

Public Goods and the Commons: Opposites or Complements?

Political Theory
2021, Vol. 49(5) 774–800
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DOI: 10.1177/0090591720979916
journals.sagepub.com/home/ptx



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Abstract

The commons have emerged as a key notion and underlying experience of many efforts around the world to promote justice and democracy. A central question for political theories of the commons is whether the visions of social order and regimes of political economy they propose are complementary or opposed to public goods that are backed up by governmental coordination and compulsion. This essay argues that the post-Marxist view, which posits an inherent opposition between the commons as a sphere of inappropriable usage and statist public infrastructure, is mistaken, because justice and democracy are not necessarily furthered by the institution of inappropriability. I articulate an alternative pluralist view based on James Tully's work, which discloses the dynamic interplay between public and common modes of provision and enjoyment, and their civil and civic orientations respectively. Finally, the essay points to the Janus-faced character of the commons and stresses the co-constitutive role of public goods and social services for just and orderly social life while remaining attentive to the dialectic of empowerment and tutelage that marks provision by government.

Keywords

public goods, commons, anti-statism, James Tully, post-Marxism, privatization

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Introduction

The commons have emerged as a key notion and underlying experience of many efforts around the world to promote justice and democracy. From the co-governance of local water resources to the global movement for open access to research, the commons hold out a promise of equality, inclusion, and sustainability. Reflections on the normative appeal and critical purchase of the concept abound as the field of commons studies matures. One outstanding aspect of these reflections is how they are couched in anti-statist, and not merely in anti-market, terms. The point of the commons is, in a slogan, to inaugurate a world “beyond market and state.”¹ The opposition between the commons and trends of privatization, commodification, and financialization (together with their associated policies, rationalities, and subjectivities) hardly comes as a surprise. More peculiar is that they also serve to articulate a radical critique of public goods that are backed up by governmental compulsion and coordination. This critique becomes all the more pronounced when their provision, notably in its welfare state form, is pictured as the handmaiden of late capitalism and its acquisitive spirit, giving rise to anathemas like normalization, tutelage, and bureaucratic domination.

This essay argues that political theories that posit an inevitable opposition between government-provided public goods and the commons are deeply mistaken. If transformative projects of “commoning” are to fulfil their normative promise, they must instead be embedded in, and enabled by, an authoritative public infrastructure. Instead of conceiving them as foes, the challenge is to promote virtuous circles of interplay between public and common modes of providing and enjoying goods.² This challenge becomes especially crucial to counter undesirable instances of privatization. The underlying motivation for this essay is that an orientation on objects, and on different types of goods, does not block our sight of (in)justice in social relationships, but instead helps us to illuminate and criticize it in unforeseen ways. Different types of goods postulate, I submit, different types of human relationships and represent different visions of social order and regimes of political economy.³

My essay first presents a reconstruction of the post-Marxist view of the commons, which associates them with practices of inappropriate usage that must be pitted against a regime of public and private property that is secured by state and market. While there is much to learn from its critique of proprietary models of social relations, the second section argues that this view fails to appreciate the normative significance of the distinction between differentiated and absolute conceptions of property, as well as the contingent rather than necessary character of the link between “inappropriability” and desiderata of equality, inclusion, and sustainability. The third section presents an

alternative, pluralist view of the commons that is inspired by James Tully's work. Tully offers crucial insights to theorize a compatibilist account of public goods and the commons, concepts that correspond to his distinction between modern and diverse modes of citizenship. This view stresses the plurality among and within different modes of provision and enjoyment, and attunes us to their dynamic interplay. Combinations of various modes of provision and enjoyment, which take into account contextually relevant motivational and institutional constraints, will promote inclusion, equality, and sustainability in diverse ways.⁴ In conclusion, I point to the Janus-faced character of the commons and stress the primacy of an infrastructure of government-provided public goods and social services, while (borrowing from Habermas) remaining attentive to the two sides of its dialectic of empowerment and tutelage.⁵

Before proceeding, some preliminary terminological clarifications on the concepts of public and common goods are in order. This essay analyzes the advantages and limitations of several important marks of distinction and the overlap between them. These include the inherent characteristics of consumption upon which mainstream economics lays stress in terms of nonexcludability and nonrivalry, and the post-Marxist focus on their position within or beyond systems of property. My analysis, however, emphasizes the importance of drawing the distinction in terms of different modes of provision and enjoyment. These are, in turn, predicated on different kinds of social relationships. Unlike the commons, public goods refer to objects around which persons are related in an association of ineluctable and inescapable political authority—notably, but not exclusively, states. Crucially, the infrastructure they compose rests on the means of compulsion and coordination that are peculiar to this association's government, such as legal enforcement or taxation. Moreover, usage of these means ought to be subject to control by its members (i.e. democratic control).⁶ By contrast, the commons are provided and enjoyed through active participation in a myriad of voluntary relationships from which dissociation is in principle possible.⁷ My task is to spell out how these modes may complement one another in a normatively desirable and empirically plausible way.

The Post-Marxist View: From Property to Usage

Michael Hardt and Antonio Negri's towering contribution has given the notion of "the common" much of its currency, which they articulate as the spontaneous productive force of the "multitude" that must be liberated from the grips of "empire."⁸ Hardt and Negri diagnose how property titles have transformed from principal instruments of capitalist accumulation into the

central obstacle for the “biopolitical” production of commonwealth. The tendency to infuse the commons with both anti-market and anti-statist qualities is clearly seen in Hardt:

Too often it appears as though our only choices are capitalism and socialism, the rule of private property or that of public property, such that the only cure for the ills of state control is to privatize and for the ills of capital to publicize – that is, to exert state regulation. We need to explore another possibility: neither the private property of capitalism nor the public property of socialism but the common in communism.⁹

For Hardt and Negri the concept of the common(s) not merely serves as a diagnostic tool for a negative critique of late capitalism. They also present it as the cornerstone of a positive organizational vision. But this vision remains oblique. While they encourage “an entrepreneurship of the common [which] functions within a democracy of producing subjectivities endowed together with the power of decision” and claim that biopolitical labor’s ingredients of cooperation, autonomy, and network organization “provide solid building blocks for democratic political organization,” it is difficult to see how these general recommendations give specific institutional content to their view.¹⁰

This institutional ambiguity is reinforced by Hardt and Negri’s take on government-provided public goods and social services. On the one hand, they instruct readers to rid themselves of the “illusion” of social democracy and its attempts at “resurrecting the welfare structures and social mechanisms necessary for capital to guarantee the social reproduction of the working class.”¹¹ On the other hand, they consider resistance against the destruction of welfare arrangements as “an eminently ethical and important task” and subsume public goods and social services under their broader concept of commonwealth. Moreover, they also support reforms like a universal basic income, which clearly require engagement with, rather than exodus from, the state.¹²

A more robust institutional account is articulated by Pierre Dardot and Christian Laval, who similarly seek to theorize the commons with revolutionary intent.¹³ Dardot and Laval credit Hardt and Negri for proposing a theoretical transition from the commons in the plural toward the common in the singular, and for enlisting the latter as the central concept to inform a critical theory in which the “present of capitalism” is no longer read “as a continued repetition of its origins.”¹⁴ For to speak of the commons in the plural is to refer to those natural, precapitalist common pastures that at the dawn of capitalism were enclosed and transformed into private property. This archaic connotation of the commons mistakenly suggests that what is at stake today is

merely the protection and defense of existing commonwealth and resources against the destructive forces of capitalism. Plural usage prevents us from recognizing the novelty of the common as a contemporary generative force: we are not just witnessing a return but also an inauguration of the commons.¹⁵ Dardot and Laval thus pose the strategic question of how to produce and institute the common in organizational terms.¹⁶ Their answer centers on the idea of inappropriable usage, to which we can turn after reconstructing their account of the notion's pedigree.¹⁷

Dardot and Laval define the common as "the political principle of co-obligation of all who are engaged in the same activity."¹⁸ This definition captures the twofold etymological sense of the Latin notion *munus*, in terms of both obligation and gift, which calls for participation in the tasks of a collectivity. Since the term *munus* designates active mutuality or reciprocity, the common refers to "a form of action – a *praxis* – and not to a form of being or having."¹⁹ Conceiving the common as *praxis* excludes an understanding of obligation that is rooted in a notion of belonging, which is not itself conditional on active participation (thus denying obligations based on membership in terms of nationality, race, ethnicity, sex, etc.).²⁰

Dardot and Laval put Aristotle's vocabulary of *koinôn* and *koinônein* to the service of their conception of the common: "the practice of sharing [*koinônein* or *mise en commun*] becomes the condition of possibility for all that is common [*koinôn*], in its affective and normative dimensions."²¹ They assert its internal relationship to democracy as follows:

If "commune" is the name for local political self-government and "commons" the name of the diverse objects that are taken charge of in the collective activity of individuals, so "common" is properly speaking the name of the principle that animates this activity and at the same time presides over the construction of this form of self-government.²²

But historically the fortunes of this political understanding of the common as a *praxis* of co-obligation have been compromised by several rival understandings that Dardot and Laval excavate in their archeology of the term. These include the statist-theological conception of the common good, the essentialist conception of the common as grounded in our shared humanity, and the naturalistic conception articulated by Roman law and contemporary economic theory. All three exemplify what the authors call a regretful "reification of the common," or essentialism, which denies that "it is only the practical activity of men that can render things common, just as it is only this practical activity that can produce a new collective subject."²³ Let us briefly consider each in turn.

First, the political conception of the common is obscured by “recourses to ‘the common good,’ which are accompanied by a certain number of perfectly anti-democratic postulates which entrust to the state, or to ‘sages’ or ‘experts in ethics,’ or again to the Church, the care of telling what it is.”²⁴ The notion of the common good is troublesome because its definition has been the exclusive prerogative of civil and ecclesiastical authorities. If Dardot and Laval fault Roman political doctrine for the governmentalization [*étatisation*] of the common, they hold the rise of Christianity responsible for its spiritualization, deflecting from its material dimensions. Since the common good has too often served as a pretext for oppression or to justify hierarchies, it should not be rehabilitated for their revolutionary project.²⁵

A second instance of the reification of the common is manifest in attempts to ground it in a universal essence of humanity, such as our sociability, rational nature, being creatures of God, perfectibility, moral dignity, etc.²⁶ This alignment of the common with the dignity of humanity requires a “semantic ennoblement” of the term (e.g., Kant’s and Arendt’s accounts of common sense), since historically the common used to designate what by contrast was considered ordinary and vulgar. This essentialist conception also underlies attempts to include the human genome under the banner of “the common heritage of mankind.” Since the 1970s, this notion of international law reserves certain commons (like the deep seabed, or outer space and cyberspace) for the benefit of all humanity, and excludes them from statist sovereignty or corporate appropriation claims.²⁷ If this notion may be appreciated metaphorically to preserve existing commonwealth, Dardot and Laval deem it inadequate to ground struggles for justice and democracy. Since humanity is not a concrete legal personality, the idea postulates a heritage without an inheritor who is also a legal subject with accompanying rights and duties. Further, as evident in the case of the human genome, it naively suggests that what should be common as a matter of right or *de jure* can be derived from what is common biologically or *de facto*.²⁸

A third source of reification can be traced to Roman legal vocabulary and is most prominently present in the typology of goods of contemporary economic theory. Here the natural characteristics of objects, rather than an immutable essence of humanity, predetermine the common’s orbit. Dardot and Laval recall the abundant distinctions found in Roman law that set *res communes* apart from *res publicae*, *res privatae*, *res nullius*, etc. Whereas *res nullius* are up for grabs and merely unappropriated, *res communes*, like air or running water, are inappropriable on account of their inexhaustible or elusive characteristics. Further, while both are inappropriable, *res publicae* are, unlike *res communes*, rendered so by an act of public law. Roman legal

vocabulary, in other words, treats the commons as an “originary enclave,” “pre-juridical paddock,” or “receptacle” of all things deemed inappropriable on account of their natural traits.²⁹

But this naturalism stands in tension with the Roman understanding of *res* itself, which refers to an object of political institution and legal contestation rather than a tangible, material thing. Since Roman law was not organized around a metaphysical distinction between subject and object, “*res* is not projected onto the plane of a passive nature or purely material exteriority.”³⁰ As Yan Thomas explains, its “central signification remains that of an ‘affair,’ taken into the networks of adversarial debate: *res in controversia posita*.”³¹ The category of *res communes* therefore exposes “the permanent difficulties of qualifying in legal terms natural entities that exist prior to law.”³²

The typology of goods of contemporary economic theory presents, according to Dardot and Laval, the paradigmatic instance of the common’s reification. In this typology, the criteria of excludability and rivalry in consumption distinguish between public goods (nonexcludable, nonrival—e.g., a street light), private goods (excludable, rival—e.g., a pair of jeans), club goods (excludable, nonrival—e.g., a toll road), and common goods (nonexcludable, rival—e.g., a fishery).³³ Dardot and Laval forcefully object that this typology errs in identifying objects as being public or common independently from, and anterior to, those contestations that institute them as such.³⁴ Moreover, the economic framework (with its postulates of scarcity, strategic rationality, etc.) mistakenly assumes that goods are private as a rule, and public only as an exception. It holds that shared provision and enjoyment are justified exclusively as *post hoc* corrections of market failures that are provoked by free rider logic.

Elinor Ostrom’s work on the commons is not exempted from Dardot and Laval’s critique.³⁵ Even if Ostrom may be credited with dispelling the myth of the tragedy of the commons and for giving pride of place to institutional analysis, Dardot and Laval argue that her polycentric model of economic reality remains captive to essentialism and the controversial postulates of mainstream economics. This reduces the critical leverage of her research program, and explains why Ostrom has difficulty confronting power asymmetries and injustices that mark public and private modes of provision and enjoyment:

[Ostrom] does not turn the common into a general principal of society’s reorganization. Her theory really constitutes a pragmatic call for the plurality of forms of activity, of property rights, and economic rules. The construction of the commons imposes itself only in particular situations, for certain specific goods, which in no way calls into question the rationality of markets or of the state.³⁶

Dardot and Laval, by contrast, aim at nothing less than “the political constitution of the common as an alternative generalizable rationality.”³⁷ This requires an alternative conception of the commons as a *praxis* of jointly instituting and enjoying rights of usage that are premised on inappropriability: “the choice is not between communal property and private property, but between the inappropriable and property, be it private or statist.”³⁸

Dardot insists that inappropriability does not refer to a catalogue of things that is secluded from commercial exchange, but rather to joint activities of caregiving:

A “commons” is first and foremost an institutional affair and, more specifically, an institutional space defined by collectively developed practical rules. . . . [Anything] common, insofar as it is instituted as such, is a good in an ethical and political sense. By contrast, any good that is capable of being purchased and sold, is not in itself a commons. This means that a common is a good only under the consideration that it is not a possession or an acquisition. In other words, once it is instituted, a common is inalienable and inappropriable. It creates a space within which use prevails over ownership. It is, thus, not a resource in itself – even when it is related to one. In this way we understand a commons to be the active link between an object, a place, a natural resource (for example, a waterfall or a forest), or something artificial (for example, a theatre or a square), and the collective activity of those who take charge of it, preserve it, maintain it and take care of it. This activity is not external to the commons, but instead inherent in it.³⁹

In these practices it is crucial that the right of usage is actualized in conjunction with the ongoing codetermination of rules: “the right of usage is not effective if it is cut off from the right to co-produce the rules for common usage.”⁴⁰ Taking their cue from Castoriadis, Dardot and Laval call for a revolutionary imaginary in which instituted forms in society are continuously transformed and amplified by a radical “instituent *praxis*.” So understood, the revolutionary project of the common points toward a consciously self-instituting society aimed at “the self-production of a collective subject in and through the continuous co-production of law”—and this, they claim, “is but another name of democracy.”⁴¹

Dardot and Laval consider several legal structures as a model for the institution of “the right of the common,” noting the limits of English Common Law due to its control by legal experts intent upon preserving private property, as well as of Marx’s discussion of the customary right of the poor because of its anchorage of social poverty within the physical scarcity of nature.⁴² Instead, they propose to draw on the French tradition of associative socialism (advanced, amongst others, by Marcel Mauss and Jean Jaurès) in

which principles of cooperation, reciprocity, and solidarity inform the transformative institution of, and co-obligation corresponding to, “proletarian right.”⁴³ Finally, since we suffer, not so much from a lack of cosmopolitanism but from a lack of cosmopolitics, Dardot and Laval make the case for a Proudhon-inspired federal structure with global reach to institute the common in terms of inappropriability. This structure must be “radically *non statist*” and based on an “intertwined horizontality” between political and socioeconomic communes that liberates the provision and enjoyment of goods from the pathologies of markets and governments alike.⁴⁴

A Critique of Inappropriability

No doubt the post-Marxist view has critical leverage for many efforts to promote justice and democracy. The notion of inappropriability as “beyond property” seems attractive because it escapes the pitfalls of the binary opposition between possession and dispossession and the reactionary logic implied in the “negation of negation,” which “the expropriation of expropriators” eventually has to bring about.⁴⁵ Robert Nichols argues convincingly in this regard that “insofar as dispossession and expropriation gain their normative force from a perceived violation or corruption of actually existing property relations (i.e., a species of theft), they are generally conservative concepts that moreover tend to reinforce a proprietary model of social relations that critical theorists generally seek to undermine.”⁴⁶

The notion can also claim considerable empirical traction with the shift from property to usage in the “sharing economy,” since, with profound technological changes, usage of services gains importance relative to the possession of goods. For instance, why bother to own a car if we might as well use a self-driving one providing the same mobility? Of course, the sharing economy is also exemplary of the further spread of market mediation, but it may well give substance to a mode of provision and enjoyment in which usage prevails over ownership. Nevertheless, there are reasons to caution against this revolutionary call to depart from the republic of property, and institute inappropriability instead. The post-Marxist view does not take the normative significance of the distinction between differentiated and absolute conceptions of property into account, and fails to appreciate the contingent rather than necessary character of the link between “inappropriability” and desiderata of equality, inclusion and sustainability.

The absolute conception found its expression in William Blackstone, according to which property is the “sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.”⁴⁷

By contrast, the differentiated conception of property, according to which an owner holds property over a thing in relation to other individuals rather than directly, is informed by the Hohfeldian bundle-of-rights metaphor, and finds a more recent articulation in the array of access, withdrawal, management, exclusion, and alienation that Edella Schlager and Elinor Ostrom have reconstructed.⁴⁸

Dardot and Laval oppose the commons to both conceptions. They argue that differentiated property rights are also bound to conflict with norms of, say, inclusion, since the right to alienate can easily trump over subordinate rights of usage and management. According to the authors there is “a certain naivety in considering that there could be rights over the same thing which could peacefully coexist in favor of the expansion of the sphere of property.” Since a disaggregated conception is hierarchically structured, in which usage has a subordinate status, situations are allowed in which usage is a “right to consume one’s individual share of a ‘good’ but the fate of which depends foremost on the good will of the owners or, at best, a right to ‘manage’ a ‘resource’ under the control of an authority which alone is entitled to take the decisions.”⁴⁹

It is unclear, however, if these situations present an argument against both conceptions of property, or if they merely alert us to the importance of just distributions of property titles. Moreover, the categorical rejection of property seems to assume that it is inherently exclusionary and prejudicial against other norms like equality or sustainability. However, just as property titles do not dictate objectionable exclusion of others, nor unsustainable exploitation of the object over which it is held, so it does not follow that inappropriable usage, and the codetermination of rules of usage, will take place in an inclusive, sustainable, or egalitarian manner. If rights to public or private property cannot prevent impropriety, so rights of common usage cannot fully ensure absence of abusiveness. In this sense, there may well be specific situations in which differentiated property rights have a comparative normative advantage over absolute titles of ownership. For instance, the fact that an artist or creator holds a property title can allow him to insist on open access to his creation, to grant inclusive rights of usage, and indeed extend rights to codetermine the rules of usage of his creation.

Of course, it may be objected that the worry here is not whether an owner actually refrains from, say, excluding others from the object he holds, but rather that s/he has the right to possibly do so. However, the trouble with this objection is not only that it overlooks the possibility of subversive strategies (e.g., copyleft) by which the institution that is denounced can actually achieve greater inclusiveness.⁵⁰ Rather, the trouble is that the specter of injustice to which the objection alerts us does not fade if an object and its

associated activity were instituted as an inappropriable commons. There is no reason to assume that with the institution of inappropriability and rights of usage, situations of impermissible exclusion, inequality, or unsustainability will no longer obtain—as if the multitude is always receptive to being instructed by justice or goodness.⁵¹ In this respect, it is important to recall Hess and Ostrom's observation that there is no necessary connection between a good's combination of excludability and subtractability, on one hand, and a specific property regime (public, private, communal, federal, state, local, etc.), on the other.⁵² To this claim we must add that the connection between either a property regime or inappropriability, on one hand, and norms of inclusion, equality, and sustainability (however specified), on the other, is also contingent. Sometimes an expansion of inappropriability may be desirable; sometimes a shift from private to public property recommends itself, while in other cases the presence or absence of property titles may be simply irrelevant to these desiderata.

Consider, for instance, a crowded metropole in which residents yearn for more public spaces like a city park.⁵³ It may be supposed that a greater share of municipal territory should be parceled out at the expense of those reserved for private housing, shops, or business offices. It is not clear why, in this scenario, the newly created city park should be instituted as an inappropriable commons rather than a public good. Following Dardot and Laval's logic of a *praxis* of co-obligation, in the case of the park as a commons the residents' usage of the park is necessarily tied to, and conditional upon, participation in the codetermination and enforcement of its rules of usage. But numerous residents may be unwilling and/or unable to devote themselves to the park's maintenance. Instead of cogoverning the park's opening hours, the number of its waste bins, its prohibition against the use of open fires, etc., residents may also prefer to influence these matters via publicly established channels of representation and accountability. They are hardly bothered, much less turned into docile subjects, by the park's administration by local officials who are employed by the city.

Even if these residents should be indisposed or incapable to cogovern the park, they may nevertheless be eager to use it in conformity with its rules, and repose there in the company of their coresidents, to play with their children, to assemble for political reasons, etc. It is therefore difficult to see why the park would be, *qua* public good taken care of by public officials, less egalitarian, and more exclusionary, than if it were a self-governing, inappropriable commons. On the contrary, since in the latter case usage is tied to active participation in the park's governance, the park as a commons leads, counter-intuitively, to a more exclusionary and unequal situation compared to the park as a public good administered by local officials. Equality and inclusion

are affected here by whether or not usage is conditional upon active cogovernance, while the presence or absence of a public property title becomes epiphenomenal.⁵⁴ The example of a city park shows how radical democratic advocates of the commons may suffer from an unintentional elitism. Casting public and common modes of providing and enjoying goods as inherently antagonistic is thus not only a strategic mistake and empirically distorted, but must also be resisted on principled grounds.

Of course, these concerns should not obscure how the public administration of things like city parks can also occasion injustices. And it may well disable or wear out the organizational capacities of groups to cogovern goods as commons. The brutal repression of commoners protesting in 2013 against the government's plan to construct a replica of the Ottoman Taksim Military Barracks that would include a shopping mall in Istanbul's Gezi Park provides one dramatic example.⁵⁵ Episodes like these show that radical democratic practices are not only generally desirable but also critical to (re)claim rightful access to vital goods like city parks, which no government ought to overturn by unjustified force, not even those claiming an electoral mandate. Nevertheless, it is important to distinguish clearly between a right and an obligation to cogovern the commons as corollary to their usage. In tying usage to cogovernance, the post-Marxist view risks excluding all who are unable or unwilling to participate and overlooks the desirability of combining it with public governmental trusteeship through careful institutional design.⁵⁶ There is reason to be skeptical, then, about proposals to align "the common" only with "the public" if it practiced as "the non-statist public," or about how much enlightenment follows from paradoxical claims that "the true task should be to make the state itself work in a non-statal mode."⁵⁷

Besides their rejection of property, what leads Dardot and Laval to insist so staunchly on aligning the common only with "the non-statist public," and how consistently can they sustain this insistence? Clearly, it rests on their indictment of the state as the ultimate force of domination, brought about by its deification through sovereigntist absolutism and transformation through neoliberalism.⁵⁸ The trouble with this indictment, however, is that it precludes the compatibility of the state, and governmental coordination and compulsion more generally, with federal structures. It may be true that a unitary state, by means of an overly centralized bureaucracy, is more likely to dominate than the "intertwined horizontality" of federal structures they favor. Yet reasons to favor "noncentered" or "nonunitary" notions of the public do not imply an argument against statism. Moreover, injustice can also manifest itself within and across a decentralized order of the commons, even if these ground co-obligation in shared activities of cogovernance rather than in exclusionary, communitarian ties of belonging and identity.

If we consider what inappropriate usage would look like in practice, Dardot and Laval's anti-statism runs into further difficulties. For instance, they celebrate the *Aqua Bene Commune* in Naples as a concrete example of how local users, ecological and social movements, as well as worker associations participate in its cogovernance alongside experts and city representatives. However, it remains unclear why their participatory inclusion is "non-statist" in any meaningful sense. On the contrary, since these commoners used public law (i.e., a compulsory means of government) to protect the provision and enjoyment of water against privatization and clientelism in 2011, the example much rather proves the possible compatibility, rather than inherent opposition, between public (compulsory) and common (voluntary) modes.⁵⁹

Further, once the authors approvingly cite Proudhon's enumeration of the local commune's competences to administer, to tax, to determine expenditures, to create schools and appoint teachers, to police, to nominate judges, etc.,⁶⁰ the reader wonders what difference remains in the distinction between statist public goods and inappropriate commons. Far from pointing to Dardot and Laval's favored passage "from the public to the common,"⁶¹ the commons have now instead become public goods inasmuch as they rest on democratic use of governmental coordination and compulsion, while the site of "statism" has merely shifted from the national to the local level. And when, finally, the authors assign a role for the state as the "ultimate guarantor of the *fundamental rights* of citizens with regard to the satisfaction of needs collectively judged as essential," their calls for a nonstatist public lose all radicalism.⁶² What they concede, in effect, is the primacy of statist public infrastructure over the commons; since usage of governmental coordination and compulsion is an indispensable institutional mechanism to secure and deliver goods not only effectively but also authoritatively (i.e., publicly protected by right), the commons cannot be expected to fulfill their transformative potential "beyond" this infrastructure. Caution against bureaucratic domination is, in short, no ground to deny that civic commoners also require a civil service.

The Pluralist View: Virtuous and Vicious Circles

At times, then, the post-Marxist view admits that we need not truly go beyond market and state, but must rather engage in countervailing practices that advance "the primacy of the common" over public and private modes. Yet the gist of Dardot and Laval's revolutionary project remains to institute the common as "an alternative generalizable rationality," such that it remains unclear how their generalization avoids the exclusion of government provision and

market mediation.⁶³ I now turn to an alternative view that appreciates the plurality within and among public, private, and common modes of provision and enjoyment. On this pluralist view, different modes are not inherently opposed, although they will sometimes bite and sometimes complement each other. This view recognizes that government-provided public goods may also disable voluntary practices of commoning. It acknowledges that many things that result from governmental coordination and compulsion are neither good nor sufficiently public.⁶⁴ Yet it is equally important to appreciate the primacy of public infrastructure, which plays more than an instrumentally necessary or enabling role for transformative practices of commoning. It has a constitutive role for such practices to unfold effectively and with respect for the rightful claims commoners advance in them. In particular, the promotion of virtuous circles between public and common modes seems particularly important to counter undesirable instances of privatization.⁶⁵

The work of James Tully is helpful to articulate this pluralist view, as he offers an appealing account of practices of commoning without projecting them onto a revolutionary plane in which public and private modes eventually wither away. Tully's account is to some extent continuous with the post-Marxist view, since he has been hesitant to conceive public goods and the commons as friends rather than foes. In the final analysis, however, he promotes synergies between them. And while his idiom does not clearly distinguish between these two concepts, Tully's articulation of the distinction and interplay between modern and diverse modes of citizenship corresponds to our contrast between government-provided public goods and voluntary practices of "commoning." What does Tully's pluralist view look like?

Tully proposes to distinguish between modern and diverse citizenship in terms of the "civil" institutional orientation of the former and "civic" practical focus of the latter. The modern orientation comes with a juridical understanding of citizens, in which the scope for participation is limited by statist power structures and institutional sedimentations, emphasizing the private roles of citizens, negative civil liberties, low-intensity exercise of democratic rights via official channels (excluding, for instance, workplace democracy), and precarious social and economic entitlements for the many.⁶⁶ From this modern perspective, citizenship loses all robust manifestations as privatization and governmentalization progressively reinforce each other, rendering human beings increasingly atomized and lethargic.

By contrast, the diverse perspective shifts attention from citizenship as a legal *persona*, which is at once protected and limited by an institutional context, towards the abundant plurality of negotiated practices in which we take care of objects of common concern—beyond, across, but also within the institutional setting of modern citizenship. Such playful,

grassroots practices may be innovative and transitory but can often claim a historical pedigree that antecedes modern citizenship, which illuminates how “long use (*usus*) and practice bring into the being the ‘right’ (*ius*) to engage in that activity, not vice versa.”⁶⁷ Such civic practices establish, nourish, and contest human relationships and their institutional configuration, distinguishing those between citizens and governors from those among citizens together. Governance relationships are not necessarily confined to the institutions of modern citizenship, although civic practices create “*Spielraum*” in official sites where such relationships can be contested and renegotiated, as when a social movement or pressure group tries to reshape public policy.⁶⁸

Nevertheless, Tully argues that the civic perspective is especially concerned with joint practices in which citizens relate directly to one another, without governance relationships and modern institutions involved as intermediaries. In this “realm of civic freedom as *isegoria*,” citizens “co-organize or ‘coordinate’ their interaction co-equally,” such that they:

[run] an entire activity on the basis of citizen partnership, not in relation to a government, but to citizenize the activity for its own sake (rather than submit to institutionalization or governance). The classic examples of citizen partnerships are the celebrated practices of direct democracy, village commons and urban communes throughout history and today, such as Porte Allegro, autonomous communities in the North and South and the Zapatista. However, the most ubiquitous and familiar example is the vast array of civic ‘cooperatives’ in the broad sense of civic organizations comprised of citizen relationships.⁶⁹

On Tully’s account, these negotiated practices “ignore the civil division between (non-democratic) private and (representative) public spheres” and are animated by a cooperative ethics and commitment to mutuality.⁷⁰

Tully points to the obstructive role of civil, institutional sedimentation, arguing that sovereigntist impositions of public infrastructure are liable to forget, if not overrun, the joint civic practices they seek to govern.⁷¹ At times, Tully’s eye for these disabling effects leads him to express strong opposition between the two modes: “from the perspective of diverse citizenship, [modern] citizenship is neither freedom nor democracy but 500 years of relentless ‘tyranny’ against local citizenship and self-reliance.”⁷² Yet Tully ultimately endorses a more nuanced take on modern institutionalization, which must not be read in a teleological register of either progressive empowerment or increased tutelage. He forcefully argues that the civic orientation will help us to conceive of institutionalization “as coming into being in unpredictable and open-ended ways out of, and in interaction with, the praxis of citizens

– sometimes furthering, strengthening and formalizing these activities while at other times dispossessing, channeling, dominating, cancelling, downsizing, constraining and limiting.”⁷³

The civic orientation has a clear eye for the role of objects of common concern: “civic activities are oriented towards *caring for* the public or ‘civic goods’ of the correlative ‘city.’”⁷⁴ And from this object orientation a telling ambiguity emerges. On one hand, Tully argues that civic practices of commoning precede, and willfully ignore, modern citizenship’s public and private modes of provision and enjoyment. On the other, he does not insulate the commons from modern institutionalization. For Tully notes that a driving force of negotiated practices is that “[when] civic citizens call a particular governance relationship into question they do so under the general critical idea that it fails to realize civic goods [like care for the environment, economic self-reliance, mutual aid, fair trade, equality among citizens] in some specific way or another. These are goods that make possible and enhance civic forms of life.”⁷⁵

Civic practices thus not only precede but also follow from and respond to (the inadequacies of) governmental coordination and compulsion to secure the public goods that make possible and are co-constitutive of common forms of life. There is, then, no reason to assume that governance relationships are less vital to civic practices than those that concern cooperative citizens directly, or to suppose that these practices can rightfully and effectively unfold without the intermediary of statist public infrastructure. Indeed, as protest movements around the world show, civic negotiations that engage with, rather than withdraw from, the institutions of modern citizenship often take center stage. By contrast, practices of “citizenizing” or commoning in which we can afford to “ignore” governmentalization and privatization in splendid isolation may be hardly available.

Tully is attentive to how civil public goods and civic commons are modified in intercourse with each other. Quasi-autarkic civic negotiations that stand secluded from public (as well as private) provision and enjoyment seem elusive, since the modern orientation associated with the latter are still to lose what Tully calls their “paramourty”:

[The] dawning awareness of the destruction of local communities, environmental devastation, global warming and climate change brought about by four centuries of expansion and exploitation under the sway of this modernizing orientation, in which these public bads are concealed as “externalities,” is gradually undermining its credibility and paramourty.⁷⁶

The question emerges, however, if the creation of more *Spielraum* for civic practices of commoning does not require a principled acknowledgment

and strategic use of the primacy (or “paramountcy”) of public goods, the infrastructure of which constitutes the better part of modern citizenship’s institutional legacy. Instead of mobilizing the civic commons to undermine this civil primacy, my contention is that friendly alliances between the two are critically important, especially when confronted with undesirable instances of privatization.

Tully’s account encourages such alliances⁷⁷ and observes its actual manifestations when “civic citizens join hands with civil citizens in the same projects from within [the institutions of modern citizenship] – such as proportional representation, deliberative democracy, democratic constitutionalism, legal and political pluralism and civic *versus* civil security.”⁷⁸ Such moments of “combining civil and cooperative” are all the more important in pushing back against the injustice that may (but does not necessarily) result from market mediation, in order to provide “the basic public goods that are privatized under the dominant form of democracy: food, shelter, clothing, health care, clean water, security and so on.”⁷⁹

Civil institutions have an indispensable role to play in fostering cooperative initiatives for such provision. Adam Dunn and David Owen make a compelling case for their construction “to facilitate the effective exercise of civic freedom.” Their focus is on the provision of “civil rights and recognized forms of interaction that facilitate engagement by reducing, and equalizing, the costs of participation.”⁸⁰ Dunn and Owen provide a crucial building block to construct friendly alliances between civic and civil modes by pointing to the centrality of publicly guaranteed rights as indispensables of an institutional landscape in which the commons can fulfill their transformative potential.⁸¹

Tully concurs with Dunn and Owen’s suggestion but stresses that they “make the crucial qualification that such institutional forms of governor-citizen relationships are not necessary or sufficient conditions of civic citizenship, since [citizens] historically and presently struggle by civic means for such institutions (and others) before they have them. They are rather ‘enabling conditions’ in many circumstances.”⁸² He is keen to assert the priority of civic commoning over civil public infrastructure, claiming that “it remains important not to reify institutions as ‘preconditions’ of the activities: that is, as institutions that are prior to and independent containers of them.”⁸³ This disclaimer helps to appreciate the mutability of public infrastructure, which is continuously transformed through civic negotiations.

But to picture civil public goods as enabling but possibly also dispensable conditions for the civic commons, as Tully does, cannot adequately capture why these citizens struggle for these goods. By engaging governance relationships, they seek to transform statist public infrastructure to make their

common modes of provision and enjoyment viable in ways they could not be without such transformations. If the infrastructure of public goods is merely enabling (and therefore optional and possibly dispensable), it is not clear why those engaged in civic commoning would bother to struggle for its transformation in the first place—they would instead “ignore” it altogether.⁸⁴ A compatibilist account need not deny the primacy of public infrastructure or shy away from pointing out that the commons (much like markets) are ultimately not as “self-governing” or “self-organizing” as their proponents claim.⁸⁵ When Tully claims that public goods do not merely “enhance” or enable but “*make possible*” common forms of life, he effectively admits as much.

Moreover, if citizens engage in practices of commoning that call into question modern public infrastructure, there is no reason to expect that they intend to purge it from all relationships of governance. Civic citizens often need to form alliances with public officials, and use their means compulsion and coordination, to effectively counter obstacles posed by third parties, like private corporations. Take the example of research, which provides an illuminating case to see how synergies between civil public (compulsory) and civic common (voluntary) modes can constitute a virtuous circle when confronted with an undesirable instance of privatization.

“Civic” networks of academic researchers, transnational advocacy groups, and other citizens (i.e., the community related to the commons of research) engage with “civil” public officials, multilateral actors, and international organizations to transform research output from privatized commodities into a truly public and common good. Citizens and governors act in concert to break up the oligopoly of commercial scientific publishers, and the conservative publishing culture in academia, for the sake of rendering research available to all. While the achievements of the “civic” open access movement over the past two decades are impressive, its success remains limited due to a lack of (transnational) governmental coordination and compulsion. Further progress requires more formal, public involvement.⁸⁶

For instance, the research funders of eleven European countries, in charge of awarding publicly funded grants to researchers, have announced Plan S, coordinated by a special envoy of the European Commission, to prohibit grant recipients from publishing without open access. To the dismay of the commercial scientific publishers, Plan S is designed to take a decisive if belated step forward in the transition toward open access by giving effect to the prohibition in 2021.⁸⁷ These events help to appreciate how citizens of the “civic” open access movement revert to governors and their “civil” instruments to further their cause—from the fiscal authority for funding, the use of antitrust legislation, obliging the research community to break the reproduction of their conservative publication culture, etc. Only by promoting

synergies between “civil” public and “civic” common modes can crucial steps be taken in the direction of rightful open access and, by implication, against this undesirable instance of privatization.

Of course, as long as governments also continue to protect exclusionary and unjustifiable forms of intellectual property, civic initiatives like the Philosophical Underclass group on Facebook remain critical to push toward more inclusive access. Initiatives like these show that, at first, practices of commoning may be far from dependent on governmental coordination and compulsion and instead directed against currently unjust and undemocratic usages of these means. However, as the tragic death of programmer and activist Aaron Swartz in 2013 suggests, the price of unruly civic action without affective public protection of one’s civil rights can be unbearable.⁸⁸ While this tragedy shows the importance of Dunn and Owen’s argument, the role of public infrastructure is not restricted to enabling civic engagement by reducing the costs it may impose, since the goal of such civic initiatives must be to transform open access from, say, illegal downloading toward publicly guaranteed, legally permitted access. Ultimately, the civil institutionalization of such rightful access is not merely enabling but indispensable to realize the provision and enjoyment of research output as a truly public and common good for all. The open access movement thus presents a key example to appreciate the agonistic, dynamic interplay between public and common modes, and to promote virtuous circles between them that draw on fair distributions of political power and effective divisions of administrative labor.⁸⁹

Conclusion

Tully’s pluralist view brings out the normative appeal of the civic commons in synergy with civil public infrastructure, while remaining attentive to vicious circles and degenerations as well. He recollects that when he began “to study the civil research of Amartya Sen and the civic and cooperative research of Elinor Ostrom, the connections of complementarity became obvious.”⁹⁰ Tully presents his reading of Sen and Ostrom as offering a compatibilist account of public goods and the commons as follows:

[Sen’s “capacious” idea of justice and democracy] seeks to reform, expand, and deepen civic participation and representative government. [But] *on its own* it may not be able to address comprehensively some of the major injustices on the planet because it tends to work within and seek to reform the very institutional structure that shields the causes of these injustices from democratization. [It] may find it helpful to work with another limited yet complementary tradition of justice and democracy. This tradition is also practice based and “realization

focused,” yet in a more immediate way, and it works around, rather than within, the basic institutional structure. [This] is the living tradition of cooperative democracy that Elinor Ostrom has done so much to bring into the fields of political science and political philosophy.⁹¹

Even if Tully’s pluralist view promotes virtuous circles, it downplays the primacy of public infrastructure over civic commoning, for it claims to “work around, rather than within,” that infrastructure. And this is where our position departs from Tully’s. Tully, like other theorists of the commons, shares a tendency with the apologists of markets to regard the realm of self-chosen relationships not only as “self-governing” but also as free from objectionable manifestations of power and injustice. Like Dardot and Laval, he tends to depict the commons as the true instances of justice and democracy, which, if they are not withdrawn from the civil institutional landscape, are liable to be overwhelmed by a domineering state.

While it would be foolish to underestimate these dangers, it is important to recognize the Janus face of the commons as well. They do not always live up to their normative promise and can degenerate into sources and sites of injustice. Insofar as Tully claims strong empirical and historical traction for his civic orientation (and this distinguishes him further from the post-Marxist view), he fails to appreciate that desiderata of inclusion, equality, and sustainability may frequently be violated in the commons as well.⁹² Proponents of both privatization and commoning are not well attuned to these violations, which the dispersed “voluntary” relationships they celebrate may well manifest.

Statist public infrastructure is required to counter not only unjust instances of privatization but of commoning as well. Here the primacy of public goods shows itself in that it must equip commoners with the right and substantive means to dissociate from the commons. Such a right is also constitutive for just and orderly social life, and its protection and promotion is itself a crucial public good that government must secure at all times, backed up by the means of compulsion and coordination that are distinctly its own.

Acknowledgments

This essay has benefited much from inspiring discussions with audiences in Frankfurt, Leuven, New Haven, and Paris. I am particularly grateful to Gordon Arlen, Jeffrey Barash, Seyla Benhabib, Astrid von Busekist, Rainer Forst, Peggy Kohn, Annabelle Lever, Matt Longo, Darrel Moellendorf, Paul Nieuwenburg, Tom Theuns, editor Lawrie Balfour and her team, as well as two anonymous reviewers for this journal, for helpful comments on earlier drafts.

Declaration of Conflicting Interests

The author declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: Research for this article was supported by a Fox International Fellowship from Yale University and a Postdoctoral Fellowship from the Centre for Advanced Study 'Justitia Amplificata' at Goethe University Frankfurt am Main.

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Notes

1. See Naomi Klein, "Reclaiming the Commons," *New Left Review* 9 (2001): 81–89; David Bollier and Silke Helfrich (eds.), *The Wealth of the Commons: A World Beyond Market and State* (Amherst: Levellers Press, 2012).
2. See Maurits de Jongh, "The Primacy of Public Goods" (PhD diss., Sciences Po, Paris, 2019), 152; see also Margaret Kohn, "Public Goods and Social Justice," *Perspectives on Politics* 14, online first: 1–14, <https://doi.org/10.1017/S1537592719004614>, January 8, 2020.
3. Bonnie Honig similarly illuminates the agonistic intercourse between public goods and the commons as "each a possible expression or institutional formation [which] elicits different inhabitations of citizenship, different ways of knowing and acting, different subjectivities and different object relations." *Public Things: Democracy in Disrepair* (New York: Fordham University Press, 2017), 92.
4. I enlist inclusion, equality, and sustainability as immanent norms of the commons, with no intention of downplaying the importance of other desiderata like freedom or efficiency. I stress, however, that each mode of provision and enjoyment (including the commons) has a role to promote them, but can also degenerate into a vehicle that undermines them.
5. Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, MA: MIT, 1996), 433. The capacious notion of infrastructure is taken from Honig, *Public Things*, 11. Whereas Honig enlightens the role of public infrastructure as the scene of democratic life, I stress its co-constitutive role for just and orderly social life more broadly.
6. In a strict sense, the office of government (i.e., its obligation to provide public goods for all members) and its democratic constitution (i.e., by all members) need not coincide historically or analytically. Leaving the specifics open, I assume in a wider sense that democratic control requires not only majority decision-making but also protection of human rights, which in turn requires equal access to public

goods. Thus, the office and democratic constitution of government stand in a recursive normative relationship.

7. This points to an important overlap between common and private goods, since the latter rest on market transactions that are also notionally “voluntary.” The distinction must be redrawn in terms of the motivational principles that animate common and private modes respectively (i.e., cooperation or competition).
8. Michael Hardt and Antonio Negri, *Empire* (Cambridge, MA: Harvard University Press, 2000), 303.
9. Michael Hardt, “The Common in Communism,” *Rethinking Marxism* 22, no. 3 (2010): 355.
10. Michael Hardt and Antonio Negri, *Commonwealth* (Cambridge, MA: Harvard University Press, 2009), 160, 170.
11. *Ibid.*, 294.
12. Hardt and Negri, *Empire*, 301; Hardt and Negri, *Commonwealth*, 306–310; Chantal Mouffe usefully contrasts Hardt and Negri’s understanding of critique as “withdrawal from” with her own agonistic conception of critique as “engagement with” contemporary institutions, both public and private. “Critique as Counter-Hegemonic Intervention,” *The Art of Critique*, May 2008, <https://transversal.at/transversal/0808/mouffe/en>. On the elusiveness of Hardt and Negri’s addition of the concept of “assembly” to their institutional idiom in *Assembly* (Oxford: Oxford University Press, 2017), see Jason Frank, “Book Review: Assembly,” *Perspectives on Politics* 16, no. 2 (2018): 514–516.
13. See Pierre Dardot and Christian Laval, *La Nouvelle Raison du Monde: Essai sur la Société Néolibérale* (Paris : La Découverte, 2009); Dardot and Laval, *Marx, prénom: Karl* (Paris: Gallimard, 2012); Dardot and Laval, *Commun: Essai sur la Révolution au XXIe Siècle* (Paris : La Découverte, 2014). The latter has been published in English as *Common: On Revolution in the 21st Century* (London: Bloomsbury, 2019). This essay refers to the original French edition; all translations are mine.
14. Dardot and Laval, *Commun*, 189.
15. *Ibid.*, 189.
16. Dardot and Laval, *Marx*, 16–17.
17. Here I draw on Pierre Sauvêtre, “Le commun contre l’État neoliberal,” *La Vie des Idées*, November 21, 2014, <http://www.laviedesidees.fr/Le-commun-contre-l-Etat-neoliberal.html>.
18. Dardot and Laval, *Commun*, 23.
19. Sauvêtre, “Le Commun”; see also François Jullien, *On the Universal, the Uniform, the Common and Dialogue Between Cultures* (Cambridge: Polity Press, 2014). Dardot and Laval stress the centrality of the common or *cum munis* in a political vocabulary that includes *municipium* (city), *municipes* (citizens), *immunitas* (discharged of obligations), etc. *Commun*, 23.
20. *Ibid.*, 23.
21. *Ibid.*, 24.
22. *Ibid.*, 19–20.

23. Ibid., 49.
24. Ibid., 25.
25. Ibid., 29–30.
26. Ibid., 47. The authors somewhat crudely charge all articulations of universalism with essentialism. For an instructive distinction between essentialist and justificatory, moral and juridical universalisms, see Seyla Benhabib, “Another Universalism: on the Unity and Diversity of Human Rights,” *Proceedings and Addresses of the American Philosophical Association* 81, no. 2 (2007): 7–32.
27. Dardot and Laval, *Commun*, 37.
28. Dardot and Laval, *Commun*, 37–40.
29. Ibid., 35. See also Marie-Alice Chardeaux, *Les Choses Communes* (Paris: LGDG, 2006).
30. Dardot and Laval, *Commun*, 37.
31. Yan Thomas, “Res, Chose et Patrimoine. Note sur le rapport sujet-objet en droit romain,” *Archives de Philosophie du Droit* 25 (1980): 416 (my translation); cited in Dardot and Laval, *Commun*, 37.
32. Chardeaux, *Les Choses Communes*, 8 (my translation); cited in Dardot and Laval, *Commun*, 37.
33. See Angela Kallhoff, “Why Societies Need Public Goods,” *Critical Review of International Social and Political Philosophy* 17, no. 6 (2014): 635–651.
34. Dardot and Laval, *Commun*, 137–148.
35. Elinor Ostrom, *Governing the Commons. The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 1990).
36. Dardot and Laval, *Commun*, 143.
37. Ibid., 156.
38. Dardot and Laval, *Commun*, 231.
39. Pierre Dardot, “What Democracy for the Commons?” in *The Commons and a New Global Governance*, eds. Samuel Cogolati and Jan Wouters (Cheltenham: Edward Elgar Publishing, 2018), 22.
40. Dardot and Laval, *Commun*, 477.
41. Ibid., 445, 423.
42. Dardot and Laval, *Commun*, 347 ff.; Sauvêtre, “Le Commun.”
43. See Marcel Mauss, *Écrits politiques* (Paris: Fayard, 1997); Jean Jaurès, *Études socialistes* (Genève: Slatkine, 1979).
44. Dardot and Laval, *Commun*, 558, 565.
45. Ibid., 76.
46. Robert Nichols, “Theft Is Property! The Recursive Logic of Dispossession,” *Political Theory* 46, no. 1 (2018): 4.
47. William Blackstone, *Commentaries on the Laws of England*, vol. 2 (Oxford: Clarendon Press, 1766), 2.
48. Edella Schlager and Elinor Ostrom, “Property Regimes and Natural Resources: A Conceptual Analysis,” *Land Economics* 68, no. 3 (1992): 249–262.
49. Dardot and Laval, *Commun*, 476–477.
50. See Sébastien Broca, “Le Commun et les Communs,” *La Vie des Idées*, November 21, 2014, <http://www.laviedesidees.fr/Le-commun-et-les-communs.html>.

51. Hardt and Negri confront this objection, also put forth by Paolo Virno, by suggesting a focus on “how the multitude is not a spontaneous political subject but a project of political organization, thus shifting the discussion from *being* the multitude to *making* the multitude.” See Hardt and Negri, *Commonwealth*, 167, 169. Original italics.
52. Charlotte Hess and Elinor Ostrom, “Ideas, Artifacts and Facilities: Information as a Common-Pool Resource,” *Law and Contemporary Problems* 66 (2003): 120–121.
53. It is customary to treat city parks as nonessential public goods—that is, those that are not required on grounds of justice, rendering government provision more burdensome to justify. For an illuminating analysis, see Kohn, “Public Goods.” The COVID-19 pandemic brings into sharp relief why access to a city park is an essential requirement of justice in densely populated urban settings and is intimately connected with other nondiscretionary public goods like public health.
54. For pushback against the identification of property with exclusion, and a brilliant analysis of how property titles may be entirely “epiphenomenal” to practices of exclusion, see Avihay Dorfman, “No Exclusion,” SSRN, December 2, 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3488149.
55. See, for example, <https://carnegieeurope.eu/2019/10/24/legacy-of-gezi-protests-in-turkey-pub-80142>.
56. Peggy Kohn offers a luminous discussion of city parks in the United States and Canada. I agree with her that court rulings against social movements like Occupy, which claim that these movements privatized public space, are a sign of “agoraphobia.” But the alternative she proposes between valuing parks for “recreation” and “disruptive political activity” must not be understood in “either . . . or” terms, but allow ample scope for both—that is, allow usage for a plurality of purposes. Nevertheless, I think that Kohn’s celebration of public spaces as sites of popular resistance risks downplaying the importance of this plurality, especially when she argues that “of course some uses [of a park] are incompatible with others, but this means that the different users should work together directly to decide on the terms of their shared coexistence.” See *The Death and Life of the Urban Commonwealth* (Oxford: Oxford University 2016), 145. What if some residents who want to use the park for permissible purposes are unable or unwilling to “work together directly” with activists who occupy parts of the park, but instead want to influence these matters indirectly via representation in the municipality, so as to shape the terms of local governmental coordination and compulsion over the park? Notwithstanding this worry, Kohn’s view leaves room to accommodate these residents, as well, and favors a compatibilist account of the park as both a government-provided public good and as a commons that is the object of civic association. See Kohn, “Public Goods,” 14.
57. Dardot and Laval, *Commun*, 276. The latter call is put forth by Slavoj Žižek, *First as Tragedy, Then as Farce* (London: Verso Books, 2009), 131.
58. Pierre Dardot and Christian Laval, *Dominer. Enquête sur la Souveraineté de l’État en Occident* (Paris: La Découverte, 2020).

59. For the voluntary character of the commons, see Dardot and Laval, *Commun*, 155.
60. Dardot and Laval, 384, as cited in Stéphane Vibert and Éric Martin, “Le Commun contre l’État-nation? Démocratie Sociale et Institution du Politique,” *Anthropologie et Société* (43, no. 2 (2019): 162, which gives an astute critique of these inconsistencies.
61. Dardot and Laval, *Commun*, 525.
62. Dardot and Laval, *Commun*, 515. Original italics. See Vibert and Martin, “Le Commun contre l’État-nation?,” 161–163, who aptly point out that Dardot and Laval fail to indicate which “institutional modalities,” such as majority decision-making, “sanction regulation” of conflict within and between the commons, by naively assuming a “perfect mutuality” among them and their members. Tully’s agonism helps to avoid this naivety, while also guarding against Vibert and Martin’s attempt to resolve conflict conclusively by appealing to a monist, and potentially exclusionary, notion of *the* common good.
63. Dardot and Laval, *Commun*, 582, 156.
64. See also Honig, *Public Things*, 24, 92.
65. It should be noted that my claim to primacy *implies* an appreciation of plural modes of provision and enjoyment, since it points to primacy of the public mode “over” common and private modes without excluding them. To the extent that theorists of so-called “self-governing” markets or commons advocate an “alternative generalizable rationality” to solve all, or nearly all, problems of social organization, they are not pluralist.
66. James Tully, “On Global Citizenship,” *On Global Citizenship: James Tully in Dialogue ed. David Owen* (London: Bloomsbury, 2014), 9, 15 – 16.
67. *Ibid.*, 40. In this sense, the commons precede and have “priority” over public infrastructure, so that the latter cannot be constitutive of historical forms of the former. However, it has “primacy” over and is constitutive of, I argue, effective civic projects of commoning that are publicly protected by “right.” I thank an anonymous reviewer of this journal for helping me clarify this.
68. *Ibid.*, 47.
69. *Ibid.*, 62–63.
70. *Ibid.*, 63.
71. *Ibid.*, 59; on this point, see Adam Dunn and David Owen, “Instituting Citizenship,” *On Global Citizenship: James Tully in Dialogue ed. David Owen* (London: Bloomsbury, 2014), 254–255.
72. *Ibid.*, 32.
73. *Ibid.*, 35–36.
74. *Ibid.*, 64.
75. *Ibid.*, 64–65.
76. *Ibid.*, 66; see also James Tully, *Public Philosophy in a New Key*, vol. 2 (Cambridge: Cambridge University Press, 2008), 70, 75.
77. In spite of claims to the contrary, as when Tully argues that modern institutions “are *designed to dis-embed* these capabilities from situated [civic] practices

- and differentiate their exercise into separate spheres.” See Tully, “On Global Citizenship: Replies to Interlocutors,” *On Global Citizenship*, 88–89. Italics mine.
78. *Ibid.*, 76.
 79. *Ibid.*, 91.
 80. Dunn and Owen, “Instituting Citizenship,” 254–255; Dunn and Owen’s compatibilist account is further specified in terms of Arendt’s federal council system. Tellingly, she envisages this system as a “new *state* concept,” which indeed celebrates the commons without pitting them categorically against the institutional inheritance of modern citizenship. Arendt recognizes that the public administration of things requires a measure of centralization. Cf. Hannah Arendt, *Crises of the Republic* (New York: Harcourt Brace, 1972), 230, and *Hannah Arendt. The Recovery of the Public World*, ed. Melvyn Hill (New York: St Martin’s Press, 1979), 327–328. Honig, similarly, points to “the centralized and accountable power that may be necessary to meet some of our most pressing challenges,” *Public Things*, 27.
 81. Differences of emphasis notwithstanding, both civil rights and public goods are central institutions and entail one another: the protection of rights and the legal system are principal public goods, but public goods, like education or healthcare systems, also give institutional effect to various rights claims.
 82. Tully, “Replies,” *On Global Citizenship*, 323.
 83. *Ibid.*, 326; see also Kohn, *Urban Commonwealth*, 6, but also note 67 *supra*.
 84. For a powerful analysis of how civic social movements work within that infrastructure to transform it, see Steven Klein, *The Work of Politics. Making a Democratic Welfare State* (Cambridge: Cambridge University Press, 2020).
 85. See Maurits de Jongh, “Public Goods in Michael Oakeshott’s ‘World of Pragmata,’” *European Journal of Political Theory*, online first: 1–24, <https://journals.sagepub.com/doi/10.1177/1474885119890452>, December 6, 2019.
 86. See Vincent Larivière, Stefanie Haustein, and Philippe Mongeon, “The Oligopoly of Academic Publishers in the Digital Era,” *Plos One* 10, no. 6 (2015): 1–15. See also Maarja Beerkens, “Knowledge Commons and Global Governance of Academic Publishing,” *The Commons and a New Global Governance*, 22: 186–211.
 87. See Holly Else, “Radical Open Access Could Spell End to Journal Subscriptions,” *Nature*, September 4, 2018, <https://www.nature.com/articles/d41586-018-06178-7>.
 88. I thank an anonymous reviewer of this journal for suggesting this telling example.
 89. For a critique that casts the push for open access as a neoliberal instrument of government to promote economic growth at the expense of academic freedom, see David Berry, “The Uses of Open Access,” *Stunlaw*, February 16, 2016, <http://stunlaw.blogspot.com/2017/02/the-uses-of-open-access.html>.
 90. Tully, “On Global Citizenship,” 98.
 91. James Tully, “Two Ways of Realizing Justice and Democracy: Linking Amartya Sen and Elinor Ostrom,” *Critical Review of International Social and Political Philosophy* 16, no. 2 (2013): 223–224. Original italics.

92. See Jullien, *On the Universal*, 21. Hardt and Negri are attuned to this doubleness when they depict the nation, family, and corporation as corrupt rather than beneficial forms of the common, *Commonwealth*, 160, 177, 306. Dardot and Laval are similarly attentive when they critique exclusionary, communitarian ties of belonging. But to do so the post-Marxist view must naively assume a “perfect mutuality,” brought about by the utopian construction, education, and socialization of a new collective subject. See note 62 *supra* and also Martin Deleixhe, “Des Conflits en Commun? La Démocratie Radicale et la Gouvernance des Biens Communs,” in *L’Accaparement des Biens Communs*, ed. Pierre Crétois (Paris: Presses Universitaires de Paris Nanterre, 2018), 85–100.

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