is partly a calculation problem. The person whose land has been "placed" in a conservation zone, for example, is losing some property value due to decreased development opportunity, but is also gaining some value as a result of being surrounded by other conservation land. If we were to consider

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<sup>44</sup> Geisler (2000) cautions us not to exaggerate the difference between community ownership and the tenure of a typical American property owner who must pay "rent" in the form of property taxes to the municipality and who is subject to land use regulation from the same. One of the reasons why community ownership is needed in Scotland is that there isn't any local government that could perform an equivalent role. Lynch and Alcorn (1993) make a distinction between community ownership of land and community-based tenure systems. In the case of the latter, ownership of land may be private and individual, but the institutions for organizing property rights and which give legitimacy to ownership are based in the community.

<sup>45</sup> The anger and sadness of some landowners was less about the loss of development opportunity than it was about the fact that the community, instead of thanking them for their stewardship, was casting them in the role of a threat that needed to be restrained.

compensating people for lost property values resulting from public regulation, we would also have to begin accounting for the ways that public regulation and spending increase property values in order to arrive at an understanding of the net result (Morris 2010). The special status of landowners as being entitled to any compensation at all for a loss in property value might also be questioned, since the government regulates behavior and industry in any number of ways that might frustrate somebody's expectations and diminish an opportunity for making money. But to suggest that landowners should understand their rights as being subject to change at any time flies in the face of one of property's basic functions, which is to provide stability and protection for people's "reasonable expectations" (Sax 1980: 186). Without secure property rights, the landowner's incentive toward investment and stewardship would be diminished. So it may be that some degree of compensation is warranted when property owners experience a loss in value; but it does not necessarily follow that this compensation must equal the full market value (Dagan 2010). Again we must consider that property owners are not the only ones with expectations. Things like wildlife and river systems are held in trust for the people by their public institutions, whose claims overlap with those of private landowners. "The central idea of the public trust," Sax tells us, is to prevent "the destabilizing disappointment of expectations held in common but without formal recognition such as title" (Sax 1980: 188). It may be that property owners need to keep the public's "reasonable expectations" in mind when forming their own expectations. The complexities of this are considerable; and the questions of when and to what degree landowners should be compensated are more than I can delve into here. What I can say, however, based on my case study in Vermont, is that changes in zoning bylaw might face less resistance if efforts were made to spread the costs and benefits, if not equally, at least in some way that is perceived as fair.

The difficulty of rearranging property rights is of course an old story. In the 4<sup>th</sup> century BC Aristotle wrote about Phaleas of Chalcedon, “who was the first to affirm that the citizens of a state ought to have equal possessions. He thought that in a new colony the equalization might be accomplished without difficulty, *not so easily when a state was already established...*” (*The Politics*: 1266a37-1266b3, italics mine). It is significant to note in this regard that community ownership in both Scotland and Norway has come about as the result of market-based transactions. What makes land reform in Scotland somewhat less than radical is the need for communities to buy their land from the landlord and that in most cases this can only be done if he or she is willing to sell. In Norway too, in the case of the community commons, the ownership rights were purchased by farmers from certain merchants in the 18<sup>th</sup> century.

In land use planning, the question of how costs and benefits are distributed may be secondary to the question of process. If people are to perceive local land use planning as a community problem-solving tool rather than as an expression of state power, every effort needs to be made to ensure that the process really is as inclusive, participatory, and democratic as possible. Numerous attendees at public meetings during the case study in Vermont spoke of “the government,” which they perceived to be threatening their rights, as if it were something other than the group of neighbors in the room with them. While it is true that the town planning process is both enabled and prescribed by Vermont statutes, the outcome of that process is in the hands of those local people who choose to participate in it. It would be well for Vermonters to make a categorical distinction in their minds between their own local democratic processes and “the government.” When cooperation of any kind is viewed with suspicion as an encroachment on individual liberty, it becomes hard to understand cooperation as an alternative to authority. Society is full of problems that need to be solved collectively, and complex societies especially require a lot of coordination.

Any opportunity that people have for self-governance should be pursued in earnest, since failures to cooperate successfully are an open invitation for authoritarian intervention. The connection between property rights and democratic practice in this regard is a close one. The idea that private property rights are a product of negotiation in pursuit of shared values suggests the need for a process that can enable such negotiation to happen, and is tied to the civic republican belief that political liberty means the ability to engage with others in collective self-government. The idea of property-as-commodity, on the other hand, is rooted in the idea of society as a market place where people compete in the absence of any social obligations—a situation that, however cloaked in the rhetoric of liberty, is bound to generate the need for authority.

Having cast the role of authority in a sufficiently ominous light, and having suggested in sympathy with Kropotkin (1902) that state intervention lies at the opposite end of a spectrum from community cooperation, I must now temper this view with a discussion of one of the more interesting observations that can be made across all four of my studies: that the state can serve as a facilitator of local cooperation.

Because the community forestry literature portrays local democratic control as something to be pursued in opposition to state power (Baker and Kusel 2003; Lee and Field 2005), I was quite prepared to see things that way as well. In each of my studies, however, I was forced to abandon any simple notion of power shifting along a spectrum between the state and the community. In most cases, the state's involvement served to increase rather than to diminish community capacity.

The state's enabling role in local resource management was greatest in the two Norwegian studies. The way that a community commons operates, from the election of its board to the ways it may expend revenue, is determined by statute. The commons themselves were not created by statute—the law itself acknowledges that the use-rights of farms are founded on ancient custom—but they are today regulated

by statute. Forestry practices are also highly regulated everywhere in Norway. In the study about moose hunting, the effort to create larger management areas and to have longer-term planning was an initiative of the state. Local hunters still write their own management plans, but the state offers them incentives to work together at a larger scale. In the effort to weld many small local commons into a few larger ones, the state might have taken power from local groups and adopted a greater management role for itself. Instead, it became a facilitator of inter-local cooperation. In addition to the incentives for cooperation, state scientists act as a resource for hunters, who take an active role in research. There is a two-way flow of information as hunters gather the data that is needed to do the science that informs their own management planning. In the comparison between two Norwegian commons, what was most noteworthy was that the state appears to be more beneficial in its regulatory capacity than as an owner. Community ownership makes an important difference in terms of community development opportunities; and this becomes especially apparent over time as uses for the commons change. In the state-owned commons, the benefit of new uses goes to the state and doesn't get reinvested in the community. In the community commons, the local community is able to capture the benefit of any new uses.

The most obvious role of the state in the Scottish study is in its legislative capacity. Passage of the Land Reform Act established the community right to buy and stipulated the legal form that a community organization must take. A number of community buy-outs occurred prior to or outside the provisions of this act; but even prior to the land reform act the Community Land Unit of Highlands and Islands Enterprise, the government development agency for the area, provided advice and assistance to communities who wanted to pursue community ownership. Money to support community buy-outs has come from the National Lottery. Like in Norway, the beneficial role of the state in Scotland seems to consist of providing resources and

a framework of rules within which local groups can take responsibility for managing their own assets. The two communities in which things didn't seem to be working as well both deviated from this pattern: In one, the land was bought by the government instead of by the community; and in the other there is no community organization as required under the provisions of the community right to buy.

The often beneficial role of the state in Norway and Scotland and the observation that it matters what the state does, not simply the degree to which it is present, invites speculation about what the state might do to improve the prospects for local community planning in Vermont. Three things come most readily to mind. One has to do with how the costs of landscape protection are distributed. Since the effects of conservation are state-wide, benefitting both developed towns and the tourism industry (which is taxed by the state), it may help everybody for the state to enable greater conservation by making funding for it less local. The second two things the state might do are both statutory. One would be to change or expand the ways that towns are allowed to collect revenue. The use of property tax instead of income tax is not only unfair in terms of people's ability to pay; it also creates a poor incentive structure for achieving Vermonters' current goals. It pressures landowners to subdivide their land, increasing fragmentation (NASS 2005); while at the same time creating for the town an interest in real estate development rather than in conservation. From a community development standpoint, the use of property tax as the main source of revenue provides little incentive for the town to increase employment or raise incomes. The focus instead becomes the increase of taxable property, much of which might provide little benefit to the community in terms of services or amenities. Lastly, there may be ways that the state can nudge Vermonters toward greater engagement in the planning process without exerting too much control over the outcome of that process. For example, the state might require each town to make a conservation plan

that meets certain minimum criteria without dictating what that plan should be. Towns are not currently required to have any plan at all—a fact often alluded to by those trying to obstruct the planning process. The case of moose management in Norway suggests that instead of absolutely requiring people to cooperate with their neighbors, it can be effective to make the right to certain benefits of that cooperation contingent on participation in the process, as is the case with hunting permits in the jaktvald. Such an arrangement is consistent with Simon’s characterization of social-republican property, “requiring that the [rights-holders] bear a relation of potential active participation in a group or community constituted by the property” (1991: 1336).

When it comes to deer management in Vermont, it may be that private individuals hold too few rights. Like in Norway, wildlife in Vermont is a public trust. Unlike in Norway, however, where landowners own the hunting rights and take responsibility for wildlife management; hunting rights in Vermont belong to the state, which takes full management responsibility. The problem with this is that there is very little the state can actually do to manage wildlife. State agencies can place restrictions on the hunting of various species, but this mainly serves to limit overharvesting. In places where the deer are too numerous and prevent forest regeneration, there is little the state can do to either protect the forest or to keep the deer population at a healthy level.<sup>46</sup> Landowners control both hunting access and habitat, but don’t currently have any incentive to provide either of these things. The state and the public should acknowledge that since landowners are the only ones in a position to effectively manage wildlife, it would make sense to provide them with the incentives they need to do it well. This might entail transferring the harvesting rights

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<sup>46</sup> There is little that a private landowner could do either, even if he or she exercised complete autonomy on the property, so long as most of the neighbors refused to allow hunting (as is often the case).



(including the right to profit from the sale of hunting permits) to private landowners, but making the exercise of these rights contingent on participation in an organization of landowners in which the management rights (including the allocation of permits) are vested. Like in Norway, the state could reserve the ultimate right to veto management plans if they violate the public trust. The Norwegian example suggests that considerable devolution of power is possible so long as some mechanism exists to make the exercise of that power responsive to broader public interests.

The chief question with which I embarked upon the studies described in this dissertation was how the problems associated with fragmenting a landscape into separate spheres of control can be avoided while still maintaining a wide distribution of private rights. As the various studies indicate, it is possible both to have divided ownership without divided management and to have shared ownership that maintains a wide distribution of benefits, including individual private use-rights. Either situation has the potential to preserve the ecological functions of the land. The generation of local economic development, however, may require not only that management be coordinated, but also that ownership be local. My analysis of the community land movement in Scotland and my comparison of two Norwegian commons both indicate why this is so: local ownership enables the community both to capture the value of their natural resources and to make locally-needed investments that mobile capital would avoid.<sup>47</sup>

Whatever cultural impediments may exist in the United States to implementing a civic republican model of property,<sup>48</sup> practitioners in the fields of natural resource management and community development may take heart that such a model is feasible

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<sup>47</sup> And that the state might avoid as well: witness the widespread closure of rural post offices in Britain.

<sup>48</sup> Or social-republican, as Simon (1991) calls it.

and holds a certain amount of promise. Because property rights are neither sacred nor absolute, but socially-created, flexible tools, people can arrange them in a wide variety of ways to serve their needs. All of the cases described in these studies involve a mixing of public and private rights.

In the case of the Norwegian community commons especially, it was clear that many different kinds of property can be applied to the same landscape—even to the same farm, each where it is most useful. At the heart of a Norwegian farm is the infield: an area of completely private ownership, intensive cultivation, and high investment. Here one finds the house and other farm buildings; and these are often impressive. In my case study communities, it was typical for there to be a timber arch or two large posts at the bottom of a driveway, making it clear that the visitor is passing into a private realm in which the owner takes great pride. Beyond the infield lies the outfield: the forest, rough pasture, and mountains that usually are shared between multiple farms. It may be that the ownership is shared between them; or they might only share the use-rights, with ownership belonging to the state. This is an area of lower investment and less intensive use. Here all people have a right to recreational access—a right that extends to the infield as well when it can be exercised without damaging crops. The public's rights also take the form of forestry regulations and prohibitions on the subdivision or abuse of farmland. Flowing from the outfield to the infield might be an irrigation system, the usufructory rights to which are shared between a few neighbors; and by the edge of the state-owned road might be a machine shop that several farmers own in common (or jointly, as the case may be). Invisible but no less important are milk-quotas, a tradable form of property that dairy farmers created through their cooperative in order to overcome that classic problem of collective action, controlling production in order to stabilize prices. Thus the Norwegian farmer moves in a world of many different kinds of property, each of

which is instrumental to its own purpose, and all of which are socially-created to fulfill this purpose.

All of the studies presented in this collection suggest that the state has a significant role to play, but this is primarily as a facilitator of local cooperation. The community's role is important because, if the rights of private owners are to accommodate the interests of others, there must be some process of civic engagement in which these interests can be negotiated and rights can be defined. Each of the cases has a different institution to fulfill this purpose. In Vermont it is the town planning process; in the case of moose management in Norway, it is the jaktvald; in Scotland it is the community trusts; and in the case of Norwegian commons, it is the commons board. How well the property rights arrangements work in each case depends heavily on how well these civic bodies function.

Property may be difficult to see when we gaze at the land; but it can also be a lens that enables us to see other things more clearly. Property is relationships; and the model of property that we adopt is inextricably connected to the kind of relationships and the kind of community that we have. Because natural resource management and community development are to a large extent about overcoming problems of collective action, they are fundamentally about successful democracy. In all of the cases described here it is clear, as the civic republican tradition would suggest, that the advancement of property rights well-suited to achieving the public good and the advancement of institutions for democratic practice go hand in hand.

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