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# agenda



# agenda

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# commons

## the role of social movements in protecting the commons

Saki Bailey\*

*Social movements today are not only providing an alternative forum for doing politics outside of electoral politics, but most interestingly in many cases they are directly reclaiming local resources and as a result providing alternative forms of governance to the top down and "one size fits all" versions endorsed by the European Union, World Bank and IMF.*

All over the world, citizens have worked to elect social democratic and workers' parties, only to watch them plead impotence in the face of market forces and IMF dictates. In these conditions, modern activists are not so naïve as to believe change will come from electoral politics. That's why they are more interested in challenging the structures that make democracy toothless, like the IMF's structural adjustment policies, the WTO's ability to override national sovereignty, corrupt campaign financing, and so on.<sup>1</sup>

As people around the world witness the subjugation of their governments to international economic institutions and the interests of private multinationals, they are increasingly losing faith in the power of the state and representative government as the form and forum for transformative politics. In this vacuum created by the domination of economics and the failure and corruption of politics, civil society actors acting through social movements are offering new strategies for tackling head on the very "structure," to which activist Naomi Klein refers, which make democracy "toothless;" the undemocratically created rules and unaccountable institutions which invisibly capture the wealth of common resources (such as water, oil, land, culture) at the local level. Social movements today are not only providing an alternative forum for doing politics outside of electoral politics, but most interestingly in many cases they are directly reclaiming local resources and as a result providing alternative forms of governance to the top down and "one size fits all" versions endorsed by the European Union, World Bank and IMF.

Social movements, in addition to the typical protest style through localized demonstration and occupations, are engaging such mechanisms as the political referendum and the use of court appeals at all levels (local, constitutional and even international forums) to protect common resources. At the international level there are a number of interesting cases of indigenous people's social movements (for example in Ecuador and Columbia) that are successfully challenging the sale of local natural resources to multinationals through a combination of transnational advocacy campaigns and appeals to international courts on the basis of International Human Rights Law and ILO provisions for the protection of indigenous peoples.<sup>2</sup> The support of the Inter-American Human Rights Commission and Court in these cases is establishing an important precedent for the protection of local resources for and by indigenous

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<sup>1</sup> Naomi Klein, "Reclaiming the Commons", 9 *New Lft. Rev.* 82, 88.

<sup>2</sup> U'wa Indigenous Community/Precautionary Measures. Case N. 11.754, accessible from <http://www.esrcnet.org/docs/i/414389> (last accessed August 11th 2012). See also Gavin Anderson, Corporate Constitutionalism: From Above and Below (but mostly from below), DRAFT presented at Transnational Societal Constitutionalism conference organized by Professor Gunther Teubner at the IUC on May 17-19, 2012.

peoples, and furthermore are demonstrating the power of social movements to bypass and even surpass the state to reclaim common resources. These cases, however are not limited to the indigenous peoples, there are also a remarkable amount of cases of social movements bypassing and surpassing corrupt state politics right here in the heart of Europe. For example, in the now famous Italian case of the water referendum, over 50% of Italians turned out to vote and almost unanimously voted (some 95%) against the privatization of water, resulting in the first quorum in 16 years in Italy.<sup>3</sup>

The social movement of “acqua bene comune” (water as a common good) was central to this victory.<sup>4</sup>The movement was made up of activists, scholars, unionists, local politicians and regular citizens who successfully were able to successfully raise awareness about the referendum even when (at the time) the ruling Berlusconi government prevented the media from publicizing the campaign. The water movement engaged a wide variety of campaign tools from YouTube and Facebook to the old fashioned style of going door to door. The movement for the common goods in Italy, however, did not stop with water, soon thereafter spreading throughout the country to protect other common goods: culture, education, labor, and nature. Citizens from various sectors all embraced the social movement of common goods: theater workers fighting privatization as a result of public cuts; students angry about the rising cost of education; labor unionists frustrated about the liberalization of labor laws as a result of mounting pressure from the troika ( the European Central Bank, European Commission and IMF) to implement austerity; environmentalists fighting large scale infrastructure projects such as the NO TAV, a high speed train line between Turin-Lyon through the alps with devastating costs both for tax payers and the environment. The Italian common goods movement is particularly interesting because it has evolved from a social movement, unifying diverse civil society actors, to creating new networked sites (theaters, NO TAV, water boards) for the localized management of resources. The Italian case is a good example of the way in which social movements are becoming sites of alternative forms of governance to the state and the market. This evolution has been facilitated by the movements engaging in a unique combination, much like the indigenous cases, of deploying strategically both public and private law tools to legitimize and legalize acts of reclaiming the commons.

Public law was deployed by the lawyers and scholars in the common goods movement in two ways: first by lawyers to achieve constitutional approval to launch and confirm the referendum and secondly by scholars who proposed reforms to the civil code for the protection of common goods. First lawyers had an uphill battle against the hostile Berlusconi government (destined to profit from water privatization) to open the referendum and later to confirm the results. The argument of the Berlusconi government was that privatization (under the Ronchi decree) was mandated by European law and hence no referendum could be permitted. On January 12, 2011 the Constitutional Court held that European Law does not mandate liberalization or privatization of public services and that it is up to member states to decide whether to use the private or public sector.<sup>5</sup> Much more could be said about a long series of battles in the constitutional court on the validity of the referendum, however I will focus here on the second use of constitutional law by scholars. The Rodotà commission was coordinated under the Prodi government to reform the civil code, which led to the creation of a new third legal category of “common goods,” a category distinct from public and private goods. Commons goods were defined as “goods, which provide utilities essential to the satisfaction of fundamental rights of the person to which access is guaranteed regardless of public or private ownership.”<sup>6</sup>

While the reform proposed by the Rodotà Commission was never adopted, the concept of the common goods legal category was far reaching and resonated within the social movements even beyond the initial water movement. The slogan for example of the occupants of Valle Theater in Rome was “like water, like air, culture is a common good to which the

access is a fundamental right.”<sup>7</sup> The Valle Theater was occupied by its workers after the municipality of Rome attempted to sell the 300 year old theater to private bidders. In early July 2011 Teatro Valle was declared as a Common Goods Foundation, which offered the occupants a way to legalize the “illegal” occupation and to pursue a laboratory for the horizontal management of the theater through an open assembly.<sup>8</sup> With the assistance of Ugo Mattei, a lawyer and scholar who served in the Rodotà Commission, the statute of the Valle (Statuto della Fondazione Teatro Valle Bene Comune) was notarized and officially recognized as an Italian legal entity capable of defending the activities of the occupation, enabling the protection and governance of the process of cultural production by the workers of culture themselves.

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*The Croatian Law on Golf is representative of a hermeneutic chain of logic: EU accession is conditioned on the Copenhagen criteria of economic prosperity and a model of competition, foreign direct investment is key to meeting these requirements, laws to liberalize sites of tourist development are necessary for stimulating these investments; as a result, economic interests are able to trump democracy and political accountability without contradiction.*

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The use of the foundation as legal form to effectuate the recognition of an illegal occupation was completely unprecedented in Italian law. Since the Foundation was established, seven other theaters in Italy have used the model of the Valle to pursue an alternative form of governance which ensures open and democratic participation in the management of the theater. The direct governance of common goods via the use of private law tools in Italy was also used in the case of the ABC (acqua bene comune) water company in Naples, where the corporate form of the public-common corporation has been innovatively constructed to create an alternative management of the water system with the participation and open inclusion of water workers and users.<sup>9</sup> These cases, while remarkable, are not unique to Italy and throughout the world there are well documented case studies (to the credit of Elinor Ostrom and her research team<sup>10</sup> ) which have demonstrated the way in which local communities through civil society movements are asserting their rights to govern their local resources: Indian farmers coordinating common seed banks, New Jersey trawlers their common fishing grounds, Thai communities their forest resources, and so on.



<sup>3</sup> <http://elezionistorico.interno.it/index.php?tpel=F&dtel=12/06/2011&tpa=Y&tpe=A&lev0=0&levsut0=0&es0=S&ms=S>

<sup>4</sup> Bailey, Saki, and Ugo Mattei. Forthcoming. “Social Movements as Constituent Power: The Italian Struggle for the Commons.” *Indiana Journal of Global Legal Studies*.

<sup>5</sup> Italian Constitutional Court Decision 23/2011

<sup>6</sup> Delegated Legislation to Reform the Civil Code Articles Concerning Public Property), Atto Senato n. 2031, XVI Legislatura. Available at [http://iuccommonsproject.wikispaces.com/file/detail/2010\\_24\\_02\\_ddl-commissione+rodota.pdf](http://iuccommonsproject.wikispaces.com/file/detail/2010_24_02_ddl-commissione+rodota.pdf) (accessed October 11, 2012).

<sup>7</sup> Bailey, Saki, director. 2012. “Occupying the Commons: Teatro Valle Occupato.” YouTube, August 23. (Minutes 1:33-1:40). Available at <http://youtu.be/aAi4wwirTYU> (accessed October 10, 2012)

<sup>8</sup> Bailey, Saki and Maruccci, Maria Edgarda. Forthcoming “Legalizing the Occupation: The Teatro Valle as a Cultural Commons.” *South Atlantic Quarterly* 112:2 (spring 2013).

<sup>9</sup> Statut ABC Napoli:

[http://www.acquabene comune.org/raccoltafirme/attachments/1115\\_Statuto\\_azienda\\_speciale\\_ABC\\_Napoli.pdf](http://www.acquabene comune.org/raccoltafirme/attachments/1115_Statuto_azienda_speciale_ABC_Napoli.pdf).

<sup>10</sup> E. Ostrom, 1990. *Governing the Commons: The Evolution of Institutions for Collective Action*, Cambridge: Cambridge University Press

In Croatia, social movements are similarly engaged in the protection of common goods and resisting corrupt national politics and supranational economic conditionality. These movements will undoubtedly become highly relevant as Croatia enters into the EU as the 28th member state next year. The last six years of negotiations between the Croatian government and the European Commission for EU ascension have been long and troubled particularly as a result of the Croatian government's rampant corruption and failure to meet standards of democratic rule. However, the European Commission overlooked this less than pristine political record in light of Croatia model compliance with economic portions of the Copenhagen criteria, namely of a competitive market economy. Croatia's compliance has been highlighted as an economic success story of the Balkans with foreign direct investment increasing 42 times between 1993 and 2008 (right before the crash).<sup>11</sup> A significant amount of this FDI is in the real estate market and in the past ten years Croatia has climbed to the top vacation spot in Europe with Dubrovnik as the world's tenth most visited port for cruise ships: some 850,000 passengers a year, and is expected to reach one million this year.<sup>12</sup>

In the wake of the crash in 2009, troubled by the sudden decrease in FDI, the Croatian Parliament in what has been infamously dubbed the "Golf Course Laws" expanded the eminent domain power of the government to expropriate land for the purpose of developing golf courses without the right to appeal. The Law according to the parliament was justified as golf courses were in the Croatian "national interest." This law facilitated the expropriation of common spaces around a number of Croatian cities, using the golf course as a guise for building luxury villas and gated communities with a much higher economic value than the golf courses themselves with the aim of attracting foreign buyers. Most notably this law has been used for large scale development in Zagreb in the case of the "Golf and Country Club," another by Jupiter Adria corporation in Motovun (Istria) adjacent to a majestic and ancient hilltop fortress town, and in Dubrovnik where the Srđ je naš, a local resistance movement, demonstrated that for every golf hole some 213 luxury apartments are expected to be built. In the case of Motovun local activist Ranko Bon states:

In major developments, such as golf in Motovun, the state land is leased for a period of many years, while the private land adjoining it is sold outright to foreign investors. The spatial or physical planning process preceding individual development projects is widely used in the region to ensure that leasing and sale go hand in hand. In accordance with the Croatian law, agricultural and urban land use can be switched in the planning process without informing the owners.<sup>13</sup>

The collusion between state and private interests to subvert the law and legal process is blatant in Croatia and has led to the conversion of public commons into private wealth. While these laws were finally repealed in 2011, as a result of a massive victory headed by NGOs (including Zelena akcija, Zelena Istra, GONG, Transparency International Hrvatska, Pravo na grad – Right to the City, NGO Grad, Srđ je naš, Eko Zadar, Šibenski građanski forum, and Heinrich Böll Croatia), the Constitutional appeal they submitted was never heard by the Court. As a result, while the laws were repealed, little has been done to physically halt the development projects and in many cases they are sure to be completed.

NGOs, much like in the Italian case, argued on the basis of Constitutional protections and guarantees of common resources. They argued that the law violates the Croatian constitution on several grounds: 1) The procedure for adopting the law was unconstitutional (majority instead of qualified majority). 2) Strategic interest for the country must be defined according to constitutional values. 3) The Law did not treat all parties/citizens equally. 4) The Law violated the constitutional right to private property. 5) the Law violated the constitutional right to a healthy environment and nature.<sup>14</sup> Particularly relevant to these arguments was Constitutional Article 52 which states:

The sea, seashore, islands, waters, air space, mineral resources, and other natural assets, as well as land, forests, flora and fauna, other

components of the natural environment, real estate and items of particular cultural, historical, economic or ecological significance which are specified by law to be of interest to the Republic of Croatia shall enjoy its special protection. The manner in which any assets of interest to the Republic of Croatia may be used and exploited by holders of rights thereto and by their owners, as well as compensation for any restrictions as may be imposed thereon, shall be regulated by law.<sup>15</sup>



Much like Italian social movements which used as a basis for the common goods as a fundamental right Italian Constitutional Articles 41, 42, & 43, NGOs in Croatia argued on the basis of Article 52 that certain kinds of common goods as those listed above, cannot be expropriated based on their special constitutional status. In addition to citing the Constitution, the NGOs argue that the 2009 law violates the criteria for EU *acquis* (EU accession). It argues that European Union Law and Human Rights Law prohibit the 2009 law as it is a blatant refusal of property and human rights protections guaranteed. However, while this argument is legally valid, it misses entirely the economic dimension and context which drives legal interpretation and political action in the context of the EU. In a way the 2009 law is representative of a hermeneutic chain of logic: EU accession is conditioned on the Copenhagen criteria of economic prosperity and a model of competition, foreign direct investment is key to meeting these requirements, laws to liberalize sites of tourist development are necessary for stimulating these investments, as a result economic interests are able to trump democracy and political accountability without contradiction. While citing European Union law of course provides a strong legal strategy for social movements, it is clear that these arguments can and will be overlooked by the European Commission, so far as Croatia continues to demonstrate its economic success even if accomplished undemocratically, as evidenced by the planned accession of Croatia into the EU next year. Social Movements in Croatia, if they are to have a chance at protecting the commons and bypassing corrupt politics and the EU's economic conditionality, will need to look at the law not only as a text but as a site of resistance to reclaim the law as a tool for citizens to creatively construct protections for the commons as in the Italian case via legal entities like the foundation & public-common corporation.

<sup>11</sup> [http://www.hnb.hr/statistika/e-statistika\\_inozemnih\\_izravnih\\_ul.htm](http://www.hnb.hr/statistika/e-statistika_inozemnih_izravnih_ul.htm)

<sup>12</sup> <http://www.telegraph.co.uk/travel/destinations/europe/croatia/>

<sup>13</sup> <http://globalvoicesonline.org/2009/02/04/croatia-changing-eminent-domain-for-a-golfing-gain/>, <http://www.residua.org/book-xxxiii-2008/croatia-spells-conflict-of-interests/>

<sup>14</sup> [http://zelenaakcija.hr/en/programmes/biodiversity/activities/scandalous\\_law\\_on\\_golf\\_courses\\_is\\_no\\_longer\\_in\\_force\\_as\\_of\\_today\\_24\\_11\\_2011](http://zelenaakcija.hr/en/programmes/biodiversity/activities/scandalous_law_on_golf_courses_is_no_longer_in_force_as_of_today_24_11_2011)

<sup>15</sup> [http://en.wikisource.org/wiki/Constitution\\_of\\_the\\_Republic\\_of\\_Croatia#Article\\_52](http://en.wikisource.org/wiki/Constitution_of_the_Republic_of_Croatia#Article_52)

# what a self-aware citizen must do with the state, what can they do without it, and what they need to do against it\*

Žarko Puhovski

*Politicisation is an essential characteristic of citizenship, it is what enables a citizen's very existence. It is precisely for this reason that professional political officials often warn the "common citizen" not to "politicise problems". In so doing, unaware of what they are really saying, they work on the dismissing of political action, on denying its only meaningful way of being: dealing with those problems that can only be dealt with in cooperation.*

0. The conceptual presuppositions are abbreviations of a democratic catechism that is as follows:

0.1 the state is an apparatus that is tasked with maintaining a certain state-of-being\*\* (that is, not an object of affection like a country, homeland, nation or similar);

0.2 the citizen only exists if there exists a (democratically organised) state, which he/she can influence through legally established political channels. In other words: there can be a state without citizens (which clearly isn't democratic), but not citizens without a (democratic) state – in that case, we might be speaking about subjects, activists, sympathisers, revolutionaries, protesters and similar;

0.3 a self-aware citizen is one who has a subjective understanding of objective (formal) authorisations that issue from his/her status, and uses them.

1. The substantive problem of contemporary representative democracies lies in the one-dimensional reduction of the attention paid to (and effort expended on) the community; all that is essential takes place among the representatives, while the represented remain outside ("beneath") the realities of political goings on. In contemporary states, each parliamentary elections are almost necessarily followed by a parliamentary genocide of sorts – following the elections, the parliament no longer needs the people.\*\*\* Any serious analysis will show that parliamentary democracy does indeed work thus: the people (as a community of citizens), having done their job at the elections, are thanked and politely shown the way towards a private (and, if possible, a discreet) existence – until the next elections arrive.

2. The one-dimensional existence of the community at the level of emancipated representatives, of the kind that is all-present in the modern era, is commonly called politics, a concept which has acquired some notoriety in the course of the past few decades. Those in business as well as culture, activists and analysts have all been repeating the same formula whenever they need to describe a failed effort: "politics interfered". The very rhetoric of this make it clear that this ominous characterisation presupposes the existence of an undefined thing that, shrouded in mystery and concealed from "the common people", decides on everything.

2.1. The spectre of politics doesn't only haunt the ignorant, but also those

who should be expected to grasp the problem – indeed, the chatter about "this and that politics" has lately become commonplace even among locally-based scholars (professors, commentators, writers...) as if the term politics weren't a collective noun, both in its origin and method-wise.\* Stranger still (and as a consequence of the un-thought-through translation from the English), there is talk, apparently perfectly serious, of a plurality of "public politics" (those who use this expression could therefore be assumed to believe that private, or perhaps secret politics somehow make sense as a feature of political life).

2.2 A serious understanding of what politics meant from its very beginning until the contemporary times has arrived at a perfectly simple, yet well-chosen translation: politicising. This gerund adequately covers the essential substance in consideration, as it emphasises as essential precisely the activity (with regards to the well-being of the community). The widespread misunderstanding of this is manifest in the very commonly heard remarks about the people who are actively engaged in politics, although "passive engagement" should be considered an evident oxymoron (true, one can also frequently hear people referring to "actively participating in sports", so perhaps we shouldn't be terribly surprised).

2.3 This politicisation is the substantial characteristic of citizenship, that which makes possible the very existence of citizens. It is precisely for this reason that professional political officials frequently warn "the common citizens" not to "politicise problems", thus – unaware of what they are actually saying – actually working on dismissing political agency itself, on denying its only meaningful way of being: dealing with those problems that can only be dealt with in cooperation. If this is not the way things are, citizens have nothing left but the four-year hibernation between elections, or periodic C&P agency - controlling (in the public) and punishment (in elections).

3. What is colloquially imprecisely called politics is connected, as a rule, to "centres of power", which are, of course, most commonly institutions of government. If such a tradition of understanding the problem were to be taken as absolute, the recent – both instructive and misguided – moaning about the transferral of power from traditional state institutions to their various para-statal versions is bound to occur. In parallel with the famous statement by Heraclitus the Dark, it may be relatively simple to describe events that cause confusion: politics likes to conceal itself, politicians of our times love to go on about their powerlessness – pointing fingers at the media, banks, foreign countries and so on. It is as if contemporary political bigwigs are emulating the "greatest trick the devil ever pulled", trying to convince us that they really don't exist.

3.1. However, the centre of power can almost always and in all cases be identified – even if not always simply and quickly; serious analysis is necessary, unburdened with the inherited conceptual frameworks. If we begin this way, it will become clear that in the final instance it is of no consequence whether the actual centre of power is located in the government, the president's office or a rating agency. What is crucial is to establish a means of control over every centre of power, that is, abolishing its hiddenness, secrecy or "intransparency". Only after this can there follow an institutionalised attempt to achieve public influence on this centre's workings – in addition to control over it.

3.2. Representative democracy has displayed an expressed impotence in controlling real centres of power (not to mention influence) – this doesn't pertain "only" to citizens, but also to parliaments. As the widespread practice of our times clearly shows, in principle, executive power treats parliamentarians the same way the parliament treats its electoral body – the moment the former are voted in, the latter are given their leave with a blessing. Of course, all this holds even more markedly in situations in which the government itself appears to be a screen for where power actually does take place (all the way to Engels' classical, indicatively radicalised thesis about the "managing committee ... of the large bourgeoisie").

4. However, the contemporary historical practice suggests the inversion of the very popular understanding of political systems which sees them as essentially serving to conceal the real economic (or: class) influences on the (formal) power-holders. Many facts point to a certain ("post-modern"?) turn, namely, they suggest that, ever more clearly, political agency has been creating production, changes in the markets (not to mention redistribution).

4.1. Following the outbreak of the recent "credit crunch", governments have rushed to buy out banks, and through them also the relevant actors in the "real sector". The public is generally (rightly) aghast at the fact that the bankers are still being given enormous remunerations even when their

\* a skeletal conceptual framework of a lecture given on the 30th September 2012 at GOLJP summer school in Supetar.

\*\* The word denoting „state“ (*država*) in the Croatian language is etymologically linked with the word meaning to hold, maintain (*držati, održati*). (*translator's note*)

\*\*\* In Croatian, the word more commonly used to denote the members of a polity is the one that signifies those belonging by virtue of being born into an ethnic group (*narod*), rather than a shared political reality. (*translator's note*).

\* While *politics* in English are pluralia tantum, the Croatian word, *politika*, is singularia tantum. Careless translations from English (both of *politics*, but also of *policy*, covered by the same word "politika") have resulted in a proliferation of the grammatically incorrect, plural use of the word in Croatian. (*translator's note*)

banks have incurred losses, but it seemingly fails to notice the fact and size of the role of state intervention in the functioning of an ever-increasing number of banks. Therefore, from the government's point of view, the most elegant course to take now is to fan the flames of anger at the banks – as if the political authorities themselves didn't maintain "privileged relations" of domination with them. Politics, that is: politicising, thus gains additional significance, while the number of those who declare themselves, with gusto (in a manner of speaking) to be apolitical grows almost in proportion to this.

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*The actual productive epochal conflict, which necessarily arises from the position of the citizenry (and perhaps also overcomes it), takes place around the public good. However, this is not helped by half-thought-through jumping to an immediate defence of this good without having initially defined it, at least within its necessary contours; nor is it helped by ritual attacks on the government instead of pressuring it to perform one of its basic functions: safeguarding the public good.*

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3.2. Predstavni ka je demokracija pokazala neupitnu nemo u kontroli nad realnim središtima mo i (da se o utjecaju i ne govori) – to se ne odnosi „samo“ na građane, nego i na parlamente. Kako to epohalno proširena praksa bjelodano pokazuje, izvršna vlast postupa s parlamentarcima u na elu jednako kao i parlament sa svojim glasa kim tijelom – im ih izaberu, u milosti su otpušteni. To sve, dakako, još mnogo izraženije važi u situacijama u kojima se i vlada pojavljuje kao paravan realnoga zbivanja mo i (sve do klasi ne, indikativno radikalizirane Engelsove teze o „nadzornome odboru krupnoga kapitala“).

4. Suvremena povijesna praksa upu uje, međutim, i na obrat toliko popularnoga shva anja o politii kim sustavima koji, u biti, služe baš za zakrivanje realnih ekonomijskih (ili: klasnih) utjecaja na (formalne) mo nika. Mnoge injenice upu uju na svojevrsan („postmoderni“?) obrat, na to, naime, da politii ko djelovanje sve jasnije kreira proizvodnju, tržišne mijene (da se o raspodjeli i ne govori).

4.1. Nakon izboja recentne „kreditne krize“ vlasti su na veliko zapo ele kupovati banke, a preko njih i relevantne imbenike „realnoga sektora“. Javnost je uop eno (s pravom) zgrožena time što bankarima ostaju enormni prihodi i kada su banke u gubicima, ali, izgleda, previđa to da je – i koliko je – državna intervencija djelatna u funkcioniranju sve ve ega broja banaka. Zato je, sa stajališta vlasti, sada najelegantnije potpirivati bijes protiv banaka – kao da sama politii ka vlast s njima nema „privilegirane odnose“ nadmo i. Politika, zapravo: politiziranje, time dodatno dobiva na zna enju, a, gotovo razmjerno, istovremeno raste broj onih koji se – s apetitom takoreku – proglašavaju apoliti nima.

5. In such circumstances, the self-aware citizenry is faced with clear options:

5.1. with the state:

5.1.1. to use the rights provided by the system;

5.1.2. to perform the duties that arise from the system in which it has the right to participate;

5.1.3. to defend the public good.

5.2. without the state:

5.2.1. to realise personal life strategies (of happiness, success, change of surroundings and similar);

5.2.2. to establish various horizontal relations – private, neighbourly, to an extent also business relations, etc.;

5.2.3. to use the public good.

5.3. in opposition to the state:

5.3.1. defend privacy (which it would seem needs rethinking and redefining);<sup>1</sup>

5.3.2. prevent damage being made to the public good – from combating illegitimate legislation (civic disobedience), through contesting the appropriation of public space for individual or special aims, to opposing

censorial and manipulative damage being made to the sphere of public communication.

6. It is easy to see that nearly all the relations listed here are routine and formal, while the truly productive epochal conflict, which necessarily arises from the position of the citizenry (and perhaps also overcomes it) takes place around the public good. However, this isn't helped by the half-thought-through jumping to the immediate defence of this good without having initially defined it, at least within its necessary contours, or by ritual attacks against the government instead of pressuring it to perform one of its basic functions: safeguarding the public good.

6.1. The citizenry will put pressure on the government – “from below” – in order to give the public good as broad a definition as possible, and defend it as efficiently as possible. Traditions – from natural law, through generations of socialists, utilitarians, through to the Catholic social doctrine (“Rerum novarum” and so on) and Rawls – have taken different starting points and different paths towards defining the public good. However, the common denominator is relatively easy to establish – the public good is that which should in principle be accessible to all citizens, which doesn't require special qualifications, merit or similar.

6.2. This is precisely the reason why higher education doesn't belong to public goods, in spite of the ill-formulated desires of those who would use this claim to boost their position. Simply put, I don't need secondary education to be able to reach the sea shore or a public square, but I do need it to enrol in university. On the other hand, the original liberal utopia considers the market a public good open to all. But the question is whether the practice of competition, without which there can be no market, can be reconciled with the communality implied by the public good (this is rather well demonstrated by the application of Pareto's criterion to the market – but also, for example, to the competition among university professors or applicants).

6.3. Some twenty years ago, Elinor Ostrom made a hypothesis stating that collective agency which is rationally constituted may turn out to be a more efficient strategy for using public goods than are market allocation or actions undertaken by the state (in this, she also took Hardin's widely discussed understanding of the “tragedy of the commons” as her starting point). It would seem that this is nowadays an even more salient political, economic, but also moral problem.

7. The centre of power in a community draws its legitimation from its role in the protection of public goods. In order to perform this role in a way that is in accordance with the basic tenets of democracy, it is necessary not only to practise control over this centre (as well as to influence it), but also to constrain it by means of a definition of the public good that is as precise as possible. Indeed, those who replace this with uncritical platitudes merely empower the existing centres of power, while weakening the citizens. Or, to be more specific, if the university is unfoundedly declared a public good, it will become more difficult to put up even a theoretical defence of the sea coast, a riverbank, or a square. Because, if the notion that the public good is something that is only open to those qualified is accepted, a simple inversion will see us arrive at the assertion that all public goods demand a certain qualification (be that educational, financial, locational or any other), which is quite simply a cynical negation of the very rationale of the public good.

7.1. By the logic of things, the self-aware citizens are tasked with acting in the name of the public good; obviously, not merely on the level of the “mundane”. Relatively new models of deliberative democracy certainly represent a possible path of replacing the current models of democratic constitution of the community, which are in many ways perfectly inadequate. However, before this, we again encounter the necessity of rethinking the basic concepts without which there cannot even be an understanding of that which should one day, one hopes so, finally be mastered.

<sup>1</sup> Recently, Google presented in Croatia its program depicting all parts of the country, even individual buildings. However, on the occasion they pointed out that in these photographs, peoples' faces (as well as parked cars' number plates) were obscured “to protect privacy”. However, as the spaces concerned were exclusively public (streets, squares etc.), this kind of protection makes no sense at all, and neither does the repeated grumbling against surveillance cameras in cities in the name of “protecting privacy”.

# rethinking common versus private property

David Ellerman\*

*Our main point goes much deeper than just a tamed or "socially responsible" version of capitalism; it goes to the form of private property behind the system. It is based on the notion that people should get the fruit of their labor.*

## introduction

The main point of this article is that the Green and Commons Movements seem to have accepted that the current system is based on the principles of private property, and then have juxtaposed the notion of common property to private property. In fact, the current system is based on violations of the principle on which private ownership is supposed to rest, namely the principle of people getting the fruits of their labor. The Commons and Green Movements should critique the current system as an abuse of private property both in how it treats the products of labor as well as how it treats that which is not the fruits of anyone's labor (natural resources). When private property is refounded on its just foundation, then economic enterprises would be democratic firms such as worker cooperatives, and the ground would be cleared to apply common property arrangements to natural resources which are not the products of labor.

## private property on a just foundation

The underlying normative principle we will use is simply the basic juridical principle that people should be legally responsible for the (positive and negative) results of their actions, i.e., that legal or de jure responsibility should be imputed in accordance with de facto responsibility. In the context of property rights, the responsibility principle is the old idea that property should be founded on people getting the (positive or negative) fruits of their labor, which is variously called the labor or natural rights theory of property [Schlatter 1951].<sup>1</sup>

For instance, the responsibility principle is behind the Green Movement's criticism of the massive pollution and spoliation by corporations that don't bear the costs or legal responsibility for their activities. Ordinary economics shows that markets do not function efficiently in the presence of these "negative externalities" but the responsibility principle shows that there is injustice (i.e., the misimputation of responsibility) involved as well, not just inefficiency.

But our main point goes much deeper than just a tamed or "socially responsible" version of capitalism; it goes to the form of private property behind the system. The ideology of the current system seems to have convinced both the Left and Right that the current system is based on the principles of private property so that anyone who opposes the current system is an "enemy of private property" itself, as the Commons and Green Movements are often portrayed (and as some members of those movements may portray themselves). We will see that practically the opposite is true.

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<sup>1</sup> The labor theory of property is sometimes confused with the deeply fallacious "labor theory of value," a confusion that is completely sponsored by the apologists for the current system of property so they can easily criticize the labor theory of property. [Ellerman 1992]

Like the old system of chattel slavery, the current property system is "a" private property system but it is grounded on violating the very responsibility principle upon which property appropriation and other juridical imputations are supposed to rest. And when private property is refounded on the responsibility principle (or the labor theory of property) then a very different system emerges where firms are worker cooperatives (or similar workplace democracies) where people will appropriate the positive and negative fruits of their labor. Moreover this refounding of property on the responsibility principle provides no basis to treat the products of nature as if they were ordinary private property.

## the fundamental myth about private property

The fundamental myth, accepted by both the Right and Left, is that the current economic system is founded on the "private ownership of the means of production."

To see the fallacious nature of the myth, one only has to take a few seconds to consider the case where the ownership of the means of production (e.g., machines, buildings, land, or other capital goods) stays the same but the assets are rented, leased, or loaned to another legal party who undertakes the productive process. Then the asset owner still has his ownership of the capital asset but has no ownership of the products or management rights over the process (which might include rented or leased assets from many owners). One would think this suppose-the-capital-is-rented-out argument would be easily available to people on the Right and Left who constantly use phrases like "ownership of the means of production." But the misuse of these phrases is quite common.

For instance, one way to state the point is that "residual claimancy"<sup>2</sup> is not a property right attached to the ownership of the "means of production"; residual claimancy is a contractual role determined by who hires what or whom in the marketplace. Those who unthinkingly talk about "ownership of the means of production" as if that ownership included residual claimancy are in effect acting like capital cannot be rented. But the characteristic feature of the misnamed "capitalist" economy we have today is not that capital cannot be rented—but that people can be rented.<sup>3</sup> The key institution is not the private ownership of capital but the renting of human beings (the employment contract).



<sup>2</sup> The residual or profit is the difference between the revenue and expenses in a business enterprise.

<sup>3</sup> "One can even say that wages are the rentals paid for the use of a man's personal services for a day or a week or a year. This may seem a strange use of terms, but on second thought, one recognizes that every agreement to hire labor is really for some limited period of time. By outright purchase, you might avoid ever renting any kind of land. But in our society, labor is one of the few productive factors that cannot legally be bought outright. Labor can only be rented, and the wage rate is really a rental." [Samuelson 1976, 569]

## the misformulated capitalism-socialism debate

This confusion as to what is involved in the ownership of the "means of production" is crucial to the misframing of the whole capitalism-socialism debate. The real debate is not about "socializing" private property but about the abolition of the voluntary self-rental contract in favor of firms that generalize the family firm and self-employed business person to a larger scale where all the people working in the firm are its legal members.

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*When private property is refounded on the responsibility principle (or the labor theory of property) then a very different system emerges where firms are worker cooperatives (or similar workplace democracies) where people will appropriate the positive and negative fruits of their labor.*

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Here is the most urgent challenge to political invention ever offered to the jurist and the statesman. The human association which in fact produces and distributes wealth, the association of workmen, managers, technicians and directors, is not an association recognised by the law. The association which the law does recognise—the association of shareholders, creditors and directors—is incapable of production and is not expected by the law to perform these functions. [Eustace Percy quoted in Goyder 1961, 57]

The basic solution is the re-constitutionalizing of the corporation so that the "human association which in fact produces and distributes wealth" is recognized in law as the legal corporation where the ownership/membership in the company would be assigned to the "workmen, managers, technicians and directors" who work in the company. Far from socializing private property, that would for the first time base the appropriation (and termination) of private property in the products of labor on the just basis of the juridical responsibility principle.

## natural resources: a negative application of the responsibility principle

We have so far applied the responsibility principle to the (positive and negative) fruits of the inalienably de facto responsible activities of the people working in a productive enterprise, i.e., to the products of labor.

But much of our world is not the products of labor but is the common endowment of nature. Hence the basic responsibility principle does not imply that such natural resources and endowments be treated as the private property.

The essential principle of property being to assure to all persons what they have produced by their labour and accumulated by their abstinence, this principle cannot apply to what is not the produce of labour, the raw material of the earth. [Mill 1970, 380]  
No man made the land. It is the original inheritance of the whole species. Its appropriation is wholly a question of general expediency. [Mill 1970, 384]

Land might be represented as a durable asset yielding a stream of services now and throughout the future. When land and natural resources are privatized as ordinary private property, then it is not just the right to current services that is sold but the rights to all future services—which disenfranchises the future generations with an equal claim as the current generation. That is the basic idea behind the notion of "sustainable" use, i.e., use that would not prejudice the equal claim of future generations to the endowments of nature.

Even though land is not the fruits of anyone's labor, the using up of the current services of land and of natural resources is part of the negative fruits of the labor of those who farm, mine, or otherwise use the land and consume the resources. Thus the responsibility principle implies that those private parties should hold the liabilities for using up the current land services or resources. But the responsibility principle does not determine any private party to whom the liabilities should be owed.

Hence (1) the claims of future generations to future services and resources, and (2) the lack of a determinate private prior owner to current services and resources, both call for special common ownership arrangements for

natural resources [e.g., land trusts or sky trusts, Barnes 2006] different from private ownership in the products of labor.

Our point here is that this rationale for common property-compatible arrangements follows from a negative application of the principle on which private property is supposed to rest since "No man made the land."

## concluding remarks

We have argued that on the key issue of property rights, the Commons and Green Movements should not replay the 20th century's juxtaposition of private-versus-social property (substituting "common" for "social"). "Private property" won that debate, but the root problems remain. And few think an answer lies in some tweaked version 20th century's notion of socialism. The issues need to be rethought from the ground up.

All concepts relating to the green economy place the economic sphere at the centre of any debate on future viability. According to this view, we can only save the planet with the economy, not against it. So do all solutions revolve around Homo oeconomicus once again? If we are looking for new models for society that accept human rights, equity, cultural diversity and democratic participation as fundamental principles while at the same time aiming to stay within ecological limits, we are tasked with nothing less than reinvention of the modern age. [Unmüssig, et al. 2012, 37]

We have suggested such a fundamental rethinking of the property rights issue. The current dominant economic system is in fact based on a violation of the principle on which private property is supposed to rest. When private property is refounded on a just foundation, then economic enterprises would be re-constituted as democratic firms.

And with private property refounded on its proper role of guaranteeing the products of labor, then property arrangements other than ordinary private property are required to treat the products of nature in a manner that would recognize the equal claim of future generations.

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# public debt and fiscal policies

Vladimir Gligorov\*

*Assuming that entitlements reflect the political idea of social justice and the tax system is optimal, the emerging deficit or surplus is subject to sustainability, i.e., public debt should not increase relative to GDP without limit. In general, its level and needed development can be in conflict with both justice and efficiency.*

The development of public debt, in percent of GDP,  $d$ , depends on three variables: the primary fiscal surplus or deficit (with interest payments deducted), in percent of GDP,  $s$ , the interest rate on the debt,  $r$ , and the growth rate of GDP,  $g$ . Development and sustainability of the public debt is defined basically by the following equation:

$$s = (r-g)/(1+g)*d \quad (1)$$

Effects of revaluations or stock-flow adjustments are disregarded. If the  $1+g$  term is also disregarded, because it changes little at low rates of growth, the difference between  $r$  and  $g$  multiplied by  $d$  gives the required surplus or deficit that stabilizes  $d$ , i.e. keeps it at the same level.

The first thing to notice is that  $r-g$  and  $d$  have a proportional contribution to  $s$ .<sup>1</sup> Or, put differently, a cut of  $d$  by half has an equivalent effect on  $s$  as 50% lower difference between  $r$  and  $g$ . For example, with unchanged  $s$ , lowering  $r-g$  from -2 to -1 is equivalent to halving  $d$  from 100% to 50%. Also, if  $r-g$  equals 0, any level of  $d$  can be sustained by  $s$  equal to 0, i.e. with a zero primary surplus. A change of  $s$  is as powerful as the change in  $r-g$  and has a proportional effect on  $d$ . So, twice as large fiscal surplus will halve, over time, the public debt with no change in  $r-g$ . Equivalently, a 50% debt write-off will relieve the government from the need to double its primary surplus.

This is just accounting. If the relationship of these four variables captured in (1) is to have policy implications, the question is which is the policy variable; which is the variable that can be manipulated, can be set to have a desired value by policy interventions? In other words, which variable can be an instrument of policy? One formulation of the policy of keeping the public debt sustainable is to choose, through an appropriate political process, the desired fiscal deficit or surplus, that is the difference between public revenues and public expenditures, because:

$$d = f_1(s - r, g) = (r-g)/s \quad (2)$$

i.e. debt to GDP ratio depends on the primary surplus in percent of GDP given the interest rate on that debt and the growth rate of GDP. Once the interest rate and the growth rate are known, equation (1) will give the development of the public debt for each value of the primary surplus.

This strategy of public debt sustainability puts the entire burden on fiscal policy. Assuming, for instance, that economy is efficient, which means that interest rate is equal to the growth rate in the long run, the development of public debt will be determined by choices that set out the schedule of public revenues and public expenditures. All that will be needed to stabilize public debt at any level would be to run zero primary surpluses on average. This is a version of the no-Ponzi-game condition. In general, this condition will be satisfied if the development of  $s$  at least reflects that of the  $r-g$  term.

Fiscal deficit or surplus depends on decisions on revenues and expenditures. Those are made through the political process. In principle, the needed revenues will be determined by desired expenditures. Most of

the public expenditures are designed to redistribute income, which means that they will be guided by some idea of social justice. Revenues come from taxes, which should be levied with the aim to either increase efficiency or minimize distortions. Assuming that entitlements reflect the political idea of social justice and the tax system is optimal, the emerging deficit or surplus is subject to sustainability, i.e., public debt should not increase relative to GDP without limit. Which is why,  $s$  is a policy instrument that targets debt sustainability. In general, its level and needed development can be in conflict with both justice and efficiency.

The level of public debt in percent of GDP,  $d$ , is naturally a target variable of sustainable fiscal policies. However, sustainability does not determine the level of public debt. How is it determined? It is probably natural to think of it as that level up to which there is willingness to service the debt, i.e. to generate the surpluses necessary to stabilize it at that particular level. The alternative is to set the ceiling at which the debtor nation is not able to service the debt, e.g. at a level at which primary surpluses would have to be larger than the public revenues or even higher than the national income, which is a constraint that of course has hardly any policy relevance. This development is ruled out by the transversality condition, i.e. the condition that net present value of future fiscal surpluses at least equals the public debt, or their difference is at least zero. In other words, the debt is paid down in full in the end. That is different from the no-Ponzi-game condition that just requires that debt does not increase without limit.



If debt is unsustainable, that is its ratio to GDP increases indefinitely, this limit of serviceability would eventually be reached, but the willingness to service the debt would be exhausted at much lower levels of public debt. Assuming some level of consumption of the debtors that cannot be lowered further or alternatively that cannot be taxed away, only so much debt can be serviced with needed taxes. To the extent that this optimal level of public debt can be set by some process of public choice, which reflects the willingness to pay, the policy choice variable becomes the public debt to GDP ratio. This is the natural way to think about the inter-generational distribution of consumption and savings that is of justice between generations. In that case, public debt management will become a policy instrument with the distribution of deficits and surpluses between generations being the target of fiscal policy. In that sense, the policy function will be:

$$s = f_2(d | r, g) \quad (3)$$

in other words, given the interest rate and the growth rate, primary surplus is determined by the choice of the level of debt. The advantage of choosing the level of debt, or rather of a trend growth of public debt, is that it does not need to depend on any of the other variables directly; in particular it does not depend on the interest rate and the growth rate. Their fluctuations over the business cycle would be reflected in the changes in the primary surplus. The choice of the level or the schedule of public debt will of course depend on some welfare or distributional function, e.g. on an inter-generational justice function (that is all in conformity with Ramsey theory of saving). That policy regime will require the other policies to be set with the view of achieving the desired public debt to GDP ratio, which can fluctuate over the business cycle and can respond to changes in public or social preferences

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<sup>1</sup> Another way to see this is to notice that debt to GDP stabilises at the ratio of the fiscal deficit and the growth rate; e.g. fiscal deficit of 3% of GDP and the growth rate of 5% stabilize public debt to GDP ratio at 60%.

on which the welfare function is constructed. It could also conform to some kind of Wagner law with richer countries having higher public debt than the poorer ones.

It could be argued, however, that interest rate is under control of monetary policy, in which case the target primary surplus can be chosen by the choice of the interest rate given the rate of growth and the desired level of debt:

$$s = f_3(r | g, d) \quad (4) \text{ which is}$$

again easy to calculate with equation (1). Variable  $s$  can in this context be thought of as the intermediate policy target, because the ultimate target is still the level of debt. This is an application of the Taylor rule type of monetary policies, but not their motivation because their target is of course stable and low rate of inflation.

The development of the interest rate is one way to distinguish problems of solvency with those of liquidity. If the interest rate has to be raised to such a level that debt sustainability requires the primary surplus that is so high that it clashes with the willingness to pay on the part of the tax payers, that is the state of insolvency. Put differently, net present value of affordable primary surpluses is below the public debt. If this high interest rate is a consequence of a panic or of a speculative attack, monetary policy could succeed in bringing the interest rate down to levels that ensure sustainability of the public debt with affordable primary surpluses. That would be a problem of liquidity.

There is no definite cutting point between the interest rate that signals insolvency and the one that only accompanies problems of liquidity. In a closed economy, insolvency is ruled out because public debts can be inflated away; nominal, if not necessarily the real interest rate is under full control of monetary policy, i.e. of the central bank. In an open economy, the willingness to pay is a constraint on the interest rate, which is only partially under control by the monetary authorities even if the exchange rate is allowed to float fully.

It can also be argued, on macroeconomic and policy grounds, that the interest rate is determined, at least in part, by the growth rate. With faster growth being associated with a relatively, relative to the growth rate, lower interest rate (in other words,  $r-g$  is less negative or is in fact positive):

$$r = f_4(g | s, d) \quad (5)$$

in other words, given fiscal and monetary policies, growth rate determines the interest rate, which can then be used to determine the primary surplus with which the sustainable level of public debt can be then maintained. If this is true, then clearly the speed of growth is the one most important determinant of debt sustainability.

However, unlike  $s$ ,  $d$ , and  $r$ ,  $g$  is not an instrument of policy. Some monetarists, so-called new monetarists, believe that central bank can always target the nominal growth rate, via a commitment to nominal GDP target, and in that sense it can be an intermediate target or an instrument to maintaining the sustainability of the public debt. Also, Keynesians argue that as long as there is no full employment, the speed of reaching full employment, that is the growth rate, could be the target of aggregate demand management, e.g. of expansionary fiscal policy. Again, even if higher public expenditures are financed from additional borrowing, the speed up of growth will make the rising public debt sustainable.

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*Some of these fiscal policy decisions are deliberate choices, while in some cases those have been dictated by high costs of refinancing, i.e. high interest rates. That has raised the issue of the role of democracy in public finance.*

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Interest rate and the rate of growth are often said to depend on the management of the public debt because higher primary deficits may be judged to be pushing the development of the public debt on the unsustainable path and that will lead to higher interest rates. More generally, an increase of public borrowing requirements could increase the interest rates, not because of crowding out of private credit but for a variety of other reasons, e.g. higher demand for financing, so that the interest rates can be seen to be determined by the fiscal deficit even if public debt sustainability is not an issue:

$$r = f_5(s | d, g) \quad (6)$$

If that were the case, the effect of the higher interest rate will be much stronger than the increase of public debt implied by higher fiscal deficit. That is why there is such high sensibility to the interest rate hikes. In addition, speculation on public debt default has higher chances to succeed if it can move the interest rate up, because the needed increase in primary surplus in order to keep public debt sustainable may be larger than the threshold on the willingness to pay will allow.

The effect of public debt and fiscal deficits on the growth rate of GDP is also said to be negative. This can be the case if indeed interest rate increases, but it is often argued that growth suffers because of misallocation of resources that accompanies higher public spending:

$$g = f_6(d | s, r) \quad (7)$$

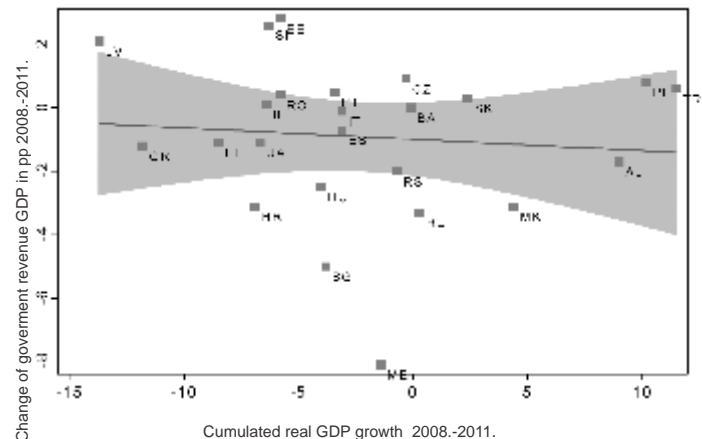
This is the consequence of the assumption that all taxation is distortive because lump-sum taxes are not available. This is a rather complex proposition that is probably not immediately applicable to economies with significant frictions and externalities. On the other hand, the efficiency of the use of public resources is also an issue. There are refinements to optimal tax literature that throw a different light on the tax wedges and there is a large public choice research on the rents that public spending provides to special interests and influential social groups. On balance, it is not easy to say analytically what the relationship between public debt and growth is. Empirically, it seems that growth of developed economies slows down once  $d$  is above 90% and above 40% for developing economies.

An argument is made in this context that smaller fiscal deficits and thus lower public debts will support higher private investments because profits cannot be invested in public bonds. There are additional arguments about the need for rule based fiscal policy in order to anchor expectations and thus stabilize consumption and investment. A contrary argument can be made that a well-organized state will take over various private sector costs and risks and will thus support investment and growth. The key issue is that of inter-generational justice and of the role of public debt in its furthering with or without Ricardo-equivalence theorem failing.

The main implication of all this is that interest rate and growth policies are the key to public debt development and sustainability. Sachs has argued, correctly, that low interest rates make almost any public debt sustainable. Acemoglu has argued the same for high growth rates. An argument can also be made that aversion to high public debts is often quite high, which means that the levels at which willingness to pay fails are rather low especially if it has to be revealed via high fiscal surpluses or higher taxes. There are exceptions to this public debt aversion, though these are probably real exceptions.

The relation between economic growth and fiscal policy is said to be countercyclical when slowdown of growth is accompanied with increased public expenditures or by decrease in public revenues (both as a share of GDP). It is procyclical otherwise. Put differently, in the case of deceleration of growth or a recession, fiscal policy should increase public and private spending with the aim of softening the decline or of getting the economy out of recession. If contrary developments are observed, fiscal policy is procyclical – deepening recession or blowing the bubble growth as the case may be.

Graph 1: **Change of general government revenues and GDP growth 2008-2011**

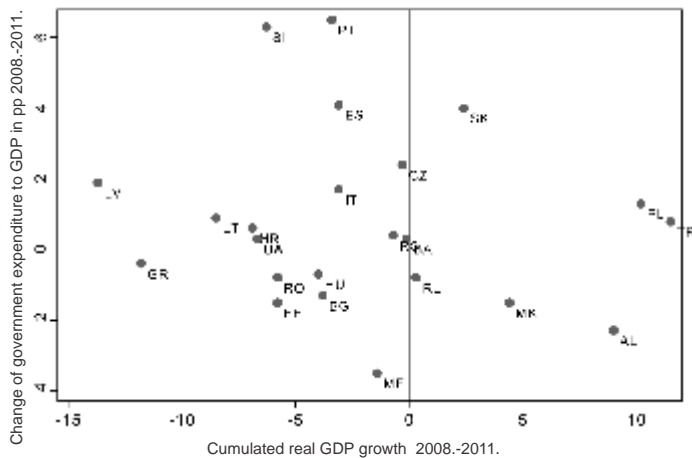


Source: wiiw Database incorporating national and Eurostat statistics, own calculations.

In the long run, expenditures should remain at more or less the same share of GDP as should the revenues, as that would reflect the long term fiscal preferences. In the cycle, however, expenditures should at least not decline with the GDP, the difference being reflected in the increase in the fiscal deficit and of the public debt while revenues should move together with the GDP. Or even more countercyclically if the recession is deep and protracted.

In Graphs 1 and 2, it can be seen that most countries have not changed all that much their revenue stance, though there are some notable outliers – Montenegro, Bulgaria, Croatia that have reduced the burden of the public revenues, i.e. the tax burden. However, when it comes to expenditures, quite a number of countries have cut their public outlays even though they were in recession and in some cases this procyclical policy of public expenditures can be credited with the prolongation of the recession or for

Graph 2: Change of general government expenditures and GDP growth 2008-2011



Source: wiw Database incorporating national and Eurostat statistics, own calculations.

Some of these fiscal policy decisions are deliberate choices, while in some cases those have been dictated by high costs of refinancing, i.e. high interest rates. That has raised the issue of the role of democracy in public finance. Clearly, the government can renege on its debt obligations, especially if it is democratic. It provides a procedure to reveal the lack of willingness to pay to the creditors, domestic or foreign. In that sense, democracy is a system of institutionalized irresponsibility – it can change its mind and its policies and can impose costs on either the creditors or the fraction of the taxpayers (e.g. those in the future) or on foreigners. In the long run, this willingness to pay determines the level and the structure of fiscal policy.

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# society as commons

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*While general goods and public goods can be imposed or guaranteed by various power structures, common goods are inextricably intertwined with the structure of relationships wherein the users are the originators, agents, and beneficiaries of the results of the common governance of the common, cooperative, or otherwise pooled resources.*

More than thirty years ago, the model of state in advanced capitalism (then optimistically called 'late capitalism') fell into crisis. Within this model, the state would perform two functions simultaneously, often by the same means, both functions going beyond the classic role of the 'night watch' liberal state. It prevented cyclic economic crises by maintaining a sufficient level of effective demand, whereby, by means of redistribution of a part of the profits of capitalist enterprises, it simultaneously provided for a relatively high level of social 'justice'. Social services and welfare support, subsidised goods and other benefits mitigated property differences and corrected the effects of the market in favour of the weakest, sustaining at the same time the demand-side counterbalance to the abundant supply.

The reasons for the crisis are a long story. The major causes include, on one hand, the complexity of the state itself, and on the other – the global changes which altered the position and strength of its social and economic partners. Numerous diversified taxes, tax reliefs, subsidies and other instruments of economic intervention of the state, as well as the complicated complex of institutions and agencies which provide social services and implement social policies, obstructed a comprehensive overview over the system as a whole, rendering it ungovernable and hampering democratic control. At the same time, the growth of the global market of capital investment decreased the nation-states' power to track and tax corporate revenues. Furthermore, the global market saw a growing supply of labour suitable for capitalist exploitation, bringing competition to the organised labour in the richest and most advanced countries, which weakened its negotiating positions as opposed to the employers and the government.

Combined with the consequences of the revolution in information and communication technologies, automation and cybernetics, which reduced the need for physical labour and increased the possibilities for managing production regardless of geographic distances, it all resulted in a new power structure. The power of the state and organised labour to act as a counterbalance to the concentrated oligopolistic corporate power decreased, and the state was more exposed to a direct impact of economic interests.

Since four or five years ago, a crisis has gripped the model which had triumphed over the model of the economic and social intervention of the state. The loosening of control ("deregulation") over operations of the financial capital virtually wiped away the dividing line between legitimate business, fraud, and theft. The unfettered creation of securities caused an artificial growth of demand and a great increase of private debt, with consequential overinvestment, followed by the plummeting of the value of products (most notably in the construction industry), which spread the crisis to the real sector. The pressures to reduce the tax burden and to open new fields to profitable investment within the developed countries led to the reduction of social services and support, a part of public services being commodified. Unemployment remains a structural trait of the developed economies. All these developments resulted in the increased difference between the poor and the rich. It still isn't a crisis of capitalism itself, but it did turn out that the return to the market as the main regulator and mediator in providing the means of satisfying human needs, the reduction of state intervention, and the commodification of public services were an ideology, rather than a durable solution. Indeed, the speed with which states intervened and stopped a more comprehensive crisis demonstrates that the state has never really gone away.

Still, a restoration of the harmony of the welfare state is not to be expected, because, due to the aforementioned global changes, the socio-economic constellation which constituted its basis no longer exists. Thus, there remains the question of the needs that are provided for neither by the markets nor by the state.

That is the context wherein there is a growing interest for those forms of providing for the needs which are [the forms, namely] of a collective character (that is, needs that cannot be fulfilled by private labour, either within the family circle, or for markets), but aren't delegated to state or 'public' institutions. Some of these arrangements have centuries-long traditions of utilisation and maintenance of natural resources; others have emerged on the ground of a 'resource' which in its essence was always common, and only in recent decades has become an object and a basis of a technology – communication and information. What they all have in common is precisely the *common* utilisation of resources (the work, management, and decision-making around the distribution of the products). However, while the social basis of some of these arrangements exists in traditional, separate communities, others are functionally and spatially interwoven with other social relationships. That's why it is worth considering what makes them specific and what is their possible meaning for social relationships as a whole.



So, what are the goods that are not private? There are three attributes most commonly used in the discourse around them: the "general", the "public" and the "common". These attributes may refer to the same things, but they are often used as though their meanings overlap. But even if the goods they refer to are one and the same, they refer to different aspects or, more exactly, different *relations*, which is clearly borne out by different patterns their attributes express.

The key to the "general" attribute is *validity*: what is general applies to all members of a societal unit (not only with regard to goods). When referring to "the general good", the question is not whether, and to what extent it is really good for everybody, and to what extent. This very generality says that what is posed as such (general) good applies to everybody. Therefore, such goods may be something legally defined under the rule of law, but also something determined by a dictatorial decree. Given the significant differences existing in any society, with the exception of some truly general human common denominators, such as freedom and dignity of each person, the general good is always somehow imposed, since it generalises determinations that do not equally suit all people. The modes of this imposition may vary from a democratic majority rule (unless corrective measures are provided to secure acceptability for all), through a consensus imperative (wherein disagreement is silenced and suppressed in the name of unity), to an explicitly authoritarian, dictatorial or totalitarian dominance of a minority.

Regarding the public good, the key word is access; what is public must by definition be accessible to everybody (for free or for an affordable compensation, which does not serve a profit purpose). Information available only to a few, a square where everybody cannot walk, a service that requires particular conditions, a drinking-fountain where not everybody can drink, or (in a murky utopian projection) air which not everybody can breathe – all those goods are not public. True, in everyday usage or in popular publications and discourse the "public" also appears to designate anything that is not private, i.e. all goods and services provided by "public" institutions (both state institutions and institutions founded by the state and vested with authority and obligations) which are funded from "public" sources; thus, one talks about "public funds" or "public sector" in general even if they are not accessible to everybody. Of course, in democratic systems these institutions are supposed to be a matter of public concern, but the attribute of "public" as opposed to private expresses something else than the public as open to insight, access and utilisation by all.

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*If the choice of a supposedly optimal mode of governing over a segment of useful activities is at the disposal of a given society, there is no reason why governance of any segment of such activities shouldn't be at the society's disposal, including those currently covered by private economy.*

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What is key for the commons is precisely their kind of *governance*. What makes them common is that the very same people who do the work also decide, equally and inclusively, on the purpose, use and maintenance of the means of production, natural resources and other goods. This differs both from the "possessive individualism" of private property and from the governance "on behalf" of society delegated to the aforementioned "public" institutions. While the general and public goods can be imposed or guaranteed by various power structures, commons are inextricably intertwined with the structure of relationships in which the users are also the source, the agent, and the beneficiary of the results of the joint governance of the common, cooperative, or otherwise pooled resources.

There is a striking resemblance between this description and the classic American slogan which defines democracy as the power of the people, by the people, and for the people, the difference being that these principles, unlike the idealised American image, are really implemented, because it is done as in the framework of a real community. Commons are not merely about things or services; the community itself is a common good. It is both a prerequisite, a 'means' and the product of agency that revolves around defining, producing, managing and maintaining commons, as well as the conditions of their production and enjoyment.

Many such communities have by now already been well-researched and analysed, and many of them even possess a tradition that has lasted for centuries. However, it will not do to give in to the illusion of an ideal, primordial communality that has, by some miracle, managed to survive in the cruel reality of economic and political domination. Within the tradition of theories on the society, the classic definition of community is that by F. Tönnies as the embodiment of primary solidarity, but this definition doesn't have empirical significance, only methodological, that of the "normal type". However, this didn't stop the "ordinary" concept of community, as a "group whose members share values and a way of life, identify with the group and its practices, and acknowledge each other as members", being confused with a "moralized" concept, as a group "whose members are mutually concerned and do not exploit one another, nor behave unjustly towards each other, at least not in any systematic way".<sup>2</sup> The communality of values,

<sup>1</sup> "We may now establish the great main laws of Gemeinschaft: (1) relatives and married couples love each other or easily adjust themselves to each other. They speak together and think along similar lines. Likewise do neighbors and other friends. (2) There is understanding between people who love each other. (3) Those who love and understand each other remain and dwell together and organize their common life. A mixed or complex form of common determinative will, which has become as natural as language itself and which consists of a multitude of feelings of understanding which are measured by its norm, we call concord (*Eintracht*) or family spirit (*concordia* as a cordial allegiance and unity). . . ."-Ferdinand Tönnies, *Gemeinschaft und Gesellschaft, Abhandlung des Communismus und des Socialismus als empirischer Culturformen*, von Ferdinand Tönnies, Leipzig, Fues's Verlag (R. Reisland), 1887., pp. 24-25. Translated into English and edited by Charles P. Loomis, Michigan State University Press, East Lansing, Michigan, 1957, reprinted by Harper & Row, Publishers, Inc., New York 1963, p. 48

<sup>2</sup> Andrew Mason, *Community, Solidarity and Belonging. Levels of Community and Their Normative Significance*, Cambridge University Press (Virtual Publishing) 2003, str. 4 te 18-37.

ways of living or behaviours, as well as collective identification, may stem from sources of utmost variety, which may often have nothing to do with morally desirable values. Communities may arise from fear or guilt and be sustained by them;<sup>3</sup> communality by means of identification with a "collective personality" may have a destructive effect on political participation and make the community uncivilised.<sup>4</sup>

This is illustrated by the very basis of the word denoting community in most of non-Slavic Indo-European languages in Europe. Unlike the Slavic word, which indicates being, desiring or action "for one" ("za jedno", hence "zajednica" = community), the Latin word "communitas" contains the root *munus*, denoting task, *duty*, a function that has to be performed, an obligation of giving,<sup>5</sup> although its adopted meaning speaks of collective being and equality.<sup>6</sup> It is possible that the old-English word "*gema nscipe*,"<sup>7</sup> as well as the German nouns "Gemeinschaft" and "Gemeinde", as well as the adjective "gemein", that we might find more familiar, have evolved from the same root. The memory of two latter words is preserved in the word "gmajna", which in Slovenia and northern parts of Croatia signifies precisely a certain kind of common good, a municipal, public, communal grazing land<sup>8,9</sup>.

Communities that drive the (re)production of common goods and constitute its basis are neither the result, nor agents of some kind of primeval unity or unmediated identification. They are mediated by relations that have been carefully built in order to reconcile and unite individual participants' (individuals' or families') interests and the greatest achievable benefit for all. As research<sup>10</sup> has confirmed, these communities are based on mutual obligations, expressed through elaborate rules that encompass the entire functional cycle and normative framework: the mode of productive use of common or pooled resources (which may also be privately owned), the distribution of products, oversight of implementation of the rules and sanctioning their violation. They do not constitute a 'model', especially not a singular one, but a multitude of specific institutional solutions to a multitude of various concrete situations, in which "dilemmas" arising from models constructed on the premise of isolated individuals who are exclusively self-interested and in a competitive surrounding are overcome.<sup>11</sup> Aside from this entire spectrum of various possibilities, interesting in itself though it may be, they all prove that it is possible to create institutional arrangements that support and/or maintain cooperation and mutual trust among the partici-

pants, without reducing the mutual trust to the level of a social-psychological phenomenon.<sup>12</sup>

This way, it is possible to build communities based on the optimum common interest, which isn't determined by homogeneity, personal closeness and group identification. But what about their social surroundings? The society of the modern era, even if we take the reductive understanding of it as a totality of relations within the borders of a nation state,<sup>13</sup> is not only far larger and more complex than the communities built upon the management of common goods, but also 'lacks' their fundamental precondition – the communality of interests. The point lies not only in the wide spectrum of differences between interests, but in their systematic mutual *opposition*. Roughly speaking, the opposition works both in the horizontal and the vertical structural dimension: those who occupy a similar position horizontally, within capitalist market conditions, are in competition with one another, while those who are in different positions along the vertical dimension exploit each other. As unrealistic as the image of class polarisation may seem nowadays (if it ever was realistic), these oppositions are real despite the gradation and diversity of the vertical differentiation, and they do not permit the facile assumption that it is always and in all cases possible to find a common basis or point of convergence of all interests.

What's more, in many relations the interests that dominate the contemporary capitalist society (the globalisation of all key relations justifies the singular form) stand in opposition to the 'logic' of commons and suppress them. Beside the already notorious modes of destroying common goods (from the classical – enclosing municipal lands, at the dawn of capitalism, to the contemporary monopolisation and renting of the results of communicative cognitive and creative labour in the form of "intellectual property"), for-profit investment in the post-industrial segments of the contemporary society has colonised not only the 'third world' and all the remaining natural resources but also the so-called public sector. As has been outlined in the introductory section, this 'sector' (as the entirety of goods and services provided by the state and institutions to which certain public responsibilities and authorities have been transferred) had the function of sustaining the capitalist economy<sup>14</sup> from its beginning, but the redistribution of a part of income through social benefits, services and other goods has happily coincided with the function of maintaining the economic balance that the market itself would not be able to provide, just like the historically specific constellation of the political compromise between the

<sup>3</sup> See Roberto Esposito, *Communitas. The Origin and Destiny of Community* (translated by T. Campbell), Stanford University Press, Stanford, CA 2010, *passim*.

<sup>4</sup> See Richard Sennett, *The Fall of Public Man*, Alfred A. Knopf, Inc., 1976

<sup>5</sup> *Communitas* → *communicans*: "*communicantes quod communiter, id est pariter, convenienter*" – Robert Maltby, *A Lexicon of Ancient Latin Etymologies*, published by Francis Cairns, Leeds 1991, p. 144.

<sup>6</sup> Michiel de Vaan, *Etymological Dictionary of Latin and the other Italic Languages*, Brill, Leiden 2008, p. 395. Thence, for instance, the words "munusculum" (a small gift) and "munerare" (to gift), but also "communis" (common, general) and "municipium" (community, municipality) etc. (*ibid.*).

This coercive meaning of community, apparent in its etymology, is analysed in detail by Esposito, *op. cit.*, p. 4 and further.

<sup>7</sup> Douglas Harper, "Community", u *Online Etymology Dictionary*, <http://www.etymonline.com/index.php?term=community>. "An Old English word for 'community' was *gema nscipe* 'community, fellowship, union, common ownership,' probably composed from the same PIE roots as *communis*."

<sup>8</sup> This is confirmed by the two dictionaries of foreign terms (Bratoljub Klai, Matica hrvatska, Zagreb 1978, p. 490; Vladimir Ani and Ivo Goldstein, Novi Liber, Zagreb 1999, p. 487).

<sup>9</sup> Even the word "tratina" (pasture), which is not limited to these regions' dialects, and exists in various variants of the štokavski dialect, and is thus considered by many to be 'our own' word signifying "uncultivated land, covered with low grass" (Vladimir Ani, Rje nik hrvatskoga jezika, Novi Liber, Zagreb 1998, p. 1208) has its origin in the common good. It stems from the German word "Tratte" (Old High German trata – Petar Skok, *Etimologijski rje nik hrvatskoga ili srpskoga jezika*, 3rd volume, Jugoslavenska akademija znanosti i umjetnosti, Zagreb 1973, p. 493). In Austria, this was the common term denoting communal land (Brigitte Kratzwald, "Rethinking the Social Welfare State in the Light of the Commons", in D. Bollier and S. Helfrich (ed.), *The Wealth of Commons. A world beyond market & state*, The Commons Strategies Group, Levellers Press, Amherst, MA 2012, p. 56 and n. 6, referring to: <http://sabitzer.wordpress.com/tag/bergwesen>

<sup>10</sup> Elinor Ostrom, *Governing the Commons. The Evolution of Institutions for Collective Action*, Cambridge University Press 1990, especially chapter 3: "Analyzing long-enduring, self-organized, and self-governed CPRs", pp. 58-102.

Elinor Ostrom, "Common-pool resources and institutions: toward a revised theory", u B. Gardner i G. Rausser (ur.), *Handbook of Agricultural Economics*, Vol. 2, Elsevier Science B.V. 2002., p. 1330 and further.

Elinor Ostrom, *Understanding Institutional Diversity*, Princeton University Press, Princeton and Oxford 2005, for a general institutional analysis.

<sup>11</sup> Elinor Ostrom, "Beyond Markets and States: Polycentric Governance of Complex Economic Systems", lecture on the occasion of the award of the Nobel prize for economics, held on the 8th December 2009, published at [http://www.nobelprize.org/nobel\\_prizes/economics/laureates/2009/ostrom\\_lecture.pdf](http://www.nobelprize.org/nobel_prizes/economics/laureates/2009/ostrom_lecture.pdf), pp. 416-417.



<sup>12</sup> E. Ostrom, *ibid.*, p. 432. Martin Beckenkamp, "Institutions and Trust in Commons: Dealing with Social Dilemmas", in D. Bollier, S. Helfrich, *op. cit.*, p. 26.

<sup>13</sup> On the ideological character of this reduction see Michael Billig, *Banal Nationalism*, Sage publications, London, 1995, esp. the chapter "National Identity in the World of Nations"

<sup>14</sup> This shows the baselessness of the 'revelation' that it was only the domination of the "neoliberal economic model" that made it "clear that the state is not a neutral actor that truly represents the interests of the general public, but rather it reflects the societal power relations" (Brigitte Kratzwald, *op. cit.*, p. 55).

'social-economic partners' and the state made it possible to adopt such policies. With the weakening of two sides of this three-sided compromise, both the goods and the services that used to be provided by the so-called public sector have logically (and not because of the influence of a single – "neoliberal" – ideology or sudden moral decay among the business circles in the sense of increased "rapaciousness") become a playing field for the third side, that is, for turning these goods and services into commercial wares and their for-profit marketing.

However, it is precisely this process that points to its opposite. The privatisation of public goods and services shows that they aren't public 'by nature', that is, that the very nature of things such as education, traffic infrastructure, energy distribution etc. doesn't determine the way they are socially organised; in other words, that it isn't necessarily the state that organises and supplies them. With the existing technology of control, and with adequate political decisions, they can function in the market. The quality of the goods and services may fall, they may become more expensive and there may be difficulties in coordination, but this doesn't mean that organising them by means of the market is impossible, only that it may not be optimal. But the opposite also holds true; if the mode of managing 'public' goods and services, which had up to that point been supplied to the entire society, is a matter of policy and the technology of control and management, it is possible to consider joint management of activities that satisfy social needs, which had up till now been coordinated *ex post*, that is through the market. If it is at the political disposal of a society to choose the allegedly optimal way of managing a segment of useful activities, there is no reason for it not to be likewise the management of any segment of these activities, including those that are currently taken care of by private economy.<sup>15</sup> There is enough evidence that today's dominant mode of governance, through private corporations and the market, is far from optimal – whether we find this evidence in the imperfections of the market itself (as a result of concentration and creeping oligopoly), crises, or the unsustainable exploitation of natural and human resources.

However, society is not community. Although it could plausibly be shown from an observer's standpoint that even if we take into account all the deep differences, there are some common denominators (the need for self-preservation on this limited planet at the very least), there is no common awareness of this, and therefore also no common interest. In place of community, not within, but opposite the society, there is the state, whose functioning is based on the method of the "general good", in the terms I have set out above: If the state is based on the rule of law, its rules should, as a principle, govern all equally, but the shaping of these rules and policies is influenced at best by the majority, or, more realistically, by the most powerful interest groups. The state is a substitute community<sup>16</sup>; the 'common' interest is that which prevails in the process of public formation of the political will and the institutional and non-institutional process of forming executive policy decisions.

In such a context, islands of commons, of communities whose common, but limited, interest has been confirmed in practice, are at a kind of crossroads. They can maintain and defend their field of action and rules of the game, but with the great risk that – as with any defensive position – it may end in defeat or even greater marginalisation. But they can also be used as a means of governance that can be applied to other activities that might function as a common good. This would, however, require entry into the political 'arena' (often even, in the same stroke, its creation by means of opening up disputes over the common significance of certain goods and demonstrating the existence of alternative possibilities) and engagement in the political struggle to define the 'general' interest.<sup>17</sup> Opportunities for employment, education, use of unpolluted resources... all these can be imagined as commons. But they cannot be realised through moralising alone, or claims to allegedly fundamental values, but through political confirmation and affirmation of a shared need as a common interest.

The lesson from analysing commons is that a common good is not only that which satisfies needs, but also the social arrangement that reflects such communality. The politics of changing social relations instead of the



politics of government and appeasing particular interests is a huge challenge, and largely untried terrain, at least if the intention is to implement it without sacrificing liberty and democracy (the latter has certainly been tried; the Nazi and Stalinist political systems show where it leads). The challenge becomes greater still if an essential characteristic of 'green' politics is added: sensitivity towards real conditions for meeting specific human needs and quality of life, as well as a strategic perspective of long-term sustainability of living conditions on the planetary scale. Nevertheless, as great a challenge as it may be, the question is whether another perspective even exists.

<sup>15</sup> The possibility for non-statist planning, that is, allocation of resources *ex ante*, without a totalitarian framework which had up till now gone hand in hand with the command economy, was convincingly set out by Ernest Mandel in "In Defence of Socialist Planning", *New Left Review* 1/159, September-October 1986, pp. 5-37.

<sup>16</sup> Zarko Puhovski, *Interes i zajednica*, Sveu ilišna naklada Liber, biblioteka Razlog, Zagreb 1975., p. 25 and further.

<sup>17</sup> See Danijela Dolenc, "The Commons as a Radical Democratic Project" (lecture held at the conference "The Economy of Crisis Capitalism and the Ecology of the Commons, Zagreb, 22-24th November 2012) [http://commons.mi2.hr/wp-content/uploads/2012/11/the-Commons-as-a-Radical-Democratic-Project\\_Dolenc.pdf](http://commons.mi2.hr/wp-content/uploads/2012/11/the-Commons-as-a-Radical-Democratic-Project_Dolenc.pdf).

