

COMMENTS ON DANIEL BROMLEY'S PAPER

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The question of who owns the oceans, and what we mean by ownership, is extremely important. Ours is an era in which public policy readily turns to market-based approaches premised on notions of private property. As Daniel Bromley's paper suggests, both our notions about ownership and common ways of implementing it in the oceans are faulty, and need to be seriously rethought if we are to address the combined social-environmental problems resulting from overfishing and associated ecosystem degradation.

Like Professor Bromley, I find compelling the evidence of problems in the world's oceans. I also very much agree that accepting that there are problems does not mean that we need to blindly adopt what has become the dominant solution, which is to enclose the oceans. As his paper points out, environmentalists, marine ecologists, and free-market pioneers have all converged on various forms of enclosure, especially individual transferable quotas and marine protected areas, as the solution to problems in fisheries. However, despite the claims of its multiple proponents, enclosure is neither inevitable nor necessary. My goal in this commentary, then, is to thank Professor Bromley for raising trenchant critiques of the status quo, and then to push his arguments further. We need to hear more about conceptual confusion regarding property, including implementation of property in the oceans. We need to hear more about spurious economic arguments for various forms of private property as solutions to problems in fisheries (and problems in other arenas as well). And we need to hear more about the inherently political character of our relationship to nature.

I find refreshing Professor Bromley's reminder that overfishing has not occurred in the absence of property rights – under regimes of *res nullius* – but rather in their presence. The coastal oceans, where most fishing occurs, are state property, and the resources of these areas belong to citizens. I, too, have been consistently perplexed at the strength and ubiquity of 'tragedy of the commons' explanations for problems in fisheries (and associated calls for private property as the solution). My research has explicitly challenged this formulation by showing how the trajectory of fisheries development in the US Pacific resulted not from common property or open access (as is commonly claimed), but from fisheries being state property and thus subject to state development efforts carried out in the name of national economic growth (for example Mansfield 2001a, 2001b).

Given that my findings were based on well-known historical events, I have been interested in the ubiquity of tragedy of the commons explanations that ignore the combined role of the state and economic models in encouraging unsustainable fishing. In his paper, Professor Bromley suggests that the ongoing assertion of a lack of property in fisheries – despite the reality of state property – results

from 'conceptual confusion'. I agree that such confusion exists, but I would argue that this blindness regarding varieties of property is not due to simple confusion but instead to political stance – and more specifically to the now-dominant political stance of neoliberalism, or 'free market' public policy. I do not mean to suggest that politics stands in the way of the truth, but rather that the same situation is interpreted differently given different political commitments. Those promoting a tragedy of the commons understanding of fisheries are, of course, very much aware that coastal oceans are state property. But for them, this is part of the problem because state property, until the advent of ITQS, has not been treated as 'property' as classically defined. That is, state property does not create the same kinds of individual incentives to labor, rewards for stewardship, and mechanisms for improvement as does private property (and it is these characteristics that make property serve as the basis for the 'free market'). As Professor Bromley puts it, the assumption is that 'private owners cannot help themselves in being ideal stewards of what they own'. Thus, proponents of a tragedy of the commons perspective may be ignoring well-established differences between common property and open access, but they are not ignoring the existence of state property. Instead they see state property at best as a step toward 'real' property rights, and at worst as a cover for open access (see Mansfield 2004).

In his paper, Professor Bromley responds to arguments about the necessity of property by pointing out the bad track record of private property in regards to sustainability. There are numerous examples of degradation of resources held as private property (and numerous examples of privatization leading to increased inequality) and there are clear economic incentives for this (the incentive problem is not 'solved' by private property). Another widespread response to these arguments is to concede the basic point regarding the problems of open access, but to argue that private property is not the only solution; instead common property, in which people act collectively to make decisions about resource use and allocation, also provides an effective mechanism for avoiding the tragedy of open access. While I absolutely agree that common property may be part of the solution, and not the problem, I am nevertheless skeptical of this response because it does not do enough to clear conceptual confusion regarding property (Mansfield 2001a, 2004). First, this response leaves intact assumptions about the negative effects of open access, thereby ignoring the social interactions that shape behavior *even in open access situations*. Second, this response leaves intact our everyday notions about private property and ownership – notions that a variety of legal scholars have tried to show are faulty (Rose 1994; Singer 2000; Underkuffler 2003). They show that even private property is not based on complete and individual control over the thing owned, but instead can only exist as the result of a system of interdependence; private property is not an absolute, but is a social decision about how to allocate resources. I have used these notions about the complexity of private property to show that the economic logic of property is neither as absolute nor obvious as it is made to seem, and that property rights in fisheries are much more complex than either proponents or opponents of privatization allow (see Introduction and Chapter 4 of Mansfield 2008).

I am sure Professor Bromley is aware of most of what I am saying about property – and indeed I originally learned some of this from his work (Bromley 1991, 1992). Yet the fisheries management alternative that he proposes – auctions for shares of total allowable catch – does not address the issues raised by these investigations into what property is, how it works, and the purposes to which it is put. Professor Bromley decries ITQS as an unfair give-away of a public resource and MPAS as a form of neocolonialism, and sees both of these as a form of dispossession in which poorer people lose access to resources (I agree with all of this!). Auctions, he claims, are very different in that they are time-limited leases rather than permanent gifts or enclosures. Yet, in my view, auctions share many characteristics with these other property-based approaches to fisheries management. Auctions enclose a resource for some (those who can afford to win a bid) and thus are a form of dispossession for the poorest among us. Auctions also make state property more like private property, in that they involve not only rights to use and exclude but also to transfer through markets with prices as the key mechanism for expressing multiple values and allocating resources. Or, to be more precise and avoid conceptual confusion, all these forms of fisheries management (auctions included) are enclosures that move us toward the *neoliberal model* of private property, which assumes absolute control, equality in the market, and clear incentives to action. But this is the very model that the work I cited above shows to be a fiction. To me auctions appear not as a real alternative to ITQS and MPAS, but as a kinder and gentler way to impose neoliberal forms of property and markets.

I agree, then, that there is conceptual confusion regarding property in the oceans, that ITQS are based on faulty economic logic, and that there is rampant political indifference regarding the social-environmental effects of fisheries management. But these are not limited to a lack of recognition of oceans as state property or the illogic of giving away the public's resource through permanent gifting of quota share. Instead, the conceptual confusion, faulty economic logic, and political indifference come from the fact that we insist that private property entails individual control, rather than collective interdependence and decision-making, and then we pretend that private property has an internal logic that commands people to act in ways that always lead to the greater good (while other forms of property always lead to problems). Ocean governance will have a greater chance at addressing problems in the oceans if it can move away from a model that sees property as given and then ascribes causality to property, and instead embrace a model that sees different forms of property as the outcome of human (and human-nature) interaction. This would allow us to focus on the precise interactions that cause problems, and thus search for more successful (that is ecologically sound and socially just) forms of fisheries management.

References

- Bromley, D.W.
1991 *Environment and Economy: Property Rights and Public Policy*. Oxford: Blackwell.
- Bromley, D.W. (ed.)
1992 *Making the Commons Work: Theory, Practice and Policy*. San Francisco: Institute for Contemporary Studies Press.
- Mansfield, B.
2004 Neoliberalism in the oceans: 'rationalization', property rights, and the commons question. *Geoforum* 35 (3):313-326.
- 2001b Thinking through scale: the role of state governance in globalizing North Pacific fisheries. *Environment and Planning A* 33:1807-1827, with Erratum 34 (1).
- 2001a Property regime or development policy? Explaining growth in the us Pacific groundfish fishery. *Professional Geographer* 53 (3):384-397.
- Mansfield, B. (ed.)
2008 *Privatization: Property and the Remaking of Nature-Society Relations*. Malden, MA: Blackwell.
- Rose, C.M.
1994 *Property and Persuasion: Essays on the History, Theory, and Rhetoric of Ownership*. Boulder: Westview Press.
- Singer, J.W.
2000 *Entitlement: The Paradoxes of Property*. New Haven: Yale University Press.
- Underkuffler, L.S.
2003 *The Idea of Property: Its Meaning and Power*. Oxford: Oxford University Press.