

Maine land: private property and hunting commons

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Abstract: In the burgeoning literature on property rights, relatively little analysis has been done on the relation between property rights regimes (i.e. individual property, state property, clan property), and the types of goods that are produced. In Maine [USA], the decisions of landowners are strongly influenced by government regulation which creates a number of types of goods. In addition, some of the rights to that land are appropriated by the public who use this land for recreation. Although the right of the public to use private land is under attack, currently this forestland is both privately owned and a recreational commons. At the same time, new property institutions are coming into being. As a result, a single “privately owned” parcel of land produces private goods, public goods, common pool resources and toll goods all at the same time. The Maine case points out that the relationship between various kinds of property rights and goods is more complicated than has been assumed by many social scientists involved in the “commons” debate.

Keywords: Common pool resources, forest, landowner, Maine, property rights, public goods

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I. Introduction

In the growing literature on property rights, there is increasing appreciation that property is a very complicated phenomenon. Within the same society, rights can be bundled in different ways to create what von Benda-Beckmann et al. (2006, 18) call "master categories" (i.e. private property, state property, etc.). Moreover within the same society, different rights to a single object may be allocated to a number of different categories of people or social units to create an incredibly complicated matrix of claims (Schlager and Ostrom 1992, 16). Rights to property may be contested. Legal pluralism can exist so that two or more kinds of normative orders apply to the same situation. Some people can have *de jure* rights to property; others have *de facto* rights unrecognized by the state (Ellickson 1991). Claims to property are buttressed by ideology, and sometimes these ideologies are can be so inconsistent that they can be used to buttress the claims of different individuals or groups (Lindayati 2003).

What has not been adequately explored is the relationship between property rights regimes and types of goods that are produced by those various property regimes. The way that property rights are allocated in Maine gives us a chance to explore the relationship between property rights and various types of goods in some detail. We contend that the relationship between property rights regimes and various types of goods is very complicated, and that one type of property can produce several different types of goods.

In this article, we describe the property rights to Maine forestland. Maine forests are used and claimed by different groups who have different bundles of rights. Some of those rights are *de jure* rights and others are *de facto* rights. Moreover, Maine forests produce four different types of goods: private goods, common-pool goods, toll goods and public goods all at the same time. As we shall see, distinguishing between bundles of property rights and the kinds of goods produced is essential to understanding the Maine forest situation, which is undergoing considerable and rapid change.

Most Maine forestland is said to be "privately" owned because approximately 88% of Maine's forest is deeded to private individuals or organizations (Hagen et al. 2005, 9). However, private landowners do not have the entire bundle of rights to "their" land. First, there are government restrictions on the activities of landowners, and the state of Maine retains the rights to wildlife. Second,

this “privately owned” forestland has long been used by the public as a kind of recreational commons¹. However, rights of the public to use private land are increasingly being resisted by landowners. The situation is fluid, rapidly changing and heavily contested. Both sides have an ideology and legal arguments to support their claims. As a result, some new kinds of bundles of property rights are coming into being which involve different kinds of goods.

In this article, we will focus a good deal of attention on the enigmatic and problematic situation between landowners and the recreational public. We first present the ethnography of this case, including the laws pertaining to property rights, the ideologies involved and the cultural bind presented by issues pertaining to Maine forestland ownership. We then describe the bundle of rights held by the government and the choices of landowners. Finally, we discuss implications for the theory of property rights in general.

1.1. Maine forests

Maine is the most heavily forested state in the country, with over 90% of the 25 million acres [10,117,000 ha] covered with forests. The southern part of the state is heavily populated, urbanized and relatively highly industrialized. Half the population lives within 30 miles of Portland, the largest city, located about 100 miles north of Boston. The small towns in this region are heavily populated by suburbanites who commute to the cities for work. In this area, most of the forests are held by small landowners, many of whom own only a few acres of land.

The northern half of Maine is the largest contiguous forested area in the US east of the Mississippi. The landscape is dominated by spruce-fir forests, punctuated by very large lakes (McWilliams et al. 2004, 27). Most of this land has never been cleared for agriculture. The human population is sparse; the communities are small; and there is little industry. From the 19th century to the end of the 20th century, virtually all of this land was owned by some 20 large companies which have maintained the area as working forests (Hagen et al. 2005, iii).

2. Methodology

Most of the data presented in this article were collected during the summer and fall of 2007 during a study in which 173 landowners and hunters were interviewed. These informants live in eight widely separated counties in Maine and were interviewed by eight interviewers using a semi-structured interview form. One of our major purposes in carrying out this study was to collect data that would allow us to compare values and behaviour of landowners, hunters and people who were

¹ In this article, we will speak of “forestland” and “forestland owners”. Most of the land in Maine is forested; hunting takes place primarily in forested areas; and the open land tradition is thought to apply to forested areas. To be sure, a lot of farms have both forests and cleared fields, and settled areas have a lot of open land, but making these distinctions adds unnecessary complications.

both landowners and hunters. In Maine, there are no complete statewide lists of forest landowners and finding people who own forestland and who hunt poses special challenges. In order to find these people we used a rolling or snowball sample technique. While this technique does not result in a random sample, it is one of the best ways of locating “hard to find” categories of informants (Bernard 2006, 192–193). To locate these people, we asked interviewers to start by interviewing a hunter or landowner they knew. At the end of the interview, they were to get the names of two or more hunters or landowners. These people were then interviewed and were asked to provide other names. All interviewers were instructed to interview hunters, landowners, and people who were both. Most of the data reported in this article are from this study unless otherwise noted. We supplemented our semi-structured interview data with key informant interviews with landowners, public officials, and association officers.

Use of a rolling sample technique can introduce bias into data (Bernard 2006, 193), but we do not believe it has done so in this case². The study of landowners and hunters was part of a larger research project on Maine forest landowners. We had earlier (2005) conducted a large-scale mail survey of 2,000 individuals selected randomly from the membership lists of the three largest organizations representing forest landowners. Their membership includes approximately 10% of the estimated 88,000 forest landowners in Maine; we are certain the people we surveyed from these organizations do own forests. There was no statistically significant difference in the demographic profiles of the people in the large mail survey and the hunter-landowner study that produced the data for this article (Acheson and Doak in press). This indicates that both sets of informants are representative of the same population.

3. Public use of private forests: the ethnography

3.1. Maine’s open land tradition

Landowners in Maine have legal title to their property; they are able to get all of the income from economic activities on that land; they can sell it, pass it on

² The basic problem is that if one begins at a single point in a network, one can end up being referred to people only in that network. If the first person interviewed comes from an unusual background and refers researchers to other similar people, you can end up with a very unrepresentative sample. In order to avoid this problem, we hired eight interviewers in eight different Maine counties. We also told the interviewers to get landowners, hunters, and people who were both landowners and hunters. We instructed them that if they discovered they were being referred to only one type of person (e.g. landowners) they were to try to interview other types of people (e.g. hunters). They did not interview the same number of people in each category. One interviewer got into a network of hunters; and eight of the 18 interviews this person got were hunters. Another two got a disproportionate number of landowners. However, the responses of the landowners interviewed by these people look like the responses of other landowners interviewed by other people. The same is true of hunters. We analyzed the data on several questions with this in mind. As far as we can see, there are no obvious differences in snowballs.

to their heirs, and can manage it subject to environmental laws. Of course, they have to pay taxes on the land and are liable if they create a hazard which causes someone injury. At the same time, the public uses large amounts of forest – technically owned by private landowners – as if it were a common property resource. People hunt on land owned by others, run their snowmobiles and all terrain vehicles (ATVs) on it, and use the land for bird watching and cross country skiing. In northern Maine, people take hiking and canoeing trips in which they camp for days on end on land owned by others. Members of the public generally feel they have a “right” to use the land of others for recreation – particularly in the vast forested regions of northern Maine. Sometimes they ask permission to use the land, but often they do not. When land is posted, many feel that something that should be theirs has been taken away³. It is not uncommon for members of the public to tear down the “No Trespassing” signs and use the land anyway. The landowners, for their part, generally acquiesce. Even if they are not entirely happy with the arrangement, they generally allow others to use their land without much complaint.

The widespread use of private land by the public goes by various names. Most commonly Mainers speak of the “open land tradition”. Others talk about having forestland open to “traditional uses”. George Smith, Executive Director of the Sportsmen’s Alliance of Maine, in a recent interview with one of the authors referred to Maine’s “hunting heritage”. “It is an old tradition in Maine to hunt where you want. It is a unique tradition. In some states, you have a hard time to find a place to hunt”. He made it clear that sportsmen are willing to defend this valued tradition.

The recent past has seen a number of well-publicized cases where the open land tradition was vigorously defended. In the fall of 2005, Roxanne Quimby, a wealthy entrepreneur, bought a 24,000 acre [9713 ha] piece of land in northern Maine with the intention of establishing a wildlife sanctuary. She forbade hunting on her property and closed off the roads crossing her property to vehicles. She ran into a firestorm of criticism from local people who vilified her for threatening the local economy by reducing the areas where hunting was permitted, prohibiting trucks from going to and from other plots of land being worked by forest products companies, and for making direct access to some wilderness camps impossible. Her legal rights were beside the point. She had violated “traditional rights” of the public to have access to private land (Austin 2003).

3.2. The law

The “open land” tradition is very old in New England, and the law and policies of Maine government encourage public access to private land. The public’s right to use private land was first encoded in the “Great Ponds Law”, which stems from a

³ “Posting” refers to legally serving notice on members of the public that trespassing in general, or certain activities, will not be permitted on the land. The most common means of posting is to place signs around the perimeter of the property.

Massachusetts law of 1641. The Colonial ordinance allowed people to pass over private property to reach a pond >10 acres [4.1 ha] in size for purposes of fishing and fowling. When Maine became a state in 1820, the Great Ponds Law was accepted as part of Maine law. Since that time, a number of Maine court cases have modified and clarified the Great Ponds doctrine. Several cases make it clear that Great Ponds [i.e. over 10 acres] are public ponds. The state holds them in trust for the public and the public has a right to “fish, and fowl and cut ice upon them” (Supreme Judicial Court of Maine 1952). Since virtually all large forest landowners have big ponds on their land, these landowners do not have a clear-cut right to keep the public out of their property completely if that means cutting off access to a great pond.

However, there is a very well developed body of common law specifying the rights of private property owners to keep uninvited people off their property. Landowners can post their property and if the posting meets standards prescribed in law, they can have trespassers prosecuted. Though landowners may have the legal right to keep uninvited users off their property, there are practical problems in doing so. There are over 100 Maine state trespass laws, making it difficult for landowners to know which laws apply and what their rights are. Additionally, wardens will not prosecute trespassers unless the landowner is willing to go to court to testify about the nature of the violation. This means that enforcement involves costs in terms of time lost, money for an attorney, and the psychic costs of being in conflict with other people.

We believe that the law of trespass and the Great Ponds law is a case of conflict of laws. The Great Ponds law and “tradition” work to keep privately-owned wild lands open to the public, while a well worked out body of common law gives landowners the right to forbid any access. At this time it is unclear whether or not owners of land with a 10-acre pond can forbid recreational users from using their lands if that means closing off the public from large bodies of water. The rights of the public to use private property have never been adequately tested in court, and as long as most large landowners maintain the open access policy and the state keeps its landowner relations efforts, it probably will not be tested.

Despite the legal complications posed by the Great Ponds law, large landowners take the position that they do have the right to control access to their land. Nonetheless, they usually do not keep the public off their land, and in fact, have a policy of maintaining open access to further “public relations” (Killian 1991). They do, however, want the state to recognize their right to control access to their property.

The state of Maine holds all wildlife in trust; and it retains the right to manage stocks of those animals. Landowners do not have a right to take animals on their own property unless they obey all of the laws governing hunting – just like any other hunter. When game is shot, however, it immediately becomes the private property of the hunter.

Moreover, Maine has a strong landowner liability law which protects landowners from suits by people who get hurt on their land while they are engaged in some recreational activity (Maine Revised Statutes 2007, Title 14,

Section 159A). This protection removes a motive for landowners to forbid people to use their land.

3.3. The government

The state of Maine has a longstanding policy of encouraging landowners to allow the public to use their property to boost tourism, Maine's largest industry. If access to private lands were cut off, there would be a substantial loss to businesses in inland areas serving people who come to hunt, fish, snowmobile, hike, camp, and do bird watching. These activities depend, in large measure on having access to privately owned land (Rubin et al. 2001, 10). Maine's governor, John Baldacci, recognizing the importance of the open land tradition to Maine, set up a task force on Traditional Uses and Public Access to Lands in Maine (Leach 2004). In addition, the Northern Forest Land Council, composed of representative of government and industry in New England, has recommended that "the Congress and State legislatures enact legislation" that would "encourage landowners to keep their land open and available for responsible public recreation" (Northern Forest Land Council 1994, 74).

3.4. Behaviour and attitudes of Maine landowners and hunters: a cultural bind

The attitudes of Maine landowners and hunters concerning the recreational use of private land are complicated and inconsistent. There is little consensus on many issues. Many informants in our studies showed mixed support for both the rights of landowners to control public access and for the open land tradition. The same ambivalence was apparent in attitudes towards posting. To complicate the situation, there is a difference in people's stated attitudes and their behaviour.

One of the most illuminating questions was: "Should the public have a right to use private land for recreation free of charge?" Respondents were then asked to explain their answer. Ninety-three of the 162 who answered this question (57%) said "yes", the public had a right to use private land, and 69 (45%) said "no", the public did not have such a right (Table 1)⁴. Thirty-two of the people who said "yes" said they believed the public had an unqualified right to use private land and that landowners should not be able to close their land to public use, but two-thirds of those who said "yes" qualified their answer by saying that the public should use private land only if the landowner gave "permission". Moreover, some of those saying the public had no "right" to use the land of others qualified their answers by saying the land should be closed only if the public "abused" the land.

⁴ Missing responses is a basic source of bias in data analysis. To deal with this problem, we analyzed demographic characteristics of those who did not answer the two questions presented in Tables 1 and 2 and those who did. To the best of our knowledge, no characteristics distinguish these two groups. Those who did not answer are not clustered in any part of the state, nor are they in any occupational, age or educational group. As far as we can tell, missing answers do not bias our results.

Table 1: Question: should the public have the right to use the land of others free of charge? Please explain your answer.

	Yes (%)	Number Answering (N)	Missing
Landowner, not hunter	36	66	7
Landowner and hunter	67	70	0
Hunter only	85	26	3
Total	57	162	11

Another question was: “Some new owners of large tracts of land have recently prohibited hunting and ATV use on their land. What is your opinion of this situation?” Interestingly, the answers to this question revealed more support for landowner rights. Eighty-five of 161 who answered this question (53%) clearly supported the right of landowners to close off their land. Many would agree with the person who wrote, “It is their land, they can do what they want with it”. However, 33 of 161 (20%) of those responding clearly condemned such large scale closures, and clearly approved of the open land tradition (Table 2). Several said that such closures go against the “Maine tradition” or the Maine “hunting heritage”. Another said closing land is “unfair” another said that “people who close their land are just plain selfish”.

Another 43 of 161 (27%) had indeterminate answers. They could understand the arguments of those who wanted to keep the land open, but could also sympathize with those wanting to close their land to use by the public. One said, “They [landowners] have the right to do it, but I hate to see it happen”. I can see the “pros and cons”, said another.

Table 2: Question: some of the owners of large tracts of land have recently prohibited hunting and ATV use on their land. What is your opinion of this?⁵

	Approve prohibition (%)	Approve open land tradition (%)	Indeterminate (%)	Number Answering (N)	Missing
Landowner, not hunter	69	6	25	67	7
Landowner and hunter	48	20	32	68	0
Hunter only	27	62	12	26	5
Total	53	20	27	161	12

⁵ Our interview question lumped together hunting, an old traditional practice, with ATV use, which is quite new. There is considerable evidence that many, but not all, Maine people object more to ATV use on their land than to hunting (see Acheson 2006).

Virtually all of our respondents were from Maine. Moreover, there was no clear correlation between attitudes towards the rights of landowners vs. hunters and any social characteristics of respondents (e.g. age, education, occupation, etc.). There is one exception: the hunters who did not own land were more supportive of the “open land” tradition than landowners who did not hunt. This showed clearly in the information we received on attitudes towards posting. When asked if landowners should have the right to post their land, the vast majority of respondents (147 of 164 or 90%) who answered this question said that landowners did have that right, including 97% of the landowners who did not hunt. However, 28% of the hunters who owned no land were not in favour of allowing landowners to post their property.

In responding to another question about the public’s right to use private land free of charge, 20 of the 25 (80%) of landless hunters who answered the question believe that the “public has the right to use private land”, but only 29 of the 68 (43%) of landowners who do not hunt who answered this question said the same. The respondents did not think landowners had a right to charge hunters and others seeking recreation for the use of their property. Only three of the 164 who answered this question in our survey said that landowners should be able to charge people for using their land.

Respondent attitudes and behaviour differed. Many said that the public has “no right” to use the land of others without permission, and that landowners have a right to post their land, etc. They act, however, as if the land is a recreational commons. When asked whether they ask permission to hunt on someone else’s property, 50 of the 93 who answered this question said they “sometimes ask permission” or “never ask permission”. Our experience suggests that far fewer hunters ask permission than these figures would indicate. One of the authors has owned a 60 acre [24.6 ha] piece of forestland for 35 years which is hunted by dozens of people every year. No one has ever asked permission to hunt there – not even once. One man said when asked why he never asked permission of landowners, “It is Maine tradition to hunt where you want. No one asks to hunt on my land and I do not ask permission to hunt on their land”.

Respondents were asked whether they agreed with the statement: “I do not hunt on posted land, but I know someone who does”. Of the 164 who answered this question, 47 (29%) agreed. Agreement with this type of statement confirms what a lot of Mainers know, namely that there are many (but not all) hunters who make a habit of hunting on posted land. Some hunters treat using other people’s land, especially posted land, as a game. One person who moved to Maine from Pennsylvania observed, “Most Mainers have what they call ‘Indian rights’. That means that if they hunted in a place all their lives, they are going to continue to hunt there whether or not the person [owner] posts the land”. In some instances, a social class antagonism is evident. The attitude of some hunters is that the land is owned by large corporations or wealthy individuals, who are being “selfish” in closing off their land to the public. They appear to feel no compunctions about hunting on such property. The fact that the owners do not want you there adds to the allure.

Our fieldwork and survey results revealed a wide difference in attitudes among Maine people regarding the public use of private land. At one extreme are those who strongly support the open land tradition. Many are hunters who do not own land. They truly feel they should be permitted to continue to hunt anywhere they want as long as they do not “abuse the land”. They have always hunted where they want, and in their view they should be able to continue to do so.

At the other extreme are landowners who feel that the public has no right to use their land. Many clearly felt abused by an uncaring public and forcefully stated that landowners had the right to post their property. Some are outraged if people do not stay off their property. An increasing number of landowners agree with the man who told us, “That is my land. I bought it; and I pay the taxes on it. No one has any right to come on my land without permission”.

However, the attitudes of the majority of landowners and hunters reflect a cultural bind. Attitudes are inconsistent, contradictory, and reflect no small amount of conflict.

Most landowners feel that they have a clear legal right to deny the public the use of their property. Yet, many expressed regret that so much posting was going on. Some landowners, however – especially those who hunt – support the open land tradition. They are Mainers, after all, and are well socialized in the open land tradition.

However, many respondents who favoured the open land tradition said they could understand why landowners would post their land. They are fully aware of instances of public abuse. Still, they believe that people should be allowed to access privately owned land if they do no harm, and if they ask permission. It is common for hunters to state that landowners have no moral right to turn down a hunter who asks to hunt their property.

Both landowners and hunters felt that there was a difference in what was expected of small landowners and the rights of large landowners. Many expressed the idea that the public should be able to use large pieces of privately owned land, but do not have the same expectations of small landowners, especially in settled areas, where having hunters close to houses poses both privacy and safety issues.

3.5. Accommodation to the cultural bind

How do Mainers accommodate to a situation in which the forestland is private and yet produces a common-pool resource? In the past, accommodation between hunters and landowners was facilitated by the fact that many of the people hunting in a given area were themselves landowners from that area. Older key informants conceived of the situation as involving an exchange. One said, “People hunted on my land and I hunted on their land. It was the Maine way and it worked out well for everyone”. There was also a general acceptance of the idea that landowners had many rights to the land, but they did not have the right to exclude the public from hunting and fishing on it.

Today increasing numbers of landowners are far less tolerant of others using their property. This has resulted in a number of different conflict-avoidance strategies. The most common is avoidance: sportsmen try to stay out of the way of landowners, particularly when they are going on posted land, while landowners go to some length not to confront recreational users of their property, especially hunters. One hunter admitted, "I hunt on their land when I know they've gone to Florida". Many landowners make it a point not to go into their own woods any more than necessary during hunting season.

Moreover, sportsmen's groups have recognized that they are having problems with landowners and that the open land tradition on which their various sports depend is being threatened. They have made serious attempts to reduce the incentive landowners have to post their land by urging their members to act responsibly and avoid activities that annoy landowners. They stress the importance of getting permission before they use someone else's property. One snowmobile club gives landowners an annual steak dinner. However, none of these recreational groups has proposed compensating landowners for the use of their property.

3.6. Forces for change

At present there are forces working to reduce or abolish the open land tradition and others working to retain it. The situation is very much in flux, but the tide appears to be working against the open land tradition. Two factors are operating to greatly reduce the amount of open land in Maine: sprawl and posting.

In the past few decades, Maine's population, especially in the southern part of the state, has been spreading out into rural areas resulting in the conversion of a good deal of forestland to housing and non-forest use (Acheson 2008). But sprawl is spreading into central Maine as well, and in northern Maine there are many seasonal dwellings being built – even in remote regions.

At the same time, there has been a great rise in the amount of posting of private property. A study by the SWOAM (Small Woodland Owners Association of Maine) showed that in 1991, 14.9% of those surveyed said they were posting their land and did not allow any recreational use at all (Acheson 2006). In a 2005 landowner mail survey conducted by the senior author, 39.4% said they were posting their land.

Why are more landowners posting their property? The most immediate reason is that they feel their property has been abused by the public. Some are concerned about hunters operating too close to their homes; many mentioned trash dumping, and a small number had timber stolen. However, the largest source of problems was ATVs which make a lot of noise and can make huge ruts (Acheson 2006).

At a deeper level, basic demographic and attitudinal changes are at work. The population of urban areas in the northeastern part of the US has increased, bringing a far larger number of people to rural areas seeking recreation. This has increased the friction between landowners and those wishing to use their land for recreation. Moreover, a decline in the hunting population and an increase in

the number of people interested in nature and the animal rights movement has undoubtedly made an increasing proportion of people less tolerant of hunters (Maine Department of Inland Fisheries and Wildlife 1992).

The fate of the “open land tradition” will also be influenced by events in the political arena. In Maine currently there are factions seeking to end or curtail the open land tradition, most notably the Small Woodland Owners Association of Maine [SWOAM]. They are opposed by a powerful coalition consisting of the tourist industry, sportsmen, the Maine Department of Inland Fisheries and Wildlife, and the governor’s office, who are trying to preserve the open land tradition.

In the past few years, a number of votes on bills have occurred in the legislature which, in effect, supports the rights of landowners to curtail public use of their land. One bill, which was defeated, aimed to abolish the century-old blue law prohibiting Sunday hunting which would have opened all land in Maine to Sunday hunting. Another defeated bill would have required all landowners who receive tax breaks under the Tree Growth Tax Law [see below] to keep their land open for public recreation. Further supporting landowners’ rights, a bill was passed requiring ATV owners to get permission from landowners before riding on their land (SWOAM NEWS 2005).

4. New combinations of property rights

Conservation easements are being established on large amounts of forestland, mainly in northern Maine. This is being done by owners of forestland who are selling the development rights to conservation organizations. The former seek to obtain more income from the land; the latter seek to preserve the land. The conservation easement is created by a contract between the landowner (e.g. a timber company) and a conservation organization which specifies that the landowner will not sell parcels for houses, will harvest the trees using high quality forestry practices, and will permit the public to use the land for “traditional activities” (i.e. hunting, fishing, snowmobiling etc.). The contract, in effect, creates two owners each with a different set of ownership rights – the original landowner, and the owner of the easement.

In addition, North Maine Woods is an organization of large forest landowners whose members allow the public use of their lands for a fee. This program was started in 1972 and now involves 3.5 million acres [1.4 million ha], which are located in the still undeveloped northwest quadrant of the state (North Maine Woods 2006). The forestland owners hold the rights to harvest the trees (private good); but the paying public enjoys rights to camp, canoe, snowmobile, etc. on the property. In the American South hunting leases have become quite common (Forest Landowner 2008), and a few Maine landowners are following suit. The landowners continue to harvest trees, while exclusive hunting rights are held by a club or a group of hunters. These arrangements produce both private goods and toll goods, which are enjoyed by people with different ownership rights.

4.1. Government regulation of rural Maine land

The federal, state and local governments have enacted a complicated set of regulations. Most are designed to protect natural resources, including forests, water quality, and wildlife.

Several Maine laws are designed to preserve forests. The Tree Growth Tax Law substantially lowers land taxes to give landowners an incentive to maintain their forestland and practice sustainable forestry. To qualify for this program, a landowner must hire a forester to develop a forest management plan to ensure sustainable management. The plan must be followed, and the land must remain in forest under penalty of law. In addition, the Maine Legislature enacted the Forest Practices Act in 1989 to limit clearcutting. In 2005 a law was enacted to stop liquidation harvesting (i.e. the practice of buying land, stripping it of timber, and selling the cut over land). Finally, several Maine towns have established restrictive timber harvesting ordinances.

Water quality rules have been established by both the Maine Legislature and the US Congress to enforce “best management practices” when forests are cut or roads are built in forestlands. State law and the federal Clean Water Act set very strict rules for timber harvesting and building in shoreland and wetland areas.

Several laws are aimed at protecting wildlife. The most restrictive is the federal Endangered Species Act which prohibits all human activities that might possibly harm listed species, regardless of the cost to landowners.

All of these laws are in addition to town and state zoning ordinances regulating buildings and the placement of roads.

Landowners feel that many laws impose an unreasonable burden on them. While some may be exaggerating, it is clear that regulations are placing increasingly strict limits on the rights of landowners to manage and extract resources from their land.

5. Discussion

5.1. Property rights and property disputes

In Maine it is commonly stated that over 90% of the land is privately owned. But describing all of this land as “private property” oversimplifies a very complicated ownership. It has long been recognized that property involves a bundle of rights and that owners can have different combinations of those rights. Schlager and Ostrom (1992) distinguish between five different types of property rights: access, withdrawal, management, exclusion and alienation. Maine forestland owners have the right to access their property, and they can sell the land or give it to kin. Landowners can also manage and withdraw their timber, except as those rights are controlled by state and federal conservation laws. Maine landowners, however, do not have a clear right to exclude others from their property and that is the source of the controversy over the “open land” tradition. The recreational public has appropriated some of the rights of access to the property; and it has also gained some benefits of the land in the form of recreation.

This situation may be far from uncommon. Von Benda-Beckmann et al. (2006, 17) say “a major distinction is made in all societies between rights to regulate, supervise, represent in outside relations, and allocate property on the one hand, and rights to use and exploit economically property objects on the other”. The Maine situation finds a close parallel in Western Europe. In much of Western Europe, especially in Scandinavia, the public has the right to roam on privately owned land for exercise or recreation (Kaltenborn et al. 2001, 418).

There are also a number of societies in which private property and common property have been combined in various ways. In several European countries owners of estates may have the rights to timber and agricultural products, but peasants have the *de facto* right to gather mushrooms, nuts, and firewood, and to use the land for grazing (see for example Blok 1974, 40). Eggertsson (1990, 89) discusses a case in which government land is appropriated by the public to produce a “de facto commons”. In other societies, the same parcel of land is held privately at one time and is a commons at another (Bauer 1987; Vondal 1987). Lesorogol (2008) describes a situation in which common land is being privatized, but still retains many features of a common-pool resource.

A number of authors have commented that conflicts over property rights can be exacerbated by “legal pluralism” (Sturgeon and Sikor 2004, 4–8; Muttner 2006, 269, 273) where two different conflicting legal codes buttress the positions of different claimants, leaving ownership rights ambiguous. Verdery (1999) writes about “fuzzy” property rights in post-Socialist Eastern Europe, where very rapid social change has resulted in many conflicting claims to property. There is a growing literature on ‘fuzzy’ property (Sturgeon and Sikor 2004).

In Maine, it is not a matter of having two different legal codes; the problem is a conflict of laws. The law of trespass supports the position of landowners seeking to control access to their property, while the Great Pond Law gives credence to the claims of recreational users who want access to rural land. But there can be no question that the result is “fuzzy” property rights, if we mean by that term that the rights of owners to exclude the recreational public are costly and uncertain.

Conflicting claims to resources can be supported by different ideologies (Lindayati 2003). In Maine, there are landowners who believe they have a right to exclude the public from their property, and others (mainly hunters) who believe they do not. If one can judge from our research, there are many Mainers who accept both ideologies, a situation that results in a cultural bind. This may be one of the unusual aspects of the Maine case.

5.2. Goods and property rights

Ostrom et al. (1994, 7) classify goods as one of four types (see Figure 1). Until recently there has been a tendency to associate one type of property with one type of good, a problem which has been discussed by McKean (2000). Private property is used by the owner to provide goods for him or herself; public goods are usually

		Subtractability	
		<i>Low</i>	<i>High</i>
Excludability	<i>Difficult</i>	Public Goods	Common-pool Resources
	<i>Easy</i>	Toll Goods ^a	Private Goods

Source: Ostrom et al. (1994, 7).

^aToll goods are called club goods in much of the literature. For an introductory discussion of club goods, see, for example, Cornes and Sandler (1986).

Figure 1. A classification of goods.

produced by the government since they cannot be produced through a market; and common-pool resources are produced in situations in which there are insecure property rights or group property rights.

In Maine, privately owned forestland does not produce one type of good; it produces every kind of good listed in Figure 1; and the rights to withdraw those goods is “owned” or controlled by different categories of people. Land owned by private owners produces private goods in the form of timber, pulpwood and agriculture goods which only the landowner has the right to take. When that same land is used by hunters, it produces a common-pool resource in the form of game and hunting services. Game is a common-pool resource because game is a subtractable resource and the open land tradition makes it costly to exclude hunters.

This same private land also produces a wide variety of public goods. It is used by members of the public for snowmobiling, bird watching and skiing, which are non-subtractable activities. Moreover, state regulations provide other kinds of public goods in the form of erosion control, wildlife habitat, and carbon sequestration.

Privately owned land that has been put in conservation easements produces a number of goods. The original owners are using the forests to provide private goods (i.e. timber); the owners of the conservation easements are providing common-pool resources to the public in the form of hunting and fishing rights, and a public good in the form of uncluttered vistas, snowmobile trails, etc. Thus, the land held under conservation easements involves private goods, public goods and common pool-resources.

Moreover, the owners of private land who are charging the recreational public a fee (e.g. North Maine Woods) or who are leasing land out for recreation are creating still another combination of goods. The forestland owners hold the rights to harvest the trees (private good); but they are also creating a toll good when they sell the rights to camp, canoe, snowmobile, etc. on their property. The same combination of private goods and toll goods is being created by a few forest landowners who are selling hunting rights on their property.

This situation in Maine points up something very important – namely that the bundle of rights to a single parcel of land can be allocated or appropriated by

different types of people or organizations which can result in property producing different types of goods at the same time. In no society does an owner have all of the rights to his or her property; some of those rights are always reserved for the society and other rights cannot be enforced, resulting in them being appropriated by others (North 1990, 33). Moreover, the four types of goods do not line up with four different types of property rights.

Cases where multiple types of goods have been produced by a single property regime have been noted by other authors. Short (2008, 206) points out that common land in England and Wales has evolved to produce three broad classes of goods. Yandle (2007) speaks of “mismatches” to convey the same idea in New Zealand.

While there is little consensus on the linkages between property rights, governance structures, and types of goods, there is a growing body of literature on this topic. Von Benda-Beckmann et al. (2006, 19) talk about “hybrids” to describe property arrangements stemming from plural legal systems and producing different types of goods. Several other authors decouple resources from institutional arrangements governing them. While they make different arguments, one of the threads that run through their work is the idea that rights of ownership can be combined in a wide variety of ways to create different institutional structures to manage a variety of types of resources (Bromley 1991; Edwards and Steins 1996, 1998; Berge 2002; Ostrom 2003; Sandberg 2007; Short 2008). In this regard, Elinor Ostrom (2003, 249) notes, “Thus, common-pool resources are not automatically associated with common-property regimes – or with any other particular type of property regime”. The Maine case suggests that the situation may be more complicated than even this statement suggests. It is entirely possible that all types of goods can be produced by a large number of types of property regimes. Nothing definitive can be said with certainty about this situation until more case studies have been produced.

Literature cited

- Acheson, J. M. 2006. Public access to privately owned land in Maine. *Maine Policy Review* 15(1):18–31.
- Acheson, J. M. 2008. Maine: On the cusp of the forest transition. *Human Organization* 67(2):125–136.
- Acheson, J. M., and T. Doak. in press. Inheritance, land sales and the future of Maine’s Forests. Submitted to *Ecological Anthropology*.
- Austin, P. 2003. *Roxanne Quimby purchases high priority 24,000 acre township east of Baxter Park*. *Maine Environmental News*. November 24, 2003. <http://www.meepe.org/files03/pa112403.htm> (accessed August 21, 2006).
- Bauer, D. 1987. The dynamics of communal and hereditary land tenure among the Tigray of Ethiopia. In *The question of the commons*, eds. B. McCay and J. Acheson, 217–230. Tucson: University of Arizona Press.

- Berge, E. 2002. Varieties of property rights to nature. Some observations on landholding and resource ownership in Norway and England. In *Forest law and environmental legislation. Contributions of the IUFRO research group 6.13 Proceedings VII*, eds. F. Schmithüsen, G. Iselin, and P. Herbst, 14–33. Zurich: ETH.
- Bernard, H. R. 2006. *Research methods in anthropology*. Fourth Edition. Lanham, MD: Altamira Press.
- Blok, A. 1974. *The Mafia of a Sicilian village: 1860–1960*. New York: Harper and Row.
- Bromley, D. W. 1991. *Environment and economy: Property rights and public policy*. Cambridge, MA: Blackwell.
- Cornes, R., and T. Sandler. 1986. *The theory of externalities, public goods and club goods*. Cambridge: Cambridge University Press.
- Edwards, V. M., and N. A. Steins. 1996. The role of contextual factors in common pool resource analysis. Bloomington, IN: International Association for the Study of Commons. <http://www.indiana.edu/~iascp/Drafts/edwards.pdf>.
- Edwards, V. M., and N. A. Steins. 1998. Developing an analytical framework for multiple-use commons. *Journal of Theoretical Politics* 10(3):347–383.
- Eggertsson, T. 1990. *Economic behavior and institutions*. Cambridge: Cambridge University Press.
- Ellickson, R. C. 1991. *Order without law: How neighbors settle disputes*. Cambridge: Harvard University Press.
- Forest Landowner. 2008. Hunting leases provide growing stream of forest income. *Forest Landowner* March/April:5–6.
- Hagen, J., L. Irland, and A. Whitman. 2005. *Changing timberland ownership in the northern forests and implications for biodiversity*. Report #MCCS-FCP2005-1. Brunswick, ME: Manomet Center for Conservation Sciences.
- Kaltenborn, B., H. Haaland, and K. Sandell. 2001. The public right of access: some challenges to sustainable tourism development in Scandinavia. *Journal of Sustainable Tourism* 9(5):417–433.
- Killian, L. 1991. A walk in the woods. *Forbes*, September 30:78.
- Leach, J. 2004. Governor signs executive order creating task force on traditional uses and public access to lands in Maine. Augusta, ME: Office of the Governor. <http://www.maine.gov/tools/whatsnew/index.php?topic=Gov+News&id=3398&v=Article>.
- Lesorogol, C. 2008. *Contesting the commons: Privatizing pastoral lands in Kenya*. Ann Arbor: University of Michigan Press.
- Lindayati, R. 2003. Shaping local forest tenure in national politics. In *The Commons in the New Millennium: Challenges and Adaptations*, eds. N. Dolsak and E. Ostrom, 221–264. Cambridge, MA: MIT Press.
- Maine Department of Inland Fisheries and Wildlife. 1992. A report on the program of landowner relations. Submitted to the Legislative Joint Standing Committee on Fisheries and Wildlife, March 11, 1992. Augusta, ME: Maine Department of Inland Fisheries and Wildlife.

- Maine Revised Statutes. 2007. Title 14: Court Procedure – Civil, Part 1: General Provisions, Chapter 7: Defenses Generally, §159-A. Limited liability for recreational or harvesting activities. Augusta, ME: Office of the Revisor of Statutes. <http://janus.state.me.us/legis/statutes/14/title14sec159-A.html>.
- McKean, M. A. 2000. Common property: What is it, what is it good for, and what makes it work? In *People and Forests. Communities, Institutions, and Governance*, eds. C. C. Gibson, M. A. McKean, and E. Ostrom, 27–55. Cambridge: MIT Press.
- McWilliams, W. H., B. J. Butler, L. E. Caldwell, D. M. Griffith, M. L. Hoppus, K. M. Laustsen, A. J. Lister, T. W. Lister, J. W. Metzler, R. S. Morin, S. A. Sader, L. B. Stewart, J. R. Steinman, J. A. Westfall, D. A. Williams, A. Whitman, and C. W. Woodall. 2004. *The forests of Maine: 2003*. Resource Bulletin NE-164. Radnor, PA: U.S. Forest Service, North East Research Station.
- Muttenzer, F. 2006. The folk conceptualization of property in Madagascar. In *Changing properties of property*, eds. F. von Benda-Beckmann, K. von Benda-Beckmann, and M. Wiber, 269–292. New York: Berghahn Books.
- Northern Forest Land Council. 1994. *Finding common ground: Conserving the northern forest. Report of the Northern Forest Land Council*. Augusta, ME: Northern Forest Land Council.
- North Maine Woods. 2006. *History of North Maine Woods*. Ashland, ME: North Maine Woods, Inc. <http://www.northmainewoods.org/history.html> (accessed August 21, 2006).
- Ostrom, E. 2003. How types of goods and property rights jointly affect collective action. *Journal of Theoretical Politics* 15(3):239–270.
- Ostrom, E., R. Gardner, and J. Walker. 1994. *Rules, games and common-pool resources*. Ann Arbor: University of Michigan Press.
- Rubin, J., S. Hart, and C. Morris. 2001. *Gasoline consumption attributable to snowmobile use in Maine*. Orono, ME: Margaret Chase Smith Center for Public Policy, University of Maine.
- Sandberg, A. 2007. Property rights and ecosystem properties. *Land Use Policy* 24:613–623.
- Schlager, E., and E. Ostrom. 1992. Property rights regimes and natural resources: A conceptual analysis. *Land Economics* 68(3):249–262.
- Short, C. 2008. The traditional commons of England and Wales in the twenty-first century: Meeting old and new challenges. *International Journal of the Commons* 2(2):191–221.
- Sturgeon, J., and T. Sikor. 2004. Post-socialist property in Asia and Europe: Variations on ‘fuzziness’. *Conservation and Society* 2(1):1–17.
- Supreme Judicial Court of Maine. 1952. Smedberg v. Moxie Dam Company. *Maine Reporter* 148:302, 304–305.
- SWOAM NEWS. 2005. Legislative updates. *SWOAM NEWS* (July) 30(7):5.
- Verdery, K. 1999. Fuzzy property: rights, power and identity in Transylvania’s decollectivization. In *Uncertain transition: Ethnographies of change in the*

- postsocialist world*, eds. M. Burawoy, and K. Verdery, 53–82. Lanham, MD: Rowman and Littlefield Publishers.
- von Benda-Beckmann, F., K. von Benda-Beckmann, and M. Wiber. 2006. The properties of property. In *Changing properties of property*, eds. F. von Benda-Beckmann, K. von Benda-Beckmann, and M. Wiber, 1–39. New York: Berghahn Books.
- Vondal, P. 1987. The common swamplands of southeastern Borneo: Multiple use, management and conflict. In *The question of the commons*, eds. B. McCay and J. Acheson, 231–249. Tucson: University of Arizona Press.
- Yandle, T. 2007. Understanding the consequences of property rights mismatches: A case study of New Zealand's marine resources. *Ecology and Society* 12(2):27.