

6. Towards a commons theory of property

After having laid the foundations for an ecological understanding of freedom and some preliminary remarks on a more profound notion of commons, I believe it is necessary to turn to a central question that I have not yet discussed in this book: the question of what a commons theory of property could look like. Generally put, this is of central importance because it would enable us to develop an understanding of property rights that is not based on exclusion, dominion and scarcity, but rather on access, democratic guardianship and relative, convivial abundance.

In order to develop such a theory, I proceed as follows. Firstly, I critically examine the normative language of goods with reference to the categorization of goods in the work of the Ostroms. In a second step, I present a general argument for common property arrangements, based on the acknowledgement of common needs and the interdependent yet conflictual satisfaction of these needs in shared resources. After these two introductory sections, I turn to John Locke's famous labor theory of individual private property and critically reinterpret it from a commons perspective. Here, I argue that we must shift our justification of property in three respects: firstly, we must replace property arrangements based on (self-)ownership with those structured according to guardianship. Secondly, I argue that the negative rights of non-interference must be replaced by the notion of non-domination. Lastly, I demonstrate that a commons theory of property must be based not on the special rights granted to individual laborers but more importantly on general rights that arise from the needs of interdependent beings. With this groundwork in place, I then turn to John Rawls' influential theory of a property-owning democracy. Here, I will argue that Rawls' notion of predistribution provides us with a good understanding of positive access rights to resources, but that we must shift the focus from productive capital to the care we need to bestow on material resources held in common. In a final step, I shift my focus from so-called productive resources to consumption goods and maintain that certain consumptive goods should also be organized in the form of common property. Here, I will show that shared consumptive goods both decrease detrimental ecological impacts and simultaneously make it possible to provide more people access to goods than are able to have under non-commons arrangements. With this critical reworking of Locke's and Rawls'

theories, I hope to sketch a commons theory of property that increases individual freedom, relative abundance and democratic, convivial ways of life.

6.1 The normative language of goods

In order to explore and develop a commons theory of property, I would like to take the previous argument on commoning a step further by focusing on the civic activity of self-organization from a linguistic perspective. As we have already discussed in relation to our understanding of nature, the way we describe and categorize things constitutes or co-creates reality. In this sense, language is never neutral and should therefore also be understood as a political act. This implies that the praxeological turn that consists in understanding commons as commoning must also be understood as a linguistic turn, whereby speaking constitutes merely one form of social praxis (Austin 2009; Searle 2005). With reference to our discussion of commons, this implies that the way we describe goods also frames their constitution and normative desirability in the symbolic order of things. The etymological roots and equivocal meaning of the word ‘good’ are an obvious demonstration of the normative structure of words and language: here, goods (i.e. *certain* things) are generally perceived as something good (i.e. valuable and desirable) (Milgate 2008). The question that arises is, however, whether commons are also perceived in this light – and how this might be changed. In my analysis of the Ostroms’ work, I noted that common-pool resources are defined according to their rival quality and their relatively high costs of exclusion. Yet my discussion of nature and ecological freedom led us to the conclusion that commons are never simply given, but are always created through civic activities of self-organization or commoning. In line with this questioning of the assumed facticity of commons, I would now also like to critically examine the normative categorization of goods according to the terms ‘exclusion’ and ‘rivalry’.

Generally put, it can be said that the mainstream political and economic discourse on goods and property revolves around the categories of exclusion, rivalry and, to a certain extent, subtractivity (Buchanan 1965; Corners/Sanders 1999; E. Ostrom 2002). As already mentioned, Elinor and Vincent Ostrom did use the term “exclusion”, yet replaced the word “rivalry” with “joint use” and “non-rivalry” with “alternative use” (Ostrom/Ostom 1999). rom 1977, 1999). The reason for this lies most likely in the normative way that the classical terminology is framed; what the words do with us and the world. If we consider the mainstream terminology, it must be recognized that all three terms have a certain negative connotation that assume and emphasize the conflictual aspects of goods, implying that one person’s enjoyment of a good is often interrupted or threatened by other people. This negative connotation, in turn, provides a more general normative and political framework

for thinking about and dealing with goods: where exclusion ‘unfortunately’ is not possible, people must either arduously organize these goods in complex common property arrangements, or – even worse – let the centralized state manage them. Thus, implicit in this categorization is the assumption that we would actually prefer to possess these goods privately and enjoy them without being bothered by other people. Or put somewhat more radically, the underlying principle of this categorization is – in the words of Sartre – that “hell is other people” (Sartre 1989: 45).

This is not to say that everyone with private property hates his or her neighbors, but rather that a deep fear of other people is an axiomatic basis of individual private property and our understanding of goods in general. As we see, by framing goods in this manner, people are assumed to be related to one another in inherently antagonistic ways. Yet in this case, the fact that humans are each other’s enemies lies not merely in people’s ‘nature’ but is also reproduced in the way we perceive and organize goods. By framing goods in this manner, the antagonistic relation between people is naturalized – and the supposedly best answer to this problem is, apparently, the exclusion of others through negative rights and individual private property. By shutting the other out (and oneself in), the individual is supposedly freed from unwanted interferences, burdensome responsibilities and conflict. Only from this ‘original position’ of negative freedom based on a supposed material independence can positive social freedom then be attained by entering into voluntary relationships according to the needs and desires that spring entirely from the independent self. As we can see, this deeply rooted understanding of independent antagonistic individuals and highly contested goods goes against the understanding of ecological freedom that I have outlined, which is based on the mutual *interdependence* of self-organizing living beings that inherently share a common reality. Thus, in order to create a system of democratic eco-law based on commons, we must also reformulate our categorization of goods, which, in turn, should transform our normative framework of social arrangements.

For this reason, I would argue that we must shift our focus when discussing goods from exclusion to inclusion, from subtraction to sustainability or addition and, finally, from rivalry to (negotiated) cooperation. If we revise the categorization of goods in this manner, the normative question that implicitly underlies the social organization of goods is then no longer how to limit the consumption of goods through exclusion. Instead, the normative question regarding a good would be: which goods produce better joint outcomes when shared, and which can be sustainably reproduced or, if possible, increased in number through (negotiated) cooperation? It can be assumed that such a recategorization would flip the supposed tragedy of the commons on its head by defining not the (unregulated) commons but privatization as the main problem we face. In turn, this might provide us with a normative linguistic framework that would value inclusive, sustainable and additive social arrangements over those based on unlimited individual appropriation.

We need to ask ourselves, however, if this replacement of categories is merely a sleight of hand that ignores the ‘intrinsic’ characteristics of goods. In order to answer this question, let me provide some examples that illustrate what I am trying to get at. As I have already discussed, the question of exclusion is not necessarily dependent on the ontological characteristics of a good, but rather on the economic, technological and institutional context that makes exclusion possible or not. Thus, the ability to exclude people from a good is not inscribed in the good itself, but is determined by social conditions and norms. With subtraction and rivalry, the issue appears a little less straightforward. The standard argument assumes that a good is rival or non-rival depending on whether its future use is decreased, i.e. subtracted, when utilized or consumed. The classical examples here are food and information. If I eat an apple, the other person cannot eat the same apple because it is gone. If I use a piece of information (e.g. a recipe, a book from a library or an article from a newspaper or on the Internet), the quality of the good is not diminished and thus can be used by another person. In more abstract terms, while food is normally understood as subtractive and thus rival and scarce, information is generally understood as non-subtractive and therefore non-rival. Due to this categorization, food is then classified as a private good and information as a public good, or it is assumed, at least, that these goods *should* be classified in this manner (e.g. Stiglitz 1999).

As was the case with excludability in relation to common-pool resources, we can also think of other ways of perceiving and organizing the goods that have been classified as rival and non-rival. With respect to information, several examples quickly come to mind where information is not always structured as an open-access public good. For example, scientific information arising from research that was, at least in many cases, funded out of the public purse is often stored in expensive, privately owned academic journals. We will discuss this problem in relation to the education commons in the next chapter. Printed newspaper articles can also often only be accessed if the newspaper is paid for and therefore privately appropriated. By socially organizing this information as private goods, it is made scarce and rival, despite its supposedly inherently non-rival character.

However, the case with apples is a little more complicated. Obviously, it is true that my consumption of an apple would prevent another person from consuming it. In this sense it could be argued that apples are subtractive and rival goods. But to then assume, as John Locke did (2008: II, §26), that the apple *must* be a private good is not necessarily given. We will return to Locke later, but the focus on subtraction merely emphasizes one way of using a specific good. There are, for instance, other ways of using an apple that enable or even increase its usefulness to others: this is the case, for example, if I merely take a photo of it (neutral use) or share it with someone else (inclusive, non-additive use) or use its seeds to plant other apple trees (inclusive, sustainable/additive use) (Euler 2020). The last two examples

show how a group of people can have their shared cake or, rather, apples and eat them too. In other words, all three uses demonstrate how an apple can be used in non-exclusive and non-subtractive ways that support relationships of inclusion and conjoint flourishing. Furthermore, by focusing on the individual subtraction of an apple through consumption, two central questions are ignored: (a) whether other people have access to other apples and (b) how the apples came into existence in the first place. If, for example, there are piles of fresh and juicy apples for a group of people to eat, the fact that I consume one or even a few apples does not make apples *per se* scarce and rival. Alternatively, if apple trees were cultivated by a group of people who then divided them up fairly¹ between themselves year after year, the quantity of apples might be limited, but not necessarily rival and scarce. In this case, we might even consider a relative abundance of apples to exist because the group is satisfied with the number of apples available to it and the consumption of apples by one person does not threaten another's access to apples, since everyone acknowledges a limitation on individual appropriation. Philosopher Jeff Noonan discusses this notion of relative abundance in relation to the conflict of use and appropriation rights between Native and white fishers in New Brunswick, Canada:

Conflict [over the lobster fishery] is only likely to be resolved if both sides to the dispute interpret 'abundance' in such a way that they can agree that there is enough of the resource to share without any group feeling deprived. This conclusion cannot be reached if either side looks at the logic of resource appropriation as governed by the value of profit maximization, since by definition the growth of profit has no 'natural' limit and anyone driven by that value will see any restriction upon that logic as a personal or group deprivation. (Noonan 2004: 191-2)

Here, we are reminded of Elinor Ostrom's work on the democratic management of commons, where Ostrom says that the limitation of appropriation can enable the sustainable use and reproduction of resources over long periods of time. Yet as Noonan makes clear, such a regime also requires, in turn, a normative shift from unlimited wants and the desire for endless profits to a mindset based on basic needs satisfaction and sufficiency. With Erich Fromm, we might be able to think of this as a shift from having to being (Fromm 1997). Considered in this manner, relative abundance and non-rivalry would theoretically be possible for subtractive goods under the condition of a materially limited reality (Sahlins 1972: 1-39; G. A. Cohen 1995: 128). In this sense, we can agree with Hardin that scarcity and rivalry are not given, but arise through an unregulated, unlimited and, ultimately, unfair increase of use or appropriation of a certain good. Consequently, scarcity is not an

1 The fair distribution of these goods needs not imply that they are distributed equally; they could fairly be distributed, for example, according to effort, need or whatever other values people define as important.

intrinsic condition of nature and rivalry is not an inherent characteristic of subtractive goods, but rather depends on the way we perceive and thereby institutionally organize their use.

In coming to appreciate this important insight, we can avoid confusion if we differentiate between goods, their production and their institutional arrangements. In the case of the apple, we have the apple, the apple tree and many other factors that are necessary for the growth of the apple, such as a plot of land, air and water, to name just a few. With Elinor Ostrom and Charlotte Hess, we can therefore differentiate between the flow of resources (e.g. apples) and the resource unit (e.g. the apple tree, the orchard and the ecosystem) (Ostrom/Hess 2007: 10). Along those same lines, we can also differentiate between goods used for production (e.g. the apple tree, a fishery, machines, capital) and goods used for consumption (the apple, fish, pasta, clothes or wages) (Held 1995: 263). In general, we could therefore say that while the consumption of a good (e.g. chewing and digesting an apple) is often individual (i.e. private), neither the (re)production, the appropriation nor the allocation of that good must necessarily be organized privately. The following question then arises: which type of social organization of which goods is more conducive to the values of inclusion, sustainability and addition? Since it can be assumed that a fair distribution of goods will create a sustainable, relative abundance of limited goods, it is of the utmost importance that the individuals dependent on specific resources have the opportunity to negotiate and codetermine the social arrangements for dealing with them (Knight/Johnson 2007). In line with the insights gained from the Ostroms' work, we may thus conclude that democratic negotiated cooperation and self-organization are the key counterparts to scarcity, rivalry and, ultimately, tragedy. And because the ability to codetermine the institutional framework would imply rights to access, inclusion and democratic participation, it can be argued that a property regime based on commons, understood as a variety of forms of common property arrangements, may well fulfill this purpose best.

6.2 Common needs, common resources and common property

Similarly, Capra and Mattei argue in favor of a shift in our legal framework from extractive to more sustainable and "generative" property rights based on commons and commoning (Capra/Mattei 2015: 145-6; Kelly 2012). In a nutshell, they contend that for most of human history resources were held in common, while only during the recent history of humankind has a legal system based on universal, individual private property rights emerged that enables the unlimited accumulation of wealth. Although this legal transformation has provided a part of the world's population with increased living standards and technological advances, it has also

brought with it numerous grave ecological, social and political problems. For this reason, Capra and Mattei write that “harmonizing human laws with the principles of ecology requires, at a minimum, the development of a healthy and legally protected commons sector and associated institutions” (Capra/Mattei 2015: 152). In order to do this, they argue that it is necessary to transform existing forms of property structured around the individual into forms structured around interdependent situations and the shared reality of the community. In their words:

A radical revision of property and of its relationship with state sovereignty is thus necessary if we wish to transform capital back into commons and build an ecological order. Such an alternative begins with the understanding that a community lives and unfolds in a common space where the actions of one member affect the well-being of all others. Such a space is the venue of life and death for a community and it must serve the interest of every one of its members, regenerating life in it. (ibid.: 139)

This shared, common reality thus provides the backdrop for the understanding that humans – and most, if not all, living beings – possess common needs and desires, such as the desire to be loved and respected, the need to eat, the desire to live well and the desire to develop one’s capabilities and to codetermine (i.e. self-organize) one’s reality. Obviously, this is not an exhaustive list of human needs, but it does assume that certain needs and desires are common to all sentient beings. This is not to say, however, that the specific form of need satisfaction is the same for all beings; these vary according to species, culture and technological development. Nevertheless, instead of assuming conflicting interests and goals as the axiomatic foundation of social arrangements, the ecological commons approach to property emphasizes interdependencies and the similarity of fundamental needs and desires. From this perspective, it is the similar needs that come first and ultimately lead to conflicts of interest. Jeff Noonan aptly expresses this idea:

Beneath differences in the content of cultures, there is, I will argue, a shared – indeed universal – human need for a ‘social habitat,’ that is, a resource base through the use of which goods are produced that in turn sustain the practical and symbolic particularities of the culture. [...] The uniqueness of a culture is a content that is produced by universal forms of human activity. The evidence for the position is provided precisely by the struggles between *different* [individuals and] cultures for the *same* resources. If [individuals and] cultures were radically distinct and discrete wholes they would never come into conflict because there would be no common needs between them, and there would therefore be nothing to struggle about. (Noonan 2004: 186; original emphasis)

As we can see, beneath the conflicts between people lie not completely diverging interests, but rather common needs that are, in turn, codependent on the use of

these resources. However, because all living beings exist in webs of interdependent relationships, the satisfaction of one person's needs is significantly affected by the manner in which other people satisfy their needs. Due to these existential interdependencies, it is crucial to hold those resources for the satisfaction of such common needs in common.

Conversely, behind this reasoning lies the assumption that, if individuals can privately appropriate these limited vital resources, then the ability of others to satisfy their basic needs will also be limited. To put it briefly, the abilities of the have-nots to survive, self-organize and flourish will be undermined. Here, it is worth pointing out that the word 'private' etymologically comes from the Latin word *privare*, to deprive, bereave or rob (Onions 1966: 711; Glare 2012: 1607-8). This root meaning of the word private thus supports the interpretation that private individual property is something that is taken from the shared reality-as-commons. The individual appropriation of vital resources thus implies that possible uses of these resources by other people are blocked – and, simultaneously, the relationship of responsibility and obligation between the one who appropriates and other beings is dissolved.² Private property turns the relationship of duties on its head: the responsibility no longer lies with the owner towards the community, but rather in the duty of those excluded from the resource to respect the rights of the owner. In the words of Jeremy Waldron:

Material resources are crucial to our survival and elementary aspects of our well-being. In the circumstances of moderate scarcity that we must assume, it is per-

2 Although some might argue that private property entails duties owed by proprietors to the rest of society (e.g. I cannot drive my car on the sidewalk or faster than 120 km/h on the highway), I agree with Jeremy Waldron that we must understand these restrictions not as duties but rather as "general background constraints". He writes: "The rule that knives are not to be used murderously nor cars driven at a certain speed are not to be seen as property rules. They are part of the general background constraints on action which place limits on what anyone can do with any object whether it is his property – or something he has some sort of entitlement to use – or not. Once we have settled what the background rules of action are, we can then turn to the property rules. If a particular action, say, riding bicycles, is permitted by law, it does not follow that the law permits me to ride any bicycle I please. The specific function of property rules is to determine, once we have established that bicycles may be ridden, who is entitled to ride which bicycle and when." (Waldron 1988: 32-33) Aside from these background constraints, the institution of private property requires that individuals fulfill one central duty regarding others: to respect their private property and, in turn, to fulfil contractual obligations. This reciprocity might be understood as a form of mutual obligation and, thus, care. Yet due to the central principle of exclusion from and non-interference in private property, the duty to respect private property ultimately and, at least in principle, liberates the individual from further obligations in relation to the need, satisfaction and wellbeing of other beings. I believe this to be one of Robert Nozick's central arguments in *Anarchy, State, and Utopia* (1999).

fectly possible that the uses that are blocked by the duties correlative to property rights are uses that relate to human need, not just covetous desire. (Waldron 2009: 165)

Despite the existence of common needs in a shared reality, private property in material resources enables people to exclude others from its use, ultimately placing the burden of duty on the community to respect the ownership rights of the individual – and not on the individual to care for the wellbeing of the community. With this inversion, the notion of care and responsibility, as I elaborated earlier, is individualized, implying that each individual is responsible for the satisfaction of his or her own needs. Although we cannot deny the importance of individual responsibility for one's own wellbeing, this entirely individualized notion of care based on private property brings about an atomistic and competitive arrangement that reminds us of Hardin's tragedy of the unmanaged commons. Tragedy results because no one feels responsible for the sustainable satisfaction of the needs of the community as a whole and, as an individual, no one is institutionally capable of caring for shared, common resources.

A widespread argument against this rather critical interpretation of individual private property is that ownership is not a unified concept, but rather consists of a "bundle of rights" (Grey 1980; Glackin 2014). This bundles-theory interpretation of property must be understood as a critique of the standard interpretation of William Blackstone's (1723-1780) famous definition according to which private property is "that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe" (Blackstone 2016: 1).³ Contrary to this Blackstonian notion of private property as "individualistic, exclusive and absolute dominion" (Schorr 2009: 104), the bundles of rights theories, as, for example, presented by Wesley N. Hohfeld (1913) and A.M. Honoré (2015), define ownership rights as a diverse collection of independent rights (Penner 1996; Glackin 2014: 3). Importantly, and as Shane N. Glackin states, "the bundle theory regards these individual and separable rights, or 'sticks,' as having no substantive, essential connection to each other" (2014: 4). In this sense, the notion of private property is not constituted by any *intrinsic* characteristics of the relationship between individuals and things, but rather through *contingent* ways of bringing rights together into combinations that are ultimately assigned to people. This basically implies that prevalent notions of private property are not based on transcendental or natural laws, but that they are historical products of existing societies. At this point it must be admitted that a deconstruction of individual private property into its diverse components is remarkably helpful in

3 As recent work has shown, however, even Blackstone himself did not support this rather monolithic notion of individual private property (Schorr 2009).

“demystify[ing]” (ibid.: 3) widespread notions of property and understanding the complex relationships of access, management, use, exclusion and alienation of resources. Elinor Ostrom and Edella Schlager, for example, use the bundle-of-rights theory in order to analyze various arrangements for dealing with “common-property resources” (Schlager/Ostrom 1992). This strategy can open the field to a less ideologically charged debate over the pros and cons of different property arrangements, whether individual, common or public.

Nevertheless, with Henry E. Smith I would argue that the bundle theory is problematic because it can cover up normative questions of property arrangements by focusing on the *how* instead of on the *why* (Smith 2011: 281). That is, on *how* individual property is structured, rather than on *why* certain resources are allowed to be owned privately. Furthermore, the analytic ‘realism’ of the bundle-of-rights theories conceals the fact that individual private property does have a dominant, central meaning in modern Western societies that is employed either as a cognitive shortcut in order to simplify complex legal relationships or, and more importantly, as a normative justification of existing social arrangements. As I have already mentioned, following the arguments of Henry Smith, Jeremy Waldron and Richard Epstein, a central function of individual private property is defined as exclusion or non-interference.⁴ Although Jeremy Waldron also defines exclusion as the “key to private property” (Waldron 2009: 164), he elaborates “in Hohfeldian terms” on a few other important aspects of private ownership:

To justify private property is to justify conferring, recognizing, and enforcing certain individual rights over material resources. An individual X’s rights of ownership in relation to some land, Lx, usually are comprised of such elements as (R1) the right to use Lx, (R2) the right to exclude others from the use of Lx, and (R3) the power to transfer some or all of these rights to others by way of gift, sale, lease or bequest. (ibid.)

Here, we see two additional key aspects of individual private property that result from exclusion: the right to use and to alienate (i.e. trade) resources. Implicit in this definition is also the right to accumulate, underuse or destroy resources. The exclusion of the other provides the owner with the freedom to do what they please

4 Henry Smith writes, for example: “The architecture of property emerges from solving the problem of serving use-interests in a roughly cost-effective way. [...] At the core of this architecture is exclusion because it is a default, a convenient starting point.” (Smith 2011: 282) In Richard Epstein’s book *Design for Liberty*, he writes: “The choice of a sound property ‘baseline’ in the original position is not random. [...] The central proposition is this: the *only* set of substantive rules that achieves that goal is one that requires all persons to forbear from interfering with the property rights of any other person, where ‘interfering’ is narrowly defined to involve taking, using, handling, or breaking the property of another.” (Epstein 2011a: 74)

with a good within certain “general background constraints” (Waldron 1988: 32).⁵ Along these lines, in his book *The Right to Private Property* (1988), Jeremy Waldron further defines ownership as

the abstract idea of an object being correlated with the name of some individual, in relation to a rule which says that society will uphold that individual's decision as final when there is any dispute about how the object should be used. The owner of an object is the person who has been put in that privileged position. (ibid.: 47)

As we see, individual private property implies the right to exclude others from the determination of how resources will be used and allocated. Here, the *individual* owner has the right to determine the access and use of material resources for the satisfaction of their *shared* individual needs. Thus, a central aspect of individual private property over goods is to place the owner's decision-making power and the satisfaction of their needs over that of other members of the community.

As I have already mentioned with reference to the tragedy of privatization, the emphasis on exclusion and non-interference in individual private property rights makes it difficult to alter property arrangements in order to align them with the shared yet conflicting needs of other human and non-human beings. Thus, I agree with Capra and Mattei that only by holding these vital resources in common is it possible to negotiate the terms of their use and, hopefully, to satisfy the needs of everybody. Put in these terms, the central justification of commons must be understood as an ecological (re)interpretation of the basic right to life and liberty or, in my terminology, to an interdependent, sustainable, self-organized and flourishing existence (Alexander/Penalver 2009). According to Capra and Mattei, it is this ecological reasoning that has brought commons into existence throughout human history:

Ancient institutions of the commons that provide communities with water, wood, agricultural products, education, and housing construction are still alive in ecological niches in Europe and are still very important in much of Africa, South Asia, and Latin America. [...] Even today, when a common need emerges, people tend to organize in common to run recuperated spaces, factories, theaters, gardens, farmers markets, or institutions such as Time Banks. [...] These emerging alternatives, based on the recognition of common needs, material or spiritual, make us understand that *the resources necessary to satisfy a need must themselves be understood as a common and governed according to the principles of solidarity necessary for all to satisfy their needs and for the community to prosper*. (Capra/Mattei 2015: 142-4; emphasis added).

5 For an elaboration on the notion of these “general background constraints”, see footnote 2 above.

Simply put, if we recognize that humans share both a common reality and common needs, we should also recognize that the resources that enable everyone to satisfy these needs should also be held in common. In the words of Capra and Mattei, a legal order that is based on generative ownership “serves the needs of life by having the tendencies to be socially just and ecologically sustainable built into the very fabric of its organizational structures” (Capra/Mattei 2015: 146).

The ideal type of commons can thus generally be defined as goods created, reproduced and held in common by a group of people, a network or a community that is affected by and dependent on a specific material or immaterial resource. As we see, this definition closely resembles the notion of common property as defined by Jeremy Waldron:

In a system of common property, rules governing access to and control of material resources are organized on the basis that each resource is in principle available for the use of every member alike. In principle, the needs and wants of every person are considered, and when allocation decisions are made they are made on a basis that is in some sense fair to all. (Waldron 1988: 41)

In contrast to individual private property, which defines exclusion as its structuring principle, common property arrangements emphasize access and inclusion. Although commons often have – or even require – boundaries, they can nevertheless be considered inclusive because they enable those in need and those affected to define and adapt their institutional framework. In this sense, commons are based on networked democratic governance systems that ensure the inclusion and participation of the affected people. Simultaneously, commons demand that the users of a resource are responsible for its sustainable reproduction. Commons are thus structured according to the individual satisfaction of common yet conflicting needs and desires through the sustainable and interdependent co(re)production of these goods. It is again important to underline here that commons must not necessarily assume an extremely high level of harmony or unity, but instead provide people with the ability to collectively solve conflicts and shared practical problems through democratically negotiated cooperation. This aspect of common property arrangements emphasizes the ‘freedom-against’ characteristic of ecological freedom. In this sense, common property arrangements support and enable democratic problem solving in all spheres of life. Last but not least, the (re)production and maintenance of commons is not merely a means to an end (freedom through, i.e. individual needs satisfaction), but must itself be understood as an end in itself (freedom with). This is best understood through the concept of conviviality, in which people’s satisfaction of needs occurs not in isolation, but in acting with others.

6.3 Reinterpreting John Locke's theory of property from a commons perspective

In order to fully understand this central argument for holding resources needed for the satisfaction of individual needs in common, it might be helpful if we compare the argument to John Locke's (1632-1704) justification of the private appropriation of resources in his *Second Treatise of Government* (1689). The reason why I choose to reinterpret Locke's labor theory of property is that its importance for our contemporary understanding of individual private property and our existing social arrangements cannot be underestimated. It lies at the heart of the concept of a self-regulating market, Robert Nozick's libertarianism and, also, Garrett Hardin's tragedy of the commons. I will thus present a short sketch of Locke's argument and then revise his theory according to the conception of ecological freedom and the commons I have already outlined. This will revolve around three conceptual and normative shifts: from (self-)ownership to guardianship, from non-interference to non-domination and, finally, from access through individual labor to the interdependent satisfaction of needs.

Locke's justification of individual private property

Framed in the Christian theology of his time, Locke believed that "God has given us all things richly" (Locke 2008: II, §31; emphasis omitted). More precisely, God "has given the Earth to the Children of Men, given to Mankind in common" (ibid.: II, §25; emphasis omitted). According to these notions, the abundant resources of nature originally belonged to everyone and thus to no one. This is what Simmons and Waldron call a "negative community" (Simmons 1992: 238; Waldron 1988: 153). Locke understands this type of social arrangement as a commons (Locke 2008: II, §28), which reminds us of Garrett Hardin's notion of an unregulated open-access commons. Furthermore, in this fictional state of nature, all humans are "equal and independent" (ibid.: II, §6) and each has the right to or, rather, the freedom to preserve themselves (ibid.: II, §17, 19). Yet, in order to survive, human beings are required to labor, be this through hunting and gathering or, as God supposedly preferred, through "subduing or cultivating the Earth, and having Dominion" (ibid.: II, §35). According to Locke, this, however, puts humans in a problematic situation: how can they appropriate and consume goods that belong to everyone? (ibid.: II, §25-6) In order to solve this problem, Locke argues that one's self, including one's body and the labor of one's body, must originally be understood as one's individual private property (ibid.: II, §27). From this premise of self-ownership, he argues that individuals then have the right to transform the resources originally held in common into private property through the "mixing" of their labor with the common resources (ibid.), be it through picking an apple, killing a deer or cultivating

wheat. In Locke's words: "So that God, by commanding to [labor and] subdue, gave Authority so far to *appropriate*. And the Condition of Human Life, which requires Labour and Materials to work on, necessarily introduces *private Possessions*" (ibid.: II, §35; original emphasis). According to Locke, only the private appropriation of goods through labor can secure the survival and liberty of human beings (ibid.: II, §26). Although Locke understands property as a means to life and liberty, he then collapses the three values under the term of property (ibid.: II, §123), ultimately defining the protection of property as the "chief end" of society and government (ibid.: II, §124).

It must be noted, however, that in his labor theory of property Locke does not clearly differentiate between the right to the fruits of one's labor (e.g. the apple, the deer or the wheat) and the resources that brought this fruit forth (e.g. the apple tree, the land on which the wheat is grown and, possibly, the territory where the deer live). In Elinor Ostrom and Charlotte Hess's terminology, this implies the right not only over the resource unit, but also over the resource system itself. This is important, because it ultimately legitimates the exclusion of others not only from the fruit of one's labor, but also from the means of subsistence (e.g. water, land etc.) and the means of production (e.g. machines, factories, capital). This ambiguity implies that the labor theory of property can easily support the right not only to the outcome of the labor process, but also to the resource systems involved in the labor process itself. Nevertheless, it must be acknowledged that Locke originally limits the right to appropriate these common resources by two provisos: (a) the resources should not be left to spoil (ibid.: II, §31) and (b) there must remain "enough and as good" for others (ibid.: II, §33). While the "spoilage limitation" (Macpherson 2011: 204-11) aims at limiting the under-use of goods and ensuring respect for God's gifts to humankind, the "sufficiency limitation" (ibid.: 211-14) is apparently meant to ensure that all human beings retain access to sufficient natural resources in order to be able to secure their existence.

Nevertheless, Locke goes on to describe how these original limitations on one's appropriation rights were annulled with the "invention" of money (Locke 2008: II, §36). Because it is possible to hoard money without it spoiling, Locke contends that the first proviso is no longer applicable and people may accumulate money without limit (ibid.: II, §50). The fact that money can buy large amounts of natural resources is, according to Locke, no longer a problem because the owner will not leave the land to spoil, but will use this land productively in order to increase profits (ibid.: II, §48, 50). As Adam Smith argued almost 100 years later, the use of resources for profit is, thus, not interpreted as extraction and depletion, but rather as an increase in the wealth of mankind and the conveniences of life (ibid.: II, §37). In contrast to Hardin's tragedy of the open access commons, according to Locke, the private appropriation of common resources supposedly greatly increases the value of the resources involved (ibid.: II, §40, 43, 45).

Interestingly, the second sufficiency limitation also becomes invalid with the introduction of money. Here, Locke provides two reasons for the annihilation of the right to access resources in order to secure one's existence. Firstly, the introduction of money is based on a "tacit and voluntary consent" (ibid.: II, §50), which then legitimates the inequality that results through the private accumulation of wealth. And secondly, although Locke admits that the accumulation of wealth in the hands of a few creates scarcity for those without property (ibid.: II, §45), he nevertheless believes this to occur "without injury to any one" (ibid.: II, §50). On the one hand, this is due to the increases in productivity that result from the unbound right to accumulate. These increases in productivity supposedly create an abundance of conveniences for the wider population and therefore compensate for the scarcity that was brought about through privatization (ibid.: II, §41). On the other hand, it is implicitly assumed that those individuals without direct access to the means of subsistence in the form of natural resources still possess their own bodies and can therefore sell their labor power in exchange for a wage (ibid.: II, §28). Now it is no longer direct access to natural resources that secures one's existence, but rather access to money through wage labor, which in turn enables the laborer to survive by buying food and a place to live on the market. As becomes apparent, the original, equal right to self-preservation and liberty through access to resources held in common has been transformed into the protection of the existing, unequal distribution of property, on the one hand, and the necessity that the propertyless enter into wage labor relationships in order to secure their life, on the other hand. This is the basic argument of John Locke's labor theory of private property.

Although this story may initially appear rather straightforward and convincing, there are numerous premises in Locke's theory of property that are highly problematic. To name just a few: the existence of the independent individual in a state of nature; the open-access commons (*res/terra nullius*) as a state of nature; the concept of self-ownership; the suspension of the provisos through the introduction of money; and the necessity to declare something as one's own private property in order to use or consume it. I hope to deal with each of these issues by arguing that a commons theory of property requires a shift from (self-)ownership to guardianship, from non-interference to non-domination and, finally, from labor to needs.

From (self-)ownership to guardianship

As our discussion of nature has demonstrated, all living organisms, including humans, are autonomous or self-organizing yet always exist in webs of interdependent relationships. For this reason, it can be assumed that the more appropriate original state of nature is not to be understood as one where individuals roamed around alone, but where people – as they still do today – lived and worked together in groups – in, with and against other humans and the non-human world. As most

historical and ethnological research shows, resources were never conceived as *res nullius*, but were always subject to various informal and formal rules concerning rights and obligations. Often enough, so-called ‘primitive’ economies were based on communalistic economies with central resources held in common (Weston/Bollier 2013: 133-5; Diamond 2007: 131-3; Scott 2017).⁶ As was the case with Thomas Hobbes, the concept of the independent individual and the common world as *res nullius* is thus a historical and legal construct of Locke’s day projected back into the past and onto nature.

This raises several questions. Would the concept of interdependent living beings shed a different light on the notion of (self-)ownership? If ownership is founded on ‘labor’ can I truly be considered to be my own property? Would I not, in fact, be the property of the people who raised me and the environment that provided me with sunlight, air and things to eat? As we can readily appreciate, although human beings have a sense of self and the power to self-organize, this does not mean that one’s existence has been brought forth merely through oneself and through one’s own labor. With reference to Andreas Weber’s concept of the gift economy of the open-source “natural commons”, I would therefore argue that the self should also be understood as a gift – not necessarily from God, but from the infinitely complex processes of co-creation that result from the mutually interdependent relationships in the web of life. Or, phrased somewhat differently, the individual should be conceived of as a product of nature and society – and, in relation to each of these, as an active and semi-autonomous agent. Here, the focus shifts from the supposedly independent ‘Man’ who forms the world, to the world that brings each individual being about. The individual does not independently determine, but takes part in this process of interdependent co-creation. Such an understanding of the self-world relationship may sound somewhat peculiar in the

6 The anthropologist Stanley Diamond, for example, explains: “Primitive societies rest on a communalistic economic base. This is not to say that everything in such societies is owned in common, which is clearly not the case, but rather that those material means essential to the survival of the individual or the group are either actively held in common or, what is equivalent, constitute readily accessible economic goods. [...] Exceptions to this communal condition dissolve under close scrutiny. For example, it is claimed that members of Hottentot joint families ‘own’ particular cows in the family herd, but we find that they cannot privately dispose of them. It is similarly assumed that individuals ‘own’ particular watering places, but we discover that access is never denied to other people in need of it. On the other hand, true private property does exist among primitives, in the form of tools made by the individual, breechclouts, back scratchers and similar ‘extensions of the personality.’ However, private property of this type does not constitute primitive capitalism; this does not exist, at least among primitives. The private property that can be identified is either not essential for group survival, is readily duplicated by any individual in the society and therefore need not be owned communally, or is of so personal a nature that it cannot be owned communally.” (Diamond 2007: 131)

ears of people brought up and trained in the Western mode of thinking based on methodological individualism. Despite the danger of ethno-romanticism (Latour 2004: 42–49), I believe that it can be argued that such a notion is more prevalent in the Buddhist notion of dependent co-arising (Macy 1979; Garfield 1994; Loy 1997) and in a number of indigenous traditions (Santos 2008, 2016). A famous portrayal of this notion has been expressed in the phrase attributed to Chief Seattle, in which he apparently said that “the earth does not belong to man, man belongs to the earth.”⁷ This understanding is also echoed in Aldo Leopold’s *Land Ethic*, in which he writes: “In short, a land ethic changes the role of *Homo sapiens* from conqueror of the land-community to plain member and citizen of it. It implies respect for his fellow-members, and also respect for the [socio-ecological] community as such.” (Leopold 1987: 204)

A central implication of this understanding of the self as a member in a network of reciprocal gift giving is that it ultimately transforms a central category of property rights: ownership becomes guardianship. The resources that one uses, be it the land, the water or one’s own body, are not something that one owns, but rather a gift of nature and of society. Although the notion of the gift and guardianship is often associated with “archaic” societies (Mauss 2002), it is also marginally discussed in contemporary debates on property arrangements. Karl Marx, for example, refers to the concept of stewardship in this rather well-known passage in volume three of *Capital*:

From the standpoint of a higher socioeconomic formation, the private property of particular individuals in the earth will appear just as absurd as the private property of one man in other men. Even an entire society, a nation, or all simultaneously existing societies taken together, are not the owners of the earth. They are simply its possessors, its beneficiaries, and have to bequeath it in an improved state to succeeding generations, as *boni patres familias* [good heads of the household]. (Marx 1991: 911)

Although Marx equates ownership and property here, his critique tends in a similar direction to the argument I have been developing: that humans are not owners of the earth, but have received this earth and their selves from others and therefore have a duty to care for their own well-being and that of their society and ecosystem

7 As is generally well known, the authenticity of this phrase and of Chief Seattle’s speech is contested. Although the speech was supposedly held in 1854 or 1855, it was only published by Dr. Henry A. Smith in the *Seattle Sunday Star* on October 29, 1887. Since then, numerous versions of the speech have been published (Low 1995; Krupat 2011; Rothenberg 1999). Importantly, the cited famous phrase is actually not part of the original speech published in 1887, but only appears in later versions. Despite this historical inaccuracy, I nevertheless believe it justified to refer to this quotation, because it reflects the notion of another type relationship with world – irrespective whether it was expressed by Chief Seattle or someone else.

for the benefit of future generations. Yet in contrast to Marx, I would argue that it is not property per se but property arrangements based specifically on the notion of exclusive, individual private ownership that are problematic. In this sense, a commons can or, rather, should be understood as an institutional property arrangement in which not only is exclusion replaced by inclusion, but ownership is also replaced by guardianship.

While this change in labels may appear to be a rather simple task, effecting it would in fact require us to revise not only our conception of ownership over things, but also our deeply rooted notion of self-ownership. According to Locke, it is the notion of self-ownership that provides individuals with the right to exclusive ownership of the world. Here I agree with G. A. Cohen and Michael Sandel that the concept of self-ownership is in itself highly problematic because it lays the foundation for an individualistic and absolute understanding of property rights. With reference to Nozick's interpretation of Locke's concept of self-ownership, G. A. Cohen gets at the crux of the problem when he explains that the "polemically crucial right of self-ownership is the right not to (be forced to) supply product or service to anyone" (G. A. Cohen 1995: 215). Similar to the abstract and absolute right of ownership over things, the right to self-ownership implies that each person has "no non-contractual enforceable obligations to anyone else with respect to the use of your powers" (ibid.: 240). In turn, the premise of self-ownership enables the rejection of any claims the community might make on the fruits of the other person's labor. For this reason, Cohen understands self-ownership to be a central pillar for open and competitive markets in which each individual is free to own, exchange and accumulate goods in the absence of either limitations or obligations to other individuals. Along these lines, I would also argue that the affirmation of self-ownership and the right to the fruits of one's labor ultimately denies other people and society in general the right to a share of these fruits – let alone the right to access and share the underlying resource systems. Along with Cohen, I would conclude that the answer to this grave problem is the "rejection of the thesis of self-ownership" itself (ibid.: 230). However, while Cohen then vaguely propagates the "affirmation of non-contractual obligations to serve other people" (ibid.), I would argue that we must develop the previously discussed care ethic into more robust property arrangements that enable the codetermination of socio-ecological rights and duties.

For this reason, I turn to Michael Sandel who, to my knowledge, is one of the few contemporary Western philosophers who has not only criticized the notion of self-ownership but has also developed an alternative notion of property based on guardianship. In his book *Liberalism and the Limits of Justice* (1986), Sandel discusses Rawls' *Theory of Justice* (1971) and the general notion of self-ownership. Here, Sandel agrees with Rawls that we should understand the self as made up of a purely contingent and arbitrary distribution or, in our terminology, gift of our natural endow-

ments. For this reason, Sandel argues that we should not interpret our relationship to these gifts as something that we own. Instead, he argues,

To be sure, the various natural assets with which I am born may be said to ‘belong’ to me in the weak, contingent sense that they reside accidentally within me, but this sense of ownership or possession cannot establish that I have any special rights with respect to these assets or any privileged claim to the fruits of their exercise. In this attenuated sense of possession, I am not really the owner but merely the guardian or repository of the assorted assets and attributes located ‘here’. (Sandel 1986: 82)

The fact that a person is born with – or without – certain arbitrary qualities and capabilities implies that this person then has no justification to consider its self and the fruits of its labor as entirely its own. But how, then, are we to conceptualize the relationship to our bodies and the world? In order to answer this question, Sandel differentiates the concepts of the owner, the guardian and the repository. According to Sandel, ownership, in its strongest version, implies “that I have absolute, unqualified, exclusive rights with respect to my endowments” (ibid.: 96). In its more moderate version, this implies that “I have certain privileged claims with respect to them, a bundle of rights, while not unlimited, at least more extensive with respect to my assets than any bundle of rights anyone else may have with respect to them” (ibid.). In contrast, the repository of assets assumes the complete arbitrariness of the relationship between the self and one’s natural endowments and provides little basis for the recognition of the subject. The notion of guardianship, however, assumes a relationship between one’s self and its endowments and assets, yet embeds it in an intersubjective, communitarian framework:

To say that I am the guardian of the endowments I bear is to imply that they are owned by some other subject, on whose behalf, or in whose name, or by whose grace I cultivate and exercise them. This is a notion of possession reminiscent of the early Christian notion of property, in which man had what he had as the guardian of assets belonging truly to God, and it is a notion that fits with various communitarian notions of property as well. (ibid.: 97)

The basic reason why Sandel defends such a notion of property rights is that it enables us to understand property as a social phenomenon that has been created not only for the satisfaction of one’s individual needs and desires, but also for the needs and desires of the wider community. For this reason, I would agree with Sandel that the notion of guardianship enables us to conceptualize a form of property that breaks with the classical concept of independence and absolute dominion. Yet, instead of falling back into hierarchical dependencies characteristic of the feudal system, a democratic notion of guardianship embeds resources in a contextual framework of property based on interdependencies, mutual care and codetermi-

nation. And in contrast to both the Christian and communitarian interpretation of guardianship, I would understand the stewardship not toward God and not only toward one's fellow human beings, but equally to all living and non-living beings – as a type of socio-ecological stewardship. Thus, by defining an individual's relationship to its self and to the world as a form of guardianship within this ecological web, I would argue that we have laid the cornerstone of the “structural [eco-]communal-ity of the commons” (Meretz 2012), for property arrangements that include those without a voice: the wider community, humankind ‘in general’, nature and, possibly also, future generations. In view of these inclusory advantages of guardianship over ownership, scientists Will Steffen et al. (2011) propagate stewardship as a crucial means to solve the serious threats that humanity faces in the epoch of the Anthropocene.

From non-interference to non-domination

Although this argument might sound reasonable, it may be feared that the shift from ownership to guardianship will open the door to the arbitrary oppression of the individual by the community. In order to deal with this legitimate criticism and potential danger, I argue in the following section that not guardianship, but rather non-interference leads to new forms of domination and, thus, paradoxically enough, to *arbitrary* interference. This insight brings us to the conclusion that a revision of Locke's theory of property from a commons perspective also requires a shift in focus from non-interference to non-domination.

Put in a historical perspective, John Locke's concept of natural property rights was developed as a critique of the existing feudal social order and the absolute powers of the monarchy over property rights. With the rise of the bourgeoisie, this feudal property regime was problematized, not only because it limited the individual appropriation of property but also because the absolute monarch ultimately had the power to arbitrarily confiscate the property of his subjects. Locke's theory of property was thus a means of dealing with both of these problems. On the one hand, it justified an original appropriation of property through labor and unlimited accumulation through money; on the other hand, it protected individual private property from the arbitrary powers of the state. By grounding these basic property rights in God, nature and reason – all of which were understood to be one and the same (Laslett 2008: 94-6) –, Locke provided a new theological interpretation of the divine property arrangements that lies prior to existing social institutions. This is what is generally understood as natural law. Thus, individual private ownership became a means to prevent arbitrary political powers from interfering with a person's freedom to act. For this reason, the non-interference engrained in individual private property has become a fundamental cornerstone for all other forms of freedom and a liberal society in general.

Considering the power asymmetries of the feudal social order, the right to non-interference is in itself an important and legitimate claim. However, since Locke's times, the freedom of individual ownership has expanded to such an extent that it has shifted the balance of power from the absolute monarch to wealthy individuals and large multinational corporations whose existence often lies beyond the grasp of nation states and social control. In this sense, the relationship between sovereignty and private power has been reversed (Bailey/Mattei 2013: 973-4). And while state sovereignty has partially been democratized since Locke's times, property arrangements have remained – often in the name of individual negative freedom and constitutional democracy (e.g. Epstein 2011b) – largely immune to the processes of democratization.⁸ With James Tully we can say that this is a result of the prioritization of individual negative rights over democratic rights of code-termination. It therefore appears as though Locke's property rights, which were originally developed as a critique of the power of the monarchy have, in turn, enabled new power asymmetries to develop.⁹

In his *Second Treatise on Government*, Locke already recognized that private property and the introduction of money lead to inequalities. According to Locke, however, people must accept these asymmetries on account of their “tacit and voluntary consent” to this social arrangement and the supposed fact that monetary wealth “may be hoarded up *without injury* to any one” (Locke 2008: II, §50; emphasis added). As we see, the accumulation of wealth by some individuals has, according to Locke, no negative effects on or ‘externalities’ affecting those with less property or no direct access to the means of subsistence. As has already been mentioned, Locke's answer to this problem of scarcity-through-privatization is the ability to ‘freely’ exchange one's labor for wages and the increases in productivity that result from private ownership. The person without direct access to the means of subsistence can sell his or her labor power to someone who owns productive resources. Furthermore and as Adam Smith later argued, the unfettered profit motive, market competition and the increased productivity that results from privatization will supposedly benefit propertyless individuals in providing them not only with jobs but also cheaper and more luxurious goods. In this sense, Locke and Smith assume

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- 8 It must be noted here, however, that nationalization cannot be equated with democratization. A well-known (failed) example of the democratization of private property is the Meidner Plan in Sweden (Blackburn 2007; Pontusson 1992). This is not to say that a number of small-scale cases do not exist in which resources have been socialized and democratized, such as reclaiming water rights in Cochobamba, Bolivia, and Italy (Assies 2003; Mattei 2013b) and the recuperation of companies by workers in Latin America and Europe (Azzellini 2016).
- 9 Saki Bailey and Ugo Mattei describe this as a “return to a sort of neo-medievalism, where state sovereignty is weak and constitutional law is reduced to a Leviathan that uses an iron fist with the weak – the people – and the velvet glove with the strong – corporate powers” (Bailey/Mattei 2013: 973).

that scarcity-induced conflicts can be solved through increased productivity. Today, this is generally understood as economic growth and the 'trickle down' effect – and is still a frequently invoked justification of socio-economic inequalities (Pinker 2018: 97–120). That being said, it is important to note that this dualistic depiction of reality as divided between the haves and the have-nots may appear to some as highly simplified, especially considering the development of the middle-class and other positive effects of economic growth over history. But while there have been great increases in the absolute amount of wealth since the times of Locke and Smith (Maddison 2007; Acemoglu/Robinson 2012; Pinker 2018), the asymmetrical relation between those with and those without productive property (e.g. capital) still remains relevant (Piketty 2014; Oxfam 2017).

But do the inequalities and power asymmetries resulting from the private appropriation of the original commons truly have *no* negative effects on the propertyless? And are all people still equally free if no one is interfered with by the arbitrary power of the state? The important point to make here is that, in contrast to Locke's assumption, the unlimited accumulation of resources by *some* individuals may well expand *their* sphere of non-interference, but this accumulation also limits and therefore interferes with the freedom of *others*. Jeremy Waldron lucidly explains this problem in his book *The Right to Private Property*:

If private property serves negative liberty, it does so because owning something just is a matter of being free to use it and of its being the case that one is not to be opposed in that use by the interference of others. But then the distribution of property has a direct impact on the distribution of negative liberty. A person who owns nothing in a society (where everything is privately owned) is not at liberty, in a negative sense, to make use of anything – indeed for everything that he might use, someone else has a right that he should refrain from using it, and it is a right which they are entitled to enforce. If it is true that all (or most) human actions require a material component over and above the use of one's own body – a location, for example, or an implement – then the unfreedom in a negative sense of the propertyless man is more or less comprehensive. There is literally nothing or next to nothing that he is free to do. This point is mitigated by the existence of some common property even in the most comprehensively capitalist societies: tramps have the streets to walk on and the bridges to sleep under. But that is all they have and all they can do, without falling foul of the prohibitions enforced by the property system of the society in which they have to make a life for themselves. (Waldron 1988: 410–11; original emphasis)

As we can see, the unlimited appropriation of resources by some individuals makes these resources scarce and ultimately undermines the freedom of others, thereby substantially interfering with the freedom of others. While it is often assumed that the point of negative freedom is to free the individual from undesired interference

and involuntary obligations, as I have mentioned already it nevertheless “generates a duty [...] on everyone to refrain from using [the thing or resource] without my permission” (ibid.: 109). People without property are thus placed under the duty to recognize the property rights of the other – even if they themselves are propertyless and need these resources to survive. Similarly, G. A. Cohen vividly illustrates this relationship between one’s duty to respect the property of others and the interference with the freedom of those without property:

The banal truth is that, if the state prevents me from doing something that I want to do, then it places a restriction on my freedom. Suppose, then, that I want to perform an action which involves a legally prohibited use of your property. I want, let us say, to pitch a tent in your large back garden, perhaps just in order to annoy you, or perhaps for the more substantial reason that I have nowhere to live and no land of my own, but I have got hold of a tent, legitimately or otherwise. If I now try to do this thing that I want to do, the chances are that the state will intervene on your behalf. If it does, I shall suffer a constraint on my freedom. The same goes, of course, for all unpermitted uses of a piece of private property by those who do not own it, and there are always those who do not own it, since ‘private ownership by one person presupposes non-ownership on the part of other persons’ (Marx 1991: 948). (G. A. Cohen 1995: 55–6)

The general point that Waldron and Cohen are making is that, given the interdependence of individuals on resources that people need for their life and liberty, no neutral or positive sum property arrangements exist. The accumulation of some resources inherently leads to scarcity for others. While the concept of non-interference might have made sense in its historical setting against the powers of an absolute monarch, the un-interfered-with and thus unlimited appropriation of resources can substantially undermine the life and freedom of others. As becomes clear, the interdependence of living beings implies that the existence and freedom of one being is inherently intertwined with the existence and freedom of another being and therefore always ‘interferes’ with others – whether we like it or not.

As previously mentioned, Locke’s answer to the problem of exclusion from direct access to resources is wage labor. But is there not a fundamental difference between direct access to resources and engaging in wage labor? On the one hand, it could be argued that there is no difference between working on the original commons and wage labor because both are a means to secure one’s existence through labor. Whether I cultivate my vegetables or earn a wage to buy vegetables makes no significant difference. On the other hand, it must be acknowledged that the two are significantly different. The difference between the two is rather simple: when people do not have direct access to the means of subsistence or production, they have no other choice than to enter wage labor relationships. They either go hungry

or perform work for another – that is, if they can find a job.¹⁰ In this sense, we may speak of a socially determined existential necessity that forces people without access to the means of subsistence to enter wage labor relationships. Although the coercion is not exerted by individuals but through society's property arrangements, it is neither less real than personally exercised coercion, nor is it natural, nor entirely accidental.¹¹ We can therefore say that property arrangements that do not provide people with direct access to the means of subsistence and production deny those people the right to life and liberty.

Because this structural coercion is non-accidental, the inability to directly access the means of subsistence also means that an individual's ability to survive and freedom to choose how they will survive is interfered with in an *arbitrary* manner. While Philipp Pettit presents us with a less profound critique of wage labor relationships (Pettit 2006),¹² I would nevertheless like to draw on his notion of domina-

10 Starting one's own business is rather unlikely for most people without property, understood either as means of subsistence (land), means of production (machines) or accumulated wealth (capital), because in order to start a business, resources are required. The ability to borrow money (credit) to start a business might possibly be an option, but also requires an 'accumulation' of either social or symbolic capital (e.g. knowing the right people, having the right education, a good reputation or social status) that is not always given. This is not to say that starting a business for people without property is entirely impossible, but it is nevertheless less likely – or simply less successful – than for people with more capital.

11 While people like Townsend and Malthus aimed at naturalizing social arrangements that cause scarcity and poverty (Polanyi 2001: 116–21), Friedrich von Hayek argues that such occurrences cannot be considered unjust because they arise accidentally from the unintended interaction of individual agents. Hayek writes: "Though we are in this case [of injustice] less ready to admit it, our complaints about the outcome of the market [a property regime based on individual private property] as unjust do not really assert that somebody has been unjust; and there is no answer to the question of who has been unjust. Society has simply become the new deity to which we complain and clamour for redress if it does not fulfil the expectations it has created. [...] For in such a system in which each is allowed to use his knowledge for his own purposes the concept of 'social justice' is necessarily empty and meaningless, because in it nobody's will can determine the relative incomes of the different people, or prevent that they be partly dependent on accident. 'Social justice' can be given a meaning only in a directed or 'command' economy (such as an army) in which the individuals are ordered what to do; and any particular conception of 'social justice' could be realized only in such a centrally directed system." (Hayek 2013: 233) In contrast to this view, I argue that social arrangements can be considered unjust because they are always created by individuals with a specific purpose. The history of individual private property shows that it has always aimed at excluding other people from its use – and forcing people into wage-labor relationships (Neeson 1996: 27–34; Castel 2003). This coercion was therefore, in the eyes of some, not unintended. Yet even if this structural coercion was not intended, this should in no way deny people the right to criticize and counteract the negative effects that result from it.

12 In *Freedom in the market* (2006), Pettit argues with reference to Adam Smith that wage labor can – in an ideal or well-functioning labor market – provide people with the ability to escape

tion as arbitrary interference in order to make sense of its various problems. With Pettit, we can say that arbitrary interference occurs when one person can arbitrarily interfere with the choices and plans of another person. Here, the action of one person is “chosen or rejected without reference to the interests, or the opinions, of those affected” (Pettit 1997: 55). In this sense, one person’s exclusion from the means of subsistence or production makes them dependent on the arbitrary will of the proprietor and his or her desire to employ them. As Waldron explains:

Appropriation [...] wreaks a drastic change in the position of non-appropriators. From being tenants-in-common of God’s largesse, they are now placed in the position of moral [and economic] dependence, for everything but bare survival, on the say-so of individual property-owners. (Waldron 1988: 175-6)

Put in a historical perspective, this is what Karl Marx calls “so-called primitive accumulation” and what is more generally understood as the enclosure or privatiza-

domination. Most importantly, this occurs through the possibility of exiting relationships of domination (Smith refers here to master-servant relationships characteristic of the feudal apprenticeship system) (Smith 1994: 117, 136-42) and entering more favorable ones (Pettit 2006: 142-4). In *Republicanism: A Theory of Freedom and Government* (1997), Pettit discusses, however, the problem of domination in what socialists have otherwise called “wage slavery” during the rise of capitalism and argues that his theory of non-domination supports this critique of wage slavery (Pettit 1997: 141-2). In this sense, Pettit criticizes property arrangements that lead to asymmetrical power relations and domination, which in turn legitimize state regulation and a fairer distribution of property: “The distribution of property may tend toward inegalitarian extremes, and it may be necessary to regulate against the effects of those extremes on people’s overall enjoyment of freedom as non-domination.” (Pettit 2006: 147) Despite this conclusion, he argues that the domination or, rather, arbitrary interference must be “more or less intentional in character” (Pettit 1997: 52). For this reason, he limits the notion of domination in property arrangements to particular relationships and intentional actions. In *Freedom in the market* he writes: “The property regime can have the aspect of an environment akin to the natural environment. Like the natural environment, it will certainly affect the range or the ease with which people enjoy their status as undominated agents, and it may warrant complaint on that account, but *it will not itself be a source of domination*. It will not be a source of domination so far as it is the *cumulative, unintended effect* of people’s mutual adjustments, where that history of adjustment may or may not have begun in government initiatives.” (Pettit 2006: 139; emphasis added) As we can see, this is a similar argument to the one presented by Hayek (see footnote 11 above) because Pettit brackets out the “unintended” domination that arises from the social structure or property arrangements themselves. As I already argued *propos* Hayek, it is extremely questionable whether the domination that arises out of such property arrangements is entirely unintended, because the legal framework has been intentionally implemented and maintained (Gourevitch 2013: 606). And even if these effects of a specific property regime were unintended, I would agree with Alex Gourevitch that a republican theory of non-domination must include not only intentional domination in a particular employer-employee relationship, but also the structural domination that arises in wage labor relationships out of asymmetrical property arrangements (ibid.: 598-601).

tion commons, and the dispossession of those who have depended on commons, that began in the 12th century, if not earlier, and has continued until today (Marx 1982a: 873-940; Neeson 1996; Zückert 2003; Boyle 2003; Harvey 2004; Linebaugh 2008; Federici 2009). Although this process of enclosure might have freed peasants from the feudal relationships of serfdom, it also ‘freed’ peasants from their means of subsistence – ultimately making them vulnerable to the arbitrary interference of proprietors.

In contrast to the notion of socio-ecological interdependence I developed above, economic dependence on wage labor is therefore problematic because of the asymmetrical power relationship between the employer and the employee. This relationship places the one without property in a situation of vulnerability and powerlessness vis-à-vis the proprietor/employer. In turn, this relationship leaves the door open to domination. Here, we can also refer to Pettit’s notion of domination, which he defines as follows:

Both [the employee and the employer] will share an awareness that the powerless can do nothing except by the leave of the powerful: that the powerless are at the mercy of the powerful and not on equal terms. The master-slave scenario will materialize, and the asymmetry between the two sides will be a communicative as well as an objective reality. (Pettit 1997: 61)

The fact that wage labor relationships have been entered into by contract does not, however, alter the existence of this power asymmetry (*ibid.*: 62). Although the ability to exit wage labor relationships slightly increases one’s freedom, it does not protect or immunize the propertyless against future relationships of domination. In turn, within the hierarchical wage relationship, domination is often experienced as the necessity of carrying out certain tasks that are determined by the employer, thereby denying the employee his or her freedom to self-organize and codetermine their activities with others. As a result, we find two potential types of domination in wage labor: one in the asymmetrical distribution of access to productive resources and the other in hierarchical employee-employer relationships (Gourevitch 2013: 598).

This is not to say that all wage relationships are experienced as hierarchical and oppressive. Contemporary forms of wage labor relationships in a modern knowledge-based economy, for example, often support individual creativity, self-management and team collaboration. Yet despite these gains in the individual freedom for employees, the range of freedom is often limited by the employer’s demands that employees increase productivity and outputs (Boltanski/Chiapello 2007). Furthermore, the relationship of domination remains, because it is not necessary that the person in power (e.g. the employer) actively interfere with the freedom of the propertyless (e.g. the employee). Instead, we can argue with Pettit that “what constitutes domination is the fact that in some respect the power-bearer has the *ca-*

capacity to interfere arbitrarily, even if they are never going to do so" (Pettit 1997: 63; emphasis added). The mere capacity of property owners and employers to deny an individual their wage labor and thus a means to survival, on the one hand, and the mere capacity to subjugate the employee to the will of the employer within a wage labor relationship, on the other, provides the basis for domination, even if it is not actively exercised. In this sense, we can argue with Pettit that the propertyless "are in a position where fear [of unemployment] and deference [to the employer] will be the normal order of the day, not the frankness that goes with *intersubjective equality*" (ibid.: 64; emphasis added). By creating asymmetrical positions of power and domination, property arrangements that enable the unlimited private accumulation of resources can therefore arbitrarily interfere with and undermine the equal right of all people to life and liberty. Ironically, the arbitrary interference caused by asymmetrical property relationships as described above reminds us of the domination of the sovereign, which Locke originally aimed to limit and avert. The arbitrary interference and domination that arises from negative freedom rights ultimately undermine not only the equal negative freedom rights of the propertyless, but also the principle of self-organization that underlies my notion of ecological democracy. In order to grasp and deal with the problem of negative freedom, I argue with Pettit that we must shift our focus from non-interference to non-domination, thereby providing each member of a community with protection from arbitrary interference and, in turn, the possibility of participating in the codetermination of their activities.

Following this line of thought, one answer to the problem of domination is limiting the accumulation of resources by individuals and corporations. If we link this to the concept of guardianship, we can see that a limitation on accumulation should not merely be framed as a cap on wealth, but rather as basic responsibilities towards other individuals, affected communities and the environment that are inscribed in property relations themselves. To put it briefly, the limiting of accumulation reciprocally enables the freedom of others. John Rawls' *Theory of Justice* provided this with a now-classical definition in the form of the maximin principle: socio-economic inequalities must be limited in order to maximally benefit the least advantaged (Rawls 1999). With a more socio-ecological focus, Capra and Mattei briefly discuss the implications of such a limitation of accumulation in their discussion of ecolaw. In relation to corporations they suggest:

Ecolaw will not consider corporations, which are the current face of accumulated capital, as people, because unlike every other creature they are immortal. In the United States, for example, the idea that economic interests can be incorporated no matter what their purpose is quite recent and dates back to the late nineteenth century. Before then the legal benefits of incorporation were granted only for specific purposes and were limited in time. Once the purpose of a corporation had

been achieved, such as when the Charles River Bridge was completed, the corporation would dissolve, as naturally as individuals die. In ecolaw, the benefits of incorporations are restricted, with conditions to care for the environment and respect communities. (Capra/Mattei 2015: 185-6)

In this sense, the purpose, activities and existence of corporations will always be bound to their meaning and value for the affected people and environment. In turn, this socio-ecological embedding should limit corporations' ability to dominate others. This can theoretically imply either the limitation of resource extraction from socio-ecological systems or the redistribution of wealth back to those affected by an economic enterprise.

Despite the importance of limiting accumulation and, thus, limiting power asymmetries, the notion of non-domination also requires people to be protected from potential domination. According to what I have argued, this would require people not to be forced into asymmetrical wage labor relationships by existential necessity. Within the republican tradition, this has often been understood as freedom from economic dependence. Thinkers such as James Harrington, Jean-Jacques Rousseau and Thomas Jefferson argued that freedom and democracy can only be realized through the widespread distribution of property in resources and, more specifically, in land (Jackson 2012: 34-5). Generally put, all three propagated an agrarian republicanism that was assumed to secure the independence of individuals through a broad distribution of land and, thus, the direct access to their means of subsistence. Such a property arrangement would protect individuals from economic dependence and, in turn, produce independent, responsible, diligent and austere citizens. With the rise of the open access market and commercial society the focus slowly shifted from land to the access to public goods such as universal education, health care and old age pensions. This age-old argument that property in resources is a necessary precondition for life and liberty has more recently taken on different forms, as for example: John Rawls' concept of a property-owning democracy (Rawls 2001), Bruce Ackerman and Anne Alstott's notion of *The Stakeholder Society* (Ackerman/Alstott 1999), the idea of the unconditional basic income, which is, for example, advocated for by Philippe Van Parijs (Van Parijs 2003; Widerquist 2013; Pettit 2007). At the center of all these schemes is the basic idea that property is a necessary precondition for life and independence, generally understood as the freedom from arbitrary interference and domination.

I will discuss Rawls' notion of property-owning democracy shortly, but for the time being, it is crucial to note the importance of commons for freedom from arbitrary interference and domination. Similar to the just-mentioned schemes, commons have historically provided people with direct access to their means of subsistence and therefore "offered some independence of wages and markets" (Neeson 1996: 12). Similarly, Stuart White argues,

In the same way that the historic enclosure of the commons helped to create a proletariat, reliant on wage-labour, the emergence of the commons today can conceivably help limit this reliance. To the extent that capital- and commons-based predistribution reduce reliance on wage-labour, they thereby also help reduce the risk of domination from this source. They will tend to make workers less desperate to find jobs and so help protect them against situations where, because of the urgent need for a job, they are vulnerable to domination by employers. (White, unpublished: 10)

The direct access to resources in the form of commons can therefore limit the arbitrary interference that arises through asymmetrical distribution of individual private property and the dependence on hierarchical wage labor. Furthermore, by defining non-domination as a central pillar of property arrangements, “no single individual can arbitrarily make the decisions affecting” all the others (Gourevitch 2013: 609). In turn, this enables Pettit’s “intersubjective equality” (Pettit 1997: 64) to come about, in which people can organize economic activities, including wage labor relationships, in a more democratic manner. The important point, however, is that the notion of commons developed here emphasizes non-dominated socio-ecological *interdependence* and not economic *independence*. Put in this light, the advantage of commons over more individualistic property arrangements, such as Rawls’ property-owning democracy or a basic income, is that interdependence is inscribed in the property arrangements themselves. While criticizing the dependence from asymmetrical power relations, a commons theory of property would not fall into the illusions of individual independence, as many republican theories do, but would instead critically reflect how interdependence can be organized in a manner that hinders arbitrary interference and domination on the one hand, and enables the negotiated self-organization of economic activities on the other. The fundamental question is not, therefore, whether interference takes place or not, but rather how commons arrangements can be organized in order to distribute freedoms and duties in a manner that supports the interdependent and sustainable self-organization of all living beings.

From individual labor to interdependent needs

Up until now, I have reinterpreted John Locke’s theory of property by replacing ownership and non-interference, as constituents of our understanding of property with guardianship and non-domination. The justification of these shifts was largely based on the socio-ecological interdependence of living beings and the problems of arbitrary interference and domination that arose out of a purely negative definition of freedom. The connection between interdependence and non-domination led me, in turn, to the justification of a commons property arrangement. Now, how-

ever, a central question relevant to the reinterpretation of Locke's theory of property arises: how should we understand the legitimacy of appropriating from commons? According to Locke, the ability to individually appropriate resources held in common is based on what is often referred to as the labor theory of property. By working on the resource, I have a right to declare it as mine. In turn, Locke also declares that a thing must be one's individual private property in order to use or consume it. In order to critically reinterpret these frequently invoked justifications of individual private property, let us begin with Locke's labor theory of property and, more precisely, Carol Gould's critique of that theory in her book *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy, and Society* (1990).

Much like my own defense of an ecological and interdependent interpretation of reality, Gould argues that in order to overcome the problems of domination and exploitation we must base our property arrangements not on an individualistic, but on a social ontology. As a critique of Locke's individual labor theory of property, she argues that most forms of production occur not individually but through social cooperation and collaboration. Conceptualizing labor activities in this manner, she maintains that the labor theory of property "gives rise to a different conception of property right, namely, social property" (Gould 1990: 177). Yet, in order to protect a minimal realm of negative freedom and non-interference for the individual, Gould distinguishes between personal and social property. In this postulate, Gould differentiates between personal property that is "required for the individual's own subsistence and self-development" and social property, which is "required by individuals in common in order to realize their joint purposes" (ibid.: 180). Furthermore, she develops arguments for two fundamental rights to social property. Firstly, she explains the "right of all of those engaged in a common activity to control the products of that activity, or to enjoy in common the benefits of their labor", which provides the "condition for the development of the sociality of individuals as individuals-in-relations" (ibid.: 183). Secondly, she argues in favor of the "equal right to control the conditions of social activity" (ibid.), which sounds very similar to my definition of democratic freedom. But Gould says that this implies not only the "right to participate in decisions concerning the uses of the conditions or means of social production in which one is engaged" but also "the right to participate in decisions concerning the purposes and plans of the activity" (ibid.: 183-4). Simply put, the right to codetermination is based on one's participation in a joint, social activity. I agree with Gould that such a social right to democratic codetermination and the individual right to the fruits of one's social activities provides an important cornerstone for a more social and democratic interpretation of Locke's labor theory of property. It provides a radical shift from the right of the individual proprietor to exclude others to the right of others to be included in the common use and benefits of the specific resources. Furthermore, her understanding of labor is broad enough to include not only people in wage-labor relationships, but

also people who participate in unpaid social activities. Finally, her notion of social property is not conceptualized as state property but rather as “the property of the associated individuals engaged in a given common activity, whether in an industry or a social organization” (ibid.: 189).

In a similar way, this principle is expressed by legal scholar Burns H. Weston and commons intellectual David Bollier in their book *Green Governance: Ecological Survival, Human Rights, and the Law of the Commons* (2013). In relation to the “principles of internal [commons] governance” they write that “commoners shall have collective control over the surplus value they create through the collective management of their shared wealth and resources” (Weston/Bollier 2013: 275, 277). While Gould emphasizes the recognition of the individual equal right to positive freedom in relation to others, I would interpret this from my commons perspective as the equal right to individual and interdependent self-organization. Despite the gains that come with a social and democratic reinterpretation of Locke, I would nevertheless argue that a labor theory of property is not adequate for a commons theory of property because, firstly, it remains rather exclusive and, secondly, it falsely prioritizes labor activities over the general right to existence through a right to the satisfaction of primal needs.

In order to understand these limitations, let us begin with the basic argument for a (social) labor theory of property. Since we have already discussed the problems of a labor theory of property in relation to the notion of ownership, we will now focus on the more general problem of grounding a theory of property on labor. Put in more general terms, it must be admitted that a labor theory of property does have an intuitive appeal. If I (or we) change an object that is not owned by anyone, it seems that I (or we) should have the right to declare that thing as mine (or ours). With Gould, we could say that if a group of people kills a mammoth, then the group would have the right to the mammoth meat. Or, with a more contemporary example, if a group of people build cars in a factory then they have a right to codetermine how the activities are organized and how the profits of the company are distributed between the employees. Although Gould argues that her concept of social property refers to the broad notion of “social activity” (Gould 1990: 183) and is thus not limited to wage-labor relationships, the principle of a *labor* theory of property inherently limits the questions of codetermination to those performing the specific labor activities. Other people who are not engaged in these activities but are nevertheless significantly affected by them are thus excluded from the rights to codetermination. Thus, by focusing on labor activities, people outside of the hunting, farming or industrial activities (in both cases often women and the wider community) are excluded from the decisions concerning how activities are to be organized and, more importantly, what is to be done with their fruits. According to the principle of non-interference, it would be assumed that people outside of these activities should have no say in the codetermination of these affairs. Considering, however,

the division of labor in society and the interdependent self-organization of living beings (i.e. the dependence of the person engaging in wage-labor on the person at home taking care of the children and the household and on the city as it takes care of education, pollution, unemployment, etc.), it becomes less clear why people at home or in the community should be *completely* excluded from the important decisions that are made in businesses that *significantly* affect and determine their lives.

In order to understand this problem better, let us turn to an example that lies closer to home: the ability to democratically participate in political affairs. In contrast to the fundamental right to democratic codetermination of one's life conditions, the argument for political participation based on negative liberty and individual private property, as presented by Locke and others, is grounded on the right to non-interference as against the state authority. People are allowed to vote in matters concerning the state because they are subjugated to the state monopoly on the use of force. Furthermore, people (are obliged to) pay taxes so that the state will be able to provide certain public goods such as law and order, roads or education. For this reason, because of the coercive force that stands behind the obligation to be a member of this specific association and the requirement to pool private resources through taxation, people should ultimately also have a say in how the state is organized or, as is most often the case, they should be able to elect who shall rule and determine the organization of the state and its activities. So the main justification of the democratic right to participate in public affairs of the state is the fact that citizens are involuntarily and significantly affected by the state's overarching authority. Political participation is therefore a means to limit arbitrary interference of the state (i.e. domination) and to collectively define its legitimate forms of interference (e.g. taxation). In more general terms, participation is a means to legitimize the basic rules governing our common reality. Here, the more fundamental right to democratic self-organization shines through the negative right to non-interference. According to the classical argument from negative freedom, however, one would have no right to codetermine either the organization of the firm one works in or the use of the surplus value that it appropriates, because one has the free choice to exit this wage labor relationship and work elsewhere (where one will most likely not have the right to democratic participation either). Finally, if a person is not happy with the undemocratic company they work for, they theoretically have the right to start a democratic enterprise together with others. According to this logic, the exit option provides people with the ability to escape involuntary domination in "private" associations, but does not provide them with the right to codetermine either the activities that they perform with others or those by which they are otherwise affected.

On the one hand, I agree that we must distinguish between different types of associations in which people are involved (e.g. the state versus private firms).

On the other hand, if we understand freedom as non-dominated freedom with, through and against the other in the codetermination of the socio-ecosystems that one inhabits, the strict separation between the in- and out-group becomes less clear. Put rather simply, although I do have a choice between different partners, products or jobs, owing to the existential necessity to engage in wage-labor (even in its non-dominated and democratic form) the people of a community are significantly affected by and interfered with by the way that firms conduct their business. In this sense, how low (or high) wages are in a given society, for example, or what type of products it produces and sells (e.g. chemical or organic fertilizers), or what type of technology its firms used (e.g. whether very little labor or more craft and skill is necessary) – these things make a big difference to the people who live in that society. Even though these issues are often understood as private matters concerning, first and foremost, the official owners of the firm (e.g. the shareholders), they do have large effects not only on the workers of the firm, but also on the surrounding community and the wider public because they share a *common reality* and are dependent on this reality for their life and liberty. Parallel to the dependence of an individual's life and liberty on wage labor relationships, we must admit that communities are also deeply affected by, dependent on and, thus, potentially dominated by the economic activities of 'private' associations. While Gould's social labor theory of property aims to widen this range of codetermination to those performing collective activities, other affected communities nevertheless remain excluded from the process of democratically negotiated self-organization. Thus as we can see, the social interpretation of a labor theory of property is limited owing to its focus on the performance of labor, which then excludes those human and non-human beings who are significantly affected by the activities yet not actively participating in them. For this reason, I argue that it is necessary to include not only shareholders and those performing specific labor activities, but also significantly affected stakeholders in the democratic codetermination of enterprises, ultimately transforming an economic enterprise and association into a type of commons (Tortia 2011). Put slightly differently, the *arbitrary* interference in and potential domination of enterprises in one's private life plans legitimizes the *non-arbitrary* 'interference' in or, rather, the codetermination of social activities of (re)production in economic organizations that effect one's interdependent common reality. We will discuss the notion of economic commons associations in greater detail later, but let us now turn to the second fundamental problem in the labor theory of property: the priority of labor over life.

The question that arises from our previous discussion of economic activities, the division of labor and affected communities is therefore whether *labor* itself is truly the ideal justification for the appropriation of resources and the appointment of authority to determine the allocation and use of resources. I will not discuss the intricate details of the difficulties in the labor theory of property (Waldron 1988:

137-252). Instead, I would like to begin with Hume and Kant's general critique of Locke's labor theory of property, according to which a minimal form of possession of external resources must precede any form of labor. According to Hume and Kant, this prior possession does not arise from labor, but instead from simple occupation (ibid.: 173-4).¹³ It is the prior occupation of land and space that, in turn, enables people to access, labor on and use these resources. Or, more simply put, property in the world is a precondition of labor – and therefore also for life and liberty. Only if I can *access* resources (whether directly or through contract) can I then work on them in order to survive and, hopefully, live freely. This insight figuratively turns Locke's labor theory of value on its head – or, as will become clear, restores its original meaning. Although I would not necessarily agree with the manner in which Hume and Kant frame the problem as a warlike state of nature in which each *individual* must protect his or her goods from the threatening dispossession by others, I nevertheless agree with their general insight. Yet, in a somewhat less individualistic and belligerent rhetoric, we could also say that the original appropriation of external resources does not occur through labor, but through people simply *being in the world*.

If this argument is correct, it would also require us to reinterpret the notion of the “right to property”. To do this, it may be helpful to use Jeremy Waldron's distinction between a special-right-based and a general-right-based argument for property.¹⁴ Waldron defines the concept of “rights” and the different arguments in the following way:

A right-based argument for private property is, as we have said, an argument which takes an individual interest to be sufficiently important in itself to justify holding others (especially the government) to be under duties to create, secure, maintain, or respect an institution of private property. A *special-right-based argument* (or SR-based argument, for short) is an argument which takes an interest to have this importance not in itself but on account of the occurrence of some contingent event or transaction. A *general-right-based argument* (or GR-based argument, for short) is one which does not take the importance of such an interest to depend on the occurrence of some contingent event or transaction, but attributes that importance to the interest itself, in virtue of its qualitative character. (Waldron 1988: 115-6)

13 In the words of Jeremy Waldron: “Before a man can cultivate a piece of ground, he must take it into his possession and exclude others from its use; otherwise their exercise of common rights might make his cultivation impossible.” (Waldron 1988: 173)

14 It should be noted, however, that Jeremy Waldron adopted this distinction from H.L.A. Hart (Waldron 1988: 106).

This distinction enables us to pinpoint a central problem in the labor theory of property. Put in general terms, Locke transforms the primary and original general right to access resources in the original state of nature into a special and contingent right to appropriate resources through labor. Furthermore, Locke's justification of private property was based not only on the right to the fruits of one's labor, but also on the increased productivity that was brought about through labor and private ownership. Simply put, those who produced *more* possessed the ultimate right to resources. For example, it was the increase of "comforts" and "conveniences" (Locke 2008: II, §41) through productivity gains in farming that, according to Locke, justified the taking of the "wild woods and uncultivated waste of America" from the "needy and wretched inhabitants" of the New World (ibid.: II, §37). Although Locke did not actually argue for the privatization of common lands in England (ibid.: II, §35), the reasons that justified the violent expropriation and enclosure of commons were based on similar arguments (Neeson 1996). As Locke explains, "God gave the world to men in Common; but since he gave it them for their benefit, and the *greatest Conveniencies of Life* they were capable to draw from it, *it cannot be supposed he meant it should always remain common and uncultivated*" (Locke 2008: II, §34; emphasis added). This special-right-based argument for individual private property has major implications: on the one hand, Locke assumes that productivity and resources held in common are mutually exclusive; on the other hand, it implies that an increase in productivity provides people with the right to own resources over those who are less productive (i.e. farming over hunting and gathering, industrial production over craft work etc.). Both of these assumptions and arguments are still widespread today (Demsetz 2002). Moreover, the priority of productivity leads to a linear, growth-oriented justification of property arrangements and economic activities instead of, for example, arrangements based on care for the sustainable reproduction of resources. That being said, we may conclude that Locke's special-right-based argument of resource appropriation through productive labor does not secure the general right to life, liberty and property for all, but instead leads to the privilege of those with greater strength and skill to extract more common resources from nature and society.

It must be admitted that Gould's labor theory of social property attempts to mitigate this problem by arguing that everyone participating in a specific activity should likewise control the means of subsistence and production and have a share in the fruits of labor. Nevertheless, a very large asymmetry between those who can produce more and those who cannot or do not produce much has often been the result of this asymmetry. This is precisely the problem that Karl Marx describes in his *Critique of the Gotha Programme*, in which he criticizes the principle of the equal right to the fruits of one's (social) labor:

The right of the producers is *proportional* to the labor they supply; the equality consists in the fact that measurement is made with an *equal standard*, labor. But one man is superior to another physically, or mentally, and supplies more labor in the same time, or can labor for a longer time; and labor, to serve as a measure, must be defined by its duration or intensity, otherwise it ceases to be a standard of measurement. This *equal* right is an unequal right for unequal labor. It recognizes no class differences, because everyone is only a worker like everyone else; but it tacitly recognizes unequal individual endowment, and thus productive capacity, as a natural privilege. (Marx 2009: 9-10; original emphasis)

As Marx emphasizes, while the focus on labor may be correct according to certain standards of justice and equality, it nevertheless remains an abstraction that negates the differences between individuals' productive capabilities and activities, ultimately creating and legitimizing material inequality between people. In turn, this inequality can lead to power asymmetries and relationships of domination between people. In Waldron's terminology, we could say that even a *social* labor theory of property is a special right and thus remains contingent and somewhat arbitrary. According to Marx, this is due to the focus on the distribution of goods in the 'sphere of circulation' after the goods have been produced – instead of the distribution of the means of subsistence and production themselves.

With Waldron, I therefore argue that in order to deal with this problem we must shift our reconstruction of the legitimacy of property from a specific-right-based to a general-right-based argument. In Lockean terms, this implies a shift from the labor theory of property “back” to the primary general right of all people to access resources that originally belonged to all of humanity. But then what would the justification of the right to use and appropriate goods be based on, if not labor? The answer to this question is quite simple and has already been mentioned: needs. As Waldron explains,

A GR-based argument for private property is not satisfied by the assignment of one or two trivial or useless resources to each individual; it requires the assignment to individuals of resources that they take seriously as the basis of their individual economic well-being. Thus the universal distribution of private property, required by a GR-based argument is likely, as a matter of fact, to *satisfy the demands of the principle of need*, for in seeing to it that everyone has private property, the proponents of that argument will also in effect be seeing to it *that everyone has the wherewithal to satisfy his basic needs*. (Waldron 1988: 440; emphasis added).

According to Waldron, the shift from a special-right-based labor theory of property to a general-rights-based needs theory of property places the principle of occupation or rather being, life and self-preservation at the heart of our property arrangements. It can therefore be said that a labor theory of property reverses the

fundamental relationship with the world from one based on embodied being in relationships with the world to one based on the unequal opportunity to pursue productive activities. One's relationship to the socio-ecosystem is therefore dependent on one's arbitrary natural endowments and one's ability to work and accumulate. The labor theory of property assumes that humans should first work and then eat and have shelter, even though they require shelter, food and most likely many more resources (e.g. education) before they can work. Simply put, basic needs must be fulfilled before work can be performed. Anyone who has brought up children knows this to be a general fact. For this reason, a more just theory of property must place needs satisfaction over labor. In Lockean terminology, we must therefore conclude that a property regime that fulfills these criteria of life, liberty and property for all is not one based on labor, but on the more general right to existence through the access to resources that enables one to satisfy one's needs. Yet, to be precise we must admit that Waldron is not arguing for a general right to common property or commons. However, although he focuses on individual private property, the argument also holds true for common property. And as we have already argued, the justification for the access to commons instead of individual private property is the fact that commons provide people with a more adequate institutional arrangement for dealing with conflict in the satisfaction of people's common and interdependent needs.

In conclusion, it can therefore be said that the development of a commons theory of property demands that we critically revise Locke's well-known labor theory of property. As I have demonstrated, this demands a threefold shift in our understanding of property: firstly, the shift from (self-)ownership to (self-)guardianship integrates the wider socio-ecological web of life in institutional property arrangements. Secondly, the shift from non-interference to non-domination requires that people have direct access to resources held in common in order to avert arbitrary interference and, in turn, enable the codetermination of their activities and life conditions. Lastly, my critique of a (social) labor theory of property has demonstrated the necessity of prioritizing the more basic and general right to resources according to interdependent needs satisfaction (i.e. 'being', life or self-preservation) over the special right to resources through labor appropriation.

After having worked through these elements of a theory of property, the question arises how such a right to property should be spelled out. To gain an idea of what such a property arrangement might look like, let us now turn to the work of John Rawls, who also argues for the direct access to resources or, in his terminology, an *ex ante* or *predistribution* of property in the name of individual freedom and democracy. Parallel to my revision of Locke's theory of property, I now critically examine Rawls' notion of predistribution and property-owning democracy and reinterpret it from a commons perspective.

6.4 Predistribution: commons in a property-owning democracy

It can generally be said that John Rawls is one of the most important political philosophers of the 20th century. His magnum opus *A Theory of Justice* (1999)¹⁵ remains a central reference for the conceptualization and defense of a free and just society. In this work, and somewhat more explicitly in his later book *Justice as Fairness: A Restatement* (2001), Rawls discusses the property arrangements of such a society. Rawls develops and defends the notion of predistribution, in which property in resources is understood as a precondition of a person's life and liberty. The principle of predistribution allows him to develop a model of property-owning democracy, which I analyze here. The question that arises is whether this notion of predistribution and property-owning democracy can aid in the development of a commons theory of property and if not, how we must reinterpret Rawls' model. In order to answer this question I firstly sketch Rawls' theory of justice and his concept of a property-owning democracy. Next, I discuss the relation between the individual and society and critically analyze the role of the competitive market in Rawls' model. Finally, I argue that an ecologically sound predistribution scheme must shift its focus from productive assets and productivity to shared resources and their care. Thus, I claim that common property arrangements would provide a better background structure for a sustainable property-owning democracy.

John Rawls' property-owning democracy

In order to grasp Rawls' understanding of predistribution and a property-owning democracy, I first summarize and discuss his theory of justice, largely with reference to his book *Justice as Fairness: A Restatement* (2001). Rawls formulates the fundamental idea of justice as "a fair system of social cooperation over time from one generation to the next" (JF: 5). He breaks this concept down into his two principles of justice:

- (a) Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and
- (b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle). (JF: 42-3)

15 In my discussion of Rawls' theory of justice, I will refer to the second edition of the book *A Theory of Justice* published in 1999 with the abbreviation "TJ". The book *Justice as Fairness* will be mentioned as "JF".

The first principle should enable the “fair equality of opportunity,” which is more generally understood as “liberal equality” (JF: 44). The second principle, on the one hand, refers to the “fair value of political liberties,” which should ensure the “equal chance of influencing the government’s policy and of attaining positions of authority irrespective of their economic and social class” (JF: 46). On the other hand, the second principle also includes Rawls’ famous “difference principle” which radically binds or limits the individual accumulation of wealth to the benefit of those least well-off in society. Within the ecological understanding of social reality I have elaborated, the difference principle could be understood as a means of expressing the principle of social interdependence and the requirement that a society can only flourish when all individuals can also flourish. As mentioned previously, this principle provides a way to limit arbitrary interference and domination.

Rawls understood his theory of justice to lay the foundations for the “basic structure” of a just and free society. According to Rawls, the basic structure of a society¹⁶ is the “primary subject of political justice” (JF: 10) and should secure just “background institutions” that “remain fair over time, from one generation to the next” (JF: 51). The reason these institutions are in the “background” is because they are supposedly founded on a general overlapping consensus of the members of a society and should thus not be put into question or attacked anew in each period of legislation. These institutions should make justice and freedom socially sustainable.

For a long time after his first formulation of a just basic structure, Rawls’ theory of justice was believed to amount to a legitimation and defense of welfare-state capitalism. He corrected this common misunderstanding briefly in the preface to the second edition of *A Theory of Justice* in 1999 (TJ: xiv-xvi) and then more extensively in his later book *Justice as Fairness* in 2001. Since this reformulation, there has been a growing interest in the interpretation and further implications of his theory of justice (O’Neill/Williamson 2012; Cheneval/Laszlo 2013).

In his discussion of the specific institutions of a just basic structure, Rawls distinguishes five different regime types: state socialism with a command economy, laissez-faire capitalism, welfare-state capitalism, property-owning democracy and liberal (democratic) socialism. Not very surprisingly, Rawls rejects state socialism because it is controlled by a single political party and “violates the equal basic rights and liberties, not to mention the fair value of these liberties” (JF: 138). In this regime

16 Rawls elaborates on the concept of this basic structure: “The basic structure of a society is the way in which the main political and social institutions of society fit together into one system of social cooperation, and the way they assign basic rights and duties and regulate the division of advantages that arises from social cooperation over time. [...] The basic structure is the background social framework within which the activities of associations and individuals take place. A just basic structure secures what we may call background justice.” (JF: 10)

type, the economy is structured according to a general plan that negates both democratic participation and free markets. Yet, Rawls also criticizes laissez-faire capitalism, which he calls “the system of natural liberty” (JF: 137) because it “secures only formal equality” and rejects both principles of justice (JF: 137).¹⁷ To the surprise of some, however, Rawls also argues that welfare-state capitalism (WSC) fails to live up to the standards of his theory of justice. Although WSC does express “some concern for equality of opportunity, the policies necessary to achieve that are not followed” (JF: 138). Furthermore, WSC also rejects the second principle of justice, the fair value of political liberties. Owing to these underlying values, WSC “permits very large inequalities in the ownership of real property (productive assets and natural resources) so that the control of the economy and much of political life rests in a few hands” (JF: 138). While WSC generally provides those in need with a social minimum, the inequalities that bring such needs forth are themselves not regulated, limited or eradicated.

The only answer to the failings of state socialism, laissez-faire capitalism and welfare-state capitalism is what Rawls calls property-owning democracy (POD) or liberal (democratic) socialism. While he only briefly discusses liberal socialism, Rawls develops the differences between WSC and POD in more detail. Liberal socialism consists, according to Rawls, of a regime in which the means of production are owned “by society” (JF: 138). Yet, in comparison to state socialism, a plurality of parties competes and is therefore forced to share political power. Furthermore, economic power is not centralized but “dispersed among [democratically organized] firms” (JF: 138). And, just as importantly, economic activities are structured not by a centralized plan but through “a system of free and workably competitive markets” (JF: 138). Despite the paucity of Rawls’ comments on liberal socialism, it appears safe to say that this regime is what many other intellectuals understand as market socialism: an economy organized by worker-owned firms and a ‘free’ market economy (Miller 1990).

17 In a letter to Philippe Van Parijs, Rawls elaborates on his critique of laissez-faire capitalism. Here, Rawls argues that the “large open market including all of Europe is aim of the large banks and the capitalist business class whose main goal is simply larger profit” (Rawls/Van Parijs 2003). This economic class justifies their interests with the “idea of economic growth, onwards and upwards, with no specific end in sight” (ibid.). He goes on to say that in laissez-faire capitalism distribution is almost exclusively referred to “in terms of trickle down” (ibid.) and without any mention of welfare-state redistribution. The problem with such an unregulated market economy is that the “long-term result of this [...] is a civil society awash in a meaningless consumerism of some kind” (ibid.). With reference to this trenchant critique, it can be said that Rawls rejects large, open markets in general because they are often used by economic (and political) elites to accumulate capital without having to redistribute their gains to other members of society. Furthermore, such a market economy creates individuals that are merely consumers and not understood – or do not understand themselves – as political citizens.

According to Rawls, the only other social arrangement that realizes his principles of justice is what he calls property-owning democracy (POD).¹⁸ Like liberal socialism, POD must, he thinks, be understood as “an alternative to capitalism” (JF: 135-6). However, while liberal socialism is like *laissez-faire* capitalism and WSC in that it emphasizes social ownership, POD allows for individual private property in productive assets. The major difference between WSC and POD is, nonetheless, that while WSC allows “a small class to have a near monopoly of the means of production,” POD ensures a “wide and far more equal dispersion of real property and productive assets” (JF: 161). Importantly, this also includes human capital, “that is, education and trained skills” (JF: 139). Rawls is, however, rather vague in defining what these primary goods could be. Besides education and training, the focus is often on what Rawls calls “productive assets”, which are interpreted by most of those developing his notion of POD as “productive capital” (O’Neill 2012: 80; Hsieh 2012: 156; Freeman 2013: 23; Thomas 2017: 307). Furthermore, in a POD the distribution of capital and wealth occurs not at the “end of each period” (*ibid.*) after the process of production and the distribution of assets through market exchange have taken their course but rather “at the beginning of each period” (JF: 139). The shift from WSC to POD is thus a shift from *ex post* to *ex ante* distribution. The shift in perspective is important because it intends “not simply to assist those who lose out through accident or misfortune (although that must be done), but rather to put all citizens in a position to manage their own affairs on a footing of a suitable degree of social and economic equality” (JF: 139).

Put somewhat differently, POD attempts to realize the substantive equality in which the right to life, liberty and property is not merely understood negatively as the *protection* of already existing property relations but also positively as a general right to *access* the means of production. This shift from redistribution to predistribution should transform individuals *dependent* on welfare into *independent* individuals capable of equally and freely participating in social cooperation. While inequalities and dependencies often lead to class antagonisms and political apathy, material independence should, in turn, provide recognition and self-confidence to all members of society, ultimately empowering them to participate in democratic politics (JF: 140).

Rawls’ notion of the individual and society

Having now laid out Rawls’ general understanding of his theory of justice and a property-owning democracy, the question arises why he focused on a wide dis-

18 The concept of POD was adopted from the English economist James E. Meade (1907-1995), who explicitly discussed the term in his book *Efficiency, Equality and the Ownership of Property* (1964).

persion of individual private property. Generally, Rawls grounds the priority of individual freedom and, therefore, individual private property on the “reasonable pluralism” of individual conceptions of the good. Due to the plurality of ends individuals pursue, Rawls argues for the priority of the right over the good, which ought, he thinks, to be the result we arrive at if we think through the “original position” thought experiment and the concept of an overlapping consensus.

To delineate Rawls’ position more clearly, it may be helpful here to briefly compare Rawls’ concept of justice with Elinor and Vincent Ostrom’s concept of the commons. On the most general level, there appears to exist quite an overlap in the conceptualization of Rawls’ well-ordered, just and democratic society and the Ostroms’ design principles for the sustainable and democratic management of resources and institutions held in common. Both the Ostroms and Rawls emphasize the importance of a shared understanding of justice, the significance of shared knowledge of the constitution of society’s basic structure and the necessity of effective self-organization. That being said, while the Ostroms develop their under-theorized concepts of justice and sustainability from empirical examples of pre-contractual social cooperation and democratic participation, Rawls grounds his normative position in the thought experiment of the “veil of ignorance” and the “original position” and in the contractual agreement of an “overlapping consensus”.

According to Rawls, the veil of ignorance and the original position enable people to “be removed from and not distorted by the particular features and circumstances of the existing basic structure” (JF: 15). This thought experiment enables people to grasp the equality of persons despite opposing interests and unequal bargaining advantages (JF: 16). The aim of the hypothetical and ahistorical original position (JF: 16-7) is to provide a just procedure in order to arrive at an “overlapping consensus” or social agreement on the “fair terms of social cooperation between citizens regarded as such” (JF: 16). While the Ostroms define symmetrical (or more or less equal) relationships as a central prerequisite for fair and sustainable democratic government, Rawls formulates a just procedure that makes it possible to conceive of a hypothetical symmetry of each party despite the actual lack of symmetry. In relation to the tragedy of the commons, it could be said that Rawls’ original position enables human beings to overcome tragedy by creating just and stable social arrangements through contractual agreements based on insights arrived at by stepping behind the veil of ignorance. The tragedy is overcome when all participants recognize both the equality of all and the mutual advantage resulting from social cooperation.

That being said, the contrast between the Ostroms and Rawls should not be overemphasized, because more overlap exists than is apparent at first glance. Here, I do not wish to focus on the communitarianism-liberalism debate in this short discussion of Rawls. As Sibyl Schwarzenbach persuasively argues in her article “Rawls, Hegel, and Communitarianism”, this debate is a “red herring” (Schwarzen-

bach 1991: 564), because Rawls himself does not advocate the “abstract”, “denuded” and “asocial” individualism that many communitarians such as Michael Sandel (1986), Charles Taylor (1994) and Michael Walzer (1989: 185) see in his writing. On the contrary, in the third part of *A Theory of Justice* Rawls strongly emphasizes the importance of complementary cooperation for the “social union” and the realization of a “well-ordered society”.¹⁹ For example, Rawls explains that

the social nature of mankind is best seen *by contrast with the conception of private society*. Thus human beings have in fact shared final ends and they value their common institutions and activities as good in themselves. We need one another as partners in ways of life that are engaged in for their own sake, and *the successes and enjoyments of others are necessary for and complimentary to our own good*. [...] Thus we may say following Humboldt that it is *through social union founded upon the needs and potentialities of its members that each person can participate in the total sum of the realized natural assets of the others*. We are led to the notion of the community of humankind the members of which enjoy one another’s excellences and individuality elicited by free institutions, and they recognize the good of *each as an element in the complete activity the whole scheme of which is consented to and gives pleasure to all*. (TJ: 458-9; emphasis added)

As we see, Rawls’ concept of a just society reaffirms our insight of the interdependent self-organization and convivial flourishing of the individual for the whole and the whole for the individual. The provision of access to property enables people to satisfy their needs in a self-organizing manner that is in accordance with their natural endowments and capabilities – and those of others. Furthermore, this provision does not simply occur ‘magically’ through the public institutions of the state, but through the “collective activity of justice [which] is the preeminent form of human flourishing” (ibid.: 463). This concept of justice as the basic structure could thus be understood as the shared norms and values of a community brought about by and reproduced through civic social actions, interactions and institutions.

The competitive market and the problem of endless growth

So the problem in Rawls’ concept of justice does not lie in the discrepancy between the individual and society, despite what parties to the communitarianism-liberalism debate have often assumed. Instead, I would argue that the problem lies in two tensions: on the one hand, in a tension between the ‘private’ economic reproduction of society and the ‘public’ reproduction of a society’s basic structure; and on the other, in a tension between the reality of justice and its ideal concept. In other words, the problem in Rawls’ theory of justice is not the individual-society-state

19 See especially chapter 79 “The Idea of the Social Union” in Rawls’ *A Theory of Social Justice*.

relationship, but rather the market-state dichotomy. Since I discuss the concept of non-ideal theory in more depth later, let me turn briefly to Rawls' understanding of the market.

Interestingly, in both property-owning democracy and liberal socialism, Rawls defends a wide distribution of property against the backdrop of a competitive market economy. The combination of a wide distribution of productive assets and a system of "(workably) competitive markets" (TJ: xiv) is meant to "prevent a small part of society from controlling the economy and indirectly political life itself" (ibid.: xiv-xv). The assumption is that competitive markets "properly regulated secure free choice of occupation and lead to an efficient use of resources and allocation of commodities to households" (TJ: 244). In their ideal form, regulated competitive markets – coupled with a widespread distribution of productive assets – should ensure not merely freedom of association, but also an efficient use of society's resources. Finally, it must also be noted that Rawls' just and well-ordered society does not necessarily require perpetual economic growth; *ex ante* distribution in line with the two principles of justice should also, theoretically, be realizable in a stationary state (JF: 63-4).²⁰

Although this might be assumed, I question whether a wide dispersal of individually owned productive assets combined with highly competitive markets can actually be realized and maintained over generations. Here, I would argue that the economic 'virtues' (pursuit of self-interest, competitiveness etc.) that are cultivated through individual private property and open and competitive market arrangements would undermine the social cooperation necessary for the stable or sustainable reproduction of a just basic structure of society "over time from one generation to the next" (JF: 5). This is a common criticism of Rawls' theory of justice and property-owning democracy (Krouse/McPherson 1988: 102-3; Wesche 2013: 106-9; Hussain 2009; Roemer 2013). Aside from this ethical argument, highly competitive markets inherently lead to the accumulation and overuse of socio-ecological resources, as we have already discussed. This is what we understood as the tragedy of privatization and open and competitive markets. In this sense, I would agree with Sibyl Schwarzenbach that the provision of "productive capital" is highly conducive to "exclusive and acquisitive" ownership (Schwarzenbach 1987: 144) and ultimately to an economy geared towards perpetual monetary growth.

20 In *Justice as Fairness*, Rawls writes, "A further feature of the difference principle is that it *does not require continual economic growth* over generations to maximize upward indefinitely the expectations of the least advantaged (assessed in terms of income and wealth). That would *not* be a reasonable conception of justice. We should not rule out Mill's idea of a society in a just *stationary state* where (real) capital accumulation may cease. A well-ordered society is specified so as to allow for this possibility." (JF: 63-4; emphasis added)

The reasons for this are twofold. Firstly, for capital to be productive, it needs to be invested in a specific enterprise at a rate of interest. This implies that the firm has to produce and sell goods, which, in turn, enables it to earn a profit and pay the interest back. But the augmented capital is then lent again with the aim of receiving interest. In turn, more goods are produced and consumers (hopefully) buy more things. It is important to note that each time capital is lent its amount *must* be increased, for that is the reason why it was lent in the first place. If the expected rate of interest cannot be paid back, capital is withheld and the economy slumps or breaks down. This is what Streeck refers to as an “investment strike” on the part of capital (Streeck 2013: 50). In this sense, the inherent logic of an economy based on interest and productive capital is one of perpetual and exponential growth (Binswanger 2013; Hardin 1993: 61–68). Given this dynamic, the amount of productive assets made available to each citizen at every round of *ex ante* predistribution must, in turn, also be increased. Secondly, the reproduction and predistribution of capital separates the monetary mediation of needs satisfaction from the socio-ecological basis of wealth production. This separation often enables people to ignore and forget where monetary wealth originates and allows them to believe that material wealth can increase without limits – despite the limits to economic growth in a world of finite resources. In other words, the predistribution of productive capital not only neglects the question of *how* capital is produced and reproduced, but also transforms the *means* of satisfying one’s needs (through money) into an *end in itself* (wealth accumulation and the potential to satisfy ever more, and ever increasing needs). Yet, as I just mentioned, it is not only capital’s “veil of ignorance” that allows us to forget the socio-ecological foundation of wealth and to develop unlimited material needs and desires, but it is rather a central and inherent function of productive capital to perpetually and exponentially grow. In this sense, the supposed stability that results from an economy based on productive capital and competitive markets is, from a socio-ecological point of view, highly unsustainable (Schweickart 2012: 213).

Although Rawls does argue that we *could* have a steady-state economy, for the reasons mentioned I believe that the predistribution of “productive capital” would nevertheless result in an ecologically unstable growth-oriented economic system – even if the *ex ante* distribution of these assets were extremely fair and just. The usual answer to this problem would be that robust laws and a “just background structure” could protect socio-ecological resources from overuse. However, if unlimited growth is a central feature of the economy, then both the people demanding their return on investment and those required to repay interest will always attempt to undermine and challenge the rules. Put more generally, and as I have already observed in relation to the state-market dichotomy, the separation of individual and ‘private’ economic interests from general, ‘public’ interests ultimately leads to the limitation of political regulation and democratic organization of socio-ecological

systems. Consequently, a property arrangement based on exclusive and acquisitive ownership of productive capital will ultimately be unable to sustainably reproduce the socio-ecological just basic structure of society.

From productivity to care

For this reason, I would defend Rawls' argument for predistribution and a property-owning democracy, but I would argue that an *ex ante* distribution must be based on something other than productive capital if domination is to be overcome and the self-organized satisfaction of needs enabled. As might be expected, my answer to this problem lies in access to commons and the practice of commoning in the form of democratic negotiation over the use of economic resources that are held in common. Yet, because it is also possible that democratically organized activities be directed towards perpetual growth, I would argue that it is also necessary to shift the core normative value underlying economic activities from productivity to care. To do this, I would like to take a step back and analyze the concept of productivity and ecological limits in relation to the work of Locke and Adam Smith. Although this jump back in time might appear somewhat anachronistic, I would argue that Rawls' notion of productive assets echoes Locke and Smith's focus on productivity as a central feature of a legitimate socio-economic arrangement. After examining their arguments, I then relate them back to Rawls' notion of productive assets in a property-owning democracy.

As I have already discussed, for Locke it is not only labor, but, more specifically, productive labor that lays the foundations for the right to appropriate resources. For example, the cultivation of land is, he thinks, more productive than hunting and gathering because it produces greater yields per unit of labor and land (Locke 2008: II, §41-3). In this respect, Locke understands labor activities that increase the number of material goods in the world as productive. Adam Smith also adopts this normative notion of productive labor and clearly distinguishes unproductive from productive labor. Unproductive labor includes, for example, services performed by "churchmen, lawyers, physicians, men of letters of all kinds; players, buffoons, musicians, opera-singers, opera-dancers" (Smith 1994: 361) – and, presumably, also the activities of people who care for children, the sick and the elderly. The notion of productivity is therefore limited only to very specific activities, which, in turn, provide supposedly 'unproductive' people with food, clothes, homes, computers and cars. In contrast to Locke, however, Smith argues that it is not merely an increase in material goods (use value) that should be described as productive, but also the increase in profits that result from the sales of these goods on the market (exchange value). The emphasis on productivity is understandable considering the socio-economic realities prior to the industrial revolution. The focus on productivity has brought about an immense increase in the output of material goods and monetary

wealth over the last two hundred years (Pinker 2018: 81). The main reasons given for these developments are, firstly, individual private property, which enables the individual to use a resource in a way that will increase its yields and then sell the goods for profit. Secondly, the competition between individual producers that results from open markets drives market participants to perpetually increase levels of productivity in order to produce more goods for a cheaper price and thus maintain a competitive advantage. We have already discussed this issue in detail. According to Smith, however, another main reason for increases in productivity is the division of labor which can more generally be understood as the rationalization of production processes. This is the opening argument of *The Wealth of Nations*.

So that we can better understand where the increase in productivity in modern economies comes from, I would like to analyze Smith's argument for the division of labor in more detail and, more specifically, his famous example of the pin maker (Smith 1994: 4-5). Smith argues that the output of pin production could increase greatly if it were not one person who performed all the tasks involved in producing a pin, but if, instead, the process of pin-making were divided into numerous steps, each of which was then executed by a different person. By dividing up the labor between a number of people, each laborer becomes a specialist for a particular activity, increasing the efficiency of the work process for making a single pin and ultimately increasing the number of pins that can be produced in the same amount of labor time (e.g. one day). Lastly, Smith notes that further efficiency gains can then also be achieved through the use of machines. This is the usual story that is told when discussing increases in productivity through rationalization processes and specialization. What is noteworthy is that the story being told is linear and progressive: there is a beginning and an end, and the in the end we have more than in the beginning. So where does this 'more' come from?

To understand productivity from a socio-ecological perspective, we must shift our focus from the linear process of production to the reproduction of life in ecosystems. Here, we must also note that the amount of matter and energy on earth remains more or less constant over time. From this perspective, the creation of wealth merely implies the reconfiguration of existing matter and energy into goods that we then, in turn, define as wealth. For example, the amount of metal in the world before and after the production process has remained the same. The increase in the production of pins simply means that more metal has been extracted from the earth and transformed into pins within a shorter period of time. Let us call this the "nature side" of the equation. In this equation, however, we must also include the wood or coal that is burnt in order to change the form of the metal. It can generally be assumed that the increase in pin production would require an increase in the use of wood or coal. Today, the source of energy would be oil, gas, nuclear energy, solar energy or wind energy. On a side note, all these energy sources have a material base and effect the environment in specific ways, such as, for example,

the materials used to build solar panels and wind turbines. But for the moment let us leave the question of new 'green' sources of energy out of the picture. In Smith's case, the accumulated energy in the wood or coal is released into the air in the form of carbon dioxide, which is then transformed back into oxygen by plants through the process of photosynthesis. While trees can grow back, the cycle of coal (or oil) formation occurs over hundreds of thousands, if not millions, of years. The point I wish to make here is that what is often understood as increases in productivity is not only the transformation of specific resources into use or exchange values, but also the release of accumulated energy into the atmosphere. More specifically, the increases in productivity are not only based on the rationalization of labor processes, but also dependent on the ability to release stored energy from coal and oil (Wrigley 2004: 68-86). Expressed in somewhat different terms, it is not only labor, but also the exploitation of large amounts of the gifts of ancient "buried sunshine" (Mitchell 2011: 12) that allows human beings to increase their productivity and make the economy 'grow'.

There is also, however, the 'social side' of the equation. In a first step, this requires us to look at the type of labor that is involved in this production process. Because Adam Smith is discussing a market economy, we may generally assume that he is talking about wage labor. From a Marxist perspective, the important point here is that the wage laborer had to sell his or her labor at a price lower than the amount of money that is realized through the sale of the goods produced. One central reason for low wages is the competition between the large numbers of people dependent on wage labor for their survival. This forces wage-dependent people to accept incomes that (barely) cover their costs of living, even though the labor power that the employee exerts exceeds this value. The difference between the exchange value of the laborer's wages and the exchange value realized through the sale of the goods produced during, for example, one day of labor by the employee is, generally speaking, what Marx understands as surplus value (Marx 1982a: 293-306). According to Marx, this surplus value explains where the "more" is derived from at the end of the production cycle, which he symbolizes as $M-C-M'$ (money-commodity-more money) (ibid.: 247-256). From this perspective, it is not necessarily the division of labor, but more precisely the wage contract that enables the employer to legally appropriate and accumulate the surplus value of productive wage labor. It can therefore be said that the rate of rationalization will be intensely pursued, not by the laborers, but rather by the employers, who will then profit (at least initially) from the increases in productivity.²¹ Interestingly, much later in his work *The*

21 I say 'initially' because the gains only occur when a producer rationalizes his or her production process before the competitors follow suit. In that time, it can generally be assumed that consumers will buy the cheaper products from this more efficient producer. Marx calls this "extra profit" (Marx 1991: 142) and compares it to the average surplus value generated through

Wealth of Nations, Smith admits that there are negative social consequences which result from too much specialization, in which “the [specialized] laborer becomes as stupid and ignorant as it is possible for a human creature to become” (Smith 1994: 840). Understood within our socio-ecological framework, this implies that productivity gains should be conceived of as the time and energy that are extracted from the employee by the employer and make the employee exhausted and “stupid”. Hence, aside from the extraction from nature, it is also the exploitation of people that enables labor activities to be more productive and, ultimately, transforms this increase in productivity into increases in accumulated wealth.

It might be argued, however, that in a property-owning democracy this problem would not occur, because people have access to resources in the form of productive assets. Here, it can be argued that this fact would free individuals from entering wage labor relationships involuntarily. Thus, we could say that in such an arrangement asymmetrical wage labor relationships would not exist. Furthermore, it could also be contended that because the individual possesses productive assets, she could become a co-owner of the enterprise. This would provide the individual with rights to the surplus value that otherwise would have been appropriated by the employer. It is often assumed that such a democratic enterprise would hinder or even eliminate exploitation. Although this is partially true, if the enterprise sells onto a competitive market the necessity to perpetually increase productivity will remain, since the enterprise will be forced to keep up with changes in “socially necessary labor time” (G. A. Cohen 1979). Thus, the necessity to perpetually rationalize one’s labor processes through new technology and increased specialization would also persist. If this is not achieved, it can be assumed that the enterprise would not be able survive on the competitive market. This would then imply that the workers would be obliged to exploit themselves. We can understand self-exploitation here as the exertion of more energy than is required for the regeneration of the mind and body. The problem of specialization can be interpreted here as the self-inflicted one-sided development of one’s capacities, which demands the suppression of other activities and the degeneration of the capacities they involve. We already touched on these problems in our discussion of the tragedy of the market in relation to burnout. To be fair, a recurring and just predistribution of property would slow down the pace of this process, but it would nevertheless still occur. The only difference would be that there is no employer to blame. Instead, the exploitation would be self-inflicted and enforced through market dynamics that induce accelerating productivity gains. Here, we are reminded of Smith’s disciplining mechanism of the open and competitive market.

society’s average rate of productivity, otherwise also defined as the socially necessary labor time that is required to maintain in order to survive on the competitive market.

Another aspect of this 'social side' of the productivity equation is the specialization of people towards performing reproductive care work outside of wage labor relationships, be this in the household, the community (e.g. care for the unemployed) or for the environment (e.g. against pollution). Although we have already discussed this, it is important to note again that the 'free pass' given to 'productive people' puts more care work obligations on the people who perform supposedly 'unproductive' activities. The amazing gains in efficiency through the division of labor have therefore also divided the social world into those who are rational and productive and those who are emotional (or, from a purely economic perspective 'irrational') and caring. From the linear perspective of output gains, the former is obviously the more valuable; from the systemic perspective of reproduction, the latter is essential for survival. But the point is not to say which of the two is 'better' – both are valuable in their own way and satisfy different needs and desires that individuals, communities and ecosystems have. The point, however, is to emphasize that gains in productivity always have social and ecological costs that, in turn, need to be tended to and taken care of. Or, put somewhat more critically, gains in productivity do not merely result from the activity of productive individuals, but rather from the extraction of matter and energy from entire socio-ecological systems, which then crystallizes in the form of individual private property while it increases in output. Here, we are reminded again of Garrett Hardin's "double C–double P game", in which costs are communalized and profits are privatized (Hardin 1993: 237–8). What some people interpret as productive increases in the "wealth of nations", others experience as the depletion of their energy reserves.

That being said, the point is not to get rid of the division of labor or all forms of growth. I merely present these few examples in order to demonstrate that all increases in productivity have a specific 'material' base (matter, energy, time) that cannot be eliminated from the equation. Increases in productivity *ex nihilo* do not exist (ibid.: 70–76). This is not to say that all increases in productivity are based on exploitation. Nor should this insight imply in any way that Rawls (implicitly) supports exploitation. That would obviously be false. But his emphasis on productive assets and capital leaves the question of where productivity gains are supposed to come from unanswered (Schweickart 2012; Alperovitz 2012; Williamson 2012: 303). I believe this to be a serious problem in Rawls' theory of property-owning democracy that must be dealt with. This short discussion of the origins of productivity gains has merely attempted to make the point that productivity cannot perpetually rise without having serious (negative) effects on society and the environment. In relation to our discussion of labor and productivity, this implies that we must shift our understanding of economic activities and property arrangements from one based on productivity to one revolving around cultivation and care.

This emphasis on care in economic activities might initially appear problematic, because care is often interpreted as an unproductive activity. But this does not

imply that labor would then be *unproductive*, but rather that productive activities would not be based solely on a linear logic of the maximization of material wealth. Instead, its central normative characteristic would be concern for the sustainable creation and reproduction of goods for the satisfaction of common needs. Along these lines, Sibyl Schwarzenbach also argues in her discussion of Rawls that we should reinterpret labor and ownership according to the concept of care. She explains that “by care is meant that specifically intelligent activity which appropriately responds to the concrete legitimate needs of others with the end of encouraging their autonomous capacities” (Schwarzenbach 1987: 157). Here, the shift is not only from the linear increase in production outputs to cyclical reproduction, but also to the concern and responsibility for the satisfaction of the concrete needs of *others* – be they other humans, other living beings more generally, or entire ecosystems. Lastly, concern for others is not abstract – mediated through monetary values such as ‘capital’ – but becomes visible through the concrete activities of caring for the satisfaction of concrete needs in the form of food, housing, education, health, culture or a clean environment. Conversely, it could be said that needs decoupled from the activities of care fall into the illusion of unlimited material growth, which inherently leads to tragedy. In this sense, caring is not an individual and private activity, as it is often understood to be, but rather a social and ecological activity of cultivation, maintenance, reproduction and regulation that dissolves the boundaries between the private, the economic and the political, on the one hand, and those between culture and nature, on the other.

As can be expected, placing care at the heart of economic activities implies a transformation of property arrangements. Here, I would argue with Schwarzenbach that care requires a shift from “exclusive and acquisitive” ownership to what she calls shared “joint guardianship”, which is what we have defined as the commons (ibid.: 147, 156-7). As I have already said in relation to guardianship, such a commons property arrangement would integrate those who are significantly affected into the management of the economic activities of the specific resource system. This integration would provide individuals with opportunities to voice their concrete needs and collectively negotiate if and how such needs can be satisfied in relation to the needs of others. As is to be expected, such systems for managing resources will often be criticized as inefficient and unproductive. This is the very widespread assumption that was already voiced by Locke when he spoke of “common and uncultivated” resources. The fear that an economy based on democratic care would be inefficient and unproductive is, however, partially true. In contrast to Locke, the problem we face today – at least in the north-western hemisphere – is not a lack of productivity but a productivity that is not compatible with the socio-ecological reality. Or, in other words, an economic system based on perpetual material growth is utopian in a world of limited resources. For this reason, it is necessary to develop some reasonable alternative to such a highly problematic and

self-destructive property arrangement geared toward perpetual increases in productivity. By placing democratically organized caring activities at the center of our background structure, the short-term efficiency in *quantitative* output productivity would decrease. That, however, is precisely the point of such a property arrangement. Moreover, such a system could increase the *quality* of the resource system, the labor activities themselves and the goods being consumed. The shift from productivity to care would therefore connote a shift from quantitative to qualitative growth – a shift from owning more things to leading a more self-determined and fulfilling life. In this respect, the creation of the qualitative good life will become *more efficient* in a commons arrangement. A central reason for this is that people will have the opportunity to codetermine the (re)production process *ex ante* through democratic negotiation instead of through an *ex post* consumer choice that occurs after the products have been produced and put on the shelf. Democratic negotiation in commons property arrangements thereby also replaces the expensive advertising industry that attempts to convince people that they should buy the specific goods that are being produced. In this sense, we must interpret my critique of productivity and growth not as a renunciation of either productivity or growth *per se*, but rather as the opening up of the possibility for people to democratically codetermine the criteria, organization and direction of the sustainable reproduction of their resources and social activities. Simply put, we should put institutions that support democratic deliberation and care at the heart of ‘productive’ economic activities. This, I believe, would be an adequate socio-ecological reinterpretation of Rawls’ property-owning democracy. Accordingly, the most just basic structure of society is a commons-creating democracy.

6.5. Consumption goods: individual or common property?

Up until now, I have argued that the right to access to resources is a precondition for life and liberty. More precisely, I have argued that a commons theory of property is justified due to the necessity of satisfying needs through access to the resources on which people co depend. A common property arrangement provides people with the institutional framework to solve conflicts over these shared vital resources and collectively care for the reproduction of the specific socio-ecological resource systems. This then leads to a central question that we have not properly dealt with yet: would all goods be considered to be common property in such a property arrangement? And if not, where would the line be drawn between private and common property? In order to answer these rather broad questions, I begin by discussing the differences between individual and social activities and productive and consumption goods. With reference to the negative ecological effects of consumption patterns, I then argue that we must also conceptualize consumption

goods as commons. Thirdly, I demonstrate that collaborative forms of consumption can enable relative material abundance in a world of limited resources.

Different types of goods (part II)

The question of which goods and resources should ultimately be held, governed and reproduced in common is both a simple and a difficult question. One simple answer could be that I, as a philosopher, do not have the right to determine such things, but rather that people themselves have to decide which goods they want to organize as commons. I do, in fact, believe this to be true because commons are not something that can simply be implemented by philosopher kings or technocrats but require the civic activity of commoning to bring them forth. However, this would be an easy way out of dealing with the problem. Another rather simple approach to the problem would be to declare that all resources necessary for people's existence should be held as commons. But would this include not only the field of wheat, but also the bread that I eat? As we can see, this generalization is very vague and not very helpful because, theoretically, everything could be declared as necessary for someone's existence. Thus, the argument I provide below is not to be understood as a list of things that should be held privately or in common, but rather as an attempt to deal with the issue in a somewhat more dynamic and differentiated manner.

To begin, let us recall Carol Gould's differentiation between personal and social property. According to Gould, personal property is that which is "required for the individual's own subsistence and self-development" (Gould 1990: 180). In contrast, social property is supposedly that which is "required by individuals in common in order to realize their joint purposes" (*ibid.*). This appears to be somewhat helpful, but one central problem here lies in the fact that subsistence activities (i.e. farming, food processing, cooking) are often not performed individually, but rather in groups. In such cases, subsistence resources should actually be understood as social or, rather, common property. Yet, when these activities do occur individually, as they do, for example, in the case of cultivating a small garden lot, it is obviously adequate to understand this resource as an individual one. For this reason, we should not only focus on the differentiation between individual and social activities, but also, as David Held suggests, on the distinction between consumptive and productive property (Held 1995: 263).²² As I have already mentioned, and along the same line of thought, Elinor Ostrom and Charlotte Hess distinguish between the flow of resource units and the resource systems themselves (E. Ostrom/Hess

22 David Held also mentions financial property (i.e. capital) as a third type of property. In order to simplify the argument, I focus on the distinction between consumptive and productive goods and define financial property as a unit of productive property.

2010: 58–9). Consumptive property and the flow of resource units could be, for example, toothbrushes, apples, bread, underpants, bicycles, coal, personal computers or cash. Production goods and resource systems, on the other hand, would be things such as apple trees or orchards, coal mines, bakeries, factories for toothbrushes, underpants or computers, central processor units or capital. However, here we must also examine whether the specific entity is being used individually or together with others in order to determine whether it should be conceptualized as personal or social property. I could, for example, use my bicycle or my computer as a source of income and thus transform a consumption good into one utilized for production (e.g. as a bike messenger or a computer programmer). But this would not transform it into social property, because the activity is performed individually. In this sense, things are not productive *per se*, but become productive through their specific use. According to my argumentation, the social coordination of these individual activities in an organization (e.g. the delivery or programming services) should, however, be organized in a social and democratic manner, for example as a cooperative, enabling the participants in this specific organization to fairly distribute their individually and collectively generated wealth and to democratically codetermine the organization of their labor.

Nevertheless, another problem exists in the juxtaposition of individual consumption and social production. A good that is individually consumed can also be – and, in some cases, *should* be – organized as common property. According to Locke, individual private property enables people to use and enjoy a specific good without the arbitrary interference of others. This enables them to exclude others from the use of that property. In cases of individual consumptive and productive property, this often makes sense. I would, for example, prefer not to share my toothbrush, my underpants, and my shoes with other people. I would also prefer to cultivate *my* small garden lot by myself, ride *my* bicycle and use *my* computer. By declaring these goods as individual private property the negative freedom of the individual is secured and the freedom of other people is not necessarily threatened, assuming the goods are not used in bothersome or harmful ways (i.e. riding over old people on the street with my bike or planning terrorist bombings with my computer). These are the usual examples that are often brought up in arguments *against* common property arrangements. The general point here is that individuals don't want to have to ask the community if they can brush their teeth with the communal toothbrush twice or three times a day or if they can put on a pair of communal shoes every morning in order to go and get the communal newspaper. The problem with this argument is, however, that it leads to the assumption that everything would be held in common because, theoretically, everything has an effect on someone else (i.e. the color of someone's T-shirt might not match the color of my pants, for example). Obviously, these examples are absurd. No one would want such property arrangements. And, yes, such property arrangements would be highly inefficient

in dealing with our everyday lives. But no one in favor of commons is per se against individual private property in such personal consumption goods. When we focus on these issues, we get distracted from a more fundamental one that is at stake: the problems of exclusion from or overuse of resources that are central for one's life and liberty. From this perspective, there are strong ecological or functionalist and normative arguments for the sharing of certain consumption goods. Let us now turn to these arguments.

Maximizing consumption and the population myth

Up until this point, I have generally argued that resources that affect the larger community and that are necessary for the satisfaction of common needs should be held in common. As previously mentioned, this basically implies that (re)productive activities in resource systems should be organized as commons while the flow of consumption units should be organized as individual private property. Yet let me introduce an example that reveals problems for this dichotomy. Let us assume that a person has acquired a relative amount of wealth (for the sake of the argument, we could say within the limits of Rawls' difference principle). The person wants to use this money for consumption goods because the reinvestment of the money would transform it into productive property (capital). This would, in turn, require that the broader community also have a voice in the use of this capital. But because the person does not want the community telling them what to do with this money, they decide to spend most of their money on consumption goods such as, for example, numerous large houses, expensive cars, yachts, private jets and so on. And, to be fair, let us also assume that this person is not attempting to (according to our commons property arrangement) 'illegally' use these goods as objects of speculation and thus as 'productive goods'. According to the distinction between individual consumptive and social productive property, this would be legitimate and no one would have the right to interfere with this person's freedom.

Nevertheless, I would argue that problems arise here. Firstly, the logic of this conception of negative freedom implies that individual freedom is increased if the scope of one's non-interfered-with reach over the material world is increased. This basically implies that the *more* private consumption goods one has, the better. Although we have shifted from productive to consumptive goods, our focus on the increases in material goods and quantitative growth remains. But this leads us to the question whether such a notion of maximization is compatible with the limits of the earth system not only in the sphere of production but also in the sphere of individual consumption. If there was only one such privileged person in the entire world, we could say that it might not necessarily matter, because the environment would not be too badly affected. The reality is, however, different: more and more people strive to acquire more and more goods because they interpret the increase

in consumptive goods as an increase in freedom and well-being (Rosa 2016: 45). It can thus be assumed that this widespread aspiration has very serious negative effects on the environment.

If we remember Garrett Hardin's argument in the *Tragedy of the Commons*, this ecological problem lies not necessarily in the number of goods people accumulate and consume, but rather in the number of people in the world. As he explains in his book *Living Within Limits* (1993), if we limited population growth, the smaller number of people in the world would then be able to enjoy more goods. Quoting Malthus this would include, for example, a "daily [...] glass of wine and a piece of beef for [one's] dinner" (Hardin 1993: 213, 306). Or, formulated more technically: "at a sustainable size of population, the quality of life and the quantity of it are inversely related" (ibid.: 213; emphasis omitted). This is the main thesis of Hardin's *Tragedy of the Commons*, and it is expressed by numerous other ecologists such as Paul Ehrlich in his book *The Population Bomb* (1968) and more recently by the earth systems scientist James Lovelock, who is a patron of the Optimum Population Trust. Lovelock has said, for example, that

those who fail to see that population growth and climate change are two sides of the same coin are either ignorant or hiding from the truth. These two huge environmental problems are inseparable and to discuss one while ignoring the other is irrational. (Lovelock quoted in populationmatters.org 2009)

This conclusion can easily be drawn by looking at the correlation between population growth and the increase in greenhouse gas (GHG) emissions over the last 200 hundred years (Steffen et al. 2011: 742, 745). Here, the total amount of GHG emissions is mathematically distributed over the whole of the world's population. According to this calculation, the countries with the largest (increases in their) populations are responsible for the overuse of the carrying capacity of their resource systems. Hardin portrays this in his lifeboat ethics metaphor:

Metaphorically, each rich nation amounts to a lifeboat full of comparatively rich people. The poor of the world are in other, much more crowded lifeboats. Continuously, so to speak, the poor fall out of their lifeboats and swim for a while in the water outside, hoping to be admitted to a rich lifeboat, or in some other way to benefit from the 'goodies' on board. (Hardin 1974: 561)

The rather simple moral of this story is that the "rapidly-breeding poor" (ibid.: 565) are the cause of the overuse of ecological resources and climate change. In order to save planet earth, we must therefore exclude the poor from the wealth that northern countries possess, let poor people die and, thereby, hopefully limit their ability

to reproduce (ibid.: 565).²³ According to this argumentation, sharing goods with those who have less simply pours more oil into the fire of population growth and ecological destruction.

I do not want to say that population sizes have no effects at all on socio-ecological systems. It can generally be assumed that correlations between the two exist. Nevertheless, the problem with the emphasis on the correlation between population size and GHG emissions is that it neglects and conceals the *distribution* of the specific 'goods' (wealth) and 'bads' (depletion and pollution) within a specific group and between groups of people. By looking at the precise distribution of GHG emissions, we encounter, however, a rather different picture. Viewed in this manner, increases in GHG emissions do not necessarily correlate with population growth, but rather with the increase in wealth and, thus, in consumption goods available to individuals. For this reason, environmental scientist David Satterthwaite argues that we should stop using the often-used equation "total impact equals population times affluence times technology" ($I = PAT$). Instead, he argues that we must use the correct equation "impact equals consumers times affluence times technology" ($I = CAT$). As Satterthwaite explains:

It is not correct to suggest that it is the increase in population that drives the growth in GHG emissions, when the lifetime contribution to GHG emissions of a person added to the world's population varies by a factor of more than 1,000 depending on the circumstances into which they are born and their life possibilities and choices. *So it is not the growth in the number of people, but rather the growth in the number of consumers and the GHG implications of their consumption patterns that are the issue.* In theory (leaving aside the difficulties in measurement), responsibility for GHG emissions should be with individuals and households and based on the GHG implications of their consumption, and not with nations (or cities) based on GHG inventories from the production perspective. *From the consumption perspective, globally, the 20 per cent of the population with the highest consumption levels is likely to account for more than 80 per cent of all human-induced GHG emissions and an even higher proportion of historical contributions.* In considering how to reduce emissions globally, far more attention should be directed to reducing this group's GHG emissions. And as responsibilities for addressing this are allocated to national and local governments (with city governments having particularly important roles), consider how this 20 per cent of the world's population is distributed between

23 In Hardin's own words: "Every life saved this year in a poor country diminishes the quality of life for subsequent generations." (Hardin 1974: 565; emphasis omitted) He therefore argues that we must "admit no more to the boat and preserve the small safety factor. Survival of the people in the lifeboat is then possible (though we shall have to be on our guard against boarding parties)." (ibid.: 562)

nations (obviously most, but certainly not all, are in high-income nations). (Satterthwaite 2009: 564; emphasis added)

As the journalist George Monbiot puts it, “While there’s a weak correlation between global warming and population growth, there’s a strong correlation between global warming and wealth.” (Monbiot 2016: 104-5) As we see, the problem is not necessarily large populations, but the great increase of wealth belonging to a small group of people. Their ability to accumulate without limit enables them to consume most of the world’s resources and to consequently produce most of the existing greenhouse gases. For this reason, the political scientists Ulrich Brand and Markus Wissen call this an “imperial mode of living” (2018) of the wealthy Northern countries, which the sociologist Stephan Lessenich interprets as an “externalizing society” (2019). To translate these insights back into Hardin’s “lifeboat ethics” metaphor: the reason why the boats are sinking does not, first and foremost, lie in population sizes. Instead, the boats of the affluent are sinking due to the heavy load of consumption goods that they have collected. In turn, the boats of the poor are also sinking because of the weight of the bads (pollution, deforestation, rising water levels, oil spills etc.) that the wealthy have externalized. Yet, while the affluent can build better and larger boats to carry the load, the others are left to sink.

If this is correct, it should have rather important implications for our discussion of property arrangements for enabling life and liberty for all living beings. Firstly, we cannot simply separate production goods from consumption goods. Simply organizing productive resource units as commons and leaving the sphere of consumption intact as a sphere of individual negative freedom does not solve the ecological problems societies are currently trying to deal with. Such a strategy might protect the environment from a supply-side perspective, but it does not answer the problem from a demand-side perspective that results from ecologically destructive patterns of individual consumption. If people continuously demand more goods for the satisfaction of their needs and desires, it is not clear that the production of these goods will also change.

Secondly, although I have said that it should not necessarily be a problem if only a few individuals own and use large amounts of resources, we have just seen that only a small portion of the world’s population (20 percent) produces a large portion of the world’s GHG emissions (80 percent). It is to be expected that if we delved deeper into the statistics, we could find that an even smaller group of people is proportionally consuming even more resources than the rest of the world’s population (Monbiot 2016: 105-6; Oxfam 2017). From this perspective, it would therefore be false to say that the individual ownership of a bicycle by each person in the world is just as problematic as the private ownership of jeeps, yachts, jets and numerous houses by a few. In this sense, we can say that the *unlimited* consumption of *specific*

goods is not simply a 'private' matter, but has far-reaching and serious effects on other people and the non-human world.

Third, it is also important to note that not only does a small portion of the world's population produce most of the world's GHG emissions, but also that the very poor people of the world produce very small amounts of GHG emissions (Satterthwaite 2009: 547). This might sound like good news for Mother Nature – and, to a certain extent, also for the wealthy inhabitants of the earth, because they can simply reduce their consumption levels to a slight degree in order to get 'in tune with nature', while simultaneously hoping that the poor will remain poor. But this cynical answer is not only unjust towards those in need, but also largely unfeasible because those in poverty obviously want to improve their living standards and increase their freedom. It can generally be assumed that they also want to realize their rights to life and liberty just as Western societies have done. So how is this fundamental contradiction between consumption patterns based on ever-increasing needs and desires and the limitation of the ecosystems' resources to be solved?²⁴

Collaborative consumption and relative abundance

Since this is a rather grand question, it might be helpful to return to our previous discussion of individual private property in consumption goods in order to answer it. As I mentioned then, the underlying principle is that individuals should be free to enjoy their consumption goods without interference. Personal consumption goods should remain as the last bastion of negative freedom. This negative freedom is often understood as one of the fundamental types of individual freedom that lie at the heart of a liberal society.

Within this understanding of freedom, it is then often assumed that the larger the sphere of one's negative freedom in consumption goods, the more opportunities one has to satisfy different needs and desires. Although this might be true, we must also, however, recognize that different goods produce different effects on

24 In this short discussion of levels of consumption, GHG emissions and ecological degradation, I have neglected one important aspect of the complex situation: the ability of ecosystems to *absorb* GHG emissions. If, for example, we had enough trees on earth, our consumption levels could theoretically remain at a certain level or even increase because the plants would absorb the emitted gases. I would, however, argue that it can generally be assumed that high levels of individual consumption are dependent on the deterioration of ecological systems and their ability to reabsorb GHG emissions. The most straightforward example of this is the production of meat with soya feed in large areas where rainforest used to exist. Here, again, we are confronted with the fundamental contradiction between an endless increase in needs and desires and the limits of ecological resources.

the environment. Importantly, different *patterns* of individual consumption in relation to different goods produce different ecological effects. The increase in my collection of jogging shoes in order to go running more often is, for example, completely different than the increase in the number of flights I take in order to attend more academic conferences. Yet despite these differences, the maximization pattern nevertheless assumes that the more goods, the better. It is important to note here that it does not matter if these goods are bought with money that I earned through wage-labor on the market or if I have received the means to buy these goods from a state-orchestrated predistribution scheme available to all citizens. Depending on the type of good and the pattern of consumption, the ecological effects are the same. As we see, it appears as though we have come across a certain ecological paradox in the relationship between life, liberty and property – irrespective of whether we side with Locke or Rawls. On the one hand, we can enhance material wealth and individual freedom in the form of consumption goods at the cost of the environment. On the other hand, we could maintain life on earth at the cost of poverty and lack of freedom. Within this framework, it appears as though the needs and desires of humans oppose and contradict the needs of nature.

Where then is the way out of this dilemma? Is humanity simply going to fall into a Hobbesian war of ‘all against all’? Or will a global state and the managers of production resource systems rigorously limit and equally distribute the consumption goods that each individual is allowed to have in the name of a just dictatorship? Or is each individual required to achieve mastery over their endless needs and desires in the form of self-imposed sacrifice and asceticism? As we see, all these options appear not only unattractive, but also highly unrealistic – except for the possibility of war, that is. What other options do we have then? In order to answer this question, let us return to the basic question of what property rights are actually for. Informal or formal property arrangements intend to regulate the use of resources so that people can live in relative peace and liberty. These arrangements are meant to provide people with enough security so that they do not have to be afraid that their dearly held goods will be taken from them. This enables individuals to plan their daily affairs, reproduce their existence and, possibly, lead a good life. As we see, property arrangements are a means to an end, such as security, peace, realizing life-plans and, hopefully, a good life. Furthermore, the freedom involved in this definition is also not an end in itself. Freedom is valuable because it provides people with choices and capabilities; it is a means for people to be able to define and realize their *own* conception of the good life.

Locke’s interpretation of this was to define these property rights individually and exclusively: only if an object is individual private property can the individual consume it. This is the same logic reproduced in the economic categorization of goods I discussed in relation to Elinor and Vincent Ostrom: private goods are subtractive and rival and can exclude the use and consumption of others. As we already

mentioned above, almost all goods could fall into this category. As the term *connotes*, rival goods imply that the other person is a threat to one's freedom and liberty. But as we have seen, this logic would imply that the increase in life and liberty for all people would then necessitate that everyone had individual private property over an immense amount of goods and resources. Each piece of individual private property provides people with a larger range of freedom to satisfy their needs and desires and to realize the good life. The question remains, however, whether the effort of producing and accumulating these goods in the end provides people with enough time and peace of mind to enjoy a good life.

But we might base an alternative interpretation of the right to life, liberty and property in consumption goods not on individual and exclusive rights, but instead on collectively shared access rights to consumption goods that are held in common. As I have already suggested in relation to the classification of goods, an alternative to the categorization of goods as exclusion, subtraction and rivalry could be inclusion, addition and cooperation. Here, 'rival' goods are used and consumed individually but nevertheless held in common, thereby transforming their subtractive characteristic into an additive feature of the good. G. A. Cohen discusses this principle in reference to an often-used example of tools:

A homespun example shows how communal property offers a differently shaped liberty, in no different sense of that term, and, in certain circumstances, more liberty than the private property alternative. Neighbors A and B own sets of household tools. Each has some tools which the other lacks. If A needs a tool of a kind which only B has, then, private property being what it is, he is not free to take B's one for a while, even if B does not need it during that while. Now imagine that the following rule is imposed, bringing the tools into partly common ownership: each may take and use a tool belonging to the other without permission provided that the other is not using it and that he returns it when he no longer needs it, or when the other needs it, whichever comes first. Things being what they are (a substantive qualification: we are talking, as often we should, about the real world, not about remote possibilities) the communizing rule would, I contend, increase tool-using freedom, on any reasonable view. To be sure, some freedoms are removed by the new rule. Neither neighbor is as assured of the same easy access as before to the tools that were wholly his. Sometimes he has to go next door to retrieve one of them. Nor can either now charge the other for use of a tool he himself does not then require. But these restrictions probably count for less than the increase in the range of tools available. No one is as sovereign as before over any tool, so the privateness of the property is reduced. But freedom is probably expanded. (G. A. Cohen 2011: 155)

Although there might be a decrease in freedom for certain individuals from one perspective, the principle of a tool commons or tool library would clearly increase the freedom of those without the wealth to own all the tools. Cohen continues,

It is true that each would have more freedom still if he were the sovereign owner of *all* the tools. But that is not the relevant comparison. I do not deny that full ownership of a thing gives greater freedom than shared ownership of that thing. But no one did own all the tools before the modest measure of communism was introduced. *The kind of comparison we need to make is between, for example, sharing ownership with ninety-nine others in a hundred things and fully owning just one of them.* I submit that which arrangement nets more freedom is a matter of cases. There is little sense in one hundred people sharing control over one hundred toothbrushes. There is [however] an overwhelming case, from the point of view of freedom, in favor of our actual practice of public ownership of street pavements. Denationalizing the pavements in favor of private ownership of each piece by the residents adjacent to it would be bad for freedom of movement. (ibid.:155-6; emphasis added)

As we see, the question of which goods should be held in common cannot be answered in advance, but must be decided through weighing different pros and cons and, most importantly, through practical experiments that deal with different goods. And, as Cohen mentioned, we are not talking about the collectivization of a person's toothbrush. Nevertheless, the principle can be applied to the use of bicycles, cars, computers, musical instruments, games, gardens, holiday houses, or even one's own living space. The point is that in a world in which not *everyone* can have *everything*, sharing goods in the form of commons provides the greatest freedom for the greatest number of people. Here we can see that the normative argument for an increase in access to more shared goods is closely intertwined with the ecological or functionalist argument for the stability of commons-based socio-ecosystems. By sharing access to these goods, people can increase their freedom without necessarily having to increase the number of goods that exist. Common property in consumption goods thus provides people with a key strategy that enables them to increase relative material abundance in a world of limited resources.

But is this the answer to the destruction of the environment: public sidewalks and a library for tools? No, these are obviously simply some examples of how consumption goods can be held in common. Nevertheless, the basic principle remains rather simple and significant: by sharing goods with others, people can increase their freedom to access and use *various* goods while decreasing the overall quantity of goods being produced and consumed. The point, however, is not merely to pool preexisting goods, but also to actively create these common goods with others through the civic activity of commoning. Thus, by pooling these resources, people not only access more goods, but they can also overcome the consumption-production divide by using these goods, in turn, to satisfy their own specific needs

and desires. This is what is propagated with repair workshops, 3-D printers and the notion of open hardware (Rifkin 2015; Baier et al. 2016; Siefkes 2008). It is a transformation of individual consumers into coproducers or peer-to-peer producers (Benkler/Nissenbaum 2006) through the equal access to pooled goods, which not only frees people from the need to satisfy their needs via the market, but also provides people with numerous opportunities to engage in collective productive or 'commoning' activities.

6.6 Interim conclusion

After this rather long investigation of a commons theory of property, let me briefly summarize my findings. In this chapter, I have generally argued that in contrast to exclusory private property, a commons theory of property is based on access and democratic control. Instead of dominion, non-interference and labor, common property arrangements uphold the principles of guardianship, non-domination and needs-satisfaction. Common property arrangements can thus increase people's individual freedom, by both expanding their access to resources and giving them the ability to democratically codetermine their institutional arrangements. They provide people with the institutions to deal with conflicts over shared resources that are necessary for the interdependent satisfaction of people's common needs. This can be interpreted as an institutional means of caring for the sustainable maintenance, reproduction and flourishing of socio-ecological systems.

Put differently, common property arrangements provide people with a way of organizing life in a world of limited resources without resorting to domination and without suffering from either scarcity or the tragedies of the unregulated commons or the market. Instead, they enable people to create a relative abundance through a convivial mode of interdependent existence. Relative abundance is, however, not merely created through contracts that pool the limited *quantity* of goods being consumed, but rather through the *qualitative* transformation of the relationships in the web of life. In economic terminology we might say that commons create surplus *social* value, instead of merely a monetary surplus. Thus, the other is not primarily constituted as an existential threat, but rather as a peer with whom to jointly realize better outcomes through an ongoing process of negotiation and co-creation.

We can expect that some will find that a society based on common property arrangements imposes too specific and narrow a concept of the good life. Accordingly, it is often argued that in a liberal society political institutions should be neutral and impartial in relation to notions of the good life (Dworkin 1991: 127; Gaus 2003; North et al. 2009: 114; Hayek 2013: 169-196). This is often understood as the prioritization of the right over the good (Rawls 1988). As Rawls himself acknowledges, however, no political arrangements are completely neutral in relation to di-

verging concepts of the good life (ibid.: 251). As he explains in *A Theory of Justice*, “the basic structure of society is bound to encourage and support *certain kinds of plans more than others* by rewarding its members for contributing to the common good in ways consistent with justice” (TJ: 373; emphasis added). As we have seen, individual negative rights in private property provide people with the formal freedom to pursue their economic interests without arbitrary interference. The antagonistic structure of these property arrangements, however, inherently leads to maximization strategies and its associated tragedies. In turn, individual positive rights attempt to secure life and liberty by providing equal access to “productive assets”. Yet as we have seen, these arrangements also induce similar maximization strategies. Thus, we can say that the notion of the good life that unintentionally arises in both of these property arrangements is caught in the “straitjacket” (E. Ostrom 2003: 25) of maximization strategies and perpetual economic growth.

That being said, the problem we face, especially in relation to the problems of scarcity, domination and tragedy, is not necessarily one of absolute neutrality, but rather the question of the compatibility of different concepts of the good life. In this sense, the concept of interdependent freedom in common property arrangements obviously limits the scope of all possible life plans that can be pursued. Its underlying principles of inclusion, negotiated cooperation and care therefore inherently limit life plans that aim to realize exclusion, competition and domination. This much I must concede. But I also argue that these principles of common property are the foundations of a just, free and sustainable social order. Despite these supposed limitations of the range of choices within such a property regime, the specific plans and choices within the arrangement are not predetermined. On the contrary, common property arrangements increase individual freedom both by expanding access to resources and by bringing them under democratic control. In this sense, it must be emphasized that in contrast to other property regimes, the freedom to alter and codetermine one’s social conditions is not merely limited to the public sphere and affairs of the state. Instead, it is extended to the ‘private’ realms of production, consumption and social reproduction. Furthermore, the cultivation of democratic freedom in these everyday civic activities should hopefully open up a “world of possibility” (E. Ostrom 2003: 62) and enable people to collectively organize their lives according to their *own* conceptions of the good life. For it is these everyday civic practices in common property arrangements that are the seeds for a flourishing democratic society and the sustainable reproduction of a just basic structure.