

# What Happens When Common Property Becomes Uncommon?

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A popular American song of the 1940s expressed a general and uncontentious belief: the moon — and as well, it was believed, the air, the water, and the natural resources of the earth (though already with some notable exceptions) — belonged in common to everyone, and the best things in life were free.<sup>1</sup> Today not even the moon is uncontentious: property rights are extending into space just as they have extended over the whole of the earth.

Yet the term “common property” is widely used with reference to fish, and sometimes to standing timber. The central idea is that no one can unilaterally control the resource and no one can be excluded from access to and use of it. An argument has been advanced by scholars, governments, and private companies in British Columbia, as elsewhere, that because fish and trees are not privately owned, they are becoming depleted; ultimately no one has the management responsibilities for them.

This paper argues a contrary case. I contend that the argument is both logically flawed and factually false. With reference to the fishing and forest industries in British Columbia, the argument is entirely misplaced. What is signally missing when the depletion of the resources for these industries is blamed on their common property status is the central fact that the resources are potential commodities, and their excessive exploitation is directly connected to private commercial activities combined with state management. The literature sometimes confuses the state with the commons, and that confusion contributes to the ambiguity of the property status of resources used in commercial industries.

## *Private, State, and Common Property*

As MacPherson argued, property is a right and a relationship, rather than a thing,<sup>2</sup> and the rights go beyond mere possession because they define

<sup>1</sup> As noted by Charles Plourde, “Conservation of Extinguishable Species,” *Natural Resources Journal* 15 (1975): 791-97.

<sup>2</sup> C. B. Macpherson, “The Meaning of Property,” in C. B. Macpherson (ed.), *Property: Mainstream and Critical Positions* (Toronto: University of Toronto Press, 1978), 1-14.

socially enforceable claims. Property implies a power relationship between people, since the claims determine who may benefit and who may be excluded. Private property rights define the rights of individuals (which may be corporate bodies) to use and benefit from natural resources (among other things) and to exclude other citizens of a state or of foreign states from access and use. Private property has had a distinguished history of defence by political theorists. Locke<sup>3</sup> argued that men had the “natural right” to property, that property rights took precedence over civil law, and that the purpose of government was the preservation of that right (late seventeenth century). Bentham<sup>4</sup> (early nineteenth century), Mill<sup>5</sup> (mid-nineteenth century), and Green<sup>6</sup> (late nineteenth century) elaborated on this argument, defending private property as a natural right, as a necessary means of conserving the earth, and as a means of preserving liberty.

State property is of two kinds: the variety which is most like private property in that the state has the right to exclude members of the general public (commoners) from access and use, such as state offices and crown corporations; and the variety which is most like common property in that the general public has equal access and use rights, such as highways and public parks.<sup>7</sup>

Common property, in contemporary economic theory, is that category of things to which no one can make a property claim and, *ipso facto*, no one can be excluded from access or use. However, there are two other meanings to the term, and the economists’ version is contested. Macpherson argues that common property remains a set of individual rights in the sense that each individual has the right of access. His is the positive interpretation of the same general maxim of non-exclusivity. In contrast, Ciriacy-Wantrup and Bishop<sup>8</sup> argue that the term refers to collective rights where the collectivity can exclude outsiders. Their usage is the more consistent with historical terminology.

<sup>3</sup> John Locke, “Two Treatises on Government: Second Treatise on Civil Government,” in *Social Contract: Essays by Locke, Hume and Rousseau* (London: Oxford University Press, 1960).

<sup>4</sup> Jeremy Bentham, “Principles of Morals and Legislation,” in *The Utilitarians, An Introduction to the Principles of Morals and Legislation* (New York: Doubleday, 1961).

<sup>5</sup> John Stuart Mill, “Utilitarianism,” and “On Liberty,” in *The Utilitarians* (1961).

<sup>6</sup> T. H. Greene, *The Principles of Political Obligation* (London: Longmans, 1955).

<sup>7</sup> Macpherson, “The Meaning of Property.”

<sup>8</sup> S. V. Ciriacy-Wantrup and R. C. Bishop, “‘Common Property’ as a Concept in Natural Resource Policy,” *Natural Resources Journal* 15(3) (1977): 713-27.

The term initially derives from the area of pasture on large estates in Europe, especially England and Scotland, which all farmers attached to the estate could use, and to timber lands shared by a specific community. That usage is still in evidence in Japan as well as less industrialized countries.

In contemporary economic theory, common property, initially regarded as an archaic or primitive occurrence, is seen as a positive evil. The argument advanced by Hardin,<sup>9</sup> and with reference specifically to fisheries by Gordon,<sup>10</sup> Scott,<sup>11</sup> and Ostrom,<sup>12</sup> *inter alia*, is that "everybody's right is nobody's right." Hardin argues his case with reference particularly to two features of the commons: population and land. He argues that when the earth is regarded as a commons, over-population necessarily results and voluntary controls will not work precisely because each couple reckons their marginal utilities without reference to the collectivity. In the same fashion, he argues, the individual tenant farmer using a common pasturage will add cattle without reference to the land-carrying capacity until collectively all users will deplete the land. In his opinion, the *Enclosures Acts* in Britain came about because of the erosion of the land. Similarly, Crowe<sup>13</sup> refers to the "classic example" of the "tragedy of the commons" as the over-grazing and lack of care and fertilization of the pasturage in England, "so destructive that there developed in the late 17th century an enclosure movement" [*sic*].

In Canada, this argument has been adapted by governments, private companies, and Royal Commissioners to the fisheries. A recent Royal Commission in British Columbia assumed from the outset that the fisheries constituted a common property problem:

Because of the common property nature of the fisheries and the need to constrain the total catch within biological limits, various groups that compete for

<sup>9</sup> Garrett Hardin, "The Tragedy of the Commons," in Garrett Hardin and John Baden (eds.), *Managing the Commons* (San Francisco: W. H. Freeman, 1977); and "Denial and Disguise," *Science* 162 (1968): 1243-48, repr. in *Managing the Commons*, 45-52.

<sup>10</sup> H. Scott Gordon, "The Economic Theory of a Common-Property Resource: The Fishery," *Journal of Political Economy* 62(2) (April 1954): 124-42.

<sup>11</sup> Anthony Scott, "The Fishery: The Objectives of Sole Ownership," *Journal of Policy Economy* 63(2) (April 1955): 116-24; see also E. A. Keen, "Common Property in Fisheries. Is Sole Ownership an Option?" *Marine Policy* 7(3) (July 1983): 197-211.

<sup>12</sup> Vincent Ostrom, "Alternative Approaches to the Organization of Public Proprietary Interests," *Natural Resources Journal* 15 (1975): 763-89.

<sup>13</sup> Beryl L. Crowe, "The Tragedy of the Commons Revisited," in *Managing the Commons*, 53-65.

the catch are preoccupied with their shares; this gives rise to the pervasive allocation problem, and is the source of "gear wars."<sup>14</sup>

In a study prepared for the Economic Council of Canada, Scott and Neher<sup>15</sup> begin with these words:

Regulation and control spring up naturally when economic activity involves *common property*. When people can exploit a resource together, when they cannot enforce contracts against third parties, then the resource is prone to abuse.

This use of the term implies that property is a thing, rather than a social arrangement of rights. As soon as we recognize the social source of property rights, this use of the term "common" in association with "property" becomes a contradiction, for if property necessarily involves a socially enforced set of exclusive rights, then a situation wherein there are no enforceable rights involves no property.

An earlier and influential paper by Gordon<sup>16</sup> likewise argues that the fisheries have a common-property nature, and maintains that over-exploitation of natural resources tends to occur where they are "owned in common and exploited under conditions of individualistic competition." He concludes for the more general case that sole and private ownership is superior as a method of conservation. In this view, developed further by Scott,<sup>17</sup> common property does not provide any incentive to the individual fisher to conserve the resource. For each fisher, profit will depend on capture of the greatest number of fish regardless of the long-term effects, if fishers are primarily motivated by short-term profits. Because the fishers are competitive and the resource is owned in common, no fisher can benefit from conservation unilaterally practised; thus short-term profits would motivate competitive fishers.

Scott distinguishes between the short-run and long-run probabilities that might affect private and sole owners. If they engaged in the fishery for only a year, they would operate in precisely the same fashion as the independent fisher in a common resource is assumed to behave. But if the sole owner planned to stay in business over a longer period, he could be expected to seek means of conserving the resource. Among these means would

<sup>14</sup> Peter H. Pearse, Commissioner, *Turning the Tide: A New Policy for Canada's Pacific Fisheries* (Vancouver: Minister of Supply and Services, 1982), 4.

<sup>15</sup> Anthony Scott and Philip A. Neher, *The Public Regulation of Commercial Fisheries in Canada*, prepared for the Economic Council of Canada (Ottawa: Minister of Supply and Services, 1981).

<sup>16</sup> Gordon, "The Economic Theory of a Common-Property Resource: The Fishery," 124-42.

<sup>17</sup> Scott, "The Fishery: The Objectives of Sole Ownership," 116-24.

be development of technologies to capture greater efficiencies, and integration of facilities and vessels. Thus, he argues, sole ownership leads to better conservation if it is a long-term investment. Again there is the assumption that multiple users with long-term investments are either unwilling or incapable of advancing the same objectives.

A similar argument has been advanced in the forest industry. The provincial state in Canada has formal jurisdiction over land and resources. In British Columbia, about 5 percent of forest land was given away to railway companies or sold outright early in the twentieth century. The remainder continued under state control, known as "crown property." This is sometimes equated with "common property," apparently with the meaning that no individual user (company) can unilaterally determine uses or sell the resource in its native state. The state allocates harvesting rights by licence to individuals (usually corporations), collecting a resource rent known as "stumpage" in return. The argument is that had land rights, rather than merely the harvesting rights, been privatized, the resource would have been conserved (replanted); since the state (being equated to the commons) held the property rights, the resource was not replenished.

### *The Historical Usage of the Term "Common Property"*

Macpherson notwithstanding, and as noted above, it appears that when the term "common property" is used in reference to a situation where no one may be excluded and contracts against third parties cannot be enforced, it is a contradiction. For that set of things that are ubiquitous, such as air, or which no one has managed to corral, such as a view of the heavens, we do need a new term, and it does not help to say that for these there is a positive property right not to be excluded. The right is meaningless. Calling these things, and also calling resources under public management "common property," is historically inaccurate and misleading in an important way, because the terminology subtly implies but does not demonstrate the superiority of private ownership.

The historical usage of the term "common property" referred to definite property rights between co-owners, and these rights involved co-management responsibilities. There is a significant difference between a situation wherein all citizens of a common and delimited territory have equal access and use rights but may exclude non-residents, and one wherein no one at all may be excluded. The first is, or has been, typical of small hunting/fishing tribal groups in British Columbia and elsewhere. Indian bands, catching fish for local use or barter, did not deplete resources even where

they fished the same rivers, streams, and sea coasts for many generations. Their situation was analogous to that of the farmers using the English commons as pasturage.

Anthropologists have stressed the co-management responsibilities of individuals engaged in common property use, and other scholars as well have suggested a contrary case to that of the economists using the term "common" pejoratively. Insisting on a more restricted usage of the term than that employed by fisheries economists, Ciriacy-Wantrup and Bishop<sup>18</sup> investigate the commons in economic history, concluding that: "In communal hunting and gathering societies, without markets on which to sell surpluses, emphasis on sharing among members of the group tended to discourage accumulation." Not all pre-market societies managed their resources well, and one should beware of romanticizing "indigenous management systems," which vary according to resource base, cultural habits, and homogeneity of the management group, but there is a fair body of evidence to indicate that many such groups did and still do co-manage a common property in the interests of conservation. Berkes,<sup>19</sup> for example, argues that the "tragedy" would occur only if three conditions were fulfilled:

fishermen must be maximizing short-term individual gains over long-term community benefits, the rate of exploitation must exceed the natural rate of renewability of the resource, and the resource must be common property and freely open to any user (open-access).

He presents data on three groups of fishers in Canada (Cree Indians in the eastern subarctic, Nishga Indians in northern B.C., and Lake Erie fishers, the latter two of which are engaged in commercial fisheries, the first only in a subsistence fishery), arguing that the three conditions are not met for these. Community pressures inhibit entirely selfish behaviour, and community controls and/or government licensing delimit access and use. His conclusion suggests that, given the chance, co-users of a common property, with long-term commitments, act in the same fashion as sole owners are expected to act in Scott's argument.

Whether or not all communal groups have adequately managed natural resources, there is little doubt that Hardin's argument on the English

<sup>18</sup> Ciriacy-Wantrup and Bishop, "'Common Property' as a Concept in Natural Resources Policy," 717.

<sup>19</sup> F. Berkes, "A Critique of the 'Tragedy of the Commons' Paradigm," paper presented to the "Natural Management Systems" Symposium I-A181, IXth International Congress of Anthropological and Ethnological Sciences, August 1982, Quebec City.

pasturage is historically false. He cites a verse which is interesting because it actually refutes his argument:<sup>20</sup>

They clap in gaol the man or woman  
Who steals the goose from off the common;  
But let the bigger knave go loose  
Who steals the common from the goose.

Ignoring the fact that the commons, according to this verse, was strictly regulated prior to the *Enclosures Acts*, he says of the *Acts* that, "Unjust though [they] were, they did put an end to the tragedy of the commons."

This classic example, while certainly a tragedy, was not caused by over-grazing the commons; it was caused by turning the commons into private property, in order to use it for sheep pasturage and for commercial crops destined for markets. There is no evidence that the commons were habitually over-grazed (or that geese were regularly stolen from them, for that matter). If the enclosures are called "movement," then the term should surely apply to the forced evictions rather than any social currents of reform. Barrington Moore goes so far as to suggest that the practices of the commons before they were privatized were important preconditions to the eventual development of democracy; where no commons existed in the feudal period, certain ideas failed to emerge.<sup>21</sup>

Despite considerable variation, the main idea connected with these arrangements stands out very clearly: every member of the community should have access to enough resources to be able to perform obligations to the community carrying on a collective struggle for survival.

Population increases do become a central issue in exerting pressure on the resource base, but not in connection with the tragedy of the commons. Markets may have provided the conditions for the growth of population, or the growth may have encouraged the increasing importance of markets (as far as I can determine, this remains an unsolved issue); in any event, the growing markets created means of survival outside the rural areas and simultaneously created a demand for agricultural produce to feed non-producing populations. As these populations increased, their capacity to informally enforce co-management responsibilities decreased, not because they all over-grazed a commons, but rather because there was no co-management group and, in fact, no commons.

<sup>20</sup> Hardin, "Denial and Disguise," 46.

<sup>21</sup> Barrington Moore, *Social Origins of Dictatorship and Democracy* (Boston: Beacon Press, 1966), 497.

In summary, then, we need to make a distinction between common property (which is, in fact, communally managed property), and anything to which no claims may be enforced (which is therefore not property at all). These non-properties may be better understood if they are called "free goods." The distinction is not merely semantic. The current usage is historically inapt, and it leads to the placement of blame where it does not belong. This is particularly evident in the fisheries.

### *Government as Manager*

The argument about fish rests on their mobility. As then-Canadian Prime Minister Pierre Trudeau observed, in reference to the need for a Law of the Sea, it was essential "because fish swim." This suggests that fish fall into that category of things to which no enforceable claims exist. But in fact, everywhere there are enforceable claims on fish. The first claim is that of national governments, insistently made throughout the history of a commercial fishery and apparent in the 200-mile fisheries boundaries off coastal states.

Governments have become the custodians of natural resources within their territories, and in the case of fish, they have claimed rights beyond traditional land territories. Are governments to be viewed as the successors to communities sharing a commons, as some writers assume? I would argue that such cannot be assumed, because there are substantial differences between the two entities. The community sharing a commons had equal interest in that area, and all members needed the resources in both the short and long terms. Further, all members could, physically, impose sanctions on others because such communities were small. The participants in the commons were roughly equal in power, and no one party could impose restrictions on others. Finally, the resources in question were used directly for subsistence.

Governments, by contrast, are institutionally constructed so as to manage not one resource but many, not one use but many; and they are required to balance, negotiate, and make decisions about conflicting interests. Not all members of the population have an immediate interest in any resource, and the interests that exist have divergent and conflicting requirements. Members may not know one another, and certainly cannot impose effective sanctions in the form of social disappropriation or the like. Some participants are vastly more powerful than others, and the actions of the more powerful can and often do preclude action by others. And all of these conditions rest on a prior fact: the resources are no longer used primarily for subsistence. They are now potential commodities.

Governments in contemporary capitalist economies rest ultimately on the effective accumulation of private capital (and governments in non-capitalist economies rest on accumulation of capital by state-owned institutions). For any resource (and in the case of fish, for the habitat as well), the issue is not simply how best to conserve a resource in perpetuity; it is, how best to manage the resource so that, in the short as well as the long run, the greatest profits can be accumulated from its exploitation. This involves balancing and evaluating the relative claims of all potential users. In the case of fish, the users include commercial fishers, subsistence food-fishers (mainly native Indians), sports fishers, processing firms, other industries using or adjacent to the habitat, the tourist industry, and recreational users of the habitat.

These users have diverse interests. In British Columbia, the interests of the fishers and processors may be in conservation so that their industry survives in the long run, but even if that were true these users' interests have to be weighed against alternative uses of the habitat by the forestry and mining industries, and of the fish by sports fishers connected to the growing tourist industry. The forestry and mining industries generate vastly greater profits, provide more taxation funds for government, employ greater numbers of workers, bring in more export dollars, and pay greater rents (the rents in B.C. are much below regeneration costs for the forest, but there are no rents at all for fishing, and licence fees are not to be confused with rents, as discussed below).<sup>22</sup> In B.C., the anticipated profits from sale of hydro-power, though never realized, were much greater than the returns on fish. As well, the damming or regulation of rivers such as the Nechako by specific industries such as Alcan affects water levels downstream, and again the argument in favour of such projects is that they generate more employment than the fisheries. Thus as a minimum restriction on good management of the fisheries, competing uses of the habitat inhibit conservation of fish as a government priority.

### *Participants in the Fishery*

The assumption that all participants in the fisheries industry itself have a long-term interest in conservation may be questioned as well. Those fishers who are permanently attached to the industry, and who have invested in vessels and gear, do have such an interest; this may be demon-

<sup>22</sup> Comparative data on these industries are given in Patricia Marchak, "Uncommon Property," in Patricia Marchak, Neil Guppy, and John McMullan (eds.), *Uncommon Property: The Fishing and Fish Processing Industries in Canada* (Toronto: Methuen, 1987), 14.

strated both logically and empirically. Logically, their survival depends on continuing catches over a long run. Empirically, numerous B.C. fishers and their various organizations are on record in their concern for better conservation. Many fishing vessels are family enterprises, and parents teach children to fish in anticipation of the children inheriting the investment and carrying on the tradition.<sup>23</sup> Fishers for whom the investment is a short-term activity have no investment in the future and may be less concerned with conservation. A majority, however, are long-term participants, and for them "fishing is a way of life" rather than only an economic activity.<sup>24</sup>

But fishers are not the sole participants in the industry, and it is on this point that the typical arguments about fishers depleting the resource are most blind. Processing firms operate on the same general economic principles as any other companies. There is a general assumption that companies are always in business for the long run, but in fact there is plenty of evidence that for most industries this assumption is tenuous at best. Once a firm has passed the stage of small family enterprise, it becomes an investment for stockholders who need not, themselves, know anything about the business and have no cause to become involved in management of its affairs. Companies so owned engage in specific businesses as long as they are profitable for the investors. Investors have options in the fisheries as in other businesses. The objective is not to make profits from fish forever, but to make profits in one way or another. If fishing is profitable in the short run, then the investor will extract the profits as quickly as possible and move on to other industries; or, the largest companies will buy out the smaller ones, gain a greater control of supplies and markets, and thereby increase the profits. In none of these actions is there an inherent logic that leads to conservation of the resource.

In British Columbia, the processors preceded the commercial fishers, establishing canneries and then seeking a labour force to catch the fish. Initially, this labour force was paid a daily wage and the vessels were company-owned. This is one of several ways that processors could obtain supplies. Two alternatives — variously employed elsewhere according to the resource, the availability of labour, cultural attitudes and history — are purchasing supplies from independent fishers, or re-inventing tech-

<sup>23</sup> Neil Guppy, "Labouring at Sea: Harvesting Uncommon Property," in *Uncommon Property*, 173-98. This is also evident in briefs to the Pearse Commission, 1982; Department of Fisheries and Oceans, "Summary of Minister's Advisory Council Meetings," Session II, 17-21 January 1983, Vancouver; and fishers' conferences in the years 1982-84.

<sup>24</sup> Neil Guppy, "Labouring at Sea: Harvesting Common Property," 173-98; see also other chapters in *Uncommon Property*.

nologies for capture that reduce the significance of migratory fish mobility. A privately owned fleet requires investment, maintenance, and labour costs, but guarantees the supplies even if the raw material cannot be corralled. Independent fishers pay their own way, and labour costs may be avoided, but if there are competitive processing companies the supplies are not guaranteed. In fact, over time another option emerged in British Columbia: the development of a fleet of independent fishers, owning their own boats, but working under service contracts or with start-up funds from companies. Since the companies declined in number very rapidly after the turn of the century, each company could obtain sufficient supplies at competitive costs without putting high investments in the fleet or the labour. In this fashion, the companies "owned" the fishers rather than the fish. This solution was similar to the indenture system adopted by the Hudson's Bay Company earlier, for the catching of fur-bearing animals.

Throughout the first half of the twentieth century on the west coast, larger companies bought out smaller ones or merged with equals.<sup>25</sup> In 1962, the largest company, B.C. Packers, became the target of a large food supplies conglomerate, Weston's, which had, through another subsidiary, the retail grocery chain, Loblaws, long purchased canned salmon from B.C. Packers. The purchase was part of a general acquisitions policy for Weston's, increasing its control of food supplies for its retail outlets.<sup>26</sup> In 1969, B.C. Packers and the only other large processing company still in the business, Canadian Fish Company, owned by New England Fish of the United States, took over the assets of a third company, Anglo-British Columbia Packing Company. Finally, in 1980, the New England Fish Company, encountering financial problems at its head plant in the United States, sold its plant at Prince Rupert, B.C., to B.C. Packers. The only remaining independent processing firm of any size, and that much smaller than B.C. Packers, was the Prince Rupert Fishermen's Cooperative Association, which by 1982 was also experiencing severe financial problems.<sup>27</sup> Specific fisheries in somewhat varying market conditions have maintained smaller, more specialized processing firms from time to time,<sup>28</sup> but in the main salmon fishery, B.C. Packers has a secure hold on raw fish supplies.

<sup>25</sup> Alicja Muszynski, "Major Processors to 1940 and Early Labour Force: Historical Notes," in *Uncommon Property*, 46-65.

<sup>26</sup> John McMullan, "State, Capital, and the B.C. Salmon Fishing Industry," in *Uncommon Property*, 122-23.

<sup>27</sup> McMullan, *ibid.*, 138-39; and Patricia Marchak, "Organization of Divided Fishers," in *Uncommon Property*, 235-36.

<sup>28</sup> Evelyn Pinkerton, "Competition Among B.C. Fish-Processing Firms," in *Uncommon Property*, 66-91.

In this situation, competition among fishers does not diminish the company's profits; on the contrary, it increases the vulnerability of any one fisher in what is very close to a monopsony supply situation.

There is no doubt that this arrangement has depleted the resource, just as the Hudson's Bay Company arrangement depleted the supplies of fur-bearing animals. But what has to be understood in this is that the resource, even if not "owned" until caught, is ultimately controlled by the raw fish market dominated by one firm and occupied, in total, by very few. Competition by fishers is a consequence of the structure of that market, so that blaming the competition for resource depletion is somewhat like blaming low-income wage earners for their poverty. Investors can move their capital elsewhere if the resource is depleted; few fishers have that option, and their investments in vessel and gear would become worthless without a durable supply of raw fish. Yet fishers have no management rights. They have only a private right in the form of a licence to fish, and since 1968 the state has granted that right to more participants than the fishery can sustain.

There are other participants in the fishery who are not so obvious but equally significant. These are banks which lend funds to both fishers, for the upgrading or purchase of vessels and gear, and processors. Banks have no immediate interest in conservation; on the contrary, they have a pronounced interest in obtaining quick returns on their loans. Their participation in the industry increased in the 1970s, a period which requires special attention in the saga of the B.C. fisheries.

### *The Escalation of Competition, 1970s*

In 1968, the Canadian government embarked on what is known as "the Davis Plan," ostensibly to diminish the pressure on the salmon resource of the west coast. The strategy was to limit the number of fishers, buy back vessels and retire others, and to limit fishers by selling transferable licences.

The number of fishers and vessels declined, but the size and capacity of remaining vessels increased, and licences, now private property consigning limited access rights, became marketable commodities. Since the exchange value of licences was captured by vessel owners who sold them rather than by the state, and the original cost bore no resemblance to the market value, it cannot be argued that licensing was a form of resource rent.

The government took on all responsibility for regulation, imposing catching times and places for the various types of vessel and gear. In these ways, an artificially induced competition was created, and each gear type

struggled against the others for diminished fishing time. In such a struggle, the rational behaviour for individuals with long-term commitments to the industry is to upgrade their vessels and gear. Technological developments were adopted for improving information on fish movements, refrigerating fish for longer periods in vessel holds, and travelling longer distances on each trip. Fuel costs escalated, and those who invested in the new gear became indebted to banks and government agencies for loans that could only be paid off if they caught large quantities of fish every year. Individual fishers are on record as fearing the decline of the resource, but collectively they had no means of taking responsibility and were obliged to accept government regulation.

As chance had it, for several years in the mid-1970s, the salmon and herring runs were unusually heavy, and, simultaneously, a strong, though as it turned out, short-term market demand emerged in Japan for herring roe and salmon. The government not only relaxed its rules, it actively encouraged fishers to upgrade and increase the capacity of their vessels through loans and various incentives. This behaviour was clearly contrary to the intentions of the "Davis Plan" and to any serious conservationist policy.

The explanation for this contradictory behaviour is embedded in the nature of government in an industrialized country. As noted above, government is not a substitute for a small co-management unit. It is a collection of departments with an overall mandate to somehow balance the diverse and often conflicting interests of companies and individual citizens in its territory. In this case, the Department of Fisheries and Oceans was charged with the responsibility of conserving the resource; the Department of Northern and Native Affairs was charged with the responsibility for improving the lot of native fishers; the Department of Industry and Small Business was charged with the responsibility for helping the boat builders and fishers now defined as small businesses.<sup>29</sup> In this array of interests, the one interest which did not create immediate profits — conservation — was least salient.

Processing companies were primarily concerned with capturing fishers and increasing their catch in what turned out to be, though briefly, changed and much more competitive conditions for their own operations. New companies emerged, backed by investments from Japan, and cash buyers attempted to pre-empt the processing companies' supplies on the

<sup>29</sup> John McMullan, "State, Capital, and Debt in the British Columbia Fishing Fleet, 1970-1982," in *Journal of Canadian Studies* 19(1) (Spring 1984): 65-88; and McMullan, "State, Capital, and the B.C. Salmon Fishing Industry," 107-52.

fishing grounds. Unionized shore-workers shared the concerns of their employers when raw fish failed to come through the processing facilities, and both the major union and the processors pressed the government to impose curbs on foreign investment.<sup>30</sup>

Banks, backed by government guarantees on loans to fishers, became major investors in the fleet during this period.<sup>31</sup> Once they became participants, government policies had to take their loans into account. A major conservationist policy would have diminished the likelihood of fishers paying their debts, and banks could be expected to offer resistance. By 1980, the unusual runs and the unusual market demand had diminished, and a renewed interest in conservation spurred the government to appoint a Royal Commission. The Commissioner, though assuming that the problem was the common property nature of the resource, called fishing "a privilege," and the recommendations involved royalties, quotas, new licensing restrictions, and other means by which the state, as manager of the resource, would tighten its management role over what had now become "state" and certainly was not "common" property. None of the recommendations would delimit the profits of the processing sector, and the "buy-back" provisions would reduce the risks for the banking industry which by 1980 was experiencing a high rate of defaults on its loans. Only the fishers would suffer, and only the fishers were blamed for their competitive behaviour.

### *Immobile Properties: Comparisons*

Since the argument is that the mobility of fish is the reason for their "common property" status, and their property status, in turn, the cause of resource depletion, it is instructive to consider what has occurred in both non-mobile resource sectors and non-resource industries.

Consider first the status of trees.

Forest lands in British Columbia are largely under the jurisdiction of the provincial state, which licenses companies to cut trees for their mills. Most licences have over twenty years' duration, the argument being that companies require long-term security of supplies before they will invest in processing plants. The state has responsibility for re-forestation, silviculture, and management, though under the new regulations instituted in

<sup>30</sup> Trevor Proverbs, *Foreign Investment in the British Columbia Fish Processing Industry* (Vancouver: Economics and Statistical Services, Pacific Region, Department of Fisheries and Oceans, 1978); *Update*, 1980; *Update*, 1982.

<sup>31</sup> McMullan, "State, Capital, and the B.C. Salmon Fishing Industry," 107-52.

1987, more of these responsibilities may be shifted to the companies. Throughout the history of this industry, the stumpage has been very low.

As with fish, this renewable resource was not renewed, and a lush softwood forest provided by nature has been depleted as companies cut and processed trees into lumber and pulp. The companies argue that had they privately owned the resource, they would have replanted it. But first, the evidence is far from overwhelming in favour of this proposition on the 5 percent of lands which have been privately owned; and second, the arrangement has been extremely profitable for the companies. They have paid a rent below the cost of replenishing the resource, taken little responsibility for management, and profited from extraction and sale of a relatively unsophisticated semi-processed material. In the economic downturn of the 1980s, with new technologies for pulping hardwoods elsewhere in place, several large American companies sold their properties and exited from British Columbia. Since the mills were now becoming obsolete, what in fact they sold were their timber-cutting rights. Obviously, if they can sell such rights, trees are not common property.

The forestry example raises two pertinent questions: what is the role of the state in a state-managed resource for which there are private harvesting companies, and why have private companies not replenished the resource when they had long-term harvesting rights?

The second question is probably easier to answer than the first: investments in the resource were not profitable in the short run, and the long run was just too long. Softwoods require between 50 and 100 years to grow to maturity; few investors are planning to reap benefits that far into the future. Investors in modern industry know that nothing remains constant in world markets, and valuable resources may have no value when technologies change, substitutes are developed, or cultural habits change. Indeed, investors promote some of the changes when they provide funds for technological development. In the forest industry, technological changes have made hardwoods viable sources of fairly high-grade pulp, and hardwoods, grown in less than ten years in some countries, are in plentiful supply.<sup>32</sup> In short, Scott's assumption that sole owners (in this case, owners of harvesting rights) with long-term commitments to an industry will seek to conserve the resource is demonstrably false: they are

<sup>32</sup> *Hay-Roe's PaperTree Letter* (Vancouver, November 1985); see also, for background, Patricia Marchak, *Green Gold: The Forest Industry in British Columbia* (Vancouver: UBC Press, 1983); and, for updating, "Public Policy, Capital and Labour in the Forest Industry," in Rennie Warburton and David Coburn (eds.), *Workers, Capital, and the State in British Columbia, Selected Papers* (Vancouver: UBC Press, 1988), 177-200.

as likely as multiple owners to exploit it at high speed and without concern for long-term conservation.

In both the fisheries and forestry, the problem apparently is not ownership, but management. In both, the state has been charged with management yet the state, as presently constituted, has failed to provide that. This is not caused by a lack of professional expertise: in both industries there are government bureaucracies filled with technically qualified experts. It is a problem, rather, of social goals and priorities. Since governments reflect (if they do not actively respond to) the social priorities of their most powerful constituents, the fundamental problem is that these — private companies which use resources as commodities — are disinterested in conservation.

But even this conclusion needs to be further examined. Consider several other industries which are not connected in any direct fashion with natural resource extraction, and where governments do not have a custodial role: automobiles, electronics, textiles, steel, for example. Here we discover that there are repetitive cycles of diminishing profits, over-production, technological change, and geographical movement toward lower-wage or lower-taxation regions. Competition not infrequently leads to the demise of an industry in a particular form, though it then may lead to a restructured industry and greater profits for fewer participants. The turmoil of this process in such industries as these cannot be attributed to common property even in the economists' sense of that term. In each case, the problem of diminishing profits, excessive productive capacity, and economic downturns occurs in the context of private property rights and either market competition or the manipulation of markets to reduce the risks of competition for privileged contestants.

The conclusion one might reach in surveying the outcomes of this competition among private property holders is that short-term profits are normal objectives, and long-term interests are met not by conservation (whether of resources, plant, or labour) but by alertness to alternatives purchasable with fluid capital. Tying up capital in resource conservation would rarely make sense in a privatized world.

The basic problem as far as the state is concerned is that the interests of private capital, combined with the numerous and diverse demands for public capital, do not dictate conservationist measures either. And for fishers, the one group in the fisheries for whom long-term conservation really does make sense, management rights have been divorced from use of the resource; far from mismanaging a common property, fishers are not permitted to manage the fishery at all.

*The Sea-Bed as Property*

To this point we have considered the sea, apart from a mention of the 200-mile limit for national sea-territory, as but the context for migratory fish and increasingly mobile fishers. Since the discovery of manganese nodules at great depths of international waters, mining companies, and nations that house them, have moved toward the privatization of the sea-bed. The arguments were not new in thrust: nations had already articulated the notion of property rights to ocean resources at the United Nations Law of the Sea Conferences in the late 1950s and early 1960s. But up to that time, the United States, in particular, was more concerned with shipping rights, the rights of oil companies to mine on continental shelves, military rights, and, but far down the line of priorities, the rights of national fishers.

As late as 1970, the U.S. was still voting in favour of a United Nations General Assembly resolution designating mining sea-bed resources as “the common heritage of mankind” to be exploited “in accordance with an international regime to be created.”<sup>33</sup> At that time it was still thought that both the manganese nodules (which contain rich mineral deposits) and oil were likely to be found within the continental shelf. Gradually it became apparent that this was not so, and the mining companies became very active in lobbying the American government to abandon its commitment to an international agency and “the common property” of the sea.

Marine scientists and environmentalists argued for open access for research and international authority over deep-sea resources, but such a stance was strongly opposed by countries interested in safeguarding their military research and applications. No guarantees for scientific freedom were contained in the U.S. Draft Seabed Treaty of 1970 or subsequent documents.<sup>34</sup>

As nations moved toward the 200-mile limit, the concerns of fisheries biologists, conservationists, negotiators concerned about habitat pollution and over-fishing, and internationalists concerned with a more just distribution of the world’s resources, were equally ignored or subjugated to the interests of private mining companies, oil companies, shipping companies,

<sup>33</sup> Ann L. Hollick, “Bureaucrats at Sea,” in A. Hollick and R. Osgood (eds.), *New Era of Ocean Politics* (Baltimore: Johns Hopkins University Press, 1974), 1-74; Barry Buzan and Danford W. Middlemiss, “Canadian Foreign Policy and the Exploitation of the Seabed,” in B. Johnson and M. Zacher (eds.), *Canadian Foreign Policy and the Law of the Sea* (Vancouver: UBC Press, 1977).

<sup>34</sup> Hollick, “Bureaucrats at Sea,” 26.

and the military establishments of dominant countries.<sup>35</sup> Fish ownership was a secondary concern: ownership of the sea-bed was the central issue. With so much of the world's sea-bed now "owned," the mobility of fish has much reduced importance. The scale of this "enclosures movement" is much greater than that of the English countryside in an earlier age, but its impact is similar. Far from being a common property, much of the sea and the fish that swim therein have been privatized.

### *Free Goods and Ecological Linkages*

Air may be one of the few free goods still in existence, since no one has successfully advanced a claim on it, no group has ever co-managed it, no one can be excluded from access and use, and no state has laid claim to it, though for the first time in history there are small attempts by international agreement to reduce damage to it. There can be little doubt that air pollution is an ecological problem of immense proportions, but again, is this because no one has property rights or because the property rights elsewhere and commoditization of everything else, including fish and forests, lead incidentally to deterioration of free goods?

Consider the linkages between forestry and air pollution. Forests are evaluated in terms of numbers, girth, height, age, and species of trees because these affect the commercial values; the oxygen-generating capacities are ignored. The problem here is not that air is free but that private property owners elsewhere in the ecological system have been permitted to externalize costs and accumulate profits without reference to the environment.

Like trees, other resources have been transformed from free goods to common properties, thence to private or state plus private properties, and with the transition, their non-commercial characteristics have been ignored in the accounting of costs and benefits. As long as their uses are entirely commercial and designed for the accumulation of capital, there is no mechanism for conservation. Ultimately the only way such mechanisms could be effectively introduced would be to either rediscover the inherent responsibilities in co-management of genuine common (communal) properties, or devise a system of public responsibility superseding private property rights.

<sup>35</sup> Barbara Johnson, "Canadian Foreign Policy and Fisheries," in *Canadian Foreign Policy and the Law of the Sea* (1977); Donald McRae, "Canada and the Law of the Sea: Some Multilateral and Bilateral Issues," in *Canadian Issues: Canada and the Sea* 3(1) (1980): 161-74.

*Summary*

This paper has argued that the depletion of fish stocks and forest resources cannot be blamed on their status as “common property.” Property, it is contended, following Macpherson’s argument, is a set of rights, socially determined and enforceable, and not to be confused with the things to which the rights pertain. Given this understanding but departing from Macpherson’s argument on the positive rights to not be excluded, I have accepted the proposition that “common property” is a contradiction if it literally means that no one may be excluded and implies no common management responsibilities. This argument is contrary to that proposed by Hardin with reference to the common pasturage in England, and widely cited by way of justification for blaming B.C. fishermen for the depletion of salmon.

Historically and in some contemporary small-scale hunting societies, common property involves enforceable co-management rights among users of resources on which all members depend for their livelihood. The invocation of the term on the grounds that fish are mobile and therefore cannot be physically owned until captured inhibits recognition of the structure of an industry for which fish are not food supplies but commodities, and processing firms purchase them regardless of how many fishers are engaged in the capture. Once fishers themselves are licensed, fishing becomes a privileged activity and the ownership of a licence delimits the rights of non-licensed individuals to fish; so, again, on that ground, fish cannot be regarded as common property.

One of the confusions that arises in some of the literature on the fisheries (and occasionally on forestry) is that government, or the state, is confused with the commons. It is argued here that the state is not the inheritor of the commons and is institutionally structured such that it cannot manage resources as if they were the commons. The state must respond to numerous and diverse private interests, some of which are detrimental to resources such as fish habitat; it must be concerned with the greater profits, resource rents, taxes, and employment, for example, generated in other sectors that may impinge on resource conservation.

When we look at other industries, we discover much the same cycle of excessive investment, surplus production, technological change, and elimination of competitors. This occurs in the forest industry where rights to harvest are contractual and the resource is stationary; it occurs in non-resource industries where governments are not cast in custodial roles. In these sectors the same problems as are found in the fisheries occur in the

context of privately owned property. It is suggested that these examples question the conventional wisdom about the long-term interests of private owners.

When we discover the fish habitat, we discover that much of it has been privatized and the property rights have been legally established under international law. Indeed, one might view the law of the sea as a contemporary enclosures movement.

Some resources may fall into a category here called free goods, to which no property rights apply. Air is the obvious example (there are few others remaining). Air is polluted, and it is argued here that the pollution does not occur because of its non-property status but because it is the context for private and commercial activities. The destruction of forests contributes to air pollution, and that destruction occurs through privatization of harvesting rights with no corresponding assignment of responsibility for sustaining the environment. In short, conservation of the earth, air, water, trees, and fish is impeded through privatization and transformation of nature into market commodities rather than because they are held in common.

If this argument is valid, then it follows that solutions to pollution and resource depletion are not to be found in further privatization. Needed instead is a system that builds in public responsibilities, specifies management obligations, and adjusts calculations of costs and benefits with reference to ecology.

Fishers in a commercial industry could not co-manage the resource precisely as did their ancestors in small communities. In some places, sufficiently isolated so that local communities could impose mutual restrictions, co-management is possible, as Berkes has demonstrated. But for most of the B.C. coast, fishers no longer inhabit specifically "fishing" communities; they reside in urban neighbourhoods and capture fish anywhere along the coast in high-powered, highly mobile vessels. Nonetheless, in the shock following the Pearse Report, fishers came very close to developing associations that could have been used for self-management purposes. The failure to assign them responsibility for management, while they were so organized and ready to accept it, was embedded in the general assumption that only government could perform this task. It was also contingent on the unacknowledged understanding that the present system involves a range of private interests beyond the fishers.

An alternative possibility would be to impose quotas not on fishers but on the processors. If they were disallowed excessive raw fish supplies, the capture fleet would decline and further capitalization of vessels would

probably cease. Likewise, if banks were obliged to accept loan defaults and disallowed the option of making further loans to either processors or fishers, the fisheries would decline as an economic sector in the provincial economy. Yet a further possibility involves provision of incentives to fishers entering other occupations; the funding of fish farms is along this line. More punitive damages for polluters of the habitat would probably contribute to better conservation. But ultimately all of these methods are stop-gap, punitive, or of dubious value. Missing in them is a positive move toward development of a management system that begins with concern for the total environment, and assigns priority to conservation over private accumulation.

In the fisheries, but even more in the fields of energy, mineral extraction, and forestry, we have accepted a system of social priorities that puts profits, employment, and a particular kind of economic development first; the costs to the environment have been externalized. We are now at a point in world history when those externalized costs are being experienced in polluted waters, dead sea mammals, poisoned fish, and a damaged atmospheric environment. When conservation of our resources is not the priority, where private profits are paramount, where private interests in the commodization of resources dictate resource policies, then resources will be depleted. It is not because they are common property that they suffer tragedies, but on the contrary, because private property has superseded the commons.