



A Radical Middle Path to Global Transformation

Hans van Willenswaard

School for Wellbeing Studies and Research,

Bangkok, Thailand

hans@schoolforwellbeing.org

ini.creativespace@gmail.com

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School for Wellbeing Studies and Research, Bangkok, Thailand

Paper for the

XVI Biennial IASC-Conference

Practicing the Commons. Self-governance, cooperation and institutional change.

10-14 July 2017, Utrecht, the Netherlands.

“Extensive empirical research leads me to argue that (...) a core goal of public policy should be to facilitate development of institutions that bring out the best in humans.”

– Elinor Ostrom, Prize Lecture, December 8, 2009.

“Nation-states need to engage in a long overdue ethical dialogue with civil society on how we meet our responsibilities towards the Earth system. We believe, that an

Earth Trusteeship Council would be a most suitable platform for such a dialogue.” –

Klaus Bosselmann, *The Next Step: Earth (T)rusteeship*, Interactive Dialogue, UN General Assembly (...), 21 April 2017.

Abstract

The purpose of this paper is to shape the outline of an analytical framework enabling exploration of the quest how “the commons” can be given solid judicial ground. This exercise may include – in addition to experimentation with new forms of ownership at the operational level – envisioning a new step in the evolution of Human Rights and institution building in that perspective. In particular questions will be raised and suggestions made on *middle path dynamics* inherent in the “markets, states and beyond” perspective (Ostrom, Elinor, 2009). And whether these dynamics can open a window to the – risky but urgent – process of crafting a new paradigm in international law.

Introduction

From a contemporary perspective ‘Third Way economics’ (Giddens, 1998) – and in an Asian context: ‘the Middle Path’ (Sivaraksa, 2009) – seem no longer standing for the promise of change. At the turn of the century the Third Way promoted by Bill Clinton and Tony Blair, advised by Anthony Giddens, (Director of the London School of Economics and Political Science, 1997 – 2003), pointed at an optimistic pathway to a better world, as did the introduction of the UN Millennium Development Goals (MDGs), globally. In parallel with these developments, the middle path of sufficiency economy in Thailand, with a hint to Buddhism, was promoting ‘prudence’, ‘immunity’, ‘protection from outside conditions’ and subsequent compromise without distinct direction. Its major call was for system-neutral moderation.

The European and USA Third Way resulted ultimately in a full merger of capitalism and socialism, in which socialism nearly¹ lost its soul, contrary to Giddens’ earlier denial (Giddens, 2000: 173). The alliance of American liberalism and British New Labour forged by Clinton and Blair at the end of the 20th century, with huge global impact, reduced nation-states to ‘realistic’ followers of persistent neo-liberalism. Once George W. Bush was at the helm, aggressive global geo-politics completed the totalitarian nature of this brand of economic globalization.

The neo-liberal economy in the USA survives and continuously re-animates itself thanks to considerable, often hidden, support by the (heavily lobbied) state, in total contradiction to its principle of being free from government influence.

In Asia the merger between capitalism and communism resulted in Chinese state-capitalism that continues to embolden the state as a mono-power subordinating civil society, turning ‘comrades’ into ‘consumers’. In Thailand the

¹ The last minute support of young people for Jeremy Corbyn in England justifies ‘nearly’. Socialism is still governing Scandinavia but in decline in other European regions. However it is still engrained in European societies with or without explicit ideological support.

‘transition’ military government tightens its grip on the political system and tends to follow China as its role-model.

Whereas capitalism and communism were two conflicting ideologies during the Cold War, they amalgamated into one global economic system with – it seems – no alternative. The fantastic rise of a lively diversity of “green economy”, “circular economy”, “transition towns”, including the commons movement is hope-giving, but the movement is not articulated and inter-connected enough to actually challenge the global system. Yet.

Earth Trusteeship tries to add an almost uncharted dimension to the transformation of global governance, the role of nation-states and the commons movement. It may provide the ultimate foundation for the growth and strengthening of a poly-centric “networks of networks” of sustainable alternatives to become the new mainstream.

Four levels of analysis

The merger into one economic system and monoculture of the mind (Shiva, Vandana, 1993) was not what Anthony Giddens envisaged with his Third Way:

“Third way politics, as I conceive of it, is not an attempt to occupy a middle ground between top-down socialism and free-market philosophy. It is concerned with restructuring social democratic doctrines to respond to the twin revolutions of globalization and the knowledge economy” (Giddens, Anthony, 2000: 173).

Consolidation of the status quo – even though ‘restructured’ – is also not what Sulak Sivaraksa meant with Buddhist Economics² in his book *The Wisdom of Sustainability. Buddhist Economics for the 21st Century*:

² Sivaraksa, founder of the International Network of Engaged Buddhists (INEB), adheres to inter-religious collaboration. INEB is host to the Inter-religious Climate and Ecology Network (ICE).

“Social change and spiritual considerations cannot be separated. Religion is at the heart of social change, and social change is the essence of religion” (Sivaraksa, Sulak, 2009: 89-90).

As both political structures and traditional cultural institutions have almost totally fossilized or are drowned in consumerism, from where can we expect an adequate impulse for change?

In order to revitalize the age-old idea of a Middle Path to liberation, to happiness and wellbeing, change agents have to embark on a multi-dimensional learning journey and, to start with, assess social evolution in the last decades. Where did Giddens miss the point, causing the Third Way impulse fade into a powerless narrative of the past? Can the “engaged spirituality” of Sivaraksa bring back the transformative power of religion, even where religion lost relevance and became shallow or extremist? Or should we consider human beings to be purely rational entities, as defined by the science of economics, and adhere to the secular belief that innovations in technology will bring all the solutions for 21st century problems? Would these technological solutions really match the major challenges of our time: climate change/environmental deterioration, inequality and democracy in crisis?

Not only did Giddens not fully anticipate the gravity of the three central 21st century problems mentioned above (he was confident they could be prevented by the “Third Way”), with his dual “structure and agency” approach he missed out on addressing the level of what Elinor Ostrom calls in addition to the ‘operational’ and ‘collective choice levels’ which resonate with Giddens’ duality: the ‘constitutional’ level and even the ‘*meta-constitutional*’ level of analysis and governance. The latter remains rather unexplored (Polski, Margaret M. and Elinor Ostrom, 1999). It may be understood in the context of this paper as including paradigm formation and paradigm shift (Figure 1).

Engaged interaction between “practicing the commons” at the operational level at one hand and experimentation, dialogue and research at the meta-constitutional level at the other may create a challenging ‘action-research’ arena from where a *new* Third Way, one that would add substantially to shaping a genuine alternative middle path, sharp as an arrow in between the extremes of the bow, can be co-created.

This alternative path I propose to call “a radical Middle Path for the 21st century” (Willenswaard, Hans, van, 2016). It derives motion force from the tension between ranges of extremes including modernization versus tradition. Sulak Sivaraksa discovers, in his worldview, that the middle between these extremes is “social change as the essence of religion”. For a growing group of civilians the radical Middle Path is based on nothing else than *the commons* “as a transformative social paradigm” (Bollier, David, 2015).

Operational level
Collective choices level; communities of practice who make their own rules
Constitutional level; conditions, doctrines, under which commons form and operate
Meta-constitutional level; world views; paradigms

Figure 1. Adapted from Polski, Margaret M. and Elinor Ostrom *An Institutional Framework for Policy Analysis and Design*, 1999.

Paradigm shift

As a person and social entrepreneur primarily active at the operational level, I will try to explore in this paper this hugely intriguing meta-constitutional level of awareness-building and paradigm shift. Social enterprises are defined – though that is often ignored – by a primary goal: to contribute to system change.

From the socio-entrepreneurial drive to address the urgency of systemic change, our 'alternative' publishing house in Bangkok brings out books in various fields and enables dialogue. It undertakes 'action-research'. For this purpose the School for Wellbeing Studies and Research was established after we had organized the 3rd International Conference on Gross National Happiness in Thailand in 2007. Simultaneously, from our initial engagement as an individual consumer's family with a Community Supported Agriculture (CSA) initiative, the Thai Green Market and Towards Organic Asia (TOA) networks sprouted.

The first activity of the School for Wellbeing was initiating the visit to Thailand of Nobel laureate Joseph E. Stiglitz. Stiglitz was an early advisor of Bill Clinton on the "Third Way" but moved to the World Bank. The visit of Stiglitz included public speeches in collaboration with The Nation newspaper, at the Thai Ministry of Foreign Affairs, UNESCAP in Bangkok, and later visits to Bhutan and Myanmar.

At the opening of my book *The Wellbeing Society. A Radical Middle Path to Global Transformation* I quote Joseph E. Stiglitz:

"Changing paradigms is not easy. Too many have invested too much in the wrong models. Like the Ptolemaic attempts to preserve earth-centric views of the universe, there will be heroic efforts to add complexities and refinements to the standard paradigm. The resulting models will be an improvement and policies based on them may do better, but they are likely to fail. Nothing less than a paradigm shift will do." (Stiglitz, Joseph: 2010).

One of the reasons why the Clinton-Blair Third Way remained entangled – like many other attempts according to Stiglitz – in old paradigm economics, and even worsened the situation, is that policy makers at that time did not effectively reject the rationale underpinning assessment of economic performance and social progress by GDP. Even though Lord Richard Layard, author of the groundbreaking

Happiness. Lessons from a New Science was a prominent co-leader of New Labour, his eye-opening interest for happiness remained confined to ‘positive psychology’ embedded in the status quo. This became also true for the way the Millennium Agenda of world leaders was boiled down to the shallow Millennium Development Goals (MDGs) statistics with American economist Jeffrey Sachs as a major UN advisor.

Beyond lucid analysis, Stiglitz has not been able to provide the key to a genuine paradigm shift neither.

Gross National Happiness

The remarkable notion of Gross National Happiness (GNH) (Ura, 2010), to begin with, opens a window to fundamental critique on Gross Domestic Product (GDP) application. GDP is a misleading index that does not say anything about social progress and sustainability and even does not adequately measure economic performance (Stiglitz, 2010). It was never intended to be used as an overall policy determinant, its architect Simon Kuznets warned in 1934. However, since the Bretton Woods conference in 1944, it is persistently used as a universal yardstick for success or failure of governments, with decisive political impacts. Gross National Happiness consequently questions the *a priori* notion of utility-driven human behaviour – the cornerstone of conventional, unsustainable, economics. GNH brings back the integrity in our “pursuit of happiness”.

GNH, originally coined by the teenager King of Bhutan Jigme Singye Wangchuck in 1974, was later explained (CBS, 1999) by means of ‘four pillars’: environmental preservation; cultural (promotion) integrity; good governance; and equitable economic development. The four pillars hold a magic key to understanding the dynamics of social transformation. They enable the envisioning of a genuine and thus radical ‘Middle Path scenario’ capable to match the challenges of our time (Willenswaard, van, 2016).

The exploration of the Four Pillars of GNH ‘in perspective’ is an exercise at the meta-constitutional level. However, it also mirrors the micro reality of a social enterprises like ours in Bangkok where governance, cultural and environmental challenges are close to our skin and economic fairness is the game of the day.

One cannot expect Anthony Giddens to go into specific cultural explorations of the hidden message of the four pillars of GNH, or even Gross National Happiness as it is (though Lord Richard Layard came close to it and visited Bhutan). But Giddens could have been more critical on economic modeling that depends on measuring performance and social progress based on the GDP Index. It illustrates how far he was away from introducing the so much needed new economic paradigm in an era that the world urgently needed a ‘Turning Point’.

The Four Pillars in Perspective

Where does Gross National Happiness bring us? The following analysis tentatively reveals resonance of the four pillars successively with: the *Three Jewels* in Buddhism, the values of the French Revolution, tri-sector development (Perlas, 2000), towards a possible framework for *Earth Trusteeship* providing legal solid ground for the commons.

“By placing the Four Pillars in a *brainstorm-like and reflective perspective* of social evolution (...), a framework may light up allowing us to perceive an emerging new paradigm for development.” (Willenswaard, van, Hans, 2016: 51).

In figure 2 environmental preservation is presented as the over-arching principle with which each of the other three pillars are connected. The environment provides the foundation and conditions for the threefold human activity within its realm.

Although the pursuit of happiness is a universal aspiration, Gross National Happiness in the context of Bhutan from where it originates, is intimately connected

with the predominantly Buddhist culture of the country. In other countries it may find different contextualization.

The Four Pillars of Gross National Happiness 'in perspective':

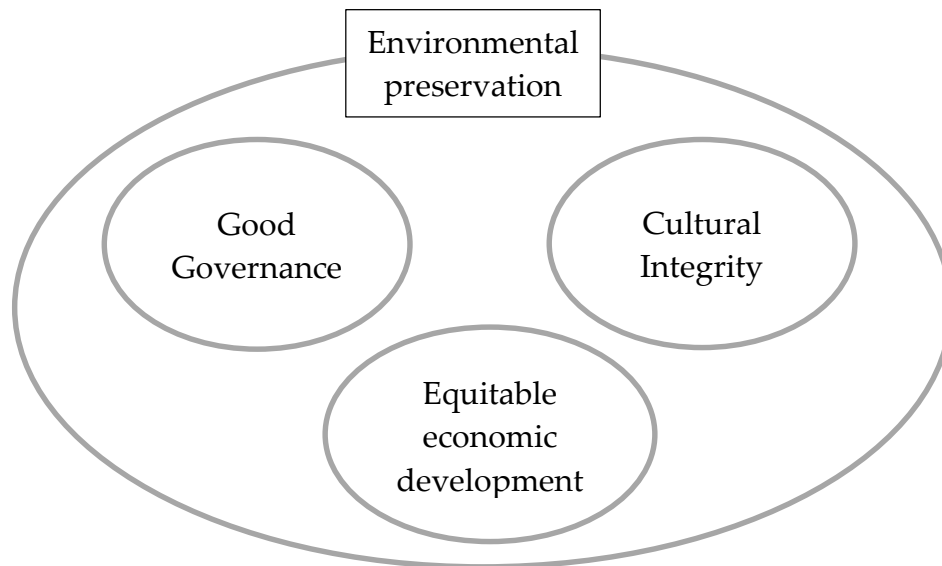


Figure 2.

The reason why political and religious perspectives are explored in tandem in this paper has to do, as will be explained later, with the legal option that religious consensus can represent a basis for customary international law (Weeramantry, C.G., 2014). In a similar way, presumably, as scientific consensus in the case of climate change provides the basis for climate responsibilities of states and corporations (Spier, Jaap *Oslo Principles and Commentary*, 2015).

The connection between Gross National Happiness and Buddhism can be examined, at the meta-constitutional level, in various ways. With due hesitation, I suggest that a certain resonance can be perceived between the Buddhist 'Dhamma', the Law of Nature or the Teachings, and good governance of GNH. While the Buddha as the personification of liberation, the realization of freedom, from where Buddhism evolved, resonates with culture that tries to preserve integrity and relevance over centuries. The 'Sangha' in turn, which in a narrow sense is the monastic community, represents in a broad interpretation (Hanh, Thich Nath, 1996)

the 'spirit of community'. Essential for community is socio-economic interconnectedness. This is symbolized by the food offerings to the barefoot monks and nuns on their begging rounds in the early morning, still common practice in Thailand.

The Three Jewels of Buddhism:

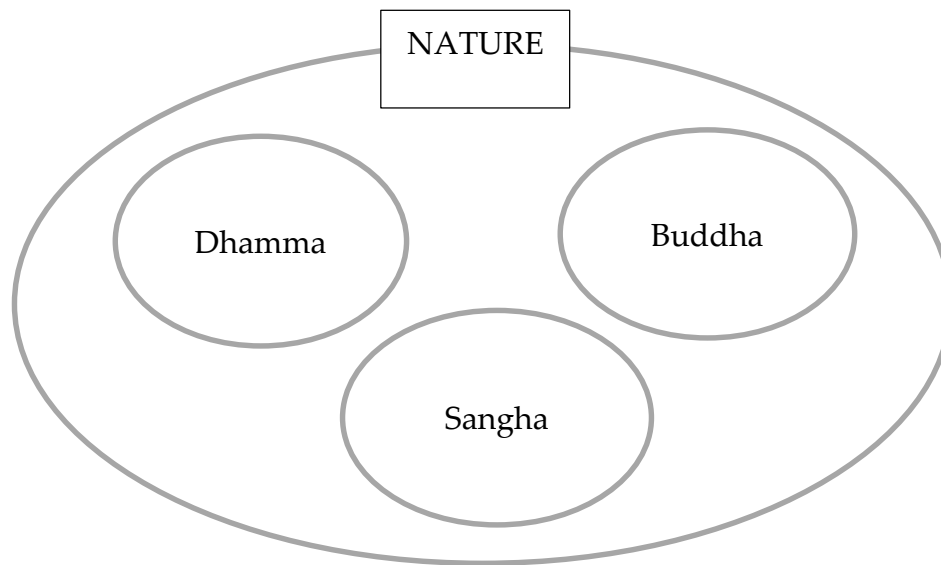


Figure 3.

If it would be accepted that the Four Pillars of GNH are a contemporary manifestation of the Buddhist *Three Jewels* (Figure 3), the question arises whether further relevant historic steps, from 2500 years ago – the era in which the doctrine of the *Three Jewels* emerged – until a contemporary manifestation like the four pillars of GNH can be perceived and established and contribute to social analysis including of the commons movement.

One such historic step towards realization to be explored with curiosity could be the French Revolution. The possibility of similarities between the basic Buddhist principles and the values of the 1789 revolution in France (even with total rejection of the violence with which it was brought about) may sound remote. Nevertheless, it was Dr. Ambedkar (1891 – 1956) who firmly established the connection.

Notwithstanding his status of 'dalit' or untouchable, he had been appointed the major architect of the Indian constitution which was adopted in 1949. Dr. Ambedkar

included what westerners may perceive as the three values of the French Revolution in the Preamble of the Constitution of independent India. But Dr. Ambedkar completely rejected the observation that these principles were derived from the French Revolution. He clearly established that these were Buddhist values, in particular the liberation, in his case of the cast system.

“Positively, my social philosophy may be said to be enshrined in three words: liberty, equality, and fraternity. Let no one, however, say that I have borrowed my philosophy from the French Revolution. I have not. My philosophy has its roots in religion and not in political science. I have derived them from the teachings of my master, the Buddha.”

This gives rise to the idea that a universal triad of principles including liberation, equality to the law, and solidarity in securing livelihoods – community – or freedom, equality and brotherhood (Figure 4) manifests over time in various cultural and historic contexts.

The French Revolution:

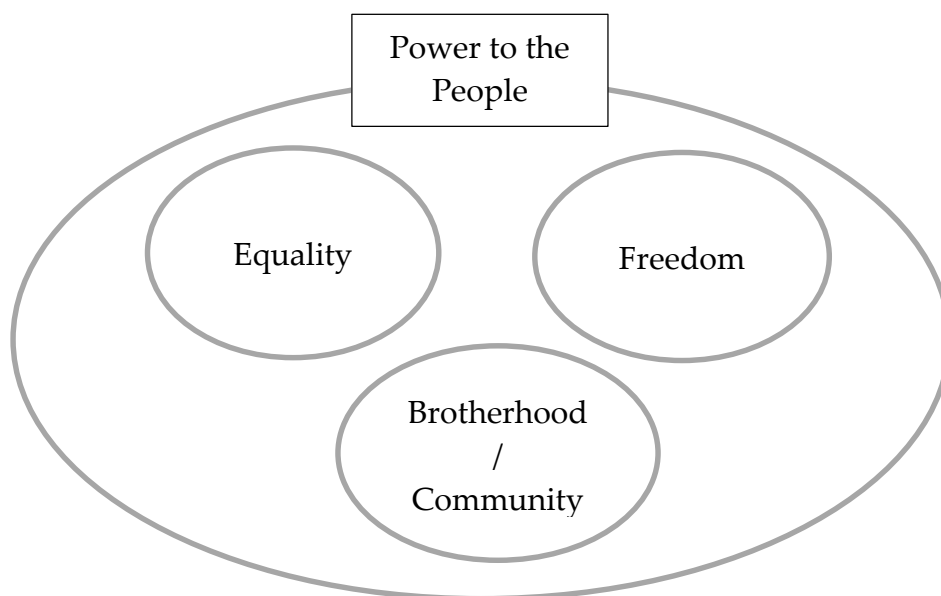


Figure 4.

Once this universal triad becomes part of a shared awareness or worldview, it can be useful as a common analytic framework towards finding solutions for various challenges. It may ultimately also provide a foundation for an approach to governance invoking a new stage in the development of the commons movement. The purpose of this paper is to apply this formative analytical framework to the question how “the commons” can be given solid legal ground.

International institutions

How could the dynamics of this threefold principle support the transformative role of “the commons” in the context of international cooperation in the future?

From where did institutionalization of international governance start? This question cannot be answered adequately within the limitations of this paper and its author. Let me just highlight one landmark momentum: in 1899 the First Hague Peace Conference was held in the Netherlands. It was an initiative of czar Nicholas II of Russia. There were two concrete results of the months-long conference: the Permanent Court of Arbitration was established, which functions until today (see the dispute between China and The Philippines regarding the South China – or West Philippines – Sea); and the construction of the Peace Palace in The Hague which would provide a permanent home for Peace building and legal mediation. The Peace Palace was completed in 1913. However, the planned Peace conference in 1915 tragically had to be canceled because of the outbreak of World War I.

The transition from the grossly unsuccessful post-World War I *League of Nations* to the subsequent establishment of the *United Nations* after World War II can be, in one way, traced back to the change from the political philosophy of President Wilson, self-determination of peoples being the centre piece of his 1918 “14 points”, to the Four Freedoms speech President Roosevelt held in 1941 to motivate the USA in its World War II liberation campaign: freedom from fear, freedom from want, freedom of expression and freedom of worship. The Four Freedoms philosophy

ultimately evolved into the Universal Declaration of Human Rights brought forth in an extraordinary international diplomatic process guided by his wife Elinore Roosevelt, and adopted in 1948.

One of the persons who formulated fundamental critique on the self-determination of peoples' principle of President Wilson was the Austrian philosopher Rudolf Steiner. Instead of reinforcing competition for territory, he promoted a threefold dynamic balance between engagement of people, independently, with three domains: 1. culture, with 2. legislation and political regulation and with 3. economic collaboration (Steiner, Rudolf, 1966/72). In this vision resonated, he felt, the three values of the French Revolution respectively 1. Freedom, 2. Equality and 3. Brotherhood. Governance of these three domains should not be left exclusively in the hands of centralizing states but should be based on free association and world citizenship. He predicted catastrophe if nation-states would remain bound to competition for territory. In addition he was the opinion that land should be liberated from the powers of capital and economic commodification and be trusted to those who practice care for it.

Another spiritual leader, 'Abdu'l-Bahá, in his *Tablet to The Hague*, 1919, emphasized that massive social transformation was needed towards the insight that the human race is one single people and "the conviction that the whole surface of the earth is one native land" (Abdu'l-Bahá, 2002).

The Second World War followed with even more disastrous impact than World War I.

From World War II emerged the *United Nations* in 24 October 1945. The UN International Court of Justice started work in 1946 from its seat in the Peace Palace, The Hague.

However enormous post-WW II progress has been made since, the UN until today is governed by unelected representatives of nation-states who are primarily defined by self-interest and the protection of sovereignty over their territories. The

right to self-determination of peoples is enshrined in Chapter I, Article 2.1 of the UN Charter.

On top of this layer of global governance by the nations of the world developed a second power structure of multi-national corporations that at least equals and often overwhelms that of nation-states.

Property

The way property was defined in the Universal Declaration of Human Rights was an issue of fundamental debate:

““Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.” So declares article 17 of the 1948 Universal Declaration of Human Rights (UDHR). However, the right to property was seen as extremely controversial by several of the states that drafted the UDHR.

(...).

The controversy reflected the ideological divide of the Cold War, between democratic and capitalist countries at one side, and non-democratic socialist states, as well as certain developing states, on the other.” (Mchangama, Jakob 2011)

Subject to the controversy was the comparative level of recognition and legal protection of private (including corporate) property rights, collective/public rights governed by nation-states or communal property rights. The unresolved contradictions caused confused governance structures that resulted in an appalling lack of protection of the Earth.

As early as around 1972 signals were broadcasted from various sides that the dominating governance by a dual “corporate – state” conglomerate would risk to again lead to catastrophe. The first UN conference on the Human Environment in Stockholm, 1972, became a landmark; in the same period The Club of Rome

published its alarming *Limits to Growth*; E.F. Schumacher wrote his passionate book *Small is Beautiful. A Study of Economics As If People Mattered* based on his experiences in Burma; the International Federation of Organic Agriculture Movements (IFOAM) was founded in Versailles, France, also in 1972 as a reaction to the devastation caused by industrial agriculture and use of chemicals; and the young King in Bhutan stated: "For us Gross National Happiness is more important than Gross National Product". Sulak Sivaraksa had started the Sathirakoses Nagapradipa Foundation in Thailand in 1968.

Environmental deterioration continued.

"Beyond states and the market"

Even the end to the Cold War, marked by the Fall of the Berlin Wall in 1989, did not bring about a new economic system. Although sustainability was now adopted as the leading principle for development at the UNCED, Rio 1992, it took until 2015 before sustainability was formulated in tentative operational terms, the Sustainable Development Goals.

The "Third Way" resulted ultimately in a "One Way solution" for the whole world. Alternatives including the commons movement are promising and heartwarming, but not yet articulated and interconnected enough to challenge the global system. The 1997 financial crisis in Asia, incited from Thailand, admittedly brought about the promotion of the Sufficiency Economy Philosophy (SEP) (Grossman, Nicholas 2015) but this did not lead to system change. Even the economic crisis of 2008 with its epicenter in the USA, and its reactions, could not unsettle the global system that continues deteriorating the environment and gradually aggravates inequality. Democracy is structurally manipulated and international governance is at risk.

The introduction of the Sustainable Development Goals (SDGs) (like the MDGs earlier), Agenda 2030 and the Paris Climate Agreement in 2015 may be bold steps in the right direction, they certainly give some hope, but they do not provide

clues for the radical system change and Turning Point needed to actually match the targets. “2015” did not bring forth the transformation towards a new scenario where nature is rehabilitated and restored in its glory, the wellbeing of the marginalized secured, population growth balanced, and governance guided not by short term compromise but by wisdom that connects *purpose* with future generations.

Apparently the impulse for genuine system change has to be found “beyond states and the market” as Elinor Ostrom stipulated in her Nobel Prize Lecture in 2009.

A ‘New History’

In the vision of Nicanor Perlas, Philippines, the year 2000 marks the beginning of a ‘New History’. The ‘New History’ is guided by the rise of civil society. Perlas introduces his ‘New History’ concept as critique and as an alternative to the 1992 book of Francis Fukuyama *The End of History and the Last Man*. Fukuyama’s *the End of History* represents what “the ruling powers want: the perpetuation of a view of the world where human beings and culture are mechanistic and controllable” (Perlas, Nicanor 2000: 238).

Threefold society:

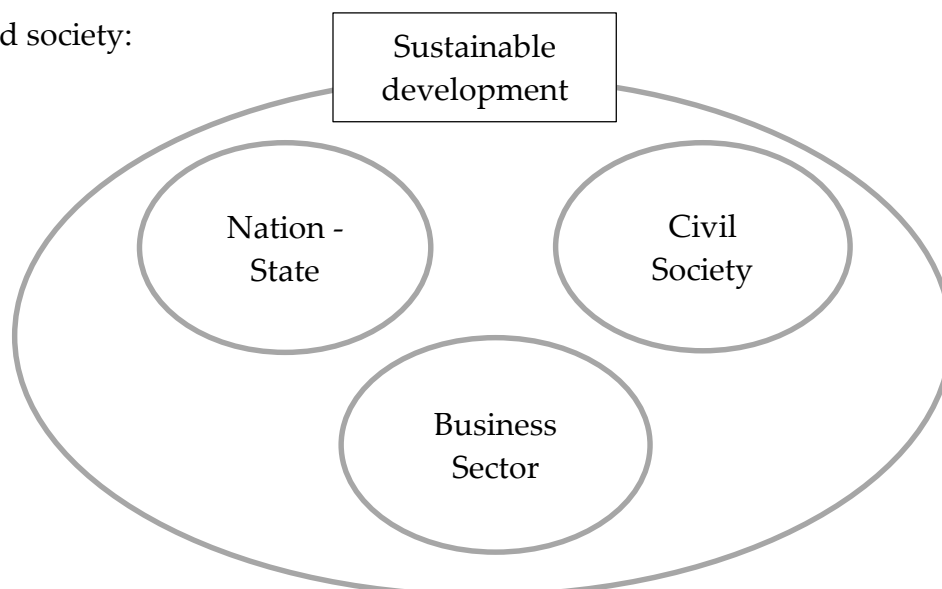


Figure 5.

Perlas firmly establishes civil society – while referring to Rudolf Steiner’s early 20st century concept of “threefolding” – as an independent domain of equal power vis-à-vis the realms of the state and the business sector.

By now civil society has been accepted by the UN in its independent capacity of “third sector”:

“Civil society is the “third sector” of society, along with government and business. It comprises civil society organizations and non-governmental organizations.” (UN, 2017)

There are many definitions of civil society. Its meaning changes over time. Nicanor Perlas describes civil society in his book *Shaping Globalization. Civil Society, Cultural Power and Threefolding* as follows:

“Civil society will consciously factor the workings of globalization into their goals, programs, and activities. In doing so, global civil society will increasingly become highly relevant to world evolution. Global civil society will increasingly spread, in a participatory manner, its benign and progressive influence even into local villages and towns. The achievements of civil society, especially those at the local level, will become the multicultural fabric that will be woven at the world level, the fabric of a new moral and spiritual world order.” (Perlas, Nicanor 2000: 238).

Whereas the core mission of the nation-state should be justice, and of the business sector ‘equitable economic development’ the mission of civil society is to be the guardian and co-creator of genuine freedom; which comes with responsibility. Symbiotic inter-action between the three sectors can unite them in joint dedication to sustainable development (Figure 5).

This pre-supposes a meta-constitutional, consensus-building, governance level that binds the three forces together.

Important steps towards uniting forces for sustainable development have been made in the Agenda 2030 process and the take-off of their implementation. It is good to realize that the 2015 SDGs project was preceded 15 years earlier by a visionary demonstration of a unified civil society: the launching of the *Earth Charter* at the Peace Palace in The Hague, in 2000, the start of the 'New History' in Nicanor Perlas' world view.

With the *Earth Charter*, the earth, the environment, nature itself received recognition as an overarching player in the new world order. In the evolution of Human Rights and international law, Earth Rights claim their place. Within the threefold dynamics of governance, beyond "the states and the market", it is primarily civil society who represents and advocates the Rights of Mother Earth and of future generations.

It makes well-founded sense to distinguish three scenarios future development: the state-driven, the business-driven and the civil society-driven society. In terms of ideology and economic theory, the three are connected with socialism, neoliberalism and with the 'new' third way, the 'radical Middle Path' a scenario that has no historic precedent. Each scenario has its own pathway to constructing social security: respectively, the welfare state, security by wealth accumulation, and security by engagement with community and the commons: the *Wellbeing Society* (Willenswaard, Hans van, 2015).

The most fundamental mode of property laying the foundation for the Wellbeing Society is common property in its broadest sense: *Earth Trusteeship*.

Rethinking Property in the cultural domain

A paradigm shift that would attribute constitutional weight to 'common property', 'the commons' 'communal rights' is needed in international law. It is a

very difficult step to take as the complexity and diversity of commons, communal land and commoning in various geographic, political and cultural contexts is overwhelming.

The international exchange platform *Re-thinking Property* held in Bangkok, 2011³, concluded that we have to find a way to formulate principles of ownership, not of specific land, landscapes, eco-systems or “global commons” – in the sense of the “no-body’s land” of the Earth beyond the sovereignty of states – but of *the Earth as a whole*. That includes communal rights, the territories of nation states, cross-boundary eco-systems, and the biosphere. We have to ask ourselves: “Who Owns the Earth?” (Chomsky, Naom, 2013).

The question “Who Owns the Earth?” may sound as a political question or one in the realm of economy.

For many people in the world it is a religious question. To put it more in general terms: the question on who owns the Earth is a question which should primarily be answered within the realm of culture.

Judge Christopher Weeramantry, Sri Lanka, former Vice-President of the International Court of Justice in The Hague established in his book *Tread Lightly on The Earth. Religion, the Environment and the Human Future* that all religions and philosophies of the world demonstrate a strong tendency towards defining the relation of Humanity with the Earth as one of *trusteeship*. Consensus among religions states: “Humanity is in a position of trusteeship of the environment and not in a position of dominance.” (Weeramantry, 2014). He examines the teachings of Hinduism, Judaism, Buddhism, Christianity and Islam on the relationship of humanity with the Earth. Weeramantry, himself a Christian, wrote about Buddhism:

³ With among others Silke Helfrich, Nicanor Perlas, Sombath Somphone, Dasho Karma Ura, Ramaswamy Sudarsha, Rosana Tositrakul, Michel Bauwens.

“(…) concepts such as ownership are often taught and conceived in Western jurisprudence as being of absolutist nature, which is the very antithesis of the Buddhist approach to these concepts. Their stress on rights overshadows the accompanying concept of duties, and the latter is what Buddhist teaching tends to emphasize. This elevated concept of duties lies at the heart of the notion of trusteeship.” (Weeramantry, 2014: 137).

Judge Weeramantry argues that “in relation to international law it is necessary to correct the popular impression (...) that treaty law is the main form of international law”:

The sources of international law are most authoritatively set out in Article 38 of the Statute of the International Court of Justice. Two of the sources therein mentioned are (...) customary international law and the “general principles of law recognized by civilized nations. These sources are in no way inferior to treaty law (...)” (Weeramantry, 2014: 250).

Judge Weeramantry adds that “the antiquated phraseology” of the expression ‘civilized nations’ should be interpreted as a general description of principles universally recognized by the nations of the world. Consensus among world religions on trusteeship would establish customary international law. New efforts are undertaken from unexpected corners to revitalize the dialogue and cooperation among religions (BMZ, 2016). A focused initiative to discuss Earth Trusteeship will be enormously beneficial.

The ultimate goal of consorted efforts by states, religions and civil society, according to Weeramantry, would be the adoption of a binding “Universal Convention on Environmental Rights and Duties”. This would be, compared to the already unique agreement of 1948:

“(…) three steps further than the Universal Declaration of Human Rights which only spoke of Rights and not Duties, which had little to say on environmental rights, and was only a non-binding Declaration as opposed to a binding Convention”.

A new paradigm in international law

The perspective needed for exploring a possible new paradigm in environmental law is to be found in the definition of the relationship between humanity and ‘the Earth as a whole’; as a juristic entity in itself; and including a dimension of “care beyond the fulfillment of human interests and needs”. (Taylor, 2008).

The first constitution in Bhutan, adopted in 2008 which changed the country from an absolute monarchy into a democracy, states:

“Every Bhutanese is a trustee of the Kingdom’s natural resources and environment for the benefit of the present and future generations (...)”.

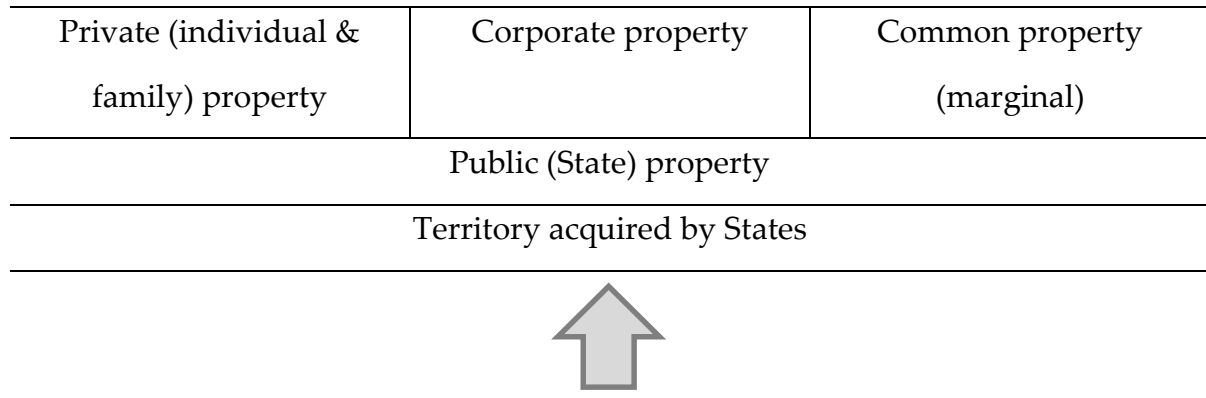
Likewise global citizens are trustees of the Earth.

The diagrams below try to clarify how layers of rights can be “stacked” from bottom up, resting upon alternative foundations.

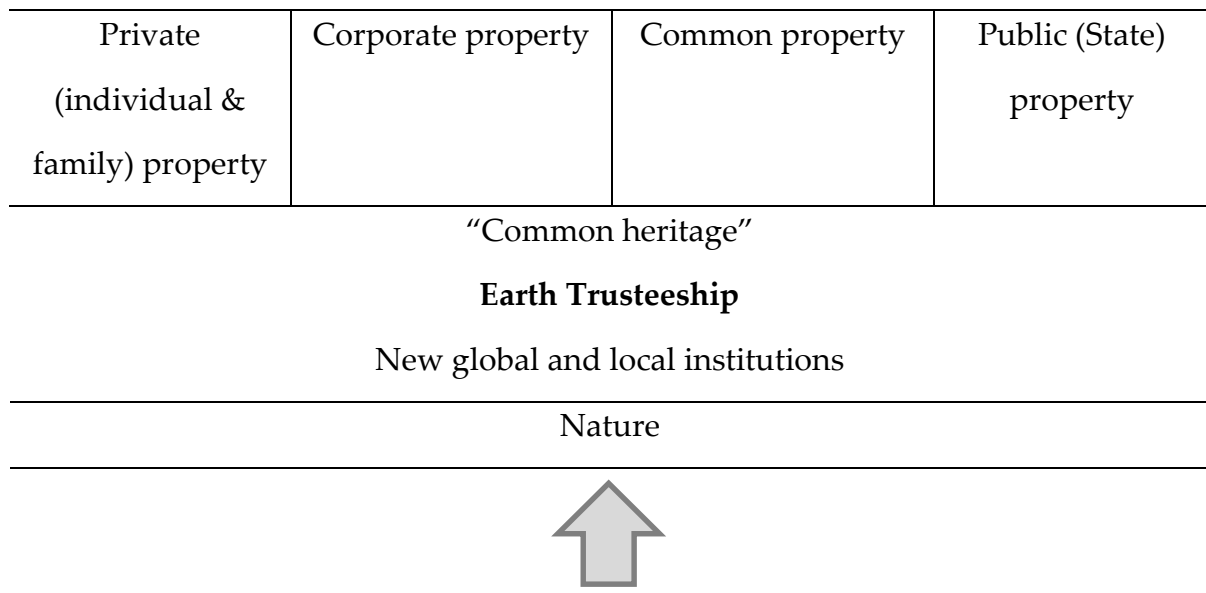
In the old paradigm the most fundamental property right over any territory is in the hands of nation states. Legitimated by sovereignty, often acquired violently as a result of wars and disputes with neighbours based on the self-determination doctrine, nation-states not seldom exercise the same sovereign power internally over their citizens, based on public property rights over territory. Public property is partially allocated to: private, corporate (concessions) and common property. Common property, the “normal” of the past, has been marginalized and has been taken over by private and increasingly by corporate property. Corporations have been given the same rights as persons (Bakan, Joel, 2005). Citizens, by and large, are

alienated from the governance of public property. They do not feel they are the real co-owners of state property or the owners of the state itself. More and more people are equally alienated from Nature.

Old framework:



New framework:



The rights and responsibilities intrinsic in "our common heritage" and confirmed by a "per capita approach" to climate responsibility (Spier, Jaap 2015) cannot be left to the nation-state and its 20th century- rooted, routine. Nor should humanity concede

these rights to corporate property, or private wealth at a scale beyond average family property needs. A new governance dimension should emerge transcending the Cold War socialism - capitalism contradiction regarding property regimes: public property, private property as well as the commons can now be based on a shared foundation of trusteeship. A new 21st century, threefold, dynamic governance framework, a synthesis (states, business sector and civil society as equal governing partners) is needed, with common property of the Earth or “Earth Trusteeship” as its foundation. Based on this foundation the allocation of property rights to the individual-, commons-, corporate- and public sectors will be fair and contributing to the common good and sustainability.

Strategic partnerships towards Earth Trusteeship

Earth Trusteeship:

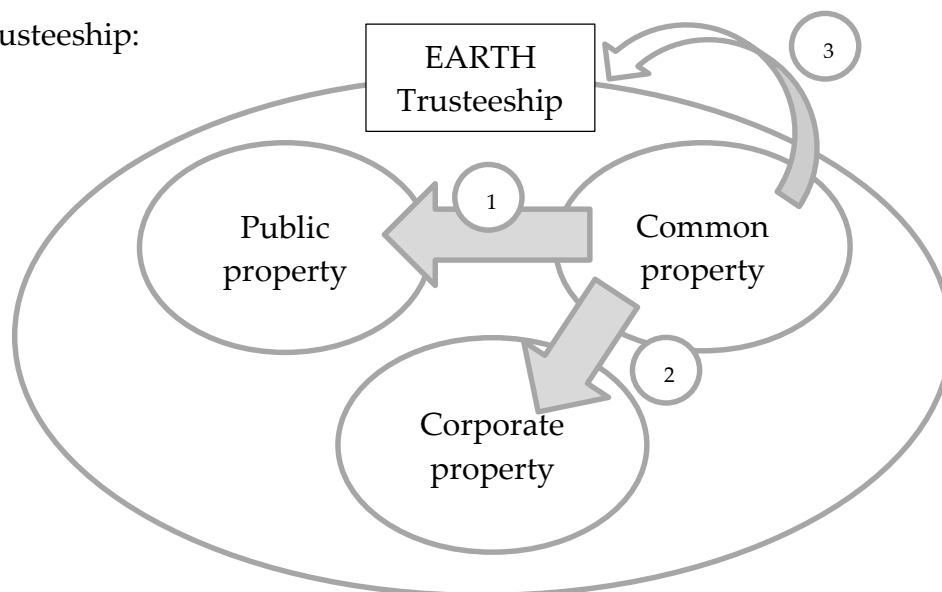


Figure 6

Civil society is without doubt the primary guardian cultivating the spirit of common property, the commons, communal ownership and ‘commoning’. In addition to practicing the commons in their own domain, the commons movement can engage in strategic campaigning through three channels 1. influence the state to govern public property, including state enterprises, based on ‘direct democracy’ and

active citizens' participation in sustainable development and international cooperation 2. The commons movement can influence the business sector to include stakeholder interests in corporate policies, respect community rights and transition to cooperative and sustainable practices. Create 'Mindful Markets' (Willenswaard, Wallapa van, 2015) 3. The commons movement can advocate Earth Trusteeship as the legal and ethical foundation of all ownership defined by shared responsibility for sustainable development; and it can co-create trusteeship institutions. This third path is a multi-stakeholder effort involving both states, inter-governmental organisations as well as the business sector.

The paradigm shift towards trusteeship as the fundament of all property can only emerge by transformation of our awareness. From understanding happiness primarily as utility-defined *satisfaction* (as in conventional economics), to appreciation of *contentment* as inner happiness independent from outer factors. And from there, ultimately, the realization of happiness as *altruism* (Ricard, Matthieu 2015). Altruism is the mode of happiness that pairs best with common property, with commoning, with support for Earth Trusteeship.

Towards an Earth Trusteeship Council

From all 17 Sustainable Development Goals there are several who address environmental issues. But Goals SDG 16 *Peace, Justice and Strong Institutions* and SDG 17 *Partnerships for the Goals* are the most relevant from the perspective of institution building towards Earth Trusteeship. Thailand initiated a strong connection between the Sufficiency Economy Philosophy (SEP) and the SDGs, in particular South – South collaboration in line with its chairmanship of the G77 in 2016, in the framework of SDG 17. Promoting strong institutions includes the co-creation of *new* institutions or the transformation of old ones where they fail to match the challenges of our time.

Klaus Bosselmann indicates a huge range of weaknesses in the present institutional make-up of sovereign states and inter-governmental organizations vis-à-vis the challenges ahead (Bosselmann, Klaus, 2015). One of them is how the

introduction of an international ombudsman or UN High Commissioner for future generations disappeared from the final version of the *The Future We Want* outcome document of Rio+20 and was changed into preparing a report on the issue 'promoting intergenerational solidarity *for the achievement of sustainable development*'. The SDGs include a goal targeting economic growth measured by GDP.

"(...) rather intergenerational solidarity is placed as a subordinate component of the paradigm of balancing economic growth with the protection of such interests. This is far removed from sustainability as an overall objective: the preservation of the global environment for future generations *can* and *must* constitute the ultimate *telos* of any international regime oriented towards sustainability (Bosselmann, Klaus and Rakhyun Kim, 2015)."

The Ombudsperson for future generations project is only one new institution or transformation of existing organisations proposed to the UN, especially by civil society organisations. One of the boldest ideas, to set up an *Earth Trusteeship Council* was proposed by Klaus Bosselmann. In his address to the UN General Assembly, symbolically convened at the Trusteeship Council Hall at the UN Centre in New York, Bosselmann states:

"We have now arrived at a juncture of human history that makes it absolutely unavoidable to think beyond the paradigm of sovereign nation-states and embrace Earth (T)rusteeship."

And he adds:

"Nation-states need to engage in a long overdue ethical dialogue with civil society on how we meet our responsibilities towards the Earth system. We believe, that an Earth Trusteeship Council would be a most suitable platform for such a dialogue." (Bosselmann, Klaus 2017)

An Earth Trusteeship Council would likely comply with the kind of institutions “that bring out the best in humans” as Elinor Ostrom envisioned in her Nobel Prize Lecture, December 8, 2009.

The composition, formation, position in (or outside) the UN, budget, location of an Earth Trusteeship Council should be left open at this stage.

One step that could be taken from the IASC conference *Practicing the Commons. Self-governance, cooperation and institutional change*, in Utrecht, July 2017, could be to establish an *Earth Trusteeship platform* from the small-scale informal start this has been made in The Hague 2 years ago. The platform could organize a conference in the context of *The Hague – City of Peace and Justice*. With prospective historical impact in light of the “70 Years Universal Declaration of Human Rights” commemorations in 2018.

Conclusion

Further articulation and rise of alternatives to the mainstream requires a vision on the commons, not as an antiquated or marginal phenomenon but as the central guiding principle of development in the decades to come. Earth Trusteeship provides the philosophical foundation – including consensus of world religions– of a civil society-driven transformation process accomplishing a “third generation Human Rights” in which the commons and care for the Earth are central.

Earth Trusteeship adds the dimension of global governance to specific common property, ‘commoning’, the commons operations and regulatory frameworks. It provides solid ground for the commons.

July 2017

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