

Discussing Some Elements of Elinor Ostrom and Jean-Philippe Platteau's Ideas of the 'Commons Dilemma'.

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1. Introduction

When I first received the invitation to Lund University, I was flattered but also somewhat apprehensive. I have a confession to make: I'm neither a political scientist or an economist. And I'm not a game-theory specialist. I have been working on land tenure issues and local politics in West Africa, in particular Niger and Burkina Faso, and now since a few months back, Ghana. Mainly from a political sociology or legal anthropology perspective. And from that perspective there are a few points that the circulated papers inspire me to raise. And I'm grateful to Staffan Lindberg and Ellen Carlsson for being given this opportunity to do it.

However, before that, I'll like to draw out two central achievements that our key speakers have accomplished in their work, as I see it and know it.

First, with the aim of simplifying things, social scientists often succumb to the temptation of organising the world in binary oppositions. In the field of property rights, the binary opposition between private and public has been a dominant epistemological scheme. However, reality resists such simplistic dichotomies, and it is much to Elinor Ostrom's credit that more sophisticated, more complicated schemes have gained ground over the past decade.

Another dominant epistemological deep-structure in social science tend to be teleology. That the world is moving in a specific pre-ordained direction. Again, in the field of property rights, the idea of an irreversible movement towards individual private property

has informed intellectual thinking and policy in a comprehensive way. Again, reality seems to resist a simple and seamless move in that direction, and it is to Jean-Philippe Platteau's credit that this basic assumption has been systematically challenged.

So we have papers from two scholars who are in the habit of challenging received wisdom and nice simple notions about property and its management. Based on this, I feel tempted to push the argument a little further and question some of the assumptions that the papers harbour, nonetheless.

First I'll like to talk about the notion of rules and institutions and their negotiation.

Secondly, I'll like to talk a little about the social and political space in which these property institutions can be found.

Thirdly, I just briefly want to touch on the hierarchy of rules

2. Rules and Institutions

In the papers distributed for this seminar there is a certain infatuation with 'clear rules'. Thus, Platteau writes somewhere in his paper:

In short, what is required is a shift from a status-based and coercive society that relies on mutual control, respect of ranks, and strictly enforced codes of generosity, to an open society where free entry and exit, democratic governance (including acceptance of dissent), competence criteria, and socio-economic differentiation are used as guiding principles or expressly allowed to operate. (Platterau's paper p. 21)

In a similar vein, Ostrom writes:

'Design principle 1 - having rules that clearly define who has rights to use a resource and the boundaries of the resource - ensures that appropriators can clearly identify anyone who does not have rights and take action against them' (Ostrom 1999, p. 17)

This request for clear rules is noble enough, but it is almost as advising poor people to get rich. The trick is in the *how*. In the *process*. How do rules (clear or fuzzy) come about ?

Rules and norms have an *attractive ambivalence* about them. On the one hand, social institutions constitute the fixtures of society, delineate boundaries and limits and signify the 'predictable'. On the other, these very institutions, limits and fixtures are in a sense the primary terrain for efforts directed at change and rearrangement. This tension between people's efforts to solidify, entrench and render social institutions predictable, and efforts to challenge, contest and evade them – and through innovation institutionalise yet others – is not only the generator of social reproduction and change but one of the central puzzles in social theory and analysis.

The fact that some institutions, rights and social relations appear to endure and remain stable or clear is not a sign that nothing is happening. On the contrary! Various actors, individuals and organisations are *actively reproducing* these social relations.

Two points must be made here. First, social institutions such as property regimes are not 'things' which are there or not, they are what people *do*. Practice is, as it were, a continual interpretation and reinterpretation of what the rule really means (Taylor, 1995 178). And second, institutions are only as robust, solid and enduring as the ongoing reproduction or re-enactment which enables them to persist. One might lose sight of this when talking about 'old' institutions as if they were perpetuated by some mysterious force. They are no more solid than people make them. Consequently, and contrary to what the language in some of the contributions to the debate on land tenure security might lead one to believe, securing rights is not a 'single-event'. On the contrary, we are dealing with 'life-time-arenas'. One does not acquire land tenure security once and for all. Or establish clear rules once and for all. Much of the anthropological literature (in the

broad sense) demonstrates how rights depend on social relationships and how they, in turn, must be cultivated to continue to yield the various rights. This is hard work. It is probably as difficult to establish a successful strategy for the actors as it is for the spectators to identify it. While people reflect on their situation and communicate with each other, most of us do it without a total vision of the possible options or knowledge of the possible outcomes.

Property rights may be successfully vindicated and publicly recognised. But achieved rights are not necessarily rights for good. While the successful property owner or owners in CPR regimes may not aim for change but be content with the status quo, a range of processes designed to secure the situation must be engaged in. Consequently, it is not only change that requires action - the reproduction of a certain state, the maintenance of social relations and the continuous enjoyment of rights also require it. Stability is not a sign that nothing is happening. Many of the stratagems employed in endeavours to stake a claim may, thus, continue once a claim to property has been recognised, though often in more subtle forms. The actual use of the resource, and maintenance of relations with politically important people and thus with the institutions of public authority, sanctioning property rights would appear to be important.

We always negotiate, even when we do not know that we are negotiating. In any social situation of opposition – however minute – acts of subversion or compliance, acts of opposition or support, acts of evasion or confirmation, and acts of transgression or inculcation are all ways of (re-)negotiating a specific order. My claim is not that everything is fluid or that rules are intrinsically fuzzy around the edges, though *practised rules* most often are. So even if rules are clear, they still need active reproduction, in fact they are rules or institutions because they are reproduced. And reproduced in a dynamic context - so when people *do* (sic!) rules it is not in a mindless repetition but rather in a conscious pursuits which produce patterns. So in that sense, rules are not clearer than peoples efforts to uphold them and change them. In general, rules are *not* merely the result of explicit communication and agreement. They are the resultant pattern of

intended and un-intended consequences of the pursuit of more or less conflicting interests.

Moreover, in many contexts several competing normative orders may be brought to bear to legitimise a specific claim, and several groups and even institutions may compete over the jurisdiction to settle disputes and establish norms by precedent (I'll return to this in a minute). This obviously produces a broad array of processes in which people may engage to pursue their interests. These range from low-level tension, where people aim at pre-empting competing claims by performing and establishing legitimising symbols; to open disputes and conflicts handled in formal state mandated or supervised courts. In this sense, the issue of land and other natural resources is not unique *per se*, but is one of a range of issues over which political and legal struggles intertwine, where local powers and less localised power structures interact, and where political and cultural symbols of power and authority are brought into play. A central element is often people's social identity, which may entitle them, if not to land, then at least to claim it. This means that social identities become a contested terrain, and that seemingly simple and clear categories such as 'first comers' and 'late comers' become the objects of intense and often refined negotiation. One can have stayed put 'forever' and yet remain a 'legal minor' in terms of rights and, conversely, one can be successful in building up a status of autochthony. Here, some people have *clear* interests in *fuzzy* rules.

My focus on negotiation and dynamic processes could produce an image of a negotiating society, populated by actively engaged and imaginative people testing out various options to improve their livelihood. However, while negotiations are certainly a feature of social life (and a strikingly vibrant one when you look at African social life), and while people actively engage themselves against heavy odds, I do not want to celebrate negotiation of rules and the social order as such. Negotiation rarely takes place between complete equals. Real life is not a level playing ground, and just as poor and disadvantaged people may sometimes negotiate improvements to their lives, these may just as swiftly be negotiated away again. Nonetheless, norms, rights and identities are subject to

negotiation. Therefore, friction, tension, and fuzziness seem to be a more likely hypothesis than clarity.

This leads me to my second observation

3. Social space - political space

What is character of the social space in which common property is managed ?

Ostrom's papers seem to suggest that in order for clarity to obtain and for communication to flow, units are bound to be small, and though Ostrom mentions 'larger regimes' I get the impression that we're facing a 'technical challenge' more than a 'political one'. In Platteau's paper a similar argument is put forth about the 'upper limits of CPR'. I find this extremely significant. However, I'm uneasy when we begin to 'assume away' society into which various CPR management arrangements are nested. In contrast, Platteau's paper is quite explicit about society as he argues for the need '[t]o curb the obnoxious influence of local elites' (and to do so through 'a strong central government ... that is determined to confront the clientelism of rural areas in an environment rife with rent-seeking opportunities (p 24). But the sweeping generalisation and even essentialisation in categories of traditional and modern society in Platteau's paper is unsettling, and not exactly matching my field experience of much more entangled rationalities and symbols, and dexterous and accidental situational composition of the cultural props of legitimacy. And this is not to say that there is no rent-seeking.

But there is a question about these local elites which is even more closely linked to property (or institutions) than money and rent-seeking: that is the question of authority.

In fact, I think we need an analytical approach where property and the institutions which sanction it are researched simultaneously. The point is that property and authority are established through one and the same process, one as the result of the other. Thus, as

resource users try to solidify their rights - attempting to turn access into property - through some kind of public recognition of their claims, politico-legal institutions also attempt to solidify their legitimacy in the institutional fabric of local politics or in a wider context. Often, various institutions compete over jurisdiction in the process of granting or expropriating property, and property disputes inevitably feed into larger political competition.

As land tenure and property are integral to larger social, political and economic processes the key question becomes ‘who has the authority to sanction property?’ *Property is never just there; just as authority is never just there.* It is my contention that the process of recognition of property rights by a politico-legal institution simultaneously constitutes a process of recognition of the legitimacy of this institution. These processes work in tandem: they fail and succeed together. In this perspective property and politico-legal institutions, or social norms and the state are essentially precarious. Property is only property if socially legitimate institutions sanction it, and politico-legal institutions are only effectively legitimate if their interpretation of social norms (in this case property rights) is heeded. Hence, public authority is being constructed in the imagination, expectation, and everyday practices of ordinary people, and in the process of *their* recognition of that authority. This also means that if hitherto hegemonic institutions which have guaranteed property rights cease to be sufficiently powerful, the property they guaranteed becomes more uncertain. Seemingly trivial actions by individuals can undermine state policy and the legitimacy of state institutions by simply not respecting the policy and taking their justice-business elsewhere. Property and authority are constantly at stake. *And we are dealing with a hierarchy of interrelated struggles.* Now, while game-theory gives us valuable insight into how individuals react vis-à-vis each other and in groups it does not always seem to be the most fruitful approach when we are facing issues of a complex and, particularly, a *hierarchical* nature. It remains a ‘three-men-and-a-cookie-perspective’. As I see it, it is illusory to try to understand property regimes - let alone engineer them - if the hierarchical nature of the institutional context is not taken into account in full. For this purpose I suggest some form of political economy-analysis which sees *power* as a central concept, and *conflict* and *un-clarity* as facts of life and not annoying creases to be ironed out.

4. Hierarchy of Rules

This leads me to the third and briefest, comment. In addition to the hierarchy between rules and authority, another hierarchical aspect of institutions merits attention.

In fact, it is useful to distinguish between two kinds of rules, namely 'primary' and 'secondary' or 'constitutional'. While the primary rules deal with rules of behaviour in a broad sense (prohibitions, obligations, permissions, etc.), the secondary rules deal with how rules are established, changed or annulled, and how the political institutions work and operate. In any society primary and secondary rules co-exist. Now, it is one thing that primary rules are unclear, but the truth is that in many places in poor parts of the world, constitutional rules - the rules of how to make rules - are equally unclear, contested and precarious. They are attempted established in a very conflictual process. So when 'we', observers, outsiders and academics advocate clear rules, the rules for how such clear rules should be established are themselves muddled.

5. Closing

Let me finish by saying that I found the papers challenging and very ambitious, and, maybe, *too* neat. Burdened as they are by the theme of this seminar - 'What is the Solution' with a big S – fuzziness, ambiguity, conflict and fluidity tend to become 'institutional noise'. Good clear models tend to turn down the 'noise', however, once we step out of the model again the noise becomes overwhelming. It is my belief that we can learn a lot from the 'noise' itself, in fact if 'we' are to 'make the commons work' we will have to better understand the 'noise' and if possible work *with* it.

Thank you.

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This discussion draws on the following works:

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