

The environmental commons: An alternative management of scarcity

Introduction

Dominique Dron, Conseil général de l'Économie (CGEJET), and Étienne Espagne, Agence française de Développement (AFD) and CERDI

History and anthropology of the legal concept of an environmental commons

The legal definition of an environmental commons
Delphine Misonne, Saint-Louis University, Brussels

There is no legal definition of the environmental commons. The contemporary vitality of the concept of a “commons” has emerged not out of the law but outside the law, even against the law or as a challenge to it. This word now mainly refers to a form of action, a “doing in common”. Herein, the focus is not on collective action as such but on the dimension that generates and activates collective action, which has as one of its characteristics that it is borne by a community. When applying this “doing in common” to questions of access and use to something in the environment, the concept of an “environmental commons” spontaneously arises in relation to collective governance and to the natural resource itself.

The ocean as a commons: The depletion of resources, appropriation and communities
Fabien Locher, junior researcher, CNRS, ÉHÉSS

The oceans and their fishing resources have long been taken to be perfect examples of the “commons” in line with the meaning that Garrett Hardin first gave to this word. This biologist and his successors approached the commons via the question of free access being doomed to the “tragedy of the commons”. This approach has guided and justified the adoption of top-down regulations for fishing in coastal waters. In a reaction during the 1970s, social scientists brought to light a vast domain of practices, some of them very old, others more recent, having to do with a community government of ocean resources and ecosystems. These “commons of the seas”, in the sense of structured institutions for organizing the use and conservation of the marine environment, could be adopted along with decentralized state regulations to cope with the depletion of fishing resources worldwide.

Models of the participatory management of water in big hydro-agricultural development projects: The Ph'ôc-Hòa Program

Olivier Tessier, École française d'Extrême-Orient (EFEO), PSL University

The local management of water is examined in two areas irrigated as part of the development program for the Đông

Nai-Saigon basin in Vietnam. These two areas were delimited using the same procedure, participatory irrigation management (PIM), which places the question of users' participation at the center of the governance of water resources. In the field, the process of preparing and setting up water boards was standardized and applied to a top-down model in full contradiction with the PIM's spirit and purpose. This dissonance resulted from a combination of external factors imposed by the program (ideology, incompatibility between the “time of the program” and the “time of peasants”) and of the internal practices of a technocratic, top-down management of irrigation, which has prevailed for several decades.

The rights of indigenous peoples and the environmental commons: The Whanganui River in New Zealand

Ferhat Taylan, University of Liège

As they have recently evolved, the rights of indigenous peoples apparently fall in line with the concept of an environmental commons insofar as certain laws allow a community to govern its environment through different forms of collective property or land uses and rights. The Te Awa Tupua Act, adopted by New Zealand in 2017, recognizes the Whanganui River as a legal person. This analysis of the act inquires into the limits and benefits of transposing initiatives in terms of a “commons”. The aforementioned act also recognizes Maori cosmology. Though implying the inseparability of human groups and natural beings, this cosmology cannot be reduced to a “governance” of resources or nature's “sacred” dimension. Seen in relation to colonial history and property rights in the country, making the river a legal person in accordance Maori demands turns out to be a re-institution of the commons.

Economic theory and practices related to environmental commons

How not to conceive of the commons: Neoclassical economic theory

Ivar Ekeland, director of the Pacific Institute of Mathematical Sciences

Neoclassical economic theory conceives of the universe in terms of goods. By definition, a good is something to be consumed, in one way or another; and its only value results from the satisfaction that consumers derive from it. Accordingly, there are four categories of goods: private goods (rivalrous and excludable) for which the market is the most efficient means of distribution; and three others (club, common and public goods). Neoclassical theory has difficulty integrating the last three and thus tends to propose privatizing them for the market to manage (so-

metimes with catastrophic consequences). Nonetheless, human societies have managed the commons in other ways, based not on property rights but on uses. It is urgent to develop a new economic theory for taking this into account.

Acting despite the complexity of the values related to biodiversity: The normative and “cost-efficiency” methods

Yann Kervinio, ministry of the Environmental Transition and Solidarity, CGDD/SEEIDD/ERNR, Centre International de Recherche sur l'Environnement et le Développement (CIRED); and Antonin Vergez, ministry of the Environmental Transition and Solidarity, CGDD/SEEIDD/ERNR

Legal norms and standards are the keystone of many a current policy for managing environmental commons: the goals of reducing greenhouse gas emissions, of seeing to the quality of water on the continents or in the seas in the sense of EU directives, conservation policies, etc. Such legal norms, along with the “cost-efficiency” methods for which they allow, will probably foster a management of the ecosystem that respects the diversity of the associated values. The conditions are formulated under which the conception and regular revision of legal norms will reveal our collective preferences and make it easier, in a large set of private and public decisions, to coherently take account of the values related to biodiversity.

Water, humanity's environmental common good? The thoughts of a water company

Hélène Valade, Suez

Water is an essential, “improved” good owing to its strong interdependence with food, biodiversity, energy, health and security. Because of population growth and global warming, this vital, common good raises issues related to its quality, quantity and access. To address these three issues, new solutions must be imagined; and water management, reworked in the spirit of the UN's sixth sustainable development goal about water resources. This approach, adopted by Suez Inc., places the water business in the perspective of a circular economy. Suez is experimenting with other models of governance, both more open and more collaborative. It has reviewed its role and assignments in order to contribute to the commonweal.

Public policies of conservation of the environmental commons

The institutional management of environmental commons in France: Successes and limits

Christian Barthod, engineer from the Corps des Ponts, des Eaux et des Forêts, Conseil général de l'Environnement et du Développement durable

At times, owing to social experiences and the popularization of scientific knowledge, a consensus forms about what is to be deemed important. Very few people now object to considering water and biodiversity to be common goods. Nonetheless, the conclusions drawn and the problem of moving beyond mere words toward deeds are quite different in the cases of water and of biodiversity.

Attention has to be paid not only to the geography and scales of distance to be used but also to the evolution of the concepts that underlie our understanding of what makes a good “common”. All this complicates making any operational definition of a participatory governance based on negotiated (but never definitive) agreements about the tools to use and the threshold effects identified. In any case, this definition must never be based just on a purely economic approach or on appropriation.

An overview of the instruments for managing common goods in the environment

Anthony Cox and Nathalie Girouard, OECD

Human activities, which are putting ever more pressure on common, environmental goods, will have major social, cultural and economic consequences. Viable long-term growth will depend on our ability to protect and safeguard these common goods. This global issue calls for worldwide coordination. Multilateral agreements on the environment have set up a framework for actions on a planetary scale. The current priority is to see to it that nation-states implement these agreements. The policy instruments are presented that national authorities now have for this implementation and for an improved management of environmental commons. Attention is drawn to the new opportunities for improving the efficiency of environmental policies thanks to the behavioral sciences and digital technology.

Water boards in Brazil and France: Managing water as a common good at the scale of catchment basins

Patrick Laigneau, freelance consultant on water management, Rosa Maria Formiga-Johnsson, Rio de Janeiro State University; and Bernard Barraqué, CNRS, CIRED

The management of water resources by catchment basin was introduced in Brazil during the 1990s by a movement of democratization that referred to the French experience, which had started 25 years earlier. More than federalism, the rather centralized administrative procedures imposed on Brazilian water boards have kept them from yielding the hoped-for results, as the OECD has pointed out. After discussing collective actions for managing the commons, thought is given to the crisis of water boards in France. In conclusion, suggestions are made for re-legitimizing these boards in both Brazil and France.

Global perspectives

Environmental commons: The mirage of socio-economic malevolence?

Pierre-Frédéric Ténière-Buchot, chairman of Solidarité Eau (pS-Eau), secretary of the Mouvement Universel de la Responsabilité scientifique (MURS) and member of the think tank (Re)sources, of the Académie de l'Eau and of the World Water Council

The environmental commons more often amount to words than to concrete deeds that reach beyond local experiments. Despite the calamitous evolution in the contemporary world of malevolence, both human (poverty, slav-

ery) and environmental (the climate, pollution), this verbal veneer seems good enough to satisfy the conscience. Herein, this article submits modest proposals for readers to think about...

Is international commercial law compatible with the environmental commons?

Sabrina Robert-Cuendet, professor of public international law, Le Mans University

The relation between the instruments of international commercial law (the WTO agreement in 1994 or, more recently, free-trade agreements) and the protection of the environment is rife with ambivalence. The right of nation-states to adopt environmental measures is, in principle, maintained; but exercising it is placed under conditions so restrictive that governments have very little leeway. Although a movement for reforming this body of law was launched a few years ago (mainly owing to the urgent need to bolster joint actions for preserving the planet's natural resources), the instruments of international trade still bear the deep marks of a purely economic rationality. As a few recent trends show however, they can also be used to protect the environment. We must, therefore, break with the dogmatic economic liberalism of these instruments and use them as genuine levers for sustainable development.

The international monetary system and bio/geo/chemical cycles

Michel Aglietta, CEPII and France Stratégie, and **Étienne**

Espagne, Agence française de Développement and CERDI

An international currency and the equilibrium of bio/geo/chemical cycles can be considered to be global common goods. The two are directly connected, at least since we have entered the Anthropocene Era. The institutions overseeing the rules of access to international liquidity can no longer ignore the impact that this liquidity has on bio/geo/chemical cycles (especially the carbon cycle). The Paris Agreement, in particular Article 2, calls for fresh thought on this problem.

Which financial architecture can protect environmental commons?

Tim Jackson and **Nick Molho**, CSUP, Surrey University

The protection of environmental commons remains one of the most pressing problems in "collective action", vital to the resilience and sustainability of societies and their economies. The discourse around "natural capital" potentially offers a way to integrate decisions about the commons effectively into economic decisions. Investing in the commons is key to protecting the flow of services provided to society by natural capital. Recent exploration of the potential for investing in natural infrastructure has highlighted numerous mechanisms, which could help turn this proposition into a reality.

Issue editors: Dominique Dron and Étienne Espagne