



ASIA-EUROPE PEOPLE'S FORUM | SOCIAL JUSTICE CLUSTER

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Social commons, Social justice, System change. Our common social future.
Commoning and sharing for society, the environment and the economy.
A programme for a democratic, participatory & transformative social protection.

From Absolute Dominion to Common Property



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Property as a **keystone right**:

“Property is the guardian of every other right, and to deprive a people of this, is in fact to deprive them of their liberty” (Arthur Lee, 1774)

Dispossession makes you dependent on another's will (unfree):

“The mechanic is under a sort of limited slavery” (Aristotle, *Politics*, 1260b).

“The man who possesses no other property than his labour power must be the slave of other men” (Marx, *Critique of the Gotha Programme*, 1875).

2. MODERN LIBERAL PROPERTY

2/7

Liberalism assumes that property MUST be individual, exclusive, and absolute:

W. Blackstone (1765): “the **sole and despotic dominium** which one man claims and exercises over the external things in the world, **in total exclusion of the right of any other individual in the universe**”.

Napoleonic Code (1804, art. 544): “the right to enjoy and to dispose of things **in the most absolute manner**”.

F. Hayek (1973): “those objects over which only particular individuals are allowed to dispose and **from the control of which all others are excluded**”.

3. ACTUAL PROPERTY RIGHTS

3/7

However, “individual and absolute property rights” have never existed:

The idea of “**individual and absolute exclusiveness**” **does not reflect most of the current juridical forms of property rights nor their historical development.**

Roman Law already included:

Res Publicae: things that, by natural/civil law, belong to all without restriction.

Res Nullius: things that belong to nobody, so they can be freely appropriated.

Res Universitatis: things that belong to a particular public-corporation.

Res Communes: things that, by nature, cannot be appropriated by anyone.

Common property is a resource appropriated by a community through some particular mode of self-organization and management (Ostrom, 1990).

Thus, **commons resources** necessarily entail:

- a) a particular **resource** (material or immaterial);
- b) a particular **community** (limited and exclusive); and
- c) a particular regime of **governance** (rights, rules and sanctions).

Ex.: crop/pasture field, urban equipment/facility, free software...

5. COMMONS AS A BUNDLE OF RIGHTS

“**Bundle of Rights**”: Property rights are **fragmented among different agents** and their **particular uses** of a resource.

Property rights (particularly of common property) decompose and recombine themselves according to distinct contexts and power relationships.

Bundle of Rights Associated with Positions (Schlager & Ostrom, 1992):

	Owner	Proprietor	Claimant	Authorized User
Access and Withdrawal	X	X	X	X
Management	X	X	X	
Exclusion	X	X		
Alienation	X			

6. COMMONS AS FIDUCIARY

- a) The property of land belongs to the people/nation.
- b) “Common” or “private property” is nothing but a common or a private appropriation of a resource as a public *fideicomisum* in a Principal-Agent relationship.
- c) The “common” or “private owner” is a trustee of the sovereign/people’s property.
- d) The sovereign is the Principal (*trustor*); the proprietor is the Agent (*trustee*) in a fiduciary public relationship called “Common”, “Private” or “State’s property rights”.

Common/Private/State’s property is a fiduciary relationship between the **Principal** (the people - right of alienation) and its **Agents** (Common or Private owner – right of use).

Common/Private/Public owner is nothing but a trustee/agent of the people’s property.

	Owner	Proprietor	Claimant	Authorized User
Fiduciary position	Principal (the people/nation)	Agents (Private, Common or Governmental)		

7. PUBLIC UTILITY OF LAND:

7/7

Democratic and Republican Constitutionalism: USSR (1917); Weimar (1919); Austria (1919); Spain (1931); Italy (1948); Portugal (1976); **Mexico** (1910, art. 27):

“The **ownership of lands** and waters within the limits of the national territory corresponds **to the nation**, which has the **right to transmit ownership** of them to private individuals, **constituting private property**.

This can not be appropriate except for public utility [...]

The acquisition of particular properties [...] is considered of public utility

[...] All contracts and concessions are revisable. Executive declares them null when they involve serious prejudice to public interest”.