WHO PAYS THE PRICE?

The Sociocultural Context of Environmental Crisis

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Eskimo Whaling Commission meeting with Secretary Babbitt," Anchorage, August 20, 1993.

11. Even though all the leases in the Chukchi Sea are federally owned, the Governor's Office of the State of Alaska supports the federal leasing agency and oil industry on this issue.

12. See especially P. A. Miller, Dorothy Smith, and Pamela K. Miller, *Oil in Arctic Waters: The Untold Story of Offshore Drilling in Alaska*, Greenpeace, 1993.

13. National Academy of Sciences, *Assessment of the U.S. Outer Continental Shelf Environmental Studies Program; III. Social and Economic Studies* (Washington, DC: National Academy Press) 1992.

14. Kim Fararo, "ARCO's Inlet Find is Big-League," *Anchorage Daily News*, April 14, 1993.

15. U.S. Fish and Wildlife Service, *Comparison of Actual and Predicted Impacts of the Trans-Alaska Pipeline System and Prudhoe Bay Oilfields on the North Slope of Alaska* (Fairbanks: USFWS) 1987, p. 51.

16. Trustees for Alaska et al., *Oil in the Arctic: The environmental record of oil development on Alaska's North Slope* (New York: Natural Resources Defense Council) 1988; and Natural Resources Defense Council et al., *Tracking Arctic Oil: The Environmental Price of Drilling the Arctic National Wildlife Refuge* (New York: Natural Resources Defense Council) 1991.

17. "AOGA and ASTF Fund North Slope Air Quality Research," *Alaskan Update* 8(2): 1 (1990) (journal published by the member companies of the Lease Planning and Research Committees). While the cost of these efforts has all been borne by the increasingly environmentally conscious petroleum industry, the expenditures are relatively small considering the immense profits enjoyed by that industry—estimated in a study undertaken for the Alaska State Department of Revenue to be over $41 billion in the years 1967–1983 (NRDC 1991 op. cit. note 16, p. 11).

18. Chevron was able to drill this well under the terms of a short-term agreement between the U.S. Department of the Interior and the Arctic Slope Regional Corporation. Significantly, the land exchange took place in 1983, without public notice.

19. NRDC 1991 op. cit. note 16, p. 16.

20. It is referred to as the "1002 area" because section 1002 of ANILCA required the Secretary of the Interior to prepare a report to Congress on the renewable and nonrenewable resource potential of the area and to recommend whether further oil and gas exploration should be allowed. The report of the Secretary did recommend exploration. Hence, the continuing debate in Congress.

21. As social philosopher William Leiss has phrased it, "Individuals are led to misinterpret the nature of their needs and to misunderstand the relationship between their needs and the ways in which they may be satisfied" [William Leiss, *Under Technology's Thumb*, (Montreal: McGill-Queens University Press) 1990].

CHAPTER 17

DEMOCRACY AND HUMAN RIGHTS: CONDITIONS FOR SUSTAINABLE RESOURCE UTILIZATION

Erling Berge[1]

Editor's Note

Berge argues that human rights and democracy are essential components in a development process with sustainable development as its goal, and that the property rights regime governing resource utilization represents the key to institutional implementation of human rights and democracy in relation to a specific resource. In other words—environmental and social sustainability at the local level hinges upon resource management and use systems that are democratic decision-making systems, where resource users share power and authority in the decision-making process with resource regulators, and they do so in a flexible system that encourages continual assessment, revision, and change while protecting basic human rights. Long-term viability of institutions and the resources they protect are, of course, tied to the structure and context of the broader sociopolitical system. This essay is derived from an analysis of international and national development-related efforts to manage various resources—fisheries, game, agricultural soils, water, minerals, and so forth.[2]

Preface

Both human rights and democracy are used in this essay in a rather loose way: *human rights* to denote some minimum set of claim rights, privileges, powers, and immunities assigned to each and every member of a society. More precisely, this concerns "individual freedom, independent formation

of opinion, open and multiple channels of information, pluralist formation of associations, political rights of participation in the formation of policies and their implementation, social security, and access to health services and education for all."[3] *Democracy* is taken to mean some legitimate and orderly way of placing and replacing the people making the laws and wielding the powers of a state. Democracy is also implied by the United Nations Universal Declaration on Human Rights Article 21-1: "Everyone has a right to take part in the Government of his country, directly or through freely chosen representatives," and Article 21-3 "The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." In many connections, however, it is necessary to discuss democracy as an issue by itself, not the least because the enforcer of other human rights has to be a government of some sort.

Property Rights and Resource Utilization

Achieving ecological and economic ends at the same time is a difficult problem. An important approach to the problem is the property rights perspective on institutional development.[4] *Property rights*, as used here, refers to the legitimate and coherent system of formally or informally enforced rule and practices used for everyday appropriation of the culturally necessary means of subsistence.[5] An important ecological end is to protect the reproduction of a resource. If an ecosystem or a species is threatened by destruction through the way it is utilized, the problem is to change the institutional structure, that is, the systems of rights and duties governing the utilization of the resource, in a direction that makes it possible for the resource to renew itself. Renewal of a biological resource is of course linked to the more general concept of sustainable utilization. The institutional structure must somehow incorporate the interests of future generations. The actual resource users must be persuaded to take a long-term interest in the resource.

The definition of property rights shapes the motivations of people in important ways. But the wide variety and historical fluidity of property rights makes it necessary to be rather specific about what they are.[6] The practical political problem encountered in changing rights and duties is to find a just distribution among the various involved actors of the gains and losses the changes in regulation entails.

Analytically, private property can be seen as an ideal type where all rights, privileges, powers, and immunities relevant for some recognized and well-defined resource belongs to individuals or private juridical persons.

The government does not enforce any regulations of the use of the resource except guaranties for boundaries and security for transfers of property rights. This ideal type can be contrasted with the ideal type of state property where the state, embodying the public interest—and nothing else—has the same complete interest in the resource. The actual users of a resource are then only complying with direct regulations issued by the state bureaucracy.

In a modern welfare state, the property rights regime is neither close to the ideal typical private property nor to the state property. The debate concerns the division of rights into rights properly belonging to the state and rights properly belonging to private actors. Much of the ideological and political activities are directed at the demarcation and adjustment of the boundary between private and state interests. The results of the struggle are manifested in laws and regulations diminishing the rights and privileges of private actors, or securing and strengthening their legitimate and established rights and privileges. At the same time technological and organizational development creates new resources, new ways to utilize old resources, or new problems for the old utilization of resources. Consideration of which resource utilizations to guarantee, to tolerate, or to stop is a process that is never finished. The system of property rights in a society has to be redefined and confirmed in a continuous process.

Sustainable use of a resource system means, among other things, concern for the long-term survival of it. This suggests three necessary characteristics of any property rights systems: (1) the interests of the users/owners of the resource system have to be long-term. Long-term interests imply that (2) the users/owners of the resource system are secure in their tenure, and (3) consequences of bad user/owner decisions most severely affects those making bad decisions.

For the owners to take a long-term interest in the management of their property, a first requirement is security of tenure. Security of tenure is always a question of trust in the property rights regime, or, rather, the power which will ultimately enforce the owner's rights against illegal appropriation by nonowners (including the state). In a rule-of-law state, the power necessary for enforcing the rights must be controlled by a legitimate state agency. And the citizens must believe that this power will be used to guarantee the long-term validity of their rights. The trust in this guarantee is liable to how the state performs its tasks. In particular, it would seem a good test to watch the security of tenure in situations of conflicting interests between the state and any of its citizens. But security of tenure is not enough to secure sustainable utilization. The temptation of short-term gains will always be around. How can one avoid short-sighted decisions?

One way to induce a long-term view of the utilization might be to convince people that if they exploit the resources for a maximum short-

term gain, they or their children will in the end have to suffer negative consequences. A necessary requirement of the state would seem to include either noninterference if some owner comes to suffer negative consequences from bad resource management, or direct administration of a measured quantity of negative consequences itself.

Historically, noninterference seems to be the norm. A policy of noninterference would seem more feasible if the land (and in general all resources) were divided among many rather than among few owners. With many holders of property, the consequences of bad management will on average be less per decisionmaker and the learning potential, in terms of what is good management, larger. Usually the penalty of not taking the longer term view has been starvation and/or loss of property. Starvation does not seem to be a suitable penalty in contemporary society.

If most people are unwilling to contemplate consequences like poverty and starvation (or equivalent harsh measures) as the necessary outcome of bad decisions, if the state on humanitarian grounds finds that it must bail out those coming to suffer the consequences of unsustainable resource management, or if the property rights system allows the owners to transform the extracted resources into profits, regardless of whether they are extracted in a sustainable fashion, and invest them in other activities, then there is no long-term view guaranteed by privately held property rights. Without some penalty for unsustainable utilization of a resource, direct intervention—or at least strong regulation of the utilization of the resource—must be preferred even if the transaction costs then are considerably higher.

But how the distribution of rights and duties between the state and private actors ought to be is not independent of the organization of the state. A democracy will, for example, need a very sophisticated government as well as constituency if it wants to pursue a consequent long-term strategy for resource utilization by direct regulation. The hazard of buying votes and short-term peace from the various interest groups will always be threatening to develop into something similar to a "tragedy of the commons" situation, where an increasing number of loyal supporters begin to question the equity of the system and their own interest in contributing to it. This is one argument for relying on private property rights rather than state property rights. But even more it points to the importance of distributing the costs and benefits of the institutional structure defining property rights in a way acceptable to a large majority of the population.

Taxes, profits from resource utilization, and penalties from breaking the regulations must all seem to be distributed equitably. If noncompliance with the rules designed to ensure sustainable development entails significant losses of welfare, it is important to examine how the laws are enforced and experienced by those subject to them. If the laws or the enforcement of

them are perceived as unfair, the regulatory framework may be put into jeopardy with subsequent increases in the rate of noncompliance or increased policing costs. One way of keeping a check on how the enforcement of rules is conducted is to make the government accountable to those subject to its regulations. To further the trust in the property rights regime, the people depending on it need to have the power to change it.

Distributional Considerations

In an ideal world, resources would be distributed in such a fashion as to meet the needs of all resource users while ensuring the long-term viability of the resource base. Achieving equitable distribution is no easy feat. The principles guiding the construction of the state—the encouraging of long-term interests in a resource, the security of tenure benefits from a resource, the equitable distribution of benefits from a rescuer, the equitable distribution of the costs of regulation, and the just penalties for breaking the rules of the resource regime—suggest that there will be many processes contributing to inequality. Persons endowed with the same resources at birth will end up unequal at death. Equality of distribution at any one moment in time is therefore not enough and thus is probably the wrong measure to use in judging the consequences of the distribution for the sustainability of a resource use. But on the other hand, one cannot expect that people without resources to manage will do much to support a goal of sustainable resource management. Rather, one should expect that the costs of policing and protecting the interests of the resource owners could become impossibly high. A democratic government will not be able to find support for the necessary taxes, and the trust in the government will also begin to erode among resource owners.

It is difficult to see how sustainable resource management can be achieved by a state unless its citizens have rights to the resource needed for an acceptable level of living. Since decisions on resource management leading to unsustainable use of the resource ought to entail loss of at least some, and perhaps all, of the resources, and since support for the long-term interest in the utilization of the resource makes redistribution a difficult problem, the critical question must be the allocation of resources to new members of society. If there is no mechanism allocating a necessary minimum of resources to new citizens, the brilliant resource management of the old dying members will do nothing to secure the long-term survival of society. Since the amount of natural resource is finite, and since the state has to be very hesitant about changing established property rights, the solution must be sought in other rights than the rights to direct use of some natural resource. The state cannot in each generation redistribute the rights to a renewable resource without affecting the time perspective of the

actors in their decisions on its use. The long-term interests in the resource will tend to disappear. Thus the rights to other types of resources, like the human rights to education and work, would seem to be better candidates than land for securing the necessary minimum to everybody. But resources like education and work are not tangible like land. The utility of an education and the availability of work depends upon the total organization of society. Here we again return to the problem of trust. People must believe in their futures. The resources they command must be seen to be something also in the future.

The more general problem facing the governor of a resource system then is to maintain trust in the governor: the legitimization of its rule. The actual resource users must feel that the regulation of the resource use is fair and they must feel secure in their tenures. They must see that the distribution of the costs of maintaining the system is equitable, and they must see that noncompliance with the necessary regulations in punished justly. But how is it possible for people to trust that the commitment of the state to any particular policy really is long-term and sincere? How can they monitor the equity of taxes and the justice in the prosecution of the various types of free riders? How is it possible to ensure that politicians and bureaucracy do not misuse their power (military forces, police, corrupt use of tax funds, etc.) or that the political processes do not produce some kind of "tragedy of the open-access state"?

Insofar as a formal institutional framework shall be relied upon to supply the motivations for a sustainable resource utilization, questions like these have to be posed and answered.

Given the many possibilities for failure in a system of people, rules, and power, it seems to me that a changeable government, one which is based on institutional flexibility, is necessary. Democracy would seem to be the most orderly way of doing just that: changing the government without disrupting the daily life. Only some "statelike" institution, a system-responsible actor, supported by actual resource users will be able to secure a sustainable utilization. Elinor Ostrom argues that for some resource systems the best way of approaching a sensible resource utilization is to encourage and enable institutions of self-government.[7] Neither state regulation nor private ownership of the resource will suffice to secure the sustainable use of it.

Democracy alone is not enough to guarantee either sustainable resource utilization or trust in the state. Some basic rights and rules of conduct, whether we call them commandments of God or human rights, must be above and outside the scope of the democratic decision-making process. Some decisions must be "unlawful" no matter how big a majority votes for them.

Notes

1. Abstracted by Barbara Johnston from a paper presented to The Third Common Property Conference of the International Association for the Study of Common Property, Washington, D.C., September 18–20, 1992.

2. For further reading, see Fikret Berkes, editor, *Common Property Resources: Ecology and Community-Based Sustainable Development* (London: Belhaven) 1990; Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press) 1990; Bonnie J. McCay and James Acheson, editors, *The Question of the Commons: The Culture and Ecology of Communal Resources* (Tucson: The University of Arizona Press) 1987; Evelyn Pinkerton, *Cooperative Management of Local Fisheries: New Directions for Improved Management and Community Development* (Vancouver: University of British Columbia Press) 1989; and The Ecologist, *Whose Common Future? Reclaiming the Commons* (Philadelphia: New Society Publishers) 1993.

3. Eide Asbjørn, "The Four Freedoms and Human Rights in the New International Order," in *The Future of Human Rights Protection in a Changing World*, edited by Eide Asbjørn and Jan Helgesen (Oslo: Norwegian University Press) 1991, p. 4.

4. For example, Erling Berge, *Some Notes Towards a Property Rights Perspective on Institutional Change in the Welfare State* (Oslo: Institute of Applied Social Research) 1990, p. 9; Daniel W. Bromley, *Environment and Economy* (Oxford: Basil Blackwell) 1991; Thráinn Eggertsson, *Economic Behavior and Institutions* (Cambridge: Cambridge University Press) 1990; Christopher J. N. Gibbs and Daniel W. Bromley, "Institutional Arrangements for Management of Rural Resources: Common Property Regimes" in *Common Property Resources: Ecology and Community-Based Sustainable Development*, edited by Fikret Berkes (London: Belhaven) 1990; Ostrom 1990 op. cit. note 2.

5. After Maurice Godlier, *The Mental and the Material* (London, Verso) 1984, pp. 71–121.

6. For example, Berkes 1990 op. cit. note 2; Piers Blaikie and Harold Bloomfield, editors, *Land Degradation and Society* (London: Metheun) 1987; Carl J. Dahlman, *The Open Field System and Beyond: A Property Rights Analysis of An Economic Institution* (Cambridge: Cambridge University Press) 1980; Godlier 1984 op. cit. note 5; Garret Hardin, "The Tragedy of the Commons," *Science*, 162 1234–1248 (1968); Robert M. Netting, *Balancing in an Alp: Ecological Change in a Swiss Mountain Community* (Cambridge: Cambridge University Press) 1981; Douglass C. North, *Institutions, Institutional Change, and Economic Performance* (Cambridge: Cambridge University Press) 1990; Ostrom 1990 op. cit. note 2; Audun Sandberg, "Fish for all: CPR-problems in North Atlantic Environments," *NF-arbeidsnotat* 1104/91, Mørkved, Nordlandsforskning, 1991.

7. Ostrom 1990 op. cit. note 2.