

A theoretically grounded classification of European commons

Erling Berge,
Norwegian University of Life Sciences, Aas
Margherita Pieraccini,
The University of Exeter, Law School, Cornwall Campus

2011

© Erling Berge

1

Diversity of commons

- Want to determine which differences make a difference
- Using observations from
 - England and Wales
 - Italy
 - Navarra
 - Norway (mostly Norway today)
- This is an interim report

2011

© Erling Berge

2

Theory

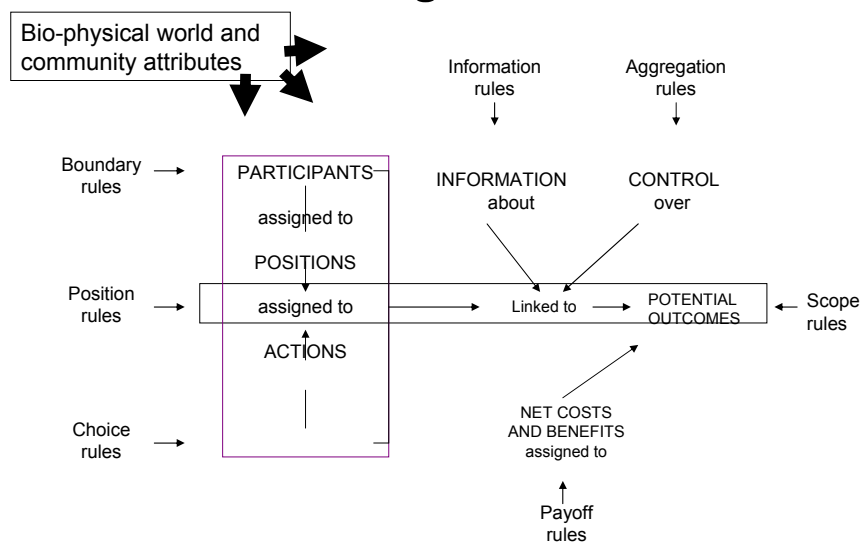
- Differences in institutions are more important than bio-physical diversity
 - and politically more easily subject to design
- Taking Ostrom's (2005) classification of rules as the point of departure
- The ADICO syntax of rules
 - Differentiating rules, norms, strategies

2011

© Erling Berge

3

Rules affecting action situations



2011

© Erling Berge

4

The vertical dimension of rules

- In a commons authorised actions obtain by using
 - Operational rules created by
 - Collective choice rules crafted by
 - Constitutional rules accepted by all
- Constitutional choice and Collective choice create authoritative relations (e.g. property rights in harvest from a commons)

2011

© Erling Berge

5

Focus on the constitutional level

- Assuming that bio-physical factors have small impact on the constitutional level
- The constitutional level may for some (types of) rules lie at the level of the commons organisation for other rules it will be located at local state level and for some at the central state level

2011

© Erling Berge

6

7 types of rules

Position Rules	Legal standing of the commons unit, organisational elements/ roles of the unit (board of governors, monitoring and sanction system)
Boundary Rules	Area, resource specification, membership criteria
Choice Rules	Legal competences of the commons unit
Aggregation Rules	Decision procedure for collective and operational choice

2011

© Erling Berge

7

Information Rules	Reports that are required; meetings that are obligatory; Information that is obligatory available to all; information that is publicly available, but at a cost
Payoff Rules	For profit or not, allocation of management costs, psycho-social and cultural values
Scope Rules	Outcomes that must, must not, or may obtain. The rules may concern equity in access, economic productivity, ecological sustainability, or ameliorating inequities

2011

© Erling Berge

8

Examples of legal mechanisms I

- Boundary rules
 - The ground
 - The specific material resources
 - The remainder
- Position rules
 - Commoner
 - Place of living
 - Land holding within a suitably bounded area
 - Type of economic activity within a suitably bounded area
 - Historical legacy (customary law)
 - Hereditary right
 - Landlord
 - Owner of the ground

2011

© Erling Berge

9

Examples of legal mechanisms II

- Choice rules
 - The landlord is not allowed to sell or lease the lands that the commoners exploit
 - The commoners are not allowed to sell timber on the market
- Information rules
 - The roll of voting members shall be made public by the end of January in the year of election
 - Promulgation for a larger group of commoners can be done in the official gazette

2011

© Erling Berge

10

Examples of legal mechanisms III

- Aggregation rules
 - The board can decide if a majority of its members but no less than 3 are present
 - Decisions by the board cannot be appealed
- Payoff rules
 - Commoners can get timber from the commons sawmill at self-cost
 - Surplus income of the commons shall first go to the improvement of the commons, including purchase of land

2011

© Erling Berge

11

Examples of legal mechanisms IV

- Scope rules
 - Rights of common cannot be severed from the tenement holding it
 - Rights of common can be exercised only to the extent needed by the agricultural activities on the tenement holding the rights
 - If the sum of needs exceed the capacity of the commons each must reduce the exploitation proportionately

2011

© Erling Berge

12

Rules that do not fit:

- In case of boundary disputes with neighbouring landowners, the case **may** be solved by the rules of the act on land consolidation
- Joining two neighbouring commons can be done by a written agreement and a proposal of new bylaws that must be approved by 2/3 in each commons

2011

© Erling Berge

13

- If a commons buys land it can be added to the commons by registered and promulgated in a certain way
- Above it was noted that decisions by the board of the commons cannot be appealed but
- In certain cases such as allocating land for building of a summer farm building commoners disagreeing can demand judicial review
- Decisions by the ministry based in this act cannot be appealed

2011

© Erling Berge

14

Concluding

- The paper is rather far from being in a final form
- The 7 types of rules identified by Ostrom are they sufficient? Are they an exhaustive classification?
 - Is there such a class as **procedural** rules?
 - Is there such a class as **ecological** rules?
- **The effort to think about legal mechanisms has been more complex than expected and (hence?) hugely stimulating, we will continue with this**