7. The role of the state in a commons-creating society

After having developed a commons theory of property, it is now necessary to turn to the question of the relationship between commons and the state, on the one hand, and the market, on the other. These questions are of great importance because the notion of commons is often interpreted as a form of social organization "beyond markets and states" (Ostrom 2010; Bollier et al. 2012). As I will demonstrate in the next two chapters, I believe this interpretation to be rather misleading. To my mind, commons are not so much a radical alternative to the market and the state, but rather as a strategy for democratizing these two social arrangements. In general, the aim of my analysis is therefore to shift our framework of societal organization from one based on the state-market dichotomy to one conceptualized as a commons-creating society. In order to flesh out this idea, I will sketch how the state and the market can be transformed through commons institutions and civic practices of commoning. Let us begin this analysis with the state-commons relationship.

My examination of the state-commons relationship begins with some general, preliminary reflections on this relationship. In a second step, I discuss the specific role commons can play in relation to various forms of the state, including the monocentric, the minimal and welfare state. I then develop a better understanding of the notion of the state in a commons creating society with reference to the public goods housing, health care and education. In a final step, I discuss the role of the state in developing commons in a non-ideal world. Here, I touch on a number of issues: the 'urgency' of climate change, the role of commons in 'developing' countries, the threat of state oppression and opportunities to reclaim and cultivate commons both within and against the state.

7.1 Preliminary reflections on the state-commons relationship

In order to clarify my intentions here, I would like to begin my discussion of the state-commons relationship with some preliminary remarks on the subject. While

it might be argued that commons exist as a form of social organization 'beyond' and thus independent of the state, I would, contrarily, argue that the state is a central institution for the realization and maintenance of commons. This claim might appear surprising and fundamentally wrong by those who interpret and experience the state as a hierarchical and oppressive institution and, in contrast, commons as a form of self-governance. Here, the notion of *self*-governance appears to contradict the necessity of an external authority manifested in the state. Yet, the problem with such an antithetical presentation of the state and commons is that it remains caught up in the dualistic Hobbesian model of the state: the monopoly on the use of coercion can only be held by a Leviathan that rules autocratically over society. Here, we must distinguish between the monopoly on the use of coercion, on the one hand, and the form of organization that exercises this power, on the other. As I have argued above, the self-governance of a commons provides us with an alternative means to overcome the Hobbesian belligerent state of nature. From this perspective, a monopoly on the use of force is created through trust, reciprocity and the democratically determined rules and regulations of the commoners. In the words of Anna Stilz: "The democratic state is a joint practice in which we act together to secure a common end, and its unity can be explained on lines similar to the unity of other practices in which we commonly act together." (Stilz 2009: 192) Here, the state's monopoly on power needs to be understood as a form of reciprocal and public coercion. Only through this democratically legitimized monopoly on power can affected people limit appropriation and free riding and, in turn, realize fair and sustainable social arrangements. While the enforcement of laws by the state can limit the harm afflicted on others and the overuse of resources, the state's ability to collect taxes is also a central means of alleviating power asymmetries and opportunities for unequal appropriation. We might therefore say that, in its ideal form, a democratic state can be interpreted as a self-governed commons.

In turn, this notion of the state provides us with a point of reference for thinking about how the state can provide access to resources in the form of a commons predistribution. This is indeed a very difficult question because it is sometimes assumed that state provision and commons are opposed to one another. In this case, state provision is normally conceived as a 'top-down' activity, while commons are understood as goods that are created, reproduced and managed 'bottom-up' by those affected. Furthermore, the notion of state provision of common property is closely associated with the communism of the Soviet Union and its practices of dispossession, coercion and uniformity. For this reason, the legal scholar Richard Epstein, for example, firmly criticizes the provision of common property by the state:

> *Any insistence, however, on mandatory common ownership is a recipe for disaster*: co-owners are not chosen but imposed, so the level of mutual distrust is likely to

> be high. Disagreement over the common plan of development, or over the division of benefits and burdens, is virtually certain to *produce massive forms of paralysis* from which there is *no escape*. A division of the property is ruled out by the *inflexible requirement of common ownership*; and a sale of the property, or of any interest therein, is not likely to succeed if a sustainable purchaser cannot be found – and who wants to buy into a lawsuit or a family dispute? Boundary disputes are the price paid in order to avoid the governance problems that arise from *forced associations.* (Epstein 1994: 36-7; emphasis added)

Although this portrayal of commons is obviously crude, Epstein's criticism nevertheless remains partly valid: the forced, top-down implementation of a commons regime would most likely be problematic. The necessary state coercion involved in such a transformation of social order would contradict the notion of free association and democratic self-governance inherent in the idea of a commons based society. Therefore, the question arises how the state can provide common goods without 'forcing' people to collectivize their property.

Furthermore, the general assumption that a commons provided by the state would be uniform must also be considered. This is, in general terms, a widespread critique of the satisfaction of individual needs through the paternalistic state provision of material equality: people are different and do not want to be provided with the same goods – irrespective if these goods are individually owned (e.g. clothes, a home etc.) or collectively (e.g. education, public swimming pools etc.). The diversity that exists between people requires that they be allowed to choose how they will satisfy their needs. Therefore, while economic liberals defend negative liberty and the freedom to choose products on the market, political liberals argue that non-dominated positive liberty and the predistribution of productive assets can overcome these problems of coercion and uniformity. Both, however, fall into a dualistic understanding of the state and the individual that is typical of the civil tradition in democratic thought: on the one side, there is the state and its background institutions; on the other side, we find the individuals who act within this preexisting framework. What both camps fail to consider, however, is a different and more democratic understanding of the state and public services, which can include the creation of commons through collective action. That will be the focus of the second section of this chapter. In order to reinterpret public goods as commons, however, let us now review the relationships between commons and the different forms of the state that I have already touched upon in order to then develop a notion of a state-commons.

7.1. Varieties of the state and the role of the commons

Commons in a hierarchical and monocentric state

As we have seen, a central figure in thinking about notions of the state is the monocentric and hierarchical Leviathan that rules over society. In this model, we will begin with the thought experiment of a Hobbesian, warlike state of nature which can be interpreted as the tragedy of an unregulated commons. Hardin's response to this problem was a social contract of "mutual coercion, mutually agreed upon" (Hardin 1968: 1247) and, more precisely, a Hobbesian Leviathan. Yet, while Hobbes' Leviathan was created to protect individual property rights, Hardin revived the Leviathan in order to regulate the use of common resources. This form of government is what Vincent Ostrom called the "monocentric order". We can conceive of this model either in a negative light, as a form of eco-dictatorship or, more positively, as a type of enlightened despotism that rules in the name of the good of the people. Although Hardin does not endorse a Leviathan that supports any form of redistribution, we can nevertheless imagine how such a political order could provide commons in the form of public goods. Here, the supposedly neutral and benevolent bureaucracy of the state provides commons in a top-down manner. Examples of such commons could range from education to transport, television, clothing, food and housing. To decrease the costs and increase the efficiency of the provision of these goods, they would, at least theoretically, be created in a uniform manner and administered according to uniform rules. These goods would be defined according to the average statistical values of all individuals combined with the ecological conditions that limit these values. Individual needs and desires could be marginally considered (e.g. in the case of having a mental or physical handicap), but would be largely ignored (e.g. in the case of preferring a freestanding home with a garden instead of an apartment).

I do not need to discuss the problems of such a political regime in detail once more. Nevertheless, let me summarize them in five points. Firstly, as I observed in relation to the Ostroms, without any means of democratic control and accountability, government functionaries are no less prone to corruption than any other human beings. Secondly, regarding the regulation of common pool resources, under the scenario I have envisaged unitary rules would be defined that do not always fit diverse contexts. Thirdly, the monitoring and enforcement of the regulations would entail relatively high costs, making their implementation rather fragmented and weak and ultimately turning them back into quasi-open-access resources. Fourthly, the uniformity of goods cannot take individual needs and desires into account. Equality is understood here as material equality which tends towards material uniformity. And finally, the provision occurs in a paternalistic and technocratic manner, disempowering citizens by transforming them into consumers. Although such

state provision might be experienced as comfortable because it frees the individual from many existential problems, it remains questionable how stable such a regime would be if based on this undemocratic and hierarchical relationship. To be clear, this critique is not to be misunderstood as a critique of the state, its monopoly on the power of coercion and public goods per se, but rather as a critique of the highly undemocratic manner in which such goods would be produced and provided. The general implication of these criticisms is that people are not truly free if they are simply materially provided for.

Commons in a minimal, market-based state

These problems of the state regulation and provision of commons have been strongly emphasized by economic (neo-)liberals and libertarians (Friedman/Friedman 1980; Nozick 1999). For this reason, they often argue that the state should be minimized and the provision of the goods I have mentioned occur through the market. Let us therefore now turn to the relations between commons and the state in a market-based society. In order to understand this issue, I will focus on the work of Adam Smith and John Locke and attempt to shed some further light on their work. Given the importance of the market in their models, it is not surprising that it takes a while for the state to appear on the stage.

If we begin with the classical understanding of the commons, we must note that Locke was not confronted with Hardin's problem of the overuse, but rather with the problem of the *underuse* of resources held in common. Although Locke perceived there to be an abundance of unowned, common resources in the world (especially, for example, land in North America), he nevertheless believed that the goods necessary for a comfortable, convenient and good life were rather scarce because they were rare and not very widespread. Furthermore, Locke understood the total surface area of land on earth to be limited and, due to the increase in people and the use of money, able to become scarce. Nevertheless, it appears that the limitation of surface area could be compensated by 'depth'. In this sense, I would argue that Locke understood natural resources as a well that could be drawn from without limit. The ability to draw more from nature would have depended, however, on access to land and on the amount of labor exerted. Hardin, in contrast, explicitly – and, in my opinion, correctly – describes all natural resources to be limited. The reasons for this shift in perspective are rather simple: while Locke lived in a preindustrial era, Hardin lived in a world that had experienced around 150 to 200 years of high levels of unprecedented industrial productivity.

As we have seen, for Locke, each person is originally allowed to appropriate from the unregulated commons as much as he or she can use as long as resources are not allowed to go to waste and there are enough resources left over for others. As Locke argues, however, with the introduction of money, individuals can appro-

priate and accumulate larger amounts of resources and use these "productively" by selling the surplus products for profit on the market. For others, direct access to the commons has become scarce if not entirely annulled. In turn, productivity gains are provided as a compensation for the loss of access to existential resources through private appropriation. However, because these others no longer have direct access to the means of subsistence, they are required to enter wage-labor relationships in order to earn money to then buy the goods on the market needed to secure their existence. If, in turn, we add Adam Smith's concept of the open market to this narrative, the allocation of goods and services would then, according to the story, occur in a self-regulating manner in which supply and demand would, over time, exist in a balanced equilibrium. Even if an absolute scarcity of resources should arise, market exchange and the prices of goods would theoretically provide the best mechanism for their efficient distribution in society, given the market's abilities to self-regulate and to reduce highly complex information (e.g. the limited availability of goods and resources) into simple, comprehensible data (prices).[1] Thus, in a minimal, market-based state it can generally be said that the commons have been privatized while direct access to resources has been replaced by market mechanisms.

According to this general description – and much as in Hobbes's work (though not Hardin) – the state was originally created through a (hypothetical) social contract in order to protect individual property rights. Here, the state can be interpreted as a type of second order legal commons generated through the pooling of people's individual coercive power. Yet in this story, in contrast to Hardin, the authority of the state is not supposed to limit the appropriation of the first order commons, but rather simply to ensure the protection of individual private property. Along these lines, Locke, Smith and many others have argued that the state should not interfere in the private accumulation of wealth or the self-regulation of the market. The protection or provision of commons is thus limited to a minimum, including the protection of private property rights and the enforcement of contracts by the police, or the protection of peace and national security by the military. For some, such as Adam Smith, the provision of basic common services is extended to those goods where "market failure" occurs. So aside from the commons of law and security, basic common services often include goods such as education or roads. Both the state and these goods are financed through pooled resources (taxes) that are collected by the state. The responsiveness of the state to the demands of the people is supposedly maintained through two central means: through the freedom to move property (i.e. capital) freely, on the one hand, and, on the other, through

1 To be precise, the reduction of complex information through the price mechanism is not, to my knowledge, an argument advanced by Adam Smith, but one especially emphasized around 200 years later by Friedrich August von Hayek.

the ability of the enfranchised population to periodically elect representatives from competing parties. In general terms, this is a minimalist, legalist notion of democracy based on the state-individual or public-private dichotomy of the civil tradition.

As I said in my discussions of Locke and Adam Smith, there are a few fundamental problems with such social arrangements. Firstly, although life and liberty are secured *de jure* through the protection of property rights, because access to resources is asymmetrical, life and liberty are not necessarily guaranteed de facto to all people. Secondly, and in addition to this socio-economic injustice, even if the propertyless have the right to vote and elect representatives and thus ultimately change their social conditions, the dependence of the propertyless on wage-labor relationships makes them highly susceptible to having to subordinate their interests to the interests of their employers and the flow of capital. Historically, this dependence on wage labor was a central reason why the propertyless were not allowed to vote. The dependence on the movement of capital is what I previously described as a structural constraint on democratic freedom. Third, the priority of negative individual rights also radically constrains the abilities and powers of the state to interfere in and influence economic matters in order to alter these property arrangements (J. Cohen 1989: 28). While this argument was originally used by Montesquieu and Adam Smith to defend the freedom of a rising bourgeoisie against the power of absolute monarchs and warring feudal lords, the freedom of property in the form of capital is used by a small elite against the realization of life and liberty for large populations today. Fourth, an extremely asymmetrical distribution of property inherently leads to the possibility of capture – and thus corruption – of the state by wealthy individuals. More correctly, we must note that the foundation of the modern state has always been an imperative to fulfill the purpose of the equal protection of the existing (unequal) distribution of private property. In this sense, the state has never been a neutral mediator between conflicting interests that has then been captured by the wealthy, but has rather been a strong protector of property rights and laissez-faire capitalism for those with property in productive resources from the outset. Here, we are reminded not only of Herman Heller's term "authoritarian liberalism" (Heller 2015), but also of the dialectical relationship underlying the state-market dichotomy. While universal individual property rights and the market were presented as alternatives to the absolute power of the state, the Leviathan is now revealed to be, not an alternative to, but more specifically a key component of the self-regulating market.

Commons in the welfare state and a property-owning democracy

One historical and theoretical answer to the problems of a minimal, market-based state is that of the welfare state and, more recently, Rawls' notion of a property-owning democracy. In very general terms, both models aim to mitigate those prob-

lems by providing individuals access to resources. These resources can include public goods such as housing, health care and education or more individualized resources such as pension plans and productive capital. But while the welfare state emphasizes *ex post* distribution schemes, the state in a property-owning democracy supports the *ex ante* predistribution of resources. Here, I discuss the state-commons relationship firstly with reference to the welfare state and then turn to the concept of a property-owning democracy.

In order to grasp the concept of the welfare state, it is important to also understand its historical origins. Importantly, the welfare state did not develop from individual property rights and self-regulating markets. Instead, these socio-economic rights were often realized through the struggles of propertyless wage laborers against the negative rights of those with property in productive resources (Lavalette/Mooney 2000). Furthermore, welfare rights were largely answers to the chaos and destruction brought about by a laissez-faire capitalism that led to the Great Depression of the 1930s and the Second World War (Flora/Heidenheimer 2009). After the Second World War various types of welfare state were developed in countries throughout Europe and North America (Esping-Andersen 1990). The aim of these efforts was for the state to provide its citizens with a minimal level of resources in order for them to secure a minimum standard of living and, thereby, to ward off many of the negative effects or 'externalities' of an open and competitive market.

Let us now compare the welfare state to the notion of commons I have thus far developed. From the perspective of the commons, the ideal-typical welfare state socializes responsibility for the risks of "ill health, old age, disability or unemployment" on the basis "shared savings […] [often] financed by levies on employees and employers and supplemented by revenue from taxes" (Weale 2013: 45). Additionally, taxation enables the state to pool and redistribute wealth in the form of public goods such as education and housing, if necessary. In this sense, the principles of reciprocity and mutuality that underlie the commons are also fundamental to the welfare system (ibid.: 47).

Nevertheless, there are a few important differences between the welfare state and our notion of the commons. Firstly, while some goods are provided for based on a basic right of access to resources (e.g. education), other welfare goods are sometimes provided for according to the contributions principle and, thus, according to proportional, distributive justice (e.g. old age pensions, unemployment compensation) (ibid.: 46). Here, the ability to receive support is relative to the amount paid and not according to one's needs. While this might be considered fair in a rather egalitarian society, the principle is problematic when substantial inequalities limit one's ability to contribute to the pooled resources. Secondly, it must be recognized that the welfare state limits socio-economic asymmetries through redistribution schemes. Nevertheless Albert Weale is right to argue that the welfare

state is a "device of horizontal rather than vertical redistribution", because it redistributes income "across the life-cycle rather than between income classes" (ibid.: 46). Despite the important measures in redistribution, the welfare state appears to leave the underlying asymmetrical distribution within society relatively untouched (Esping-Andersen 1990: 23-6).[2] This implies that welfare rights can be interpreted as a compromise that provides access to basic goods "as compensation for exclusion" (Brettschneider 2012) from the productive resource systems that were once – or could be – held in common. Thus, the satisfaction of people's everyday needs is not based on democratically negotiated self-organization by the affected, but is, rather, largely subject both to the arbitrary powers of proprietors and to growth mechanisms inherent to market competition.

Third, owing to underlying asymmetries in property ownership, the distribution of the resources and capabilities that enable people to participate in the democratic codetermination of the welfare state is also highly asymmetrical. In Rawls' terminology, "welfare-state capitalism […] rejects the fair value of political liberties" (JF: 138-9). Although the welfare state jumps in to assist and support those in need, people are not provided with the resources needed to be able to partake in the democratic definition and organization of these common goods. In this sense, welfare can be seen as a type of charity that supports dependencies rather than a basic right that enables self-determination. Furthermore, the lack of democratic participation in the provision of these common goods leaves welfare open to the previously mentioned criticism that state-provided goods are quite uniform. Ironically, however, this critique is often voiced not by those demanding the democratization of common goods, but rather by politicians who codetermine the welfare provision itself. Their answer to this problem is, however, not a greater democratization of wealth, but rather a limitation of state welfare and a provision of these goods through the market.

In contrast to this move, Rawls attempts to deal with these problems of the welfare state not through market mechanisms, but rather through an increase in *ex ante* distribution of resources as part of the property-owning democracy he proposes (Rawls 2001). Yet, in contrast to the distinction he wishes to make between these ideal models, I would agree with several authors that Rawl's attempted contrast does not hold (Jackson 2012: 47-8; O'Neill 2012: 91-2; Weale 2013; Krouse/McPherson 1988). On the one hand, the classical welfare state, for example, also provides for a predistribution of education and skills training; on the other, one-off predistribution schemes also require continuing redistribution in order

2 Gosta Esping-Andersen even goes so far to say that "the welfare state is not just a mechanism that intervenes in, and possibly corrects, the structure of inequality; it is, in its own right, a system of stratification. It is an active force in the ordering of social relations." (Esping-Andersen 1990: 23)

to mitigate unforeseen misfortunes. As these authors argue, the promotion of a property-owning democracy should not weaken the achievements of the welfare state, but rather supplement it with an increase in direct access to resources that are provided to individuals early on in their lives. In the welfare state as well as in a property-owning democracy, society's resources are continuously pooled, divided up and distributed again. Yet, in a property-owning democracy, the basic right to life and liberty is understood as a basic right to access resources at the beginning of one's life, and not only when one is in need. Ideally, this should enable people to determine their life plans and transform wage laborers and consumers into active producers, entrepreneurs and investors. Furthermore, it should also provide people with the ability to participate in the democratic organization of the state and its background structures.

Despite these major advantages that result from combining the welfare state with a property-owning democracy, a serious problem, which I have already discussed in my analysis of Rawls, remains: the competitive market's tendency to propagate perpetual economic growth. I have already discussed this problem in detail in the last chapter. Simply put, both the WSC and POD distribution schemes nevertheless encourage people to overuse society's common, socio-ecological resources. For this reason, I would argue that the organization of common resources through a welfare state or a property-owning democracy is inherently unsustainable. We must therefore shift our notion of predistribution from individual ownership of productive assets to access to basic common goods that are held and cared for in common. This implies that we not only need to rethink public goods as commons but also the role of the state in their provision. For this reason, let us now investigate the difference between public goods and commons, which I illustrate with reference to the examples of housing, health care and education.

7.2 Public goods versus state-supported commons: housing, health care and education

From ideal theory to non-ideal, civic co-creation of public goods

In order to understand the role of the state in a commons based society, I will briefly discuss the role of philosophy and philosophical methodology in such matters. Although I do greatly appreciate Rawls' extraordinary and quite radical theory of justice and his notion of a property-owning democracy, he himself emphasizes that his theory of justice is an *ideal* theory (TJ: 216). In a similar manner, I could draft an ideal theory of commons and make a list of numerous common goods that people must have access to in order for them to enjoy life and liberty. The most obvious goods would be clean air and a healthy environment, education, health care, hous-

ing, food and a basic transportation system. A more ambitious list might include, for example, clothes, culture, childcare services, basic banking services (including credit), travel opportunities and the like. As with any ideal theory, the activity of defining and defending a specific list of necessary (common) goods is a fine and noble task because it provides orientation amidst a rather confusing reality. I believe, however, that there are certain problems with this procedure.

Firstly, a central limitation of an ideal theory is voiced by Rawls himself. In *A Theory of Justice* Rawls discusses the two principles of justice and the guidance that these principles provide for people in non-ideal situations. Nevertheless, he admits that "in the more extreme and tangled instances of nonideal theory this priority of rules will no doubt fail; and indeed, we may be able to find no satisfactory answer at all" (TJ: 267). This concession concerning the large gap between an ideal and non-ideal theory leads us to the second problem of ideal theories. So long as people do not perceive there to be any connection between their highly complicated "tangled" reality and ideal theory, the focus on ideal theories may possibly disempower individuals, because they only see the great discrepancy between the two. Third, by defining a list of goods that people *should* have, one is automatically making oneself vulnerable to the criticism of being paternalistic. Rawls' strategy for this problem is twofold. On the one hand, he resorts to his original position, which provides him with the legitimation that everyone should come to a similar conclusion. On the other hand, he merely develops a "rough" (TJ: 216) notion of justice and remains somewhat vague by speaking of "productive assets", while those who have further developed his ideas have focused on "productive capital" or, rather, money (O'Neill 2012: 80; Hsieh 2012: 156; Freeman 2013: 23; Thomas 2017: 307). Money is handy in this regard because it is supposedly neutral and provides individuals with the freedom to choose how to use it. Yet, as we have already discussed, in the form of invested capital it also conceals an immanent logic of growth.

Fourth, I admit that by defining an ideal theory one also makes oneself vulnerable to the grave criticism of wanting to implement a utopian social design in a top-down and technocratic manner against the will of the people. Obviously, I am not saying that this is Rawls' intention. But the focus on the rational, the right and the ideal from an original position leads to the formulation of a somewhat static political order. For this reason, Amartya Sen describes Rawls' ideal theory as "transcendental institutionalism" (Sen 2009: 7), which appears, at least to me, to sidestep non-ideal historical contingencies, democratic deliberation and political resistance. Again, we are reminded of the civil tradition of democracy in which there is a dichotomy between transcendental background institutions of a society and the individual who acts within these institutions. Although Rawls deals with the tension between the state and society in his detailed discussion of the social preconditions for a just society, ideal theory nevertheless demands of individuals "strict compliance" with the just background institutions (TJ: 216). This focus

therefore neglects not only the question of how just institutions are created and reproduced, but also the non-ideal realities of social inequalities, concentrations of power and the destruction of socio-ecological livelihoods that impede the realization of such arrangements.

For these reasons, I believe it to be necessary to change our perspective when discussing the state-commons relationship and the provision of resources by the state from ideal-theory to what Amartya Sen has described as a "realization-focused" (Sen 2009: 7) approach, which aims at overcoming injustices, domination and exploitation. Sen describes this approach as comparative because it compares various existing and emerging institutional arrangements in different contexts and analyzes how specific injustices can be overcome given present possibilities. Here, freedom, justice and commons are not implemented from without or above, but rather grow out of the "crooked timber of humanity" (Berlin 2013; Kant 2006: 8:23). In order to overcome injustice, Sen argues that we should focus on democratic deliberation and the arguments exchanged by affected people via both local and global public spheres of contemporary societies. In line with Habermas and many others, Sen defines this deliberative understanding of democracy as "public reasoning" and his understanding of the state as "government by discussion" (Sen 2009: 321-337). Sen argues that the organization of state and social arrangements is thus not merely dealt with through periodic elections of competing elites, but rather through the perpetual expression of concerns and the exchange of ideas. Through participation in this process of democratic deliberation, people develop their capacities to define the legal framework of the state and the goods that best satisfy their needs. In short, people develop capacities for democratic self-governance and are thus able to overcome injustice and improve their security and social welfare (Sen 2009: 345-54).

I would argue that to systematically realize this, broad public deliberation must be institutionally secured through the inclusion of different groups of people in both the legislature and executive functions of government. The integration of citizens in such functions could occur through the inclusion of representatives of different affected groups (ethnic groups, socio-economic classes, consumer associations, neighborhoods, environmental groups etc.), for example by volunteering or sortition. In contrast to free association, the latter is an age-old form of political selection in which people from a population are semi-randomly nominated to take office in different political functions (Buchstein 2009; Dowlen 2008). One serious drawback of such a mechanism is the lack of accountability to the public due to the inability of those selected to be reelected. Despite this drawback, sortition and other forms of political inclusion can undermine the capture and corruption of the state by politico-economic elites (Lockard 2003). More importantly, it can enable a broader population to codetermine and participate in the coproduction of the goods and services provided by the state. Here, top-down provision of public

goods through experts is replaced by or, rather, supplemented with, local knowledge of needs, desires and the contexts of 'common' people. Classical examples of such forms of codetermination and coproduction are habitat conservation planning, participatory budgeting and functionally specific neighborhood councils for education, policing or health care (Fung/Wright 2003). With reference to Michael Walzer's work, we might see this as the socialization of the welfare state (Walzer 1988). Within democratic theory, this kind of inclusion is often referred to as participatory democracy (Pateman 1970; Barber 1984; Roussopoulos/Benello 2005) and is seen as an important means of "deepening democracy" (Fung/Wright 2003). Although many theories of participatory democracy go beyond the state, we can argue here that such political inclusion can transform the state provision of public goods into state supported commons through commoning. Last but not least, these practices of commoning enable people to develop the necessary civic virtues that help uphold and reproduce the democratic institutions of the state and of a commons-creating society (Benkler/Nissenbaum 2006).

In summary, the implementation of a democratic, commons-based society requires us to shift our understanding of the state from ideal theory to a realization-focused approach that deals with injustices and other non-ideal realities through public deliberation and broad political participation. I argue that a "realization approach" would ultimately transform the provision of public goods by the state into commons. In order to better understand this difference between public goods and commons, I will now analyze and discuss concrete examples of housing, health care and education. I choose these three goods because there is a widespread consensus in many Western countries and across numerous political camps that they are necessary resources for people to lead a life in liberty.[3] By analyzing these three basic goods, I hope to flesh out the concept of commons and their relationship to the state. Let us begin with the example of housing.

From public housing to housing commons

In general, public housing is provided for by the state for people in need, which is often interpreted to mean people with low incomes. To understand the problems of public housing, let us begin with the more commonplace criticisms of this kind of state provision.

3 Along these lines, articles 25.1. and 26.1. of the Universal Declaration of Human Rights state that access to housing, health care and education are considered to be basic human rights (UDHR 1948). Article 25.1. of the Universal Declaration of Human Rights states that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services […]". Article 26.1. affirms that "every one has the right to education. Education shall be free, at least in the elementary and fundamental stages" (ibid.).

Proponents of economic liberalism often criticize the provision of public housing because it supposedly distorts the self-regulating mechanism of the market. While this might be true, it is also the intention of public housing to provide housing to people who, owing the discrepancy between their low wages and the high rents of a home, could otherwise not afford a home on the 'free' market. If we value the satisfaction of needs over the functioning of unregulated market processes, then we can rather easily discard this criticism. Another more relevant criticism of public housing for our discussion here lies in an assumption I have mentioned several times already: that state services are uniform and unresponsive to individual needs and particular contexts. Although this may be true, one can say, conversely, that unregulated market processes are also unresponsive to individuals in need. While markets cater to those with more purchasing power, the state caters to those with less – the market as well as the state each being uniform and unresponsive in their own profit-oriented or bureaucratic manner. Aside from this common criticism, we must also acknowledge the concentration of poverty and, in turn, criminality, that results from both housing markets and more generally, misguided urban planning (Goering et al. 1997; Hui et al. 2015; Freedman/McGavock 2015).

I would say that the answer to these problems characteristic of property-owning democracy would be to provide people with housing capital so as to enable people to buy and design their own homes wherever they want. All citizens would thus become independent homeowners. Yet some problems arise from this independent housing model, such as suburban sprawl, long travel distances from home to work and the increased dependency on automobiles, to name just a few (Williamson 2010). Another problem is, however, the explosion of the cost of housing through real-estate speculation, which would be increased due to the provision of capital for all citizens. The 'neoliberal' and anti-egalitarian interpretation of a homeowner property-owning democracy has been realized since the 1980s in the USA, Britain and many other European countries by deregulating the banking sector and systematically keeping interest rates low, thereby enticing people with low wages to buy houses that they could not afford in the long run. This "privatized Keynesianism" (Crouch 2009) led to a run on real estate, which created a property bubble and, ultimately, the financial crisis of 2007/8 (Howell 1984; Streeck 2013; Levitin/Wachter 2012; Jackson 2012: 47).

What, then, are alternatives to the problems of uniformity, urban sprawl, poverty and speculation? These problems are obviously very complex and cannot be settled with simple solutions. Yet I believe that the systemic and process-oriented approach of commons could provide us with insights to fix at least some of these problems. So, what would a commons approach to the housing question look like? As I have emphasized, commons should not be understood as particular entities (e.g. public housing), but as a systemic and process-oriented approach

to creating common goods. In the case of public housing, this implies, first and foremost, the integration of potentially affected people into the development and design of a housing complex, a residential area or an entire neighborhood. Certain housing cooperatives are already developed in this way. The future inhabitants apply for an apartment, for example, *before* the complex is built instead of after. They are – or should be – able to express their various needs and negotiate how these can be accommodated within the existing financial and ecological budget. In some cases of public housing, lack of funding is a major problem, and one that leads to uniformity and 'ghettoization'. I do not believe, however, that a lack of funds per se must necessarily lead to these problems. The problem of 'ghettoization' could, for example, be rather easily alleviated by building in the centers of cities, which would mean that city planning would not be left to the planning of real estate speculators and unregulated market forces.

In turn, while it is often assumed that a lack of funds necessarily leads to uniform administration and provision, the integration of prospective dwellers into the development and design of such a complex enables people to explore the existing possibilities within whatever ecological and financial limits are agreed upon. And where money is lacking, it should be possible for people to literally determine and shape their living conditions with their own hands. Moreover, given a systemic approach, the layout of a housing commons would also provide various spaces for people to come into contact with each other and develop their living spaces not just before the building process, but also while they live there. This could include shared spaces for shared goods (shared tools and household appliances, a repair workshop, shared cars etc.), but also shared gardens, playgrounds and wild green areas, or possibly even a weekly local market and a café. These examples might sound trivial, but my main point is that the environment would never be entirely brought to completion but always open to the continual and evolutionary process of co-creation that can be adapted and developed by the different people that live in such environments.

The belief that the management of such a diverse and creatively assembled habitat would be impossible for the state to manage is, to a certain extent, correct. It would be difficult and costly for state authorities to administer such self-organized groups. That is one reason why governments often realize uniform goods with uniform rules. But this is where Elinor Ostrom's ideas about commons management come in: the costs of management can be significantly reduced while increasing the robustness of the institutional structure of an ecologically diverse resource system by enabling (and requiring) the dwellers to democratically manage their own commons, in this case their housing. This would necessitate that both institutional and physical space for public deliberation are provided for and maintained. Responsibilities would be devolved and delegated to different subgroups for different resources, goods and services. More importantly, these groups would

provide the institutional space needed so that problems can be voiced and conflicts resolved: such groups would maintain the mutual monitoring and graduated sanctioning necessary to reproduce commons on different levels. They would also provide the state with information for the background administration and support of housing commons. But would everyone have to participate in these deliberations and administrative processes? The right to dwell in such a housing commons could be made contingent on the inhabitant's committing to fulfill certain basic duties that would go beyond the mere compliance with basic rules. These could include minimal participation in the comanagement and reproduction of the housing commons. But the precise nature of these commitments would have to be defined by the inhabitants themselves.

Another question that arises in this discussion is whether housing would be provided free of charge and whether the state or the residents would be the proprietors of the housing commons. This is a central question that distinguishes housing commons from public housing. Simply put, a central feature of commons is that the people who use the resource system also manage it. Ideally, the people who use the common also collectively own it in the form of common property or a trust. I suggest that a housing commons could be arranged in the following manner: the land could be owned by the state in the form of a Community Land Trust. The Community Land Trust manages the land on behalf of the people of the village or the city and leases the land to the residence of the housing complex at affordable prices. The Community Land Trust would be comprised of politicians, experts, residents and other people from the broader community. The housing complex would then be owned as a cooperative by the people who live there (Conaty/Bollier 2014: 14-16; Lewis/Conaty 2012: 85-110). They would have to buy themselves into the cooperative. Yet, as numerous examples of housing cooperatives and other cooperative enterprises demonstrate, this amount will not be extremely high because the prices for real estate will not be driven up by speculation, and because the costs of housing will be shared by the many residents. For those who lack the necessary funds, there could be other means of accessing this capital – hopefully without falling into debt traps. To avoid this problem of debt, it is also imaginable that citizens would be provided with housing commons coupons of a certain value (e.g. $20,000) at the age of 18 years in order for them to become a member of a housing commons project. If the cooperative share exceeds this amount, the individual would have to pay the difference. But these are only some ideas of what the specific arrangement might look like. The important point, then, is that people have actual stakes in the housing commons that they live in. This not only cultivates responsibility for the management and maintenance of the commons, but also frees the inhabitants from the arbitrary interference of external owners such as the state or private investors.

Now, let us analyze the role of the state in such a housing commons scheme. According to my sketch above, its role should be conceptualized as providing housing commons with administrative and institutional support. The function of the state is to 'be there' for the commoners: to initiate and, in certain cases, to support the processes of self-governance, to aid the realization of certain large-scale projects and, most importantly, to democratically develop urban and regional planning policies that provide adequate land for housing commons. The state would, therefore, not manage people and their habitats, but would rather provide people with the opportunity to democratically manage their own lives and habitats. Coercive power would not be exercised by the state itself in the form of a monopoly, but would provide citizens with the necessary opportunities and powers with which to democratically govern their own habitats. Here, the state is not understood as an authoritarian leviathan, but rather as a partner in realizing the democratic and interdependent freedom of its citizens.

Having discussed the idea of a housing commons, let us now turn to the question of how the public provision of health care can be conceptualized as and transformed into a common.

From public health care to health commons

The right to health care is generally based on the right to life and well-being. More technically it can be expressed as a "positive right to basic human functional capabilities" (Ram-Tiktin 2012). While this might sound rather reasonable for some, the public provision of health care is highly contested (Epstein 1997). After discussing the problems of both market and state provision of health care, I will develop the notion of a health commons in relation to medical research and development, on the one hand, and in relation to the idea of community health center commons, on the other.

One central problem of the public provision of health care in many, if not most, Western countries is its increasing costs (Qidwai 2013). A common reason given for these substantial costs is the increase in demand for medical services. Garrett Hardin, for example, describes this problem as the "laissez-faire" provision of state services according to the Marxist principle "each according to his need" (Hardin 1977b; Hardin 1993: 242-3). In Hardin's words, "it takes no great insight to realize that hypochondriacs, as a class, will victimize the healthy in such a system" (Hardin 1993: 243).[4] Without testing the empirical validity of this rather cynical explanation,

4 To be precise, Hardin actually sees the problem in rising expenditure on health care in the in lawsuits of people against their doctors, on the one hand, and in expensive insurance and diagnostic tests as a means to protect doctors against these lawsuits on the other (Hardin 1993: 242-3).

I would argue that the reasons for the rises in costs in health care are not merely due to "hypochondriacs". Other important factors include, for example, the increase in population size, longer life expectancy and higher standards of health. Yet, some academics see the problem not merely on the demand side, but rather in a feedback loop of supply and demand in which greater investments in health care lead to improved health (and longer lives, larger populations and higher expectations) and thus require even greater expenditure in medical care. This is what some call the "Sisyphus Syndrome in Health" (Zweifel et al. 2005; Zweifel 2007). Zweifel et al. explain this feedback loop in the following way:

> Initially, politicians decide to allocate more resources to health. If effective this intervention causes people that would have otherwise died to survive. With more survivors around, there will be additional demand for health care services. *To the extent that this is financed out of private resources, there is not too much of a problem*. Individuals will adjust their health insurance policies accordingly and allocate a greater share of their income to health care. However, most of these services are covered by public health insurance. Rather than accepting to pay themselves, especially older voters have an incentive to get politicians to reallocate the public budget in favor of health. The increase in health care expenditure (HCE) again creates survivors. Thus, the Sisyphus syndrome can go into its next turn. (Zweifel et al. 2005, 127; emphasis added)

Despite the plausibility of this hypothesis, their conclusion seems somewhat peculiar: the central problem does not necessarily lie in rising medical costs, but more specifically in the increasing *public* expenditure on health care. According to Zweifel et al., one solution to this problem is, therefore, the privatization of health care. Expenditure on health care then depends on one's purchasing power and the 'free' choice to spend one's money on one's health. Here, it is assumed that through privatization, supply and demand will eventually balance each other out. Generally speaking, this belief that privatization will yield better outcomes in health care has become increasingly popular since the 1980s in many Western and non-Western countries (Collyer/White 2011).

The problem is, however, that agents competing on an open market must pursue profit-maximizing strategies in order to survive economically. It can therefore be assumed that the profit maximization strategy would not lead to a decrease in health-care costs, but rather to an increase in costs. The reason for this is that private firms who are in the medical and pharmaceutical industries are not necessarily interested in lowering private expenditure on health services and products but, instead, in a perpetual increase in expenditure. Aside from using their monopoly power in patents to raise the prices of drugs, this is also achieved by developing highly specialized and exclusive treatments for those with greater purchasing power. Similar to the housing market, this implies that medical and pharmaceu-

tical companies are not interested in the needs of those in need, that is, of those with ill health and little money. The necessary care for these people will be – and is being – left to charity organizations or, as is mostly the case, to untrained and often already overworked family members of the less well-off. However, in other cases, these people in need will not receive any care services or medicinal treatment. A privatized health-care system thus cannot fulfill its proper function of providing all people with adequate health-care services. Instead, it will turn – and has turned – good health into a means of social distinction and possibly even a luxury good for the affluent.

However, and more fundamentally, a health-care system that is structured according to profit maximization is, ironically, not necessarily interested in a long-term and sustainably healthy society. This is not to say that general levels of health in Western countries have not increased over the last two hundred years or that pharmaceutical and biomedical corporations produce malfunctioning or harmful drugs. The point being made here is another. The reason for this underlying disinterest of businesses in a substantially healthy society lies in the problem that if everyone were healthy, people wouldn't go to a doctor or need drugs. Sales would sink and profits would plummet – and people would lose their jobs. The underlying and long term interest of a profit-oriented health industry is therefore not healthy citizens, but, rather, sickness and a perpetual increase in desire for more medicine and more health-care services (Brownlee 2007). Put somewhat bluntly, profits feed off the sick.

However, the problem I am describing is not limited to entirely privatized systems of health-care provision. If profit-oriented corporations provide the drugs, machines and material infrastructure for a public health-care system, the supply-side problem of perpetually rising health-care expenditure remains. This problem is otherwise known as the medical-industrial complex (Relman 1980; Wohl 1984; Geyman 2004; Moskowitz/Nash 2008; Ehrenreich 2016: 39-77). Here, we are reminded again of Hardin's "double C–double P game" in which the profits of the health industry are privatized while the costs are communalized. As we see, with a background arrangement based on profit maximization, both private and public systems are unsatisfactory and lead to rising costs in health – either at the cost of increasing public expenditure or at the cost of an unhealthy and run-down lower-class population. Contrary to Zweifel et al., we can therefore conclude that it is not simply public spending that leads to the "Sisyphus Syndrome", but also a profit-oriented health-care system that leads to ever-rising costs for society.

Parallel to the problem of housing, a possible answer to this conundrum could be the conceptualization of health care as a commons. But what would such a health-care commons look like? I cannot provide a blueprint for how a health-care commons should look. Nevertheless, I can provide a few ideas that might be helpful in understanding how a health-care commons could be organized. For this, how-

ever, let us take a step back: the more general problem we are faced with is how to create a healthy society that cultivates well-being instead of a society that values efficiency gains and economic growth. From a systemic perspective, a health-care commons implies a general and fundamental right to a clean and healthy environment (Weston/Bollier 2013). As Smith-Nonino notes, "certainly, a de facto public health commons exists in every municipality that provides clean water, sewage disposal, or subsidized inoculations for communicable disease – services often taken for granted by most citizens" (Smith-Nonini 2006: 233). In this sense, we must emphasize that health care is not something that is realized simply through the provision of medication or an operation, but that it is, rather, an ongoing process and interaction of individuals with their socio-ecological environment. While not denying individual responsibility for one's health, a commons approach recognizes that individuals live in a complex webs of interdependent relationships that influence their well-being and the well-being of others. From this perspective, good health is not merely an individual effort, but is also achieved through social interactions and arrangements. To gain a more detailed understanding of what this might mean, let us analyze two facets of a health-care commons: medical research and development and community provision of health-care services.

As just discussed, a central problem of profit-oriented health-care systems is that they cater to the needs and desires of those clients with greater purchasing power rather than focusing on widespread diseases that primarily affect poorer people. This problem is accentuated by another related issue: the privatization of research and development or, more specifically, complex and overlapping patent rights in the medical sector. Intellectual property rights are often understood as important incentives because they secure property rights in one's labor, or rather one's discovery, and enable those who invest in research and development to reap greater benefits from it. The flip side of these patents is, however, that they simultaneously prevent other researchers and organizations from accessing and using the knowledge that has been gained. This is one case of what Michael Heller has described as the "tragedy of the anticommons" (Heller 1998; Heller/Eisenberg 1998) or the "gridlock economy" (Heller 2008: 49-78). In contrast to the tragedy of the unregulated commons which leads to the *over*use of resources, the tragedy of the anti-commons leads to the *under*use of resources. Here, highly fragmented exclusive ownership rights impede innovation that could enable researchers to develop cheaper or possibly even better drugs. It is in this sense that Heller argues that fragmented patents can literally cost lives (ibid.: 55).

One commons-based answer to this would be – parallel to the open-source software movement – to organize medical R&D as an open-source health commons where information is shared freely among researchers and health organizations (Tenenbaum/Wilbanks 2008). Marty Tenenbaum and John Wilbank explain this idea in their white paper on health commons:

> We envision a Commons where a researcher will be able to order everything needed to replicate a published experiment as easily as ordering DVDs from Amazon. A Commons where one can create a workflow to exploit replicated results on an industrial scale – searching the world's biological repositories for relevant materials; routing them to the best labs for molecular profiling; forwarding the data to a team of bioinfomaticians for collaborative analysis of potential drug targets; and finally hiring top service providers to run drug screens against those targets; with everything – knowledge, data, and materials – moving smoothly from one provider to the next, monitored and tracked with Fed-Ex precision; where the workflow scripts themselves can become part of the Commons, for others to reuse and improve. Health Commons' marketplace will slash the time, cost, and risk of developing treatments for diseases. (Tenenbaum/Wilbanks 2008: 3-4)

However, the point of such open-source health commons would not only be to cut costs or to produce more, but also to democratize the medical industry. Here, it can be assumed that the open-source structure of a health commons in research and development would enable more people to participate and collaborate in the 'peer production' of more innovative medical knowledge and needs-oriented treatments.

From a more systemic perspective, the democratization of health care can also more generally be encouraged by empowering people to take control of individual and social causes of illnesses. On a very basic level, this can begin with preventative health education in schools. With reference to medical training, this could imply the development of a profession of community doctors,[5] who would combine the knowledge of the family doctor, the care worker, the pharmacist and the therapist. The community provisioning of health care services could, for example, be organized in community health care centers. Here, a community doctor and other care workers would provide basic and accessible health-care services to the public. Furthermore, the people seeking help in such community health commons would not simply be consumers, but would be integrated in empowering processes involving the diffusion of knowledge and practices of self-help. This could include, for example, groups like Alcoholics Anonymous, in which people with common, widespread, complex problems such as chronic back pain, migraines, burnout, (minor) depression and obesity can discuss their problems and how they deal with them. An important advantage would be that people would learn to listen to themselves and their peers instead of having to entirely depend on expensive experts. Such a community health commons could also provide simple health activities led by volunteers that aim to increase people's individual well-being. Because care work is very

5 As an example of such community doctors see, for example, the "barefoot doctors" that used to exist in China (Zhang/Unschuld 2008; WHO 2008).

time-consuming and care workers are rather limited in number, a time bank or exchange circle could be organized in which people could offer their help in simple care services in exchange for other goods or services. But these are merely some fairly concrete ideas of how such a community health commons could be organized. On a more general level, the principles of democratic planning and self-organization would lie at the heart of community health commons. This would, in turn, enable affected people to define for themselves how they would like to organize their local health-care services.

As we see, the cultivation of health and well-being requires, if not a lot of money, then still a lot of time for caring activities. This leads us to the more political side of the idea of a health commons and the necessity of an institutional framework that supports the creation of a healthy society. Although the notion of a 'healthy society' is, at present, often associated with awareness campaigns, a systemic approach to the notion of good health would go beyond the focus on single, isolated problems and would avoid the top-down implementation of certain ideas of the good. Instead it would, for example, aim towards opening up more space for people to care for themselves and for others. First and foremost, this needs to include the limitation of the working day, which would provide people with the time for these activities. Other elements of such health policies could include, for example, walking and bike paths and parks for people to exercise and relax in. In more general terms, city and regional planning is also an important aspect of the creation of a healthy and ecologically sustainable environment. All of this might sound quite self-evident and mundane, but a commons twist to these policies would entail the democratic inclusion of the people who actually live in these environments. Furthermore, a commons approach to health, well-being and public space would involve a transformation of our understanding of public space. From the commons perspective, public space is not understood as a neutral space for everyone and no one, but rather as a common space that is shaped by the people who use it. How these different aspects of democratic participation, common space, community building and health issues are integrated can be illustrated with the example of urban gardening, which has gained a certain popularity (Lewellen 2016; Baier et al. 2013; Seitz 2009). As we see, we have moved from the question of health via that of community organizations to that of city planning, which would normally appear to have little to do with one another. The point of the commons is, however, to see the systemic relationships between its individual components. More generally, the democratic inclusion of affected people in such processes of community-health commoning implies that people can define and develop their own understanding of health and wellbeing. But beyond this, it implies that individuals' health and well-being is not only an interdependent component of a healthy society, but also of a healthy and sustainable environment.

To sum up: the notion of a democratic health commons clearly goes beyond state provision of basic health-care services. Nevertheless, its emphasis on open-access medical research and development, on the one hand, and community provisioning, on the other, could provide strategies to improve the health of citizens without perpetually increasing health-care costs.

From public education to an education commons

Having analyzed housing and health care as potential commons, now let me turn to my final example: education. In contrast to housing and health, however, it can generally be said that education is one of the most acknowledged public goods in Western countries. In this section I compare the notion of public education to an education commons. In order to do this, I firstly discuss arguments for and against education as a public good. Secondly, I argue that access to knowledge is a central aspect of public education. Here, I focus on the problem of the privatization of scientific knowledge in academic journals and argue that scientific knowledge must be organized as an open-access commons. In a third step, I discuss how public schooling can be organized as a commons.

The defense and critique of public education

The general conception of education as a universal public good is based on the critique of earlier social arrangements, most importantly of feudalism, in which only aristocrats could afford to educate their children, and the children of peasants and lower social classes learned only those skills necessary to fulfill their occupations. This conception is expressed quite clearly by Adam Smith, not so much because as in spite of his defense of private enterprise and a free and competitive market. As I have already pointed out, Smith argues that an increase in the division of labor leads to the problem that laborers become "as stupid and ignorant as it is possible for a human to become" (Smith 1994: 840). A Smith appreciates, the tragedy of an unregulated education commons makes state provision of mandatory public education necessary in order to overcome the problem of an entirely private education that leads to the exploitation of lower classes. We will come across this problem again when discussing vocational education and the competitive market in the next chapter on markets. According to Smith, a "civilized and commercial society" therefore requires the "education of the common people […] more than that of people with rank and fortune" (ibid.: 841). He continues,

> But though the common people cannot, in any civilized society, be so well instructed as people of some rank and fortune, the most essential parts of education, however, to read, write, and account, can be acquired at so early a period of life,

> that the greater part even of those who are to be bred to the lowest occupations, have time to acquire them before they can be employed in those occupations. For a very small expense the public can facilitate, can encourage, and can even impose upon almost the whole body of the people, the necessity of acquiring those most essential parts of education. The public can facilitate this acquisition by establishing in every parish or district a little school, where children may be taught for a reward so moderate, that even a common laborer may afford it […]. (ibid.: 842-3)

The aims of a public education are therefore, according to Smith, to educate people in order to make them "more decent and orderly", "more respectable" and "therefore more disposed to respect […] superiors" (ibid.: 846). Although Smith concedes that the state "derives no advantage" from public education, these qualities do, however, provide for a more stable and orderly society. More generally, educated people are "less liable […] to the delusions of enthusiasm and superstition" and "more disposed to examine, and more capable of seeing through, the interested complaints of faction and sedition" (ibid.). In turn, public education enables people of lower social classes to be "less apt to be misled into any wanton or unnecessary opposition to the measures of government" (ibid.). Here, we see the enlightened impetus that has continued until today in which education is believed to create more reflective, more critical citizens who, in turn, uphold an orderly and civilized society.

While this basic defense of public education has become widespread since the 18th century, its concept has been greatly expanded since then. Today, public education is not simply limited to the basics of reading, writing and arithmetic, but includes general knowledge of history, politics and society and sometimes extends to vocational training, university education and further, adult education. Here, education is not only provided to increase social stability or, in Rawls' terminology, a "well-ordered society", but, more importantly, in order to provide people with "fair equality of opportunity" (JF: 139). Put somewhat more generally, public education should provide people with necessary intellectual resources in the form of the knowledge and the cognitive skills needed to enable them to develop and realize their capacities and to freely choose their occupation (TJ: 243, 374). Like Smith, Rawls argues that resources in education should be allocated so "as to improve the long-term expectation of the least favored" (TJ: 87). Here, educational and vocational training are defined as central aspects of a property-owning democracy that should be dispersed widely throughout society by the state (JF: 139). As Rawls explains:

> I assume […] that there is fair (as opposed to formal) equality of opportunity. This means that in addition to maintaining the usual kinds of social overhead capital, the government tries to insure equal chances of education and culture for persons similarly endowed and motivated either by subsidizing private schools or by

> establishing a public school system. It also enforces and underwrites equality of opportunity in economic activities and in the free choice of occupation. (TJ: 243)

Not only should access to educational resources create a just background structure for a free society, but it should also support the reproduction of the system over time. As Rawls explains:

> Their education should also prepare them to be fully cooperating members of society and enable them to be self-supporting; it should also encourage the political virtues so that they want to honor the fair terms of social cooperation in their relations with the rest of society. (JF: 156)

The role of public education is therefore both an institutional and a moral one: institutional access to educational resources should support the social cooperation necessary to uphold a just system. This is, at least, Rawls' ideal theory of a public education provided by the state. Although not always realized in this ideal form, the widespread provision of public education by the state in many Western countries can be understood as an extraordinary achievement.

Despite "the great aspiration" (Oelkers 1989) embodied in these ideals, which developed during the 19th and 20th centuries, public education has been accompanied by its critics since its beginning. As with most public institutions and services, a common 'progressive' criticism has always been that state education is bureaucratic, uniform and unresponsive to the needs of the children and the community (Oelkers 2010; Hayes 2007). Often, these criticisms focus on the disciplining techniques of educational practices and the overall aims of educational policies that produce subservient and diligent workers in the name of economic utility, productivity and growth, but not critical, creative, and free citizens for a democratic society (Illich 1972; Dewey 2008; Freire 2012). Furthermore, and in spite of the widespread expansion of public education since the Second World War, state provision of education has appeared unable to counter social inequalities. In contrast, numerous studies have demonstrated how public schools merely reproduce the inequalities that already exist in society (Bernstein 1973; Willis 1981; Bourdieu/Passeron 1990; Lareau 2003).

Increasingly in Anglo-Saxon countries since the 1980s, this critique of public education has, however, been used by 'conservatives' to support an economic liberalization of the provision of education (House 1998; Apple 1996, 2000, 2006). Caught in the state-market dichotomy, the only alternative to the top-down state provision of education is therefore thought to be 'free choice', which is interpreted as the introduction of competitive market mechanisms and the privatization of public education (Friedman 1955, 2002; Murray 1984; Walberg/Bast 2003). With David Bollier, we can understand this process as an enclosure of state-provided educational commons (Bollier 2013; Björk 2017). At elementary and high school levels,

this can occur through the influence of corporations on educational policy (including curricula and textbooks) and school campuses (Neumann 2014; House 1998). More generally, a market-oriented public school system focuses on the output and comparison of grades (e.g. PISA), the competition between schools and, most importantly, the free choice of schools through voucher systems. At a higher level, this can be seen in decreases in public funding of college and university education, and higher tuition fees and student debt in Anglo-Saxon countries (Mortenson 2012; Goodnight/Hingstman 2013). Further effects include a general increase in the competitive acquisition of external, third-party funds for scientific research in Europe (Boer et al. 2007; Bolli/Somogyi 2010) and a boom in expensive, private academic journals (Tenopir/King 2000; Guédon 2001; Kranich 2007). We will discuss the problem of these journals shortly. Although not all of these reforms and developments can be declared to be simply wrong, the general tendency towards privatization of education brings us back to the problem we initially attempted to overcome through a widespread provision of public education: the inequality of access to educational resources. By declaring that the "government has not solved the problem[s] of education because government is the problem" (Maclaury 1990: ix), we end up in the same position we originally found ourselves in: a private provision of education is not interested in the needs and desires of those less well-off. As Adam Smith already argued from a utilitarian standpoint, this is problematic because it decreases society's productive or, for us from a commons perspective, caring capabilities and threatens the social order. From Rawls' normative perspective, this inequality denies the less well-off the opportunity to develop their capacities. Thus, the privatization of education appears to be something like an attempt to put out a fire with burning sticks.

What, then, is the alternative to a top-down provision of education by the state and a more private provision based on competitive market mechanisms? Here, we must again bring in the notion of commons as an alternative to the state-market dichotomy. For education, this generally implies a democratization of governance processes, institutions, and educational practices and resources. A commons interpretation of education builds on some of these critiques, yet places democracy at the core of its arrangements. To understand what this could mean in more concrete terms, let us begin with higher education and the informational resources on which it depends, and then turn to the governance, institutions and contents of elementary and high school education. We will discuss vocational education in the following chapter.

Open-access information commons: scientific knowledge and academic journals

Higher education can generally be understood as one of the key ways that a society creates experts and intellectuals in diverse fields of knowledge. In the tradition of the Enlightenment, a central aim of universities is to produce scientific knowledge that will hopefully advance people in their understanding of the world. It is assumed that this knowledge will make people freer in both the sense that it will free them from false beliefs and increase the range of possibilities for action. This occurs through the broad dissemination of information and knowledge to the wider public – and the ability of non-experts to access this information. Scientific information is thus a vital resource for political participation, critical deliberation and effective policy-making in democratic societies (Dewey 1946: 208-9). In this sense, we can say that universities and scientific information have a public function: to educate society.

If we look at the state of higher education and scientific information in many countries around the world today, it is unclear whether universities currently fulfill this purpose. Here however, we will not focus on the well-known problems of soaring university fees and student debt. My focus will, instead, be on what some might consider a sideshow: academic journals. Simply put, the problem of academic journals is that they enclose and privatize scientific information. The costs of access to individual scientific articles for people who are not affiliated with academic institutions (which is the greater part of the world's population) are generally very high.[6] One reason for these high costs is, largely, the concentration of ownership of academic journals in the hands of a few corporations (Larivière et al. 2015). As can be expected, profits in this field are therefore also very high.[7] But the more fundamental reason for these large profits is that the knowledge is provided to these corporations for free. Importantly, and in contrast to newspapers, for example, the information is not created, reviewed or edited by the journals themselves, but instead provided for free by academics (Bergstrom 2001; McGuigan/Russel 2008). Additionally, copyright in articles is usually handed over to the journals (Hilty 2007). Academics, universities and the public are therefore obliged to buy their own research back from corporations that merely package the publicly funded

6 The price for a single article can reach up to $35 a piece (Monbiot 2016: 194). In 2011, British university libraries spent up to 65 per cent of their budgets on academic journals (Economist 2011) which can range in prices from $500 to over $20,000 a year (McGuigan/Russel 2008; Monbiot 2016: 194).

7 Some estimates speak of a *turnover* of $10 billion worldwide (Björk 2017: 101), while in 2008 others estimated the *revenue* of these companies in North America alone to be $11.5 billion (McGuigan/Russel 2008). In 2010 Elsevier, the largest publisher of academic journals worldwide, had an operating-profit margin of 36 per cent (Economist 2011).

information. It appears, therefore, that private journal publishers extract profit from research communities by enclosing and restricting access to publicly funded scientific knowledge commons (Berg 2012). From a socio-*economic* perspective, and analogously to the problem of research and development in the field of health and medicine, I would argue that the privatization of information can limit collaboration and innovation and lead to the tragedy of an anti-commons – not necessarily between researchers, who often have access to the journals, but rather between the scientific community and the broader non-academic public. From a socio-*political* perspective, expensive, private academic journals ultimately undermine the educational function of universities and research in an informed and self-reflective democratic society.

The widespread privatization of scientific information in academic journals is unique in two respects. Not only are the infrastructure and the labor that go into research often funded by the public. Furthermore, digital information – and knowledge in general – is often considered to be *the* exemplary non-exclusory and non-rival good (Stiglitz 1999; Hess/Ostrom 2007). In our terminology, we could say that digital information and knowledge are highly inclusive and additive. The fact that one person can consume information and simultaneously enable other people to benefit from it makes it an ideal resource to provide in an open-access manner (Verschraegen/Schiltz 2006). The best contemporary examples of this are the free online encyclopedia Wikipedia and Project Gutenberg, which can be understood as an open-access information or knowledge commons (Safner 2016). The philosopher Peter Suber defines open access in the following manner:

> Open access (OA) is free online access. OA literature is not only free of charge to everyone with an Internet connection, but free of most copyright and licensing restrictions. OA literature is barrier-free literature produced by removing the price barriers and permission barriers that block access and limit usage of most conventionally published literature, whether in print or online. (Suber 2007: 171)

If we thus understand open access information in this manner, what would differentiate its organization as a public good from a commons? According to Suber, one main difference lies in the author's rights. When work is put in the public domain, no rights are retained: there are authors, but no legal owners of the text. In contrast, a commons is constituted when the author consents to all legitimate scholarly uses. The author thereby voluntarily gives up certain rights (which they also do when publishing in private journals), but retains the right to block the distribution of falsified or misattributed copies and block the commercial reuse of such copies (ibid.: 171, 179). From this perspective, the intellectual commons is possibly more attractive for authors because they remain the owners of the text, while still being able to provide the information to a wider public.

Aside from the question of the ownership of texts, public provision of open-access information differs from commons provision with respect to ownership and management of its infrastructure. One form of public provision of access to scientific information would require the state to set up and manage open-access internet platforms for the general public. This is often done with in-house government research that is funded by taxpayers. It is questionable, however, whether governments should also do this for academic journals. If we look at other OA projects, Project Gutenberg is, for example, a private non-profit corporation that is financed through donations and managed by its CEO and Board of Directors. Wikipedia, also a non-profit organization funded by donations, is administered by a seven-member board of trustees. For academic journals, it is evident that the academic community itself ought to provide and manage the infrastructure for open access to scientific information. Managing boards can also include members of public libraries and the wider public in order to ensure relevance and accessibility of the information. The existing expenses could be covered by public funds (e.g. in the form of salaries of university and library employees), publication grants and donations. Importantly, open access implies *free* access to information, which means that there would be no subscription fees – for readers or libraries. Yet, because much of this publishing work is already done for free by academics, we can assume that the remaining costs will be rather low. But as Suber says, "there is not just one way to cover the expenses of a peer-reviewed OA journal" (ibid.: 174). While the contents, in all of these cases, are provided for in an open-access manner, the management is conducted either through government officials, entrepreneurs, civil society or professional societies. While all this information should be understood as an information commons, I would argue that open access created through peer production and managed by those largely responsible for and affected by this content should, more generally, be considered commons in their institutional sense. In relation to our four examples, it appears that Wikipedia and open access scientific journals would come closest to this notion of a commons.

Lastly, however, it must be noted that from the perspective of access to educational resources, the value of open access to information stands above its organizational provision. The question of how this intellectual resource should be managed is therefore secondary. Despite the risks of tragedy inherent in creating intellectual commons (Wenzler 2017; Suber 2007: 183-7), the advantages of a commons over public provision are also based on the innovation that results from the inclusion of citizens in research, also known as public science or participatory action research (Kindon et al. 2007; Lawson et al. 2015). In this sense, an information commons can ideally decrease the knowledge gap between scientific experts and the wider population, not simply by educating the public but also by providing people with the means to participate in and use science for the democratic co-creation of their shared, common reality.

Schools and schooling in an education commons

Having discussed information commons in higher education, let us now turn to the more general question of how public schooling can be organized as a commons. On the institutional level, this implies, first and foremost, that the people affected by public education should have the right to codetermine its arrangements. Democratic participation must be understood as the answer to top-down uniform state provision of education and as an alternative to market mechanisms and privatization that cater to the well-off. By understanding public education as a common, welfare recipients and market consumers are, ideally, transformed into active, participating citizens or, in my vocabulary, commoners. This principle of democratic codetermination can be applied to numerous levels of decision-making: educational policy at national, state and municipal levels, the administration of schooling districts and the management of individual schools. Because it is often believed that political participation is more difficult on the national level, political participation in educational affairs is most commonly achieved through organizational bodies such as local school councils, parent-teacher associations and inter-school student councils. Another type of organizational body could be a Local Education Forum as discussed by Richard Hatcher, which "would be a body open to all with an interest in education, including of course teachers and other school workers, school governors, parents and school students", enabling these people to "discuss and take positions on all key policy issues" (Hatcher 2012: 37). The general aims of these organizations and instruments are to increase the effectiveness and accountability in the provision of education according to the needs and desires of the affected people. Despite the importance of this idea for the provision of education by the state, I will not focus on these issues because the ideas are not new and there is already a rather large body of international literature on this topic (Golarz/Golarz 1995; Brehony/Deem 1995; Fung 2003a; Lewis/Naidoo 2006; Arvind 2009; Smit/Oosthuizen 2011; Long 2014; Jung et al. 2016). However, it is important to note that despite this emphasis on local, democratic control of education, a national government is necessary to mitigate substantial inequalities between different school districts. Decentralized democratic bodies are incapable of dealing with this problem, which arises at a higher level between districts. The question, then, is how democratic participation can be strengthened not only on the local level, but also on the national or even at supranational levels of educational politics and policy-making. In general terms, democratic participation should hopefully transform a top-down provision of public education into an education commons structured as a multilayered and polycentric governance system.

Aside from policymaking and the management of schools, it is also necessary to discuss the notion of an education commons in relation to schooling. In very general terms, I would like to emphasize the importance of democratic and eco-

logical knowledge and values for schooling in an education commons. The reason for this should hopefully be rather clear from the preceding discussions. Nevertheless, let me briefly summarize my reasons again. In general terms, democracy should enable people to co-create and codetermine their socio-ecological conditions. The importance of democracy in educational matters lies not only in its instrumental value for overcoming social dilemmas and tragedies, but also in the intrinsic value of collective action and convivial modes of living. When school education focuses on democracy, it should emphasize the importance of individual freedom in relation to the freedom of others. This is what I have defined as ecological freedom: the freedom in, through and against others. The underlying value that a democracy should cultivate is thus the recognition of and respect for oneself and the other. This reciprocity lays the foundation for the deliberation and negotiation over other social values and the organization of interdependent individual lives in a shared reality. As I mentioned in my discussion of democracy, the principle of autonomy should, however, be integrated in a larger framework that includes not only the human world but also the non-human world. This, in turn, leads us to the importance of ecology in educational matters. Essentially, ecology is a principle that should enable people to recognize environmental limits, understand the relational functioning of eco-systems and negotiate the intrinsic and instrumental value of other interdependent living beings. In terms of norms, ecology should cultivate the values of diversity, reciprocal interdependence, care and sustainability. This is what Capra, Mattei and others have called eco-literacy (Capra/Mattei 2015: 174-8; Kahn 2010; Peacock 2004). As we see, however, ecology and democracy should not be seen as two separate entities, but rather as complementary means to realize a just and sustainable evolution of life. Thus, the principles of ecology should be combined with those of democracy, ultimately fostering an understanding for ecological democracy in education (Houser 2009).

Let us briefly discuss what that implies for schools and teaching. On the one hand, it would imply that democracy and ecology would be taught at schools as subjects. In many schools, this is already the case: democracy is a theme in what is called civic or citizenship education, which is sometimes subsumed into history or some other subject; ecology, in turn, is normally taught in geography or biology class. Here, democracy and ecology are treated solely as educational contents or as objects that exist 'out there' in the world. I believe this to be the traditional approach to these topics. Although sometimes pedagogically necessary, this approach is somewhat problematic since it reproduces the Cartesian divide between *res cogitans* and *res extensa* or subject and object that underlies the false dichotomy that divides our common ecological reality into human being on the one side and nature on the other. For this reason, an education commons would interpret democracy and ecology not merely as educational contents, but also as educational forms, as ways of learning. This would imply, on the other hand, that learners not only ac-

quire knowledge of democracy and ecology, but also experience and practice these principles in an interactive and systemic manner. As John Dewey already argued over 100 years ago, this means that democracy is not simply taught, but that it is also a way of learning and, more generally, a way of life (Dewey 2008). Similarly, we could say that ecology is not merely something to be learned about, but also a way of learning.

A democratic and ecological education would thus attempt to recognize the necessity and importance of each person in collaborative learning processes. Learning would not simply occur as independent *self*-organization, but rather as an interactive and interdependent cooperative process that is negotiated between the pupils and teachers in a way that recognizes their real diversity. Admittedly, this notion of cooperative learning is not new (Slavin 1996; Gillies 2007; Johnson/Johnson 2009). An ecological twist to this approach, however, would integrate one's environment into these interactive processes. For elementary school children, this could imply co-designing and helping to build a playground that fulfills their needs and desires – and, possibly, integrates ecological niches for plants and animals (Lozanovska/Xu 2013). For high school students, cooperative, ecological learning could involve projects in which the school itself is altered to become more sustainable. Pupils could, for example, plan and organize the installation of solar panels on the school's roof – possibly they could even learn how to assemble solar panels themselves.[8] In this sense, the aim of a democratic and ecological approach to educational praxis would be to foster engaged citizens who can collaborate with others and develop skills in order to actively co-create and transform their common reality in a sustainable manner.

In sum, an education commons would differ from public education in two significant ways. As we saw in the discussion of information and knowledge, an open access information commons would provide the wider public with access to academic research that is, in turn, managed by the researchers and institutions that generate this information. Secondly, I have argued that an education commons would imply the democratization of educational policymaking and the management of schools. This would expand the opportunities given to the wider public to organize their education according to their needs and desires. Furthermore, I have contended that democratic and ecological knowledge and values should be integrated into schooling. This should provide children and young adults the chance to learn in an individualized yet cooperative manner in interaction with their environment. At all levels, the aim of education in an education commons is thus to empower people to become commoners for a commons-creating society.

8 While this might appear to some as too complex and thus unrealistic, the construction of solar panels is learnt and practiced at the "Barefoot College" in Tilinia, India (O'Brien 1997; Roy/Hartigan 2008).

7.4 Creating commons in a non-ideal world – in and against the state

I must admit that my 'realization-approach' portrayal of a state-supported commons-creating society might appear rather rosy and utopian. Returning to our preliminary discussion of ideal and non-ideal theory, it might seem as though I have slipped back into a 'transcendental institutionalism' in my comparison of public and common goods. Nevertheless, I hope that this discussion has provided us with a better understanding of the relationship between the state, public goods and commons. The question that now arises is, however, what the relationship between the state and the commons looks like in non-ideal world. Or more concretely: How can such a social arrangement be realized when democratic participation is not given? Does global warming force us to give up our notion of democratic participation in a commons state? And does this focus on local, nation-state answers not forget the large, global picture of immense poverty and ecological degradation in other countries? In this last section on the state-commons relationship I will therefore touch on these issues: the 'urgency' of climate change, the role of commons for 'developing' nations, the threat of state oppression and opportunities to reclaim and cultivate commons.

The urgency of climate change

Let us begin with the problem of climate change. As I have already mentioned, there exists an unequal distribution of 'goods' and 'bads' in the world: 20 percent of the world's population produce 80 percent of the world's GHG emissions (Satterthwaite 2009). A part of this 20 percent belongs to the middle class in Western countries, while the rest belongs to the affluent people who reside throughout the world. While there might be a growing population that longs for socio-ecological change in the direction that has been portrayed in this book, there are, nevertheless, many people who prefer to cling to their habits, privileges and power. If this is true, the small difference a few experiments in tool sharing, repair workshops, cohousing and democratic city planning might make can appear somewhat laughable. We are confronted here with a few concrete and serious questions regarding non-ideal political theory: how can the socio-ecological injustices that result from this relatively affluent global population be overcome? What if a large portion of this population – including many of its political representatives – is not interested in such a democratic socio-ecological transformation? And finally, do we have enough time considering the urgency of climate change? In this section we will focus on the last question.

In the eyes of some, these interrelated socio-ecological problems – and especially climate change – are so urgent that we do not have the time to deal with them through democratic means. Ivo Wallimann-Helmer, for example, explains in his ar-

ticle "The Republican Tragedy of the Commons – The Inefficiency of Democracy in the Light of Climate Change":

> Although the normative ideal of republican democracy provides resources to overcome the risk of such tragedy, *it is inefficient all along the line*. It is potentially inefficient both in guaranteeing adequate decisions concerning international agreements for mitigating GHG emissions and with regard to the discussed possible redesign of its institutions to overcome its inefficiency. On a global level, where negotiations on international agreements to mitigate GHG emissions are concerned, respecting the relevance of democratic legitimization in republican democracies makes it very plausible that not all nation-states (democracies) will subscribe. This shows why […] the intragenerational dimension of climate change should be treated as if it were a tragedy of the commons even though under optimal circumstances it could become a simple coordination problem. It should be treated this way because there is a risk that in republican democracies necessary political decisions are not reached in due time. (Wallimann-Helmer 2013: 14; emphasis added)

Interestingly, Wallimann-Helmer does not, however, provide us with an answer to this very serious problem. He leaves us hanging at the end of his article with the passage quoted above.

Considering the urgency of the problem and the supposed inefficiency of democratic change, what can be done? One option could be, at least theoretically, a type of eco-dictatorship, as discussed at the beginning of this chapter, though achieved either through a single democratic vote or a revolution. This is obviously not very attractive; we would sacrifice our liberty for ecological sustainability, yet without being assured that the dictator will be wise and benevolent. Another apparently more pleasant option might be what John R. Hibbing and Elizabeth Theiss-Morse call "Stealth Democracy" (2004). In a nutshell, their thesis is that people are fundamentally uninterested in politics and simply want to be left alone (ibid.: 129). According to Hibbing and Theiss-Morse, the only reason why people would nevertheless choose to participate in politics is to limit corrupt and rent-seeking behavior on the part of politicians. But if these people had the illusory option of "government by non-self-interested elites" (ibid.: 130), a majority would choose it. In such an arrangement, we could simply allow scientific experts who were neutral, yet of good will, and who were familiar with the facts of climate change and the importance of equality for our individual and social well-being to govern. Here it is believed – or hoped for – that intelligent scientists would not be dictators, but friendly experts, who would slowly but surely implement the correct evidence-based policies that would turn us into a good and sustainable society in no time. And their benevolent and subtle art of "nudging" (Thaler/Sunstein 2008) would make it *seem* as if we wouldn't even have to seriously change our way of life or have lost our privileges

and power on the way. Such a political arrangement would free people from the time-consuming and dirty conflicts involved in democratic debates and negotiations – providing us with more time for self-development and convivial activities. Ideally, these experts would also implement a robust firewall that would forever shield politics from big money and private interests. This is at least how I envision a stealth democracy.

The obvious problem with such a political model, however, is the same one that we confronted with the eco-dictator and as Vincent Ostrom already made clear with reference to the monocentric and hierarchical state: elites who are neutral and 'of good will' do not exist. Such an arrangement is only attractive if the experts' opinions correspond with one's own opinion. If this is not the case, I have no possibility of influencing policy-making processes. Furthermore, it is highly unlikely that such experts could 'peacefully' implement rules and regulations that would fundamentally change people's lifestyles, privileges and powers without them noticing or resisting. A few examples of such rules and regulations that come to mind could be: a strict limitation of wealth accumulation in the name of equality; the prohibition of real estate speculation in order to provide access to affordable housing for all citizens; the definition of decent minimal living wages and the limitation of working hours so that people have more free time for caring activities and commoning; the prohibition of specific things that are ecologically detrimental (i.e. plastic bags, throw-away coffee-cups, eating too much meat, the creation of new fashion every season, unjustified use of SUVs or flying by airplane etc.); and, lastly, the communalization of individual property in certain consumer goods and in the means of subsistence and production more generally. Overcoming social and ecological injustices would require at least some, if not all, of these rules and regulations. Nevertheless it is highly unlikely that people would accept these changes implemented from above without much resistance. As we see, even if people deeply desire to be freed from political responsibilities, conflicts, and burdens, stealth democracy is an illusion.

To the reader, the trajectory of the argumentation so far will have appeared to be quite circular: the urgency of the issues involved makes us desire strong national and, even better, international laws that would simply prohibit socio-ecologically unjust activities, while we can generally assume that a large portion of the population in affluent Western countries would vehemently oppose such radical changes. So where is the way out of this conundrum? Assuming that neither an eco-dictatorship nor stealth democracy is either desirable or realistic, the options we have appear to be rather limited. It seems there are no quick answers to these problems. But how should social change occur if more affluent and powerful people resist the loss of their privileges, despite their negative effects on many other people and ecosystems around the globe? I will attempt to answer this question shortly, but before that let us now turn to another problem in the non-ideal world that is in-

terrelated with this problem: the global socio-ecological inequalities and the role of the commons for 'developing' countries.

Commons-oriented strategies in 'developing' countries

As I have just said, the lion's share of the world's resources is consumed by a small but affluent section of its population. This is not to say that the more affluent Western countries are at fault for *all* the problems that occur in the rest of the world. Nevertheless, an analysis of the global flows of commodities, capital and greenhouse gas emissions create a fairly clear picture of this global disparity: while the goods (cheap products, capital etc.) flow to the wealthy populations and most often to Western countries in the northern hemisphere, the 'bads' such as pollution and poverty are often externalized to the South. Obviously, there are no simple answers to such complex and historically entrenched problems. Nevertheless, I assume that the commons perspective may possibly provide some basic insights into how some of these problems can be alleviated.

In principle, the concept of commons remains the same, whether we are speaking of countries in the North or the South: the commons approach generally entails that the local people dependent on and affected by a specific resource system should have the collective rights in property and the ability to democratically manage these resources (Wenar 2008; Hendrix 2008). In order to minimize rent-seeking corruption, these resources should be held under democratic stewardship in the interests of the larger community and the eco-system (Weis 2015; Westra 2011). This might, however, imply that a community could nevertheless have the right to exploit their resources within certain ecological limits if the entire community desires to do so. The difference between such exploitation and the existing system of "plunder" (Mattei/Nader 2008) would be that the financial returns from this exploitation would not flow to those who are already wealthy, but go directly to those who are overusing – and therefore losing – their material means of existence.

Thus, the general policy that is proposed here to alleviate poverty in the global South is by "realizing property rights" (Soto/Cheneval 2006). A good point of reference, here, is the report *Empowering the Poor Through Property Rights* (Cheneval 2008), which was produced by the working group of the United Nations Development Programme and the Commission on Legal Empowerment of the Poor. As the report acknowledges, a major problem in developing countries is that "the absolute majority of the people in developing countries are not [legally] protected in theory or practice" (Cheneval 2008: 64). This makes people economically and politically vulnerable, most notably women, indigenous people and urban slum dwellers (ibid.: 65). One main feature of this report is its recommendation that states recognize informal or "extralegal property systems" (Cheneval 2008: 66) based on customary tenure and "vernacular law" (Weston/Bollier 2013: 104). This principle is basically

a reformulation of Elinor Ostrom's seventh design principle, which supports the recognition of people's rights to devise their own institutions (E. Ostrom 2008a: 101). Importantly, the report emphasizes the necessity of a wide "range of possibilities of ownership by individuals, members of collectives, and by collectives" (Cheneval 2008: 87). Simultaneously, the report repeatedly emphasizes the importance of common property arrangements (ibid.: 71, 73, 83-4, 87-9, 105). These can be realized through the recognition of existing, collective, "indigenous tenure systems" (ibid.: 79). Echoing the work of Elinor Ostrom, the political philosopher and rapporteur of the report, Francis Cheneval, writes:

> The majority of the rural poor depend to a large extent on non-arable resources such as forests, pastures, swamplands, and fishing grounds. These resources require careful management to avoid rent-seeking and corrupt practices that result in environmental degradation and economic inefficiencies. The state should enhance the asset base of the poor by enabling community-based ownership and management of private commons, but it will have to play the role of conflict manager among the communities and among individuals. (ibid.: 71)

While these examples focus on the rural poor, in the case of slum dwellers and the urban poor the report supports the promotion of "associative property structures" (ibid.: 87). Such arrangements can be created not simply through the formal recognition of their property rights, but also through "leverage by pooling assets" (ibid.).

As the report mentions, however, the process of realizing such arrangements is not easy. The report mentions a few problems, of which I would like to focus on one specifically: "protecting customary or indigenous rights while enacting the ability of communities and individual households to explore new economic opportunities"[9] (ibid.: 90). This can also be understood as a reference to the opportunity for individuals to opt-out of common property arrangements. I believe this to be of central importance, because support for common property arrangements cannot be understood as a top-down matter. Hence, while I emphasize the importance of commons in order to *enable* ongoing democratic self-governance, it is also necessary to underline the *prior* democratic deliberation over the desired mix of individual and common property. Accordingly, Cheneval writes, "For implementation at all levels, reforms must be based on deliberation and inputs from those that they are intended to affect." (ibid.: 70) The emphasis on democratic deliberation in the realization of property arrangements is central if we are to avoid the implementation of institutions that do not correspond with people's needs and environments. Here,

9 The other difficulties include: "identifying communities and evolving practices"; "balancing respect for local decision-making with human rights and accountability"; and the "challenge of capacity and conflict" (Cheneval 2008: 90).

we are reminded of Elinor Ostrom's second and third design principles (E. Ostrom 2008a: 92-3). The report understands the legal reforms it recommends as "context-based" (Cheneval 2008: 69). In my view, such an approach should be considered as essential in all attempts to alter property arrangements and realize commons.

Related to the question of the mix between individual and communal property is also the question of the role of the market in such policies. While the UNDP report emphasizes the importance of common property arrangements, it also underlines the importance of markets for entrepreneurial activities and "value addition" (ibid.: 74). That being said, the rapporteur also admits that there existed "conflicting views" on the "role of the state [and] the market" (ibid.: 75). While some argued that the market provides opportunities for the poor, others emphasized the "fact that market forces marginalize the poor and drive them into misery" (ibid.). In this sense, this ambivalent approach contrasts somewhat with the approach propagated by Hernando de Soto, who largely focuses on the legal recognition of individual private property in order to provide those in poverty with security and access to markets (Soto 2001). Considering the problematic effects of individual private property coupled with market access that we have already extensively discussed, I would argue that it is more desirable to support the livelihoods of individuals from a "subsistence perspective" (Mies/Bennholdt-Thomsen 1999) and the structural interdependence of individuals through communal property rights and community wealth building. As in the report *Empowering the Poor*, "through sustainable ownership and/or security of tenure individuals and communities becomes more autonomous" (Cheneval 2008: 73). Here, autonomy can be understood to mean both independence from market mechanisms and democratic codetermination. This would not prohibit individuals and communities from producing goods that they also sell on the market. Instead, the focus on democratic rights, community-building and economic self-sufficiency intends to make people less vulnerable to the negative effects of the open-access, competitive market. Or, again with reference to the UNDP report: "The idea [of associative property structures] is to provide a form of ownership to balance the interests of the individual or family with those of a broader community." (ibid.: 87)

While the notion of subsistence might sound somewhat backward-looking here, I in no way intend to imply that the poor should remain poor. Instead, it aims to conceptualize an alternative understanding of sustainable development based on ecological democracy (Kothari 2014; Kothari/Demaria 2017; Kothari 2018). Strengthening democratic practices and institutions within local communities empowers people, giving them the ability to determine how they desire to develop and grow as a community. Coupled with economic subsistence through common property arrangements this can potentially free people from the necessity of *perpetual* monetary growth. Importantly, however, these strategies of democratically

codetermined development do not simply apply to countries of the South but can and should also be developed in more affluent Northern societies.

While this process of recognition might sound grand for people with informal tenure rights and small resources that can be pooled, this is not the case for those without any property in external resources. As Cheneval writes, "increasing security of property rights will have limited direct benefits for those who do not have any real assets at all" (Cheneval 2008: 105). In order to mitigate this problem of no direct access to material resources, the commission supports not only rental markets and the recognition of informal settlements, but also a community-based land reform (ibid.: 105-6). The aim of such a reform would be to provide people with access to material resources, more specifically "real property" (ibid.: 105), i.e. property in real estate. In order to do this, they suggest that people be provided with funds in order to then access resources. Recognizing the potential negative side-effects of a "market-based" strategy, the report argues that the solution is "legally less complicated and politically less sensitive than in compulsory acquisition programmes" (ibid.: 106). Although I would absolutely agree with this insight, it nevertheless remains questionable where these funds will come from and if the state will have the ability and the will to provide these citizens with such funds. The question then arises how substantial property rights can be realized for those without much political and economic power. This problem brings us to the next topic in my discussion of the state-commons relationship: the problems of elite resistance and state oppression in attempts to realize common property arrangements.

Reclaiming the commons

As Francis Cheneval recognizes in the UNDP report on *Empowering the Poor*, a central difficulty in realizing property rights for the poor is the "resistance of powerful social actors" (ibid.: 80). In relation to the realization of commons arrangements, it can be argued that this problem is accentuated, because it conflicts with the prioritization of individual private property and the principles of free trade (McCarthy 2004; Mattei/Nader 2008; Driessen 2008). Moreover, it can be said that this problem of resistance 'from above' exists not only in developing countries but also in more developed countries (Heyn et al. 2007; Gerbasi/Warner 2007). Generally put, the reasons for elite resistance are that the realization of commons arrangements not only limit their appropriation of more wealth but also often require the expropriation of their existing individual private property. Put somewhat differently, elite resistance is a reaction against the transformation of appropriated resources back into commons. In general, I see two methods of dealing with this problem of resistance and oppression from politico-economic elites and state authorities: confrontational and 'interstitial' commoning. In this section we will focus on the

strategy of confrontation. But before that let us discuss the role of the state in elite resistance in a little more detail.

It is noteworthy that in comparison to 'bottom-up' resistance in the form of social movements, elite resistance appears to be much less documented. I believe the difficulty in conceptually grasping elite resistance lies in its interwoven structure with the state. While bottom up resistance is often visible because it occurs in public spaces, top-down resistance is much more 'civilized' and invisible because it takes the form of "investment strikes" (Streeck 2013: 50) and (supra)national governing bodies. This might be a reason why there is significantly less explicit reference in academic literature to elite resistance to commoning than to social resistance to privatization. That being said, the two can be interpreted as two sides of the same coin. Interestingly, however, the widespread focus on bottom-up resistance implicitly naturalizes privatization tendencies and normatively connotes social protest as a resistance to this natural development. I would argue that this naturalization occurs due to the interwoven interests of powerful economic and political actors. Because individuals with more resources can use their greater power to influence politicians and politics through non-democratic means, the state and supranational governing bodies are sometimes discretely and illegitimately used as a means to defend individual property arrangements and competitive markets. I have already discussed this problem of 'capture' in relation to the minimal, market-based state. Here, powerful social actors use state authority to uphold the often invisible and seemingly natural background of social arrangements. Attempts to realize common property arrangements are therefore sometimes confronted not only with elite resistance but also with state oppression.

In such cases, bottom-up confrontation can provide a means to protest against illegitimate social arrangements and grave injustices that are often neglected by politicians, the media and the public. Such confrontation can occur either through the work of NGOs who spread information on such injustices or, more classically, through protest and demonstrations on the street. This latter form of confrontation is a performative and collective means of expressing one's opinion, yet without reverting to the exchange of arguments. While protest is often understood as undemocratic because it is performative and not based on reciprocal deliberation, it must nevertheless be understood as a democratic means of bringing suppressed issues and conflicts to the fore. More importantly, it is also a means to force powerful actors who free-ride and resist democratic deliberation to the negotiation table (Tully 2014: 70). In our discussion of socio-ecological justice, protest can thus be understood as a strategy to shame and blame people, corporations or institutions for their destruction of livelihoods and the environment. Confrontation could therefore, more generally, be a means of creating public awareness of socio-ecological injustices and possibly alter the legal framework to limit appropriation and transform individual into common property.

Although confrontation is often necessary to create public pressure on political representatives to act in a certain manner, the question still remains whether this will suffice for broader social-ecological transformation in general and the development of a commons-creating society more specifically. In order to deal with this problem, I would suggest that it is necessary to widen our traditional understanding of confrontation to include the practice of "reclaiming the commons" (Klein 2001). Reclaiming the commons is generally a practice of legal or illegal occupation and re-appropriation of goods, services and institutions that are considered to be originally held in common yet have been 'enclosed' trough privatization or nationalization – and, in most cases, a mixture of both, as in public-private partnerships. Historically, this process of reclaiming the commons is a phenomenon that has, most likely, existed since time immemorial in struggles waged by people ('commoners') against the expropriation of their basic resources by elites. One well-known example of reclaiming the commons are the activities and demands of the Diggers – and, to a certain extent, also the Levellers – during the enclosures of common lands during the English Civil War (1642–1651) (Hessayon 2008; Macpherson 2011: 107-159). A less well-known but possibly more significant historical example is the re-establishment of subsistence rights to enter and use forests for commoners in the Charter of the Forest of 1217, which was a central yet forgotten sub-article of the Magna Carta (Linebaugh 2008; Babie 2016). These activities of reclaiming the commons are not to be written off as a thing of the past, but must be understood as struggles that are presently occurring all over the world in relation to numerous private and public goods and services such as water, land, seeds, information, public space, education and health care (Łapniewska 2015; Shiva 2005; Harvey 2013; Assies 2003; Wolford 2010; Karaliotas 2016).

In the case of public goods, we might assume that they are already a form of commons, but as our discussion has shown, public goods are often not to be equated with commons, either because the goods are simply not provided by the state or because the provision is not oriented to the needs of those affected or subject to their democratic administration. In cases where the state and government officials do not grant citizens the right and the ability to democratically manage resources, the activity of reclaiming the commons becomes a central aspect of commoning in which people take (back) democratic control over the socio-ecological conditions of their lives. This sheds new light on collective civic activities, which James Tully also calls "cooperative democracy". Here, democracy is not limited to deliberation, but is based on the activity of "joining hands and working together" (Tully 2014: 97). The strength of this activity is that it empowers people to take matters into their own hands without having to wait for benevolent government officials to kindly provide citizens with the opportunity to participate in democratic management orchestrated by governmental officials and kept within predefined boundaries. Here, commoning must be understood as a constituent power of so-

cial movements (Bailey/Mattei 2013) that opens the political field for the democratic redefinition of the boundaries between the private, public and common, ultimately reconfiguring the organization of social reality.

Interstitial Commoning

Because confrontational ways of reclaiming commons can, in some cases, be challenged with severe opposition by the state and politico-economic elites, it is important to support these activities with more subtle, yet just as important 'interstitial' commoning. In his book *Envisioning Real Utopias* (2010), Erik Olin Wright describes interstitial strategies and activities as "various kinds of processes that occur in the spaces and cracks within some dominant social structure of power" (Wright 2010: 322). The aim of these activities is to "build […] alternative institutions and deliberately foster […] new forms of social relations that embody emancipatory ideals and that are primarily created through direct action of one sort or another rather than through the state" (ibid.: 324). From a historical perspective, traders and entrepreneurs have used this strategy to open markets in highly regulated feudal social arrangements (Braudel 1986). Considering the pressing socio-ecological injustices we face today, I would argue that it is therefore of the utmost importance to not only focus on confronting and transforming the state, but also on independent and interstitial forms of commoning. With reference both to the inability of our limited political options to deal with the problems we face within the existing political and legal frameworks and to the injustices that result, I agree with James Tully that

> the remedy to this injustice is not only to exchange public reasons in hopes of influencing governments, for this has its limits. For cooperative democrats, the response is to non-cooperate with this undemocratic mode of production and consumption, to withdraw one's producing and consuming capabilities from commodification and to exercise productive and consumptive capabilities 'in common' in democratically run cooperatives and community-based organizations that are re-embedded in social relationships. Such grass roots democracies then produce and distribute the basic public goods that are privatized under the dominant form of democracy: food, shelter, clothing, health care, clean water, security and so on. (Tully 2014: 91)

As in my discussion of Amartya Sen, Tully argues that "this tradition [of civic cooperative democracy] is also practice based and 'realization focused', yet in a more immediate way, and it works around, rather than within, the basic structure" (Tully 2013b: 223). Obviously, such activities must also be understood as ways of reclaiming commons, yet the focus has shifted from confrontative re-appropriation to the

collective creation of commons – irrespective of state support and the existing legal structure.

Here, the goods that we have generally understood up until now as objects of a basic right to satisfy one's needs and that originally should, in some form or another, be provided for by the state are now provided as commons by the people themselves through collective civic activities. Again, in the words of Tully:

> This is the tradition of democracy as non-violent cooperative self-government: of the people exercising the capabilities of self-government together in their social and economic activities on the commons. This is the classic meaning of democracy: of the *demos* exercising *kratos* (political capacities) in public reasoning *and acting together* for the sake of public goods. (ibid.; original emphasis)

Here, Tully interprets public goods as commons because these goods are created through democratic, collective action. As he emphasizes, this activity is non-violent because the cooperation necessary for democratic self-governance can only occur through non-violent means of communication and interaction. It is clear that one should, however, not over-romanticize these commoning activities, since they often arise when people are in distress and misery due to the breakdown of older forms of provision, whether through communal ties, the market or the state (Karaliotas 2016). Yet, whatever the motivation for these activities may be, they still must be understood as a central answer to the unresponsiveness of the state and politico-economic elites to the basic needs of people. But as I have already said, the goal is not for the state or economic elites to paternalistically provide goods and services for people, but for citizens to be able to democratically provide for themselves – ideally with the support of a democratized state and the aid of what we have previously called eco-law.

In this sense, I must reaffirm more generally that democratic and socio-economic rights themselves were rarely, if ever, simply granted to people by those in power, but were often developed by people in need and finally realized through non-cooperative confrontation with state authorities. For example, the development of the welfare state since the times of Otto von Bismarck should be understood not as a well-intentioned and benign gesture, but as a bribe that was intended to pacify the masses by increasing their loyalty to the state and by simultaneously undermining workers' demands for more democratic self-management over their living conditions (Palier 2010: 36-7). Put in this perspective, although the satisfaction of basic needs could be understood as a basic right that should be provided for by the state, state provision can, ironically, if not organized in a democratic manner, easily undermine the democratic skills and institutions necessary for a commons-creating society. For this reason, interstitial commoning activities are of fundamental importance not only for people to be able to satisfy their own needs, but also to cultivate the experiences, skills and institutional examples necessary for the

widespread development of commoning and commons – both in and against the state.