

## On the commons of developed industrialized countries

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**Abstract:** The editorial discusses the status and prospects of the commons of developed industrialized countries, based on the literature. For the traditional commons, one key variable for long-term development prospects of the commons is found in the way ownership to the commons is structured. A second key variable is the way increasing knowledge, including scientific environmental knowledge, has affected our perception of what a resource is within a commons and its value. The way these two variables characterizing commons: “*structure of ownership*” and “*knowledge of valuable resources*” are related is illustrated in a process referred to as “the withering away” with potential for widely diverging outcomes. Also new emerging urban commons are commented on and a more indepth study of both traditional and new urban commons is called for.

**Keywords:** Commons, developed countries, England, industrialized countries, Japan, knowledge commons, Spain, traditional commons, urban commons

### 1. Introduction

The class of “developed industrialized countries” may not be entirely self-explanatory. In the context we provide here there are articles reporting on the situation in Japan, Spain, England, and Norway. We consider countries similar to these to be developed and industrialized. Such countries are characterized by having a low proportion of population in rural areas and an even tinier fraction of the population employed in agriculture today. However, traditional commons

were tied to agricultural production in a rural setting, leading one to expect that they would be shrinking in both economic importance and physical size.

Nevertheless, the developed industrialized countries today appear to have a growing diversity of activities inspired by the idea of a commons as a form of organisation outside the state that is capable of supplying collective benefits that everyone in a local community needs. Today, both the needs and the activities are quite likely to be urban and tied to urban communities. These communities were not in our minds when we set out to explore the fate of traditional commons in developed industrialized countries. But they clearly should be a topic for further research, and not only into their use of the idea of a commons.

We shall return to these new types of urban commons in the developed industrialized countries at several points below, but will first turn to the more traditional commons. As a historical phenomenon traditional commons are mainly found in rural areas<sup>1</sup> and have been exploited by the rural population for survival in an economy dominated by agriculture. The task we originally set ourselves was to consider the fate of these traditional commons during the process called industrialization and development. Part of this process is usually the individualization (or privatization) process generally labelled as enclosure. This process is extensively researched in the history of England. For other countries the knowledge is less systematic; however, based on the studies presented below and other readings our conclusion is that in the long term the traditional commons of developed industrialized countries have been declining in importance, not only to the societies as one might have expected, but also to the rural agricultural population. The areas known as commons have shrunk and the number of exploited resources has declined, but the trends are not uniform.

Although Berge and Haugset (in this issue) conclude that the Norwegian commons are withering away, Shimada (2014) emphasizes the efforts of Japanese *iriai* to adapt to new externally imposed conditions. But he also notes that many of them meet problems they cannot solve alone. For England and Wales it would seem that the “withering away” has halted and a trend where environmental resources and recreational use gain acceptance as valuable commons resources in addition to the remaining “profits-à-prendre” (Rodgers et al. 2011). In Spain Lana Berasain (2008) emphasizes the elements of class struggle in the process of privatization of commons and the recovery of commons during periods of democratic governance. In communities in Navarra he links this to a shift in the use of commons from an emphasis on equilibrium to equity. Today the legislation of Navarra explicitly favours the poor in the allocation of arable from the common lands.<sup>2</sup>

One key variable for long-term development prospects of the commons is found in the way ownership to the commons is structured. A second key variable

<sup>1</sup> But the history of traditional *urban* commons should be investigated more systematically.

<sup>2</sup> See e.g. Article 158 in Regulations on Local Authority Property in Navarra (approved through Navarra Decree 280/1990 of 18 October) (part) (Official Gazette of Navarra, no. 145, de 30 November 1990). An unauthorized translation is available in Berge (2006, 15–34).

is the way increasing knowledge, including scientific/environmental knowledge, has affected our perception of what a resource is within a commons and its value. These two variables characterizing commons: “*structure of ownership*” and “*knowledge of valuable resources*” are related to each other during the process referred to as “the withering away” with potential for widely diverging outcomes.

## 2. New commons emerging in developed industrialized countries

For example, in 2008 Oslo got a new opera house. In the summer of 2013 visitors to the opera house were met with the following announcement: “Here comes the “Opera Commons” explaining: “*Operaallmenningen*” (the Opera Commons) “will be a multi-functional meeting place for cultural events, recreational activities and people passing through.” The announcement is interesting. The Norwegian word “*allmenning*” is usually translated as “commons” and will in most cases designate a very old form of joint ownership or ownership in common among a well-defined group of commoners that by Norwegian law are required to be active farmers. Their current legal reality is regulated in legislation from 1857, 1863, and 1920 with the last major revision from 1992.<sup>3</sup>

The naming of this square as the “Opera commons”, located beside the Opera house and in front of the new library of Oslo, will indicate that an urban commons in Norway is constructed as an urban area with very little “green stuff” and will appear as very different from the urban parks that are constructed as nature areas with grass, trees, and flowers, sometimes with a classical garden design and usually managed by a municipal office. In their green appearance, urban parks are similar to national parks.

However, the urban commons is not a new invention. The tradition of English town and village greens is rooted in traditional commons that used to be available for people in villages and towns to graze their animals.<sup>4</sup> From the outside they do not seem to be very different from urban parks but their origin and management are different. Town and village greens have for more than hundred years been used for sports and recreation.<sup>5</sup> Many are owned and maintained by local parish or community councils, though some are privately owned. Some of them still maintain “rights of common” over them.<sup>6</sup>

<sup>3</sup> The 1992 acts are available in English translation in Berge et al. (2011).

<sup>4</sup> In Norway the traditional urban commons were called “takmark” and have today disappeared as such, but in some places the area remains as “Bymark”, available for the citizens for recreational activities (Christiansen et al. 2006).

<sup>5</sup> The shift from rural to urban interests in use of commons is noticeable in legislation at least from 1866, see Metropolitan commons Act 1866 and Commons Act 1876 (Halsbury 1968, 859–898).

<sup>6</sup> The Commons Registration Act 1965 defines town or village greens as land on which inhabitants of any locality have a right mandated by law, custom, or public acceptance (not less than 20 years) to indulge in lawful sports and pastimes (Halsbury 1968, 934), see also amendments in the Countryside and Rights of Way Act 2000, section 98, clarifying the definition.

The choice of “allmenning” (commons) to designate a place that is available for citizens of Oslo and their visitors as a “meeting place for cultural events, recreational activities and people passing through” may be part of an international trend idolizing “the commons”. This trend one may observe both in academia and in some political circles.

Tine de Moor has been following this development for some time (Moor 2012; 2013; Moor 2015, 161–168). Her perspective is to look at the organisation of the commoners, the people who will benefit from the joint management of some resource that is, or could be, held in common. She notes a remarkable growth in the number of cooperative organisations (or associations or foundations) in the area of energy supply and production, as well as production or supply of health care, carpooling, food, insurance, and infrastructure like open source software.

From the perspective of the theory of the commons, the most interesting feature is that these collectives are self-organized and work according to bylaws enacted by the members to provide an equitable distribution of goods for its members. In other ways, the diversity of their goals and modes of operation is rather bewildering. One might at first blush think that this development is triggered by a failure of the welfare state. But it operates more like a supplement, probably triggered by the increasing complexity of modern states. It is not reasonable to think that unified top-down (welfare) systems, those that the state will have to create, will be able to provide for all contingencies without creating a bureaucracy that will tend to break down under its own complexity. Self-organized commons may well be emerging to cover additional contingencies.

### 3. Observations from commons of developed industrialized countries

Moor et al. (2002, 252–253) outlined four ways of gaining rights to exploit a commons: 1) holding title to land with rights of common appurtenant, 2) being member of a community or municipality conferring such rights on their members, as well as 3) being member of a cooperative or an association with rights to a suitable resource. The fourth way, they say, is where all subjects of a ruler have rights to enjoy the resources within areas large enough to ensure that no competition among commoners arises.<sup>7</sup>

Below, we present 4 articles that study aspects of commons in Japan, Spain, England, and Norway. They present rather different perspectives. The study from Japan (Shimada 2015) presents an old style *iriai*, a semi-natural grassland. Current agricultural practice is unable to use it in traditional ways and the grassland would in a few years grow over, destroying the plants that had evolved through many centuries of traditional agriculture. A portion of Japan’s biodiversity would disappear. Until now this development has been halted by the efforts of a group

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<sup>7</sup> In Scandinavia this is known as “all men’s rights” and is concerned with recreational usage of wilderness areas (Shimada and Murota 2013).

of volunteers maintaining the traditional burning of the grassland that is the key to maintaining the plant community there. But how sustainable is such volunteer activity? The theory of the commons can give some clues to understand how a group of volunteers needs to be organised to sustain its activities. But is it applicable here with pure public goods (biodiversity and a pleasing landscape) as the only outcome?

The article on Spain (Lana and Iriarte-Goñi 2015) presents a survey of the developments of the traditional commons during the last part of the 20th century. After the privatization policy of the 19th century, the 20th century saw the commons recover and receive legal recognition. The trend has been towards greater regional diversity and less influence from the central state. One of the problems encountered is closely tied to the different and often incompatible definitions of common lands used by different government agencies. This has been an issue in forest administration and forest exploitation. The centrally promulgated regulations for agricultural activity, environmental protection, and social equity have been assisted in their implementation by using and expanding on the inherent flexibility of the diversity of commons institutions. The tension between the local commons/ commoners and the central state bureaucracy is at the core of the fate of the Spanish commons. But not everything can be decentralized with good consequences. The theory of the commons may provide some advice on what powers need to remain with central authority and what can be given back to the commoners.

The article about Norway (Berge and Haugset 2015) presents a case study of an old style “King’s commons” that in 1801 was conveyed to a local proprietor. But it did not stop being a commons immediately. The case study tells a story about a slow withering away of the rights of common until today right of pasture for a few farms in the vicinity is all that remains. The withering away is explained by the technological changes in agricultural production and a fixed inflexible property rights regime for rights of common. One observation in this history may have more general interest. In 1857 all commons were reclassified into 3 types and the case presented here belongs to the class “private commons” that was supposed to be dissolved within 20 years, according to legislation from 1863. The belief that this dissolution had (or should have) occurred seems to be the most likely explanation for the removal of the right to fish and the right to hunt from private commons but not from the other types of commons. Despite the belief in the non-existence of these commons subject to automatic dissolution, judgements from the Supreme Court – one from 1930, one from 1937, and one from 2000 – confirm the existence of 3 different private commons. More might be found if one looked for them. Maybe the lawmakers suffered from structural amnesia when removing rights from the private commons?

The study from England (Pieraccini 2015) focuses on the creation of protected areas in the sea in Marine Conservation Zones (MCZ). This way of protecting biodiversity in the sea arguably creates a new type of commons, and the article compares this to the established protected areas on land that are called Sites of

Special Scientific Interest (SSSI). The two types of protected areas have to some extent the same objectives (the protection of biodiversity/ conservation of nature), and they have the same beneficiaries (the public and future generations), differing from traditional commons. While traditional commons clearly have commoners benefitting from the resources and actively contributing to their management, these new commons have different purposes and beneficiaries. Who can best represent the interests of these new commons? Can a legitimate constituency of commoners be constructed for such new commons, or will its management have to be the task of a state bureaucracy? The article answers this question comparing the different degree of democratic legitimacy in the laws on SSSIs and MCZs drawing on deliberative democratic theory.

#### 4. The structure of ownership

The key variable that we call “structure of ownership” is seen in the ownership status given to specific resources. In some property rights systems, specific exploitations or uses (e.g. pasture) are seen as “objects” that have property rights protection in the same way as for example the ownership of a building lot in an urban area. This opens the possibility for a split between the owner of the ground (or soil) of the commons and the owner(s) of the specific resources attached to the ground (grass, trees, minerals) or flowing over the ground (water, game animals). The most common form for structuring ownership to traditional commons, probably the default condition, is defining the local community as owner of both ground and resources. Specific rights to exploit a resource or a parcel of the commons can of course be leased or rented or given to specific members of the community that owns a commons. But the specific rights are not severed from the commons. They are handled according to the specific details of the contract. Long-term leases have been observed to lead to problems in relations between community and leaseholder (e.g. long term leases for timber production in Spain).

The owner of a commons is expected to hold and manage the commons for the benefit of the community members. The local community may be seen as a public body or as a private body or somewhere in between. It may be as small as a village of 3 households and 15 individuals.<sup>8</sup> As villages grow, the problem of collective action emerges. At some point one resource will not be able to serve all members of the village and the problems of just access and distribution appear. History shows many ways of handling this problem, enclosure is just one, and for many kinds of resources it does not work well. Multi-level governance is another approach. In Shimada’s paper in this issue, the commons reported on is formally owned by Nara Prefecture with a population of approximately 1.4 million. The commons was originally owned by Tarōji community, part of Soni village. In 1971, Nara prefecture bought the semi-natural grassland. At that time, Nara prefecture

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<sup>8</sup> This is the legal minimum in Navarra, Spain (Art 37.2 in Ley Foral de la Administracion Local de Navarra). No village this small has been observed.

and Soni village exchanged memorandums in which Nara prefecture promised that people in Tarōji could continue using their grass resources in accordance with accepted customs. Actual utilization and management activities of the grassland were mainly done by people in Tarōji. In addition to Nara prefecture, the municipal government of Soni village also support the management of grassland by paying money for it. In this case the formal ownership is used to create a multilevel system of management for the commons.

In Norway the state is the owner of most of the areas called commons. But in Norway there is a tradition of owning specific resources separately from the ground. This way of structuring ownership to the commons is based on a distinction between the land surface of an area and the specific other resource found within the area. The owner of the area is the one owning the ground. The resources that can be exploited in any way, can, but do not have to be, owned by people or organisations other than the one owning the land. Today such exploitation rights will be organised according to contracts. But due to the ancient origin of the traditional commons, the commoners of England and Norway became owners of the resources they exploited.<sup>9</sup> In England, since 1066, the manorial lord owned the ground. The commoners owned the “profits-à-prendre” that they could exploit and the manorial lord owned the rest, the remainder. In Norway the remainder became bundled with the ground, in England it became bundled with the notion of fee simple ownership (the Crown’s claim to ownership of the ground still exists in England, but is not needed for a modern state’s powers to govern and tax). In Norway there was a slow transition from the medieval commons – which the King was granted only powers to manage – to the “King’s commons” of the 17th century that the King started to sell. The paper from Norway starts with the sale of such a King’s commons and tells the story of how rights to timber and hunting rights to small game within this commons were lost in a slow 200 years process. This process would have been unthinkable without the clear separation of ownership of the ground and remainder from the ownership of the rights of common.

The paper from England comparing new environmental commons on land and at sea notes that structures of ownership have an impact on the way the two are managed. The land area of a SSSI has an owner and the management of the area is based on contract between the owner and the state agency. At sea there are no owners to contract with and a wide diversity of users. This opens the opportunity for wider participation in the management.

## 5. The knowledge of resources

The traditional resources of the commons were intimately related to the way agriculture was conducted. It was pasture for cattle, often including collection of fodder for the winter, it was firewood for heating and cooking, it was timbers for building houses, and even land for new farms if needed. But the commons also

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<sup>9</sup> A more in depth comparison of property rights in England and Norway is found in Berge (2002).

comprised a variety of more abundant goods such as berries, herbs, and small game animals. It was more difficult to gain information of their status and monitor their exploitation. Abundance assured that enforcement of exclusive rights was not worth the effort. Such resources became more or less an all men's right.

The general picture from all the four countries is that the value of the resources traditionally defined as rights of common has been declining due to the abundance and low price of products produced by industrialized forestry and agriculture, or by more convenient alternatives for heating and cooking such as electricity, oil, and coal. The most persistent of the rights of common seems to be pasture used by livestock farmers as supplement for the fodder harvested on the farms. But also the use of outfield pasture is declining. If the traditional goods were the only resources offered by the commons they would seem to be heading for status as wilderness areas where humans seldom need to go. But the growth in knowledge about the world we inhabit has found new resources in the commons.

The contribution from Japan tells a story of how a particular type of grass used to be harvested to provide thatched roofs. As modern technology produced new types of roofing material more easily accessible, the uses for the grass declined and the areas maintained for this grass was abandoned to grow over by forest. As the last of such grasslands was disappearing, a group of volunteers resolved to maintain some of it, lest all should disappear. The demand for the grass had dwindled to almost nothing, because only a few houses with traditional thatched roofs are still maintained. However, part of the concern for the disappearing grassland was related to loss of biodiversity. This was new knowledge intervening and redefining the value of the grasslands. It was no longer useful for ordinary roofing purposes. But during the hundreds of years where it had been maintained for this purpose a particular ecosystem had evolved within the grasslands. If human activity stopped, the more robust ecosystems of the nearby forests would take over, probably destroying those systems that depended on human maintenance.

## 6. Environmental commons

Usually ecosystems found in commons do not depend critically on the human management of the commons as indicated by the example from Japan above. The biodiversity of self-maintained ecosystems is recognized and growing in importance. This applies also to ecosystems in the oceans and coastal areas. The sea near coastal areas has been studied both as open access areas for fishing and as commons for a group of local fishers. The tragedy of the commons has been observed for some of the fish stocks. The same areas along many coasts are also used for many other activities ranging from recreation to waste disposal, and the ecosystems are threatened as much as on land. Since the sea resembles commons much more than private property the article from England explores how the design of management systems for protected areas on land can learn from the management of protected areas in the sea. The fact that the new commons on land have owners while the new commons at sea areas do not makes it easier for the latter to create a participatory management.

One important service of many commons, even if unrecognized, has been to provide eco-system services such as freshwater or protection against avalanches and landslides for urban communities downstream from the commons (Olschewski et al. 2012). During the last few decades there have been several experiments in devising systems for paying landowners for the provision of eco-system services (Neef and Thomas 2009). The value of biodiversity and ecosystem services is now acknowledged everywhere even if the best way of managing such public values is not. Also more commercial values have been identified. Waterfalls and room for windmills have made the production of electricity a valuable activity also within areas known as commons.

## 7. Trends in the development of commons

For traditional commons the trend in Norway is for declining exploitation by individual commoners while the exploitation by organised businesses, usually owned and organised by the commoners or by the state, is steady or increasing. Sometimes this process implies transfer of control from local entities to larger scale public bodies or public companies. In Spain and Japan as well as England and Wales it is the same.

Rodgers et al. (2011) explore environmental governance on common land. While the commons as an important element in the rural economy has been declining, they find it far from extinct. They also record the same tension as seen in Norway between the public interests in protected landscapes and the private interests in customary exploitation. But arguably the private interests have a stronger legal position than in Norway. The public regulations have to be more sensitive to local conditions. The paper on marine conservation zones continue the investigation of protected areas as commons asking about the commoners. If the goods of the commons are pure public goods everybody is a commoner. But how do you organize the exploitation, monitoring and sanctioning in protected areas at sea? Who will pay the cost? And what about possible external effects distributing non-monetary costs inequitably?

In Japan Murota and Takeshita (2013) by and large find that exploitation of traditional commons (*iriai*) is declining and rights are in some cases privatized. But the processes are different from those observed in Norway and England. The formal powers regulating the exploitation are local governments interfering in the commons through the system of property wards that was the outcome of struggles over a local government reform from 1889. The property wards provided funding for public infrastructure. But in reality it was the individual land users who found ways of joint exploitation to everybody's advantage (continuing the *iriai* system). This caused customs to be a strong source for legal adjudication as conflicts arose. The duality of property ward and *iriai* became a working polycentric system with a dual power structure. But urbanization and industrialisation has caused a process of scaling up of local governments creating new regulatory bodies for the property wards with less knowledge of the customary ways of

Table 1: Signature products.

Types of products	Material	Immaterial
Signature	Artisanal products	Art performance
Mass-produced	Factory products	Internet entertainment

the *iriai*. Mergers of municipalities have proven a threat to the functioning and legitimacy of the property wards. At the same time declining use of the commons from fewer villagers, failed government forest policies, and increasing attention to environmental protection created new conditions for the commoners requiring new responses. The various strategies for adapting were not all successful and many commons have disappeared. Much has transformed into municipal property. In some cases local groups of volunteers have intervened to maintain aspects of the traditional commons that lack of use threatened to destroy, transforming the old style commons into some kind of community club (Shimada in this issue).

Takatsu in Murota and Takeshita (2013, 303–331) tells about a development in the shopping district centred around Kurokabe Corporation in Nagahama City that arguably can be analysed as the emergence of a new commons.<sup>10</sup> The revitalization of the city centre required customers (the resource). How do you attract customers? To attract customers the commoners (the shop keepers of the district) went after what one might call “signature products”. Signature products are the antithesis to mass products. Signature products are one of a kind bearing the marks or signature of their maker (see Table 1).

A shopping district may be seen as “an eco-system” of active shops, dead shops, and shops growing up. Customers come to harvest from the eco-system.

The shopkeepers can also be seen as a club. They create local public goods that all can enjoy if they are members, including a pool of customers. By nature, some of the local goods are positive externalities, while some are negative. And sometimes one may find free-riding members of such clubs. This perspective does not explicitly include customers. But part of the positive externalities is the increase in customers that comes from the joint attractiveness that competing shops generate. This may also be called network externalities.

Analysing the transformation of a shopping district in the perspective of commons provides interesting perspectives on urban regeneration. The trend towards using the “commons” as a designation for that which one believes should be for common benefit within the community has not sparked many studies. Without more studies it will be difficult to guess about developments or implications either in general or for the established commons.

<sup>10</sup> This resembles Foster’s (2011, 104) discussion of Business Improvement Districts (“BIDs”), for some alternative views on BIDs see Ward (2006) and Peyroux et al. (2012).

## 8. Enclosure of salt water fisheries: some observations from Norway

In Norway the commons of old comprise sea and mountains as well as forests and ordinary waste lands. Market forces reaching into the forest commons (15th to 17th centuries) and new technology enabling hunters to hunt more efficiently (late 19th century) and fishermen to catch much more fish than before (late 20th century) have all triggered processes that might be interpreted as tragedies of the commons. The right to harvest forest, to hunt, and to fish have in the aftermath tended to be individualized, or enclosed. But any causal link between overharvesting and the enclosure is at least complex and contingent.

In a judgement of the Supreme Court of Norway from 23 October 2013 (HR-2013-02200-P) an administrative regulation from 2005 awarding a company fishing quotas without time limit was accepted as valid and could not in a new regulation from 2007 be given a time limit without violating the constitutional prohibition on retroactive application of rules. One may see this as a sign that the enclosure of the fishing rights in Norwegian waters has come a long way since 1989 when the cod fisheries collapsed, leading in 1990 to the introduction of fishing quotas tied to particular fishing vessels.

Eythórsson (2008) provides interesting details from the enclosure of fisheries. He writes about the coastal fishers of Finnmark and their struggle to keep the fjord fishery as a commons for the local fishers. They failed in this, and for many reasons. The ethnic identity of the local fishers as Saami, the lack of understanding of the fjord ecosystems among marine biologists, and the strong position of the Norwegian Fishermen's Association in the design and implementation of regulations, as well as the invasion of harp seals and the red king crab can all be seen to contribute to the deep crisis of the 1990s.<sup>11</sup> Both in the ministry and in the Norwegian Fishermen's Association there was strong opposition to proposals for delegation of regulatory authority to local bodies. But the introduction of the valuable red king crab and the very profitable fishery on this species has made it possible to approach a kind of local fishermen's commons. One may speculate that the lack of established interest groups around this fishery as well as the push from the Saami Parliament whose powers were growing during this period may be part of the explanation for this. There is no doubt that the general trend in the sea is towards individualized ownership (meaning identifiable owners, not individual persons) of resources. This goes on despite the fact that the Norwegian state is formal owner of the sea surface, the sea bottom, and the fish resources.

Fish farming may be seen as part of this process. The state as owner of the sea areas leases these to fish farms and collects fees for this, resulting in a de facto privatization of former "open access" areas. At the same time the owners of the permission to run a fish farm (the concession) has moved from local entrepreneurs to large scale national and international companies.

<sup>11</sup> For a summary in English see Broderstad and Eythórsson (2014).

The individualization of ownership that we see in fishery, fish farming, and in the exploitation of traditional rights of common on land, have a counterpoint in the large scale landscape and nature protection processes designed to exclude unwanted human activity within the protected areas. Today this means excluding local people as well as large scale commercial operators. The intended beneficiaries are the current and future population of Norway, based on a general idea about enhancing their welfare. The goods protected are public goods and sometimes club goods. Everybody profits equally from the reproduction of these goods. Hence funding of the necessary effort can be done by the general tax fund of the Norwegian state. The common pool goods that local commoners traditionally have exploited, have been managed by the commoners in a sustainable way for a long time. This can go on, but new ways of exploiting these resources and newly discovered resources worry the national nature protection bureaucracy. Legally, new modes of exploitation will have to be approved by this bureaucracy, which makes local populations who have traditionally managed these resources feel excluded from new methods of management and use of these resources. In 2004 the Norwegian Parliament resolved to make it easier for local entrepreneurs to exploit the protected areas. As of 2013 this seems to have come to nothing (Fedreheim 2013). Protected areas are available for commercial exploitation only in theory.

The open access policy for salt-water fisheries resulted in declining resources for local coastal fishermen in Finnmark. Efforts to create a preferential position for the local fjord fishers in access to local fish resources came to nothing for a long time despite pressure both from below (the Saami organisations) and above (the political leaders of the Ministry of Fisheries<sup>12</sup>). One might guess that the fisheries bureaucracies found it contrary to their ideas about justice and customary procedures. The ability of bureaucracies to resist clear political decisions in the exploitation of protected areas and in the management of fisheries is a fact of life in complex modern polities. Sometimes it is an advantage for all, but as we see here, sometimes it will be to the detriment of what we think of as traditional commoners.

## 9. “Reinventing the commons”?

The fate of commons in the old industrialized countries can be read as a story of their disappearance. The age of enclosure is over. There certainly are enough statements about their waning significance.<sup>13</sup> Berge and Haugset (2015) observe how rights of common in Norwegian commons during the last 150 years have

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<sup>12</sup> Since 1. January 2014 “The Ministry of Trade, Industry and Fisheries”.

<sup>13</sup> Simpson (1986, 261–262) writes “The only parts of the country where common rights are still the backbone of the agricultural system are those mountainous areas where hill sheep-farming is practiced. Elsewhere common rights are rarely of great importance, nor is it normal today to grant new profits to be enjoyed in severalty.”

been withering away. In countries where the disappearing has been most noted, the remaining commons get special purpose legislation. In others they are left to themselves. Does it make a difference? Fewer and fewer of the classical rights of common<sup>14</sup> are exploited today, and no new types of rights of common have been added. If rights of common are not used there are no commoners, and if this situation lasts for a sufficiently long period, there will be no commons. This is the situation in Norway and in England. It is not the case in Spain and Japan, where the commons will remain, owned by the commoners they may recreate it if new valuable resources are identified. But as observed in Japan many commons have become municipal property exploited for the benefit of the municipal public.

But as the importance of traditional commons decline there seems to be a growth in the popular imagination about commons. People see the utility of sharing resources in various ways and they pick up the label “commons” to explain what they are doing. Wagner (2012) writes about this growth. The idolization of the commons could be observed at a meeting in Berlin in the fall of 2010<sup>15</sup> attended by very few traditional commons scholars. The organisers nonetheless stated as their key thesis that “Commons are the enabler for all other social goals, including environmental ones, which in essence are social.”

Listening to both public presentations and small group conversations gave pause for thought. The impression this writer took home was that for the majority of participants the commons represented a new ideology with some of the important desirable features of socialism, and few of the negative consequences associated with it. The IASC’s president was one of the keynote speakers and tried to introduce conceptual distinctions from the theory of the commons. But the academic approach seemed rather uninteresting for the conference participants. They, and apparently many more, share a belief in the need for, and desirability of, shared usage and management of resources that benefit communities.

In complex urban societies, scholars have started to look at public infrastructure as a commons (Hess 2008), applying insight from the study of traditional commons. The importance of the road and railway infrastructure has been highlighted (Frischmann 2012; Jain and Moraglio 2014). The importance of sharing knowledge has created the open access movement for a “Creative Commons” making copyright agreements more in line with every scholar’s wish to be read and have access to what others have written (Hess and Ostrom 2007). In the same direction we find studies of “cultural commons” (Bertacchini et al. 2012). Property rights to, and management of the radio spectrum has been studied as a form of commons (Berge and Kranakis 2011), and so have microbial

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<sup>14</sup> Rights of common to pasture, to turbary, to estovers, to pannage, to piscary, and to a couple of profits à prendre such as to take minerals or parts of the soil and to take wild animals (Rodgers et al. 2011, 4–7).

<sup>15</sup> See [http://p2pfoundation.net/Berlin\\_Commons\\_Conference](http://p2pfoundation.net/Berlin_Commons_Conference), <http://www.commonstrategies.org/content/constructing-commons-based-policy-platform> and <http://calendar.boell.de/de/event/wohlstand-durch-teilen-gemeinguetter-als-politische-leitlinie>.

commons (Dedeurwaerdere 2010), protection of nature (Zachrisson 2009; Lawrence, Molteno, and Butterworth 2009), the atmosphere (Paavola 2008), the oceans (Holt 1992), and other global commons (Buck 1998).

Two of the articles of this special feature take a historical approach. Can we learn anything useful from history? There are numerous reasons to expect that we cannot apply lessons from historical investigation of traditional commons to the management of new public goods commons. One is that the organisations created today govern goods of very different characteristics than those of traditional commons. Very frequently, new organisations are designed to care for pure public goods or very large-scale club goods. The processes that sustain their reproduction are very different from the traditional common pool goods. Another reason is that the organisation has to be created at a scale above the local community, often also at a scale above the state. But exactly how do new public goods resources relate to older private goods or common pool goods resources<sup>16</sup> when both are found on land and both are called commons?

The theoretical approach to “new commons” is different from the approach that names urban squares as commons, or organizes sharing of academic works. The growth of “commons” as a kind of ideological driver for promoting the sharing of resources deserves its own study alongside the study of the organisations that actually call themselves commons. In both cases a few insights from the commons theory might help avoiding some of the possible errors and improve on our understanding of the complicated link between believing and doing.

## 10. Conclusion

The reduction of, or disappearance of, the medieval commons should not be lamented *per se*. But by forgetting about the old commons we forget about the reasons for developing this amazing legal technology in the first place. The many enclosures may seem to have simplified the landscape and disentangled the interdependence of interests and resources. But the simple landscape of dominium plenum did not last. Even before the turning points around the last half of the nineteenth century (some countries earlier some later) groups of people with stakes in the landscape appeared on the political scene and demanded their share of the values there. The enclosures had not managed to disentangle forever the multiplicity of partly interdependent users and partly interdependent resources. By the 1920s a new course in land use regulations pointed to the contemporary system of tenure.

Since the 1920s the drivers of change have been the advent of new concerns rooted in the interests of urban populations for access to nature and the protection of biodiversity, and the public health concerns about pollution and environmental degradation. The commons have reappeared but with new names. Today they are the lands of the National Trust, and the National Parks. They are seen in the parks

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<sup>16</sup> See contributions in Murota and Takeshita (2013) and Rodgers et al. (2011).

in the cities and the green belts around them. They are admired as world heritage sites.

Property rights have to be renegotiated continuously as society and culture change. In doing so the level of specification of rights tends to grow. The greater specification allows problems to be solved. The solutions to old problems fade into the taken for granted and new problems take centre stage. The dominium plenum solution to internalising the externalities could not accommodate the more complex world of modern democracies.

Owning and exploiting resources in common or jointly is an old problem. Only recently have scholars realized that the problems of free-riding in provision and consumption, well known from the study of traditional commons, return in new guises in modern industrial societies. Technology (radio waves, internet) and knowledge (biodiversity, ecosystem services) produce goods that require collective action in agreeing on common rules for efficient provision, sustainable exploitation, and just distribution. The new goods do not replace the old ones provided by nature (forest, pasture, wildlife), but appear as layered on top or beside the old goods. This reality creates a more complex problem of governance.

If we can see no continuity between the old well working commons and the new commons appearing in complex urban societies, the commons as a social and legal reality will have to be reinvented by trial and error. Fortunately the scholarly study of the new and old commons promises better approaches.

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