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———— VOLUME II ————

Ronald Rogowski

# Comparative Politics and the International Political Economy Volume II

*Edited by*

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**Part I**  
**Issues in Economic Growth**



# [1]

## *The Property Right Paradigm*

### INTRODUCTION

ECONOMICS textbooks invariably describe the important economic choices that all societies must make by the following three questions: What goods are to be produced? How are these goods to be produced? Who is to get what is produced? This way of stating social choice problems is misleading. Economic organizations necessarily do resolve these issues in one fashion or another, but even the most centralized societies do not and cannot *specify* the answer to these questions in advance and in detail. It is more useful and nearer to the truth to view a social system as relying on techniques, rules, or customs to resolve conflicts that arise in the use of scarce resources rather than imagining that societies specify the particular uses to which resources will be put.

Since the same resource cannot simultaneously be used to satisfy competing demands, conflicts of interest will be resolved one way or the other. The arrangements for doing this run the full gamut of human experience and include war, strikes, elections, religious authority, legal arbitration, exchange, and gambling. Each society employs a mix of such devices, and the difference between social organizations consists largely in the emphasis they give to particular methods for resolving the social problems associated with resource scarcity.

Capitalism relies heavily on markets and private property rights to resolve conflicts over the use of scarce resources. These fundamental characteristics of an idealized capitalistic system have been taken for granted by most mainstream economists even though the discipline of economics developed contemporaneously with Western style capitalism. It is unfortunate that the study of the underpinnings of capitalism has been left by default to its critics on the left.

But recent years have witnessed increasing attention to the subject of property rights and to the beginning of a somewhat different approach to the analysis of social problems that find their source in

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scarcity. Three questions are suggested by this growing literature: (1) What is the structure of property rights in a society at some point of time? (2) What consequences for social interaction flow from a particular structure of property rights? and, (3) How has this property right structure come into being? Economic historians can contribute very much to overcoming our ignorance about the answers to these questions, and our purpose here is to facilitate historical research on these problems by clarifying somewhat the content of these questions.

### THE STRUCTURE OF RIGHTS

In common speech, we frequently speak of someone owning this land, that house, or these bonds. This conversational style undoubtedly is economical from the viewpoint of quick communication, but it masks the variety and complexity of the ownership relationship. What is owned are *rights to use* resources, including one's body and mind, and these rights are always circumscribed, often by the prohibition of certain actions. To "own land" usually means to have the right to till (or not to till) the soil, to mine the soil, to *offer* those rights for sale, etc., but not to have the right to throw soil at a passerby, to use it to change the course of a stream, or to *force* someone to buy it. What are owned are socially recognized rights of action.

The strength with which rights are owned can be defined by the extent to which an owner's decision about how a resource will be used actually determines the use. If the probability is "1" that an owner's choice of how a particular right should be exercised actually dominates the decision process that governs actual use, then that owner can be said to own absolutely the particular right under consideration. For example, a person may have an absolute right to pick apples off a tree, but not to prune the tree.

The domain of demarcated uses of a resource can be partitioned among several people. More than one party can claim some ownership interest in the same resource. One party may own the right to till the land, while another, perhaps the state, may own an easement to traverse or otherwise use the land for specific purposes. It is not *the* resource itself which is owned; it is a bundle, or a portion, of rights to *use* a resource that is owned. In its original meaning, property referred solely to a right, title, or interest, and resources could not be identified as property any more than they could be identified as right, title, or interest.

Distinct from the partitioning of the domain of uses to which a resource may be put is the decision process that may be relied upon to determine that use: The exercise of a particular right may depend on a decision process in which many individuals share, such as in the use of majority voting. The right to vote may be exercised individually, but it is the pattern of votes by many individuals that determines the way in which a right to use a resource will be exercised.

There are two important questions that can be asked about the structure of property rights in a society. The first asks which property rights exist. There may exist a particular right of use in a society that did not exist earlier or that does not exist in other societies. For example, early in the history of radio, users of frequencies did not own the right to prevent members of the community from broadcasting on these same radio frequencies. Any person who wished to could broadcast on any frequency, and that is still true today for certain bands of radio frequencies. The right to offer heroin for sale on the open market does not exist in the United States although it may in other countries. The right to advocate particular political doctrines exists in greater degree in the United States than in Russia. (It should be noted that the right to advocate is a right to use resources, for no advocacy could take place without the *use* of a place and other facilities.)

The second question calls attention to the fact that the identity of right owners may vary. Perhaps the most important ownership distinction is between state (public) ownership and private ownership. An easement right may be owned by the state or by an individual. The right to deliver first class mail is owned by the state, whereas the right to board troops without permission is not. Needless to say, the classification of social systems according to the degree of centralization of control is closely related to the degree to which property rights are owned exclusively by the state.

There is some ambiguity in the notion of state or private ownership of a resource, because the bundle of property rights associated with a resource is divisible. There can and does exist much confusion about whether a resource or "property" is state or privately owned. Some rights to some uses of the resource may be state owned and others privately owned. While it is true that the degree of private control is increased when additional rights of use become privately owned, it is somewhat arbitrary to pass judgment on when the conversion to private control can be said to change the ownership of the



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bundle of rights from public to private. The classification of owners can be carried beyond the important state and private dichotomy. Corporate, school, and church owners of property are also of interest. The structure of rights can have important consequences for the allocation of resources, some of which we now illustrate.

## THE SOCIAL CONSEQUENCES OF THE STRUCTURE OF RIGHTS

The significance of which rights exist can be appreciated by contrasting situations in which there is and is not a right to exclude. We shall use the phrase "communal rights" to describe a bundle of rights which includes the right to use a scarce resource but fails to include the right of an "absentee owner" to exclude others from using the resource. Operationally this means that the use of a scarce resource is determined on a first-come, first-serve basis and persists for as long as a person continues to use the resource. The use of a city sidewalk or a "public" road is communal, and the rights to till or hunt the land have been subjected to this form of ownership frequently. Often communal ownership is technically associated with state ownership, as in the case of public parks, wherein the state technically has the capability of excluding persons from using its property. If this right is exercised by the state frequently, as it is on military reservations, then the property right is more properly identified as state owned, but if the right to exclude is seldom exercised by the state, as in public parks or thoroughfares, then as a practical matter the users of the resource will treat it as communal. Communal rights mean that the working arrangement for the use of a resource is such that neither the state nor individual citizens can exclude others from using the resource except by prior and continuing use of the resource. The first driver to enter the public road has a right of use that continues for as long as he uses the road. A second driver can follow the first but cannot displace or exclude him.

The difficulty with a communal right is that it is not conducive to the accurate measurement of the cost that will be associated with any person's use of the resource. Persons who own communal rights will tend to exercise these rights in ways that ignore the full consequences of their actions. For example, one of the costs of hunting animals, if they are not superabundant, is the resulting depletion in the subsequent stock of animals. This cost will be taken into account only if it is in someone's interest to do so. This interest is provided

if someone can lay claim to or benefit from the increase in the stock of animals that results from a curtailment in his hunting activities. Under a communal right system anyone who refrains from hunting does so not to his benefit but to the benefit of others who will continue to exercise their communal right to hunt. Each person, therefore, will tend to hunt the land too intensively and deplete the stock of animals too rapidly.

Often the exercise of communal rights forces persons to behave in ways that are thought to be immoral. In 1970, the newspapers carried stories of the barbaric and cruel annual slaughter of baby seals on the ice floes off Prince Edward Island in the Gulf of St. Lawrence. The Canadian government permitted no more than 50,000 animals to be taken, so hunters worked with speed to make their kills before the legal maximum was reached. They swarmed over ice floes and crushed the babies' skulls with heavy clubs. Government offices received many protests that the seals were inhumanely clubbed (by humans) and often skinned alive. The minister of fisheries warned the hunters of the strong pressure he was under to ban the hunt and that he would do so unless the killing methods were humane in 1970. Clearly, it is not the hunters who are to blame but the regulations governing seal hunting that impose a communal right to hunt on hunters until 50,000 baby seals have been taken. The first 50,000 animals are offered free on a first-come, first-serve basis, a rationing system that is bound to encourage rapid hunting techniques and to make a condition for success the degree to which the hunter can be ruthless.

The problems posed by communal rights are abundantly clear when we analyze the causes of pollution. Since the state has invited its citizens to treat lakes and waterways as if they are free goods, that is, since the state generally has failed to exclude persons from exercising communal rights in the use of these resources, many of these resources have been overutilized to the point where pollution poses a severe threat to the productivity of the resource.

An attenuation in the bundle of rights that disallows exchange at market clearing prices will also alter the allocation of resources. The interests pursued by men are both varied and many. If a price ceiling or price floor prevents owners from catering to their desires for greater wealth, they will yield more to the pursuit of other goals. For example, effective rent control encourages owners of apartments to lease them to childless adults who are less likely to damage their

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living quarters. Effective rent control also prompts landlords to lease their apartments to persons possessing personal characteristics that landlords favor. In a Chicago newspaper, the percentage of apartment for rent advertisements specifying that the apartment was for rent only on a "restricted" basis or only if the renter purchased the furniture rose from a pre-war low of 10 percent to a wartime high of 90 percent during the period of World War II when rent control effectively created queues of prospective renters. Attenuations in the right to offer for sale or purchase at market clearing prices can be expected to give greater advantages to those who possess more appealing racial or personal attributes.

The reallocation of resources associated with the absence of a right to exclude and the inability to exchange at market clearing prices is attributable to the increase in the cost of transacting brought about by these modifications in the property right bundle. A price fixing law raises the cost of allocating resources vis-à-vis the price mechanism and, therefore, forces transactors to place greater reliance on non-price allocation methods. This is obvious; but not equally obvious is the role played by transaction cost when the right to exclude is absent.

Consider the problem of congestion during certain hours in the use of freeways. No one exercises the right to exclude drivers from using freeways during these hours. The right to drive on freeways is a communal right. But drivers who desire less congestion are not legally prohibited from paying others to use alternative routes during these hours. This right system, however, encourages drivers to let someone else pay persons to use alternative routes, since those who do not pay cannot be excluded from the use of the freeway under a communal right system. The communal right system raises transaction cost by creating a free rider problem. Moreover, even if some temporary reduction in congestion is purchased, there may be many persons not now using the freeway who are attracted to it by the temporary reduction in congestion. The supply of freeway space is very likely to create a demand for its use under the communal right system because these new users cannot be excluded. They also must be paid to return to alternative routes, and this burdens the allocation system with additional costly transactions. A right system that includes the right to exclude nonpayers, such as is possible with tollroads, eliminates both these sources of high transaction cost. Persons not now using the road can use it only if they value the route