

Property Rights Revisited – Are Narratives the Way Forward?

Abstract

Purpose

The paper aims to show how property rights predominantly shape discussions about the governance of natural resources and thereby neglect questions of (collective) identities and alternative solutions to govern natural resources. The purpose is to introduce narratives as an alternative approach to the discussion about the governance of natural resources.

Design

Guided by the question of how we acquire property and what that tells us about our understanding of to whom natural resources belong to, the paper reviews the history of property rights by looking into property theories starting from Thomas Hobbes, John Locke, Adam Smith, Immanuel Kant and Pierre-Joseph Proudhon. It then takes a closer look at the TEEB study and the Nagoya Protocol with regard to property rights. Second, the paper introduces the concept of narratives surrounding property rights in the past and present.

Findings

Property rights are a social concept dominant in the industrialised world. This has strong implications when looking at the way indigenous people look at natural resources. Mostly, property rights are unknown to them or alternative concepts exist. Yet, documents such as the Nagoya Protocol or the TEEB study presuppose an understanding of property rights originating in European property concepts. A narrative approach to property rights introduces new ideas and looks beyond legislation and policies at the stories people tell about property and natural resources, at property stereotypes and identities and what this might entail for future natural resource governance.

Originality/Value

The paper fulfils a need to find alternative approaches to govern natural resources against the background of global environmental challenges.

Keywords: property rights, narratives, natural resources, identity, stereotypes, environmental governance

1. Introduction

When the British Crown arrived in Australia in 1788 it was easy for them to declare the ‘terra nullius’ status in the absence of any legal property status. Many indigenous people have a concept of property and possession, which does not serve the individual but society. It is often based on customary law with complex structures and rules to protect and regulate access to natural resources and the knowledge about it. By introducing property rights these rules are not respected or even ignored (Eimer, 2012). Yet, property rights are essential and at the heart of western market economies. Clarke and Kohler (2005) describe property law as “the legally recognised relationships we have with each other in respect of things”. Property provides a major set of socially guaranteed rights available to a user (Aubin and Varone, 2013). On the other hand, this means that property rights exclude others and they may exclude them from formerly open access, public or communal property such as watersheds. As natural resources are put under more and more pressure for example through the projected effects of climate change in a given region, the notion of property rights as solution to resource management should be challenged.

Since the beginning of modern times philosophers, political scientists and legal scholars have discussed the origins of property rights. While today’s understanding of property rights is often determined by a legal perspective – and has been vastly discussed in legal research (cf. section 2) – this paper intends to broaden the research in introducing narratives as key factor for our understanding of property. Tracing back for example to the traditional canon of political philosophers like Hobbes or Locke, it becomes obvious that they not only developed a theory about the origin of property, but in doing so actually told a tale, created a narrative.

This paper will therefore briefly trace and recapture the history of property rights by looking into property theories of Thomas Hobbes, John Locke, Jean Jacques Rousseau, Adam Smith, Immanuel Kant and Pierre-Joseph Proudhon. It will then take a closer look at recent documents, namely at The Economics of Ecosystems and Biodiversity (TEEB) and the Nagoya Protocol, before taking into consideration which role narratives and identities play in the property right discourse. The guiding question here is how we got to the property rights principles we have today and what has changed in the course of time. Or put differently: How do we acquire property and what does that tell us about our understanding of to whom natural resources belong to? The paper will argue that property rights or rather the concept of

property rights we find in the aforementioned documents are a purely social (Bromley, 1991, 2004) and industrialised world concept. This however has strong implications when we consider the way indigenous people look at natural resources such as water for instance. Mostly, their concept of property rights varies to that of the western world but agreements or documents like the Nagoya Protocol or The Economics of Ecosystems and Biodiversity (TEEB) study presuppose an understanding of property rights originating in European property concepts. With this they are in line with neoliberal thinking which proposes, apart from free trade and free markets, strong property rights and it also means market valuation to spheres that were formerly unaffected by commerce (Gómez-Baggethun and Ruiz-Pérez, 2011). Instead it must be questioned whether property rights provide always the right answer or whether there are other forms of resource governance, which benefit all users. Thus, we find that a highly relevant and future-oriented question, that of how natural resources should be governed, is answered with old and not always fitting concepts. In order to find new answers, we propose a narrative approach to property rights and natural resources. Narratives can show a common understanding of property but also where people see shortcomings, injustices or mismanagement. By allowing those who are affected from the governance of natural resources to express their views and needs through narratives, we are opening up new discussions about the future of natural resource governance and property rights.

2. Property Rights – a history of ideas

Property rights are not inherent characteristics of human nature as they are cultural artefacts (Daly and Farley, 2011) that have developed over the long history of human existence. For a very long time they were even impractical and especially in nomadic societies, property rights to land made no sense at all. Only with the introduction of agriculture property rights to land became essential (ibid.). Today, property rights are at the heart of many policies as we will see later in the example of the TEEB study and the Nagoya Protocol. Bromley (1991) stated, “that environmental policy is nothing if not a dispute over the putative rights structure that gives protection to mutually exclusive uses of certain environmental resources”. Disputed resources may, he continues “appear to be environmental problems but they are, in fact, problems of conflicting rights claims” (ibid.). In general, he defines property as a social relation that defines the property holder with respect to something of value against all others. Property therefore is a social instrument and rights can only exist when there is a social mechanism that gives duties and binds individuals to those duties

(ibid.). Barnes (2013) puts the idea of excludability at the centre of the idea of property. According to him, to exercise property rights, a thing must be excludable which many important resources are not. Alexander (2009) describes the notion that “private property usually triggers notions of individual rights” and he concludes that property scholarship has been dominated by law-and-economics in recent years and identifies the poverty of moral values and moral issues as one of the main flaws of this perspective. Criticising even the very concept of property for its looseness and ambiguity is Hohfeld (1913). He describes property as striking example, a term that both with lawyers and laymen “has no definite or stable connotation” (ibid.). It is sometimes used to indicate the physical object to which various legal rights, privileges, etc. relate or the concept is used to denote the legal interest appertaining to such physical object. He goes on: “At times, also, the term is used in such a “blended” sense as to convey no definite meaning whatsoever” (ibid.). Yet, “the common idea of property as “rights” provides human beings with a place of deep, psychological refuge”, writes Underkuffler (1996). In a more recent article she emphasises this notion, saying that the idea of property rights as individually protective and practically absolute is a psychologically important one for human beings and acts as a political restraint on government (Underkuffler, 2010). Property therefore promises protection from change and acts as bulwark against an impairing government (ibid.). With regards to property rights and natural resources she says: “Property rights and their protection are of unquestioned societal and individual importance in the early twenty-first century United States. The identification of those who control the earth’s resources and the products of those resources is critical to industry, commerce, science, art and just about any imaginable human endeavour.” (ibid.)

Daly and Farley (2011) define property rights as a core feature of policy: “Policy is concerned largely with institutions and laws that create, redefine, and redistribute property rights”. If property rights are, as mentioned above, at the heart of western market economies it is important to understand where our understanding of property rights derives from and what role it still plays in policy formulation.

The history of property rights as of today shows that ownership and the allocation of property are the result of negotiations between different social groups, the result of voluntary or forced acceptance. Looking into the European history since the Middle Ages already gives a variety of examples for these – often violent – negotiations. Peasants’ revolts i.e. – looking at Jacques Bonhomme in France or the peasant revolts accompanying the German reformation in the early 16th century – often contain a property right and land-use aspect: Who has the right to the land, fields and woods, and what does this right include? But to understand how

property rights are formed as part of a social contract and not a God-given and unchangeable fact, it is also important to refrain from a Eurocentric perspective, something that is until today often neglected when it comes to for example pre-colonial and indigenous concepts of property (Ford et al., 2016). Yet, even in European societies the understanding of what property is and where it originates has been the subject of numerous philosophical debates and political discussions. In the following we will therefore briefly reflect upon the history of property rights from a political ideas' perspective by describing in each case how property is acquired and what role property and property rights play.

This is by no means an exhaustive list of property theorists but a selection was made to represent prominent theorists starting in early modern times and ending in the second half of the 19th century. Hobbes, Locke and Rousseau were chosen because they are well known social contract theorists and property rights play an important part within the social contract. Adam Smith on the other hand was chosen because his writings appeal to economists and because the discussion on property rights and natural resources has, at least partially, turned into a question of economic valuation of nature as the examples in the next section show. Proudhon was included in this brief overview to provide a different perspective on the issue and to make clear that different views on the issue developed early even in a western cultural context. Of course, the discussion of property rights did not stop with this canon of classics but continues until today (for example: Nozick, 1974; Penner, 1995; Penner 2009; Waldron, 1996; Waldron, 2005).

Thomas Hobbes (1588 - 1679) writes in the 'Leviathan' that in the state of nature man has a natural right to what nature offers (Hobbes, 1996 [1651] XV, 3) but as the state of nature is "solitary, poor, nasty, brutish and short" (Hobbes, 1996 [1651] XVIII, 9) and means war, man is willing to accept a certain loss of property, the right to what nature offers, because the state protects the property. "To this war of every man against every man, this also is consequent, that nothing can be unjust. (...) Where there is no common power there is no law (...)." (Hobbes, 1996 [1651] XVIII, 13) And later in the same paragraph: "It is consequent also to the same condition, that there be no propriety, no dominion, no mine and thine distinct; but only that to every man's, that he can get; and for as so long he can keep." (ibid.) Hence, property and property rights begin with the contract: "Seventhly is annexed to the sovereignty, the whole power of prescribing the rules, whereby man may know, what goods he may enjoy, and what actions he may do, without being molested by any fellow-subjects: and this is it men call propriety." (Hobbes, 1996 [1651] XVIII, 10). And even more specific: "(...) that propriety which a subject has in his lands, consisteth in a right to exclude all other

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3 subjects from the use of them (...)” (Hobbes, 1996 [1651] XXIV, 7). Hobbes lived in a civil
4 war shaken country, so to him any state was better than the state of nature and by signing the
5 contract rights and liberties are protected. In other words, if someone claimed a piece of land
6 it is only under the contract that the person is asserted the right to it.
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9 John Locke (1632 - 1704) derives property from labour. In his ‘Second Treatise of
10 Government’ or more correctly ‘An Essay Concerning the True Original, Extent, and End of
11 Civil Government’, property is created by the application of labour. “He that gathered a
12 Hundred Bushel of Acorns or Apples, had thereby a Property in them; they were his Goods as
13 soon as gathered.” (Locke, 1988 [1690] II, §46, 12-14) This labour theory still lives,
14 according to Haddad (2003): “in our social consciousness of industrialized nations” and
15 Bromley (2004) acknowledges Locke’s central role in the American idea of property rights.
16 Locke’s state of nature is not as sinister as Hobbes’ one. Men enjoy freedom, independence,
17 equality and are allowed to own as much as they need for their subsistence (Locke, 1988
18 [1690] II, ch. 2). In the state of nature men have the executive right to punish and to
19 restitution if they or their property are in danger and they have to defend themselves or their
20 property. Thus, because we decide based upon passion and jealousy Locke favours a civil
21 government. Again in opposition to Hobbes, Locke believed that monarchs tend to make
22 unjust decisions. Under a civil government the executive right is passed to the state which
23 solitary aim it is to protect property. Locke therefore proposes property outside of social
24 contexts and government regulation (Haddad, 2003). The key justification is that the state
25 guarantees the exclusiveness of a property and defends a person’s right to it. “They [those
26 who hold land] are assured of liberty because the state agrees to protect them from the
27 predations of others, and they are assured of liberty because the state itself agrees to refrain
28 from its own form of predation (...)” (Bromley, 2004)
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31 Jean Jacques Rousseau’s (1712-1782) conception of the state of nature in ‘The Social
32 Contract’ is one where “men is born free, and everywhere he is in chains” (Rousseau, 1923
33 [1762] ch.1, [1]). Everyone has a piece of land and since there is enough distance between
34 settlements there is no argument about property. But as natural catastrophes occur men
35 eventually agree to cooperate as they cannot cope with them alone. “I assume men having
36 reached the point where the obstacles that interfere with preservation in the state of nature
37 prevail by their resistance over the forces which each individual can muster to maintain
38 himself in that state. Then that primitive state can no longer subsist, and humankind would
39 perish if it did not change its way of being.” (Rousseau, 1923 [1762] ch.6, [1]) Hence, they
40 sign a social contract where they subordinate their free will under the general will (volonté
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générale): “Each of us puts his person and his full power in common under the supreme direction of the general will (...).” (Rousseau, 1923 [1762] ch. 6, [9]) Under the contract the accumulation of property is allowed but only under the condition that one occupies only as much of it as one needs to subsist (Rousseau, 1923 [1762] ch. 9, [3]). As societies grow labour will be divided though leading to interdependencies among the citizens. Eventually this will lead to inequalities, egoism, envy and exploitation. The only way out is, according to Rousseau, a return to the state of nature where there is no property.

Adam Smith (1723-1790) has no universal theory and like Rousseau believes in the notion of perfectibility of humans. According to Smith humans undergo an economic and social development in four stages (1) Age of Hunters, (2) Age of Shepherds, (3) Age of Agriculture and (4) the Age of Commerce (Smith, 1999 [1776], Smith, 1978 [1762-63]). Each stage introduces certain rights. Hunters have the right to self-preservation, home, honour and food. Due to their nomadic structure the concept of property does not make much sense to them. Shepherds additionally have the right over movable objects, i.e. herds of animals. In an agricultural society people enjoy the right to own land although this will also lead to inequalities because some have no land (feudal system). In a commercial society people have the right to symbolic property such as money, loans and labour. With the development from one stage to another people become more and more morally corrupted, especially the rich. Poverty becomes a problem and, according to Smith, a repressive state is needed to soften moral corruption by law. “All government is but an imperfect remedy for the deficiency of these.” (Smith, 2009 [1759] part IV, ch. 2) This state has several functions among them to protect property, to provide laws, justice, the police, health and infrastructure. “Civil government, so far as it is instituted for the security of property, is in reality instituted for the defense of the rich against the poor, or of those who have some property against those who have none at all.” (Smith, 1999 [1776] Book V, ch. 1)

Immanuel Kant (1724-1804) states that: “(...) I am not entitled to call an apple *mine* merely because I hold it in my hand or possess it physically; but only when I am entitled to say, ‘I possess it, although I have laid it out of my hand, and wherever it may lie.’ ” (Kant, 1990 [1797] 1, §4)¹. Hence, again we can see that “property is not an object, but an institution which depends for its functioning on the observance of a certain system of rules. An

¹ The author has mainly used the German edition of Kant’s „Metaphysik der Sitten“. English translations were taken from Kant, I. (1887 [1796]), *The Philosophy of Law: An Exposition of the Fundamental Principles of Jurisprudence as the Science of Right*. trans. W. Hasties, Clark, Edinburgh.

individual cannot for himself establish a right to a thing, because a right consists of the public recognition of an existing or desired future state of affairs. Rights, and in particular property rights, must hold for others as well as oneself, or else they are not rights” (Williams, 1977). Kant says that in a state of nature “there can be actual external property, but it is only provisional” (Kant, 1990 [1797] 1, §9). But it is possible to have external things for one’s own in a civil society” (Kant, 1990 [1797] 1, §9, Williams, 1977). Again we find that a contract provides the necessary guarantee: “The notion of such a contract must guide our behavior in society, otherwise we would not be bound to leave another’s property untouched.” (Williams, 1977)

Pierre-Joseph Proudhon (1809-1865), a French anarchist of the nineteenth century has a somewhat more radical approach to property. Living in an era where few capitalists accumulated more and more capital he envisaged a world where capitalists had no right to property. In his ‘What is property? An Inquiry into the Principle of Right and of Government’ Proudhon opens with: “Property is robbery!” (Proudhon, 1970 [1840], 12). What he means is that property is robbery of the possession of the people by an individual. Property and robbery are synonymous to Proudhon (Proudhon, 1970 [1840], 15). Property of the nobility and the clergy is based on faineance, because the wealth was not gained through labour but was instead stolen from those who laboured in order to create wealth. Those who create wealth through labour are entitled to possession though. The nobility and clergy were even protected as their property could not be seized even for debt. Thus the people wanted the conditions to be alike for all (Proudhon, 1970 [1840], 36-37). Proudhon makes the important distinction between property and possession (Proudhon, 1970 [1840], 43-44). Whereas property has no temporal limit, means exclusive use and a complete power of control, possession includes temporal use only and a conditional exclusion. Since, according to Proudhon, everything that exists belongs, meaning is possession, to the people (“everything belongs to everyone”), those who claim an exclusive use, meaning property, commit robbery. While others stress the importance of property and property rights, Proudhon writes: “If you wish to enjoy political equality, abolish property (...)” (Proudhon, 1970 [1840], 39) or later: “If then, the State takes more from me, let it give me more in return, or cease to talk of equality of rights; for otherwise society is established, not to defend property but to destroy it.” (Proudhon, 1970 [1840], 48) His argument culminates in the proposition that “property and society are utterly irreconcilable institutions. (...) Either society must perish, or it must destroy property.” (Proudhon, 1970 [1840], 52)

Other theorists – among them Hobbes or Locke – looked at property rights as a necessity, as part of a society’s overall structure and therefore did not question the existence of property rights as such. Of all the above-mentioned theories on how property is acquired only Proudhon criticises the concept of property altogether in declaring property to be robbery. Therefore, we find that property is inextricably bound to a right. Property furnishes a certain right to someone. This on the other hand means that others are excluded, thus property and property rights can also lead to inequalities. Furthermore, we find the notion of property rights has strong ties with the idea of a contract and subsequently a state. A state protects property but this protection could favour a certain class of people, usually the rich.

Beyond these theories also lies a narrative. Not for nothing did Hobbes, Locke or Rousseau describe the origin of property rights as a tale that begins with primitive societies and continues with how the cohabitation of humankind changed when property was introduced. It is the oldest way of human communication and lecturing: Cladding facts with a narrative that makes them more tangible, understandable and attractive for listeners and readers. It was our aim to briefly introduce this narrative which, as we shall see in the next section, still shapes our attitudes and policies with regard to (private) property rights. In order to focus on this aspect, we neglected for example the seminal work of Ostrom (1990; 1999) or Schlager & Ostrom (1992) dealing with alternative property-rights systems and common-pool resources such as open access, group property, individual property or government property.

3. TEEB and Nagoya Protocol – old problem, old ideas

This section briefly discusses the TEEB study and the Nagoya Protocol with regard to property rights and asks whether the property ideas presented in chapter 2 had any influence. Both cases were selected because they address issues, which lie at the heart of the property rights debate. First of all, they reduce the value of natural resources to its economic value and the introduction of property rights as a panacea. Second, they neglect the social and cultural value of natural resources. Third, although they address for example indigenous rights they fail to address them properly because a western understanding of property frames the discussion. As pointed out earlier, according to Bromley (1991): “Property is a social relation that defines the property holder with respect to something of value against all others”.

The Nagoya Protocol is about the fair and equitable sharing of benefits arising from the utilisation of genetic resources and is one of the three objectives of the Convention on Biological diversity (CBD). The protocol was adopted in October 2010 and its core is the so-

called Access and Benefit Sharing (ABS). This mechanism shall ensure legal certainty and transparency for providers and users of genetic resources (UNEP - Secretariat of the Convention on Biological Diversity, 2011). Though the importance of indigenous and traditional knowledge associated with genetic resources is acknowledged in Article 12 of the Protocol, legal certainty basically means the introduction of property rights. If we take a look at where we find the vast majority of genetic resources we find it is mainly countries of the developing world. Furthermore, looking at those who would like to have access to genetic resources we mainly find it to be pharmaceutical companies based in industrialised countries. Thus, if we assume that for example a desired genetic resource is found in an area mostly inhabited by indigenous people, we may see the introduction of property rights where there have not been any before or even have been unknown. Whether property rights really benefit both, provider as well as the beneficiary, remains unanswered, but it can be assumed that if the provider had no concept of property before he lacks the legal capacity and resources to fully understand its impact.

The Economics of Ecosystems and Biodiversity (TEEB) is an initiative with focus on the economic benefits of biodiversity. Against the background of biodiversity loss and ecosystem degradation, TEEB asks, “how economic concepts and tools can help to equip society with the means to incorporate the values of nature into decision making at all levels” (TEEB, 2010b). TEEB has a purely economic approach but it is stressed that valuation is applied for assessing the consequences of changes and not to estimate the total value of ecosystems (ibid.) which was attempted by Costanza et al. (1997). Yet, “by acknowledging the value of benefits derived from biodiversity and ecosystems, perhaps the most important consequence of economic valuation is the way it contributes to change the notion of ownership and property applied to environment in general, and biodiversity in particular” (TEEB, 2010a). The underlying danger is that nature becomes a tradable market good. Spash’s (2011) critique claims that financial institutions that understand the new and expanding environmental markets can profit through offering brokerage services, registries, or specialised funds: “Innovative marketing devices like wetland banking, biodiversity banking and endangered species credits are now ready, available and being implemented”.

With regard to both, TEEB as well as the Nagoya Protocol: What is the benefit for a developing country if companies and corporations from industrialised countries pay in order to exploit natural or genetic resources when the return and the profit remain in the industrialised world? Or even worse if, in the case of a pharmaceutical product, it is then sold at high costs to the country of its genetic origin? And are we not repeating yet the same

mistakes, which were made with regard to raw materials? In the 17th and 18th century for example the overuse of resources in Germany such as wood was compensated by restricting the formerly unregulated wood cutting in favour of the ruling class, the nobility. Only they had the privilege to cut trees, which on the one hand lead to social inequalities but on the other hand lead to the first sustainable forestry. (Tichy and Guérot, 2011)

The authors of the TEEB study write that bioprospecting programmes with the promise of selling biodiversity to protect it have flourished all over the world, but while the economic benefits of these experiments have been minimal or null in the majority of cases, internal conflicts within and between communities, governments and corporations have abounded (TEEB, 2010a). They go on: “Some have raised the question of bioprospecting as another form of colonialism, a ‘bioimperialism’ which appropriates resources and knowledge from marginal groups to powerful corporations (...).” (TEEB, 2010a).

4. A narrative approach to property rights: Property Rights and Identity

A new perspective can be gained when looking at narratives surrounding property, narratives that are important for creating social acceptance – or on the contrary challenge existing sets of rules. Narratives can broadly be defined as “an approach to the elicitation and analysis of data that is sensitive to the sense of temporal sequence that people, as providers of accounts (often in the form of stories) about themselves or events by which they are affected, detect in their lives and surrounding episodes and inject into their accounts.” (Bryman, 2012). Property narratives can show what is the common understanding of property but also where people see shortcomings, injustices or mismanagement – sometimes as immanent part of how property is defined today. More so it allows a new and open discussion about the future of natural resources and property rights, a discussion that includes the people affected by the results, their views and needs expressed through narratives.

Researching narratives takes into consideration that there are two ways of looking at property rights: The administrative and regulatory perspective takes into account what is and what was the law, hence it will trace the emergence of property rights, its development and current status in legal practice. Narratives on the other hand look at stories told about property rights, at how people see themselves and others in this social construct, at stereotypes, collective memory and how property influences identities – especially collective identities.

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3 Narrative analysis draws on different sources starting with simple administrative acts
4 or media articles and ending with private travel reports and fictional accounts. To give a few
5 examples: How did European travellers experience foreign countries and especially
6 encounters with indigenous people during the 19th century, i.e. local customs concerning
7 ownership and/or natural resources? Or: What does the classical literary canon tell us about
8 the understanding of property rights and perhaps even their failures, already perceived during
9 the 19th century? These (classic) stories depict people's understanding of property rights and
10 where they fail to address issues. But they also show how accepted these concepts are
11 especially when it comes to natural resources. Of course many of the here mentioned potential
12 sources have already been analysed but never under the overall question of property narratives
13 and natural resources. Here lies a gap in research.
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16 Another potential source is the use of oral history methods. Oral history collects the
17 perception eyewitnesses and other contemporaries have of historical events, either directly or
18 through stories told in families or among members of certain cultural groups. Concerning
19 property rights this method is less important to gather facts, but more so to get access to
20 certain narratives. Of course this rather direct approach only works for modern history and
21 current affairs and might be especially interesting for cases of conflict where property rights
22 are discussed controversially. Take for example public drinking water supply, where a recent
23 example showcases an increasing interest in water issues by the public. The state government
24 of Germany's capital Berlin was forced to publish its public-private partnership contract with
25 French water giant Veolia after a successful referendum. People were staggered by increasing
26 water prices and became suddenly interested in what is perceived by them as public good:
27 water supply (Grecksch, 2014).
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30 Narratives can tell about the change in natural resource governance, the acceptance of
31 indigenous rights and identities defined through ideas of ownership and exclusive rights to
32 property. Identity here is not only a personal issue but also a social construct. In a world
33 shaped by finance and economy, identities are influenced by ideas of property and the
34 perception that we are what we own – among other factors. Often enough people use property
35 to express their individuality and who they are: what car they drive, what clothes they wear or
36 what kind of house they build expresses how they want to be perceived by others. This has
37 shaped our understanding of property and often enough results in the idea that private
38 property is inevitable and a social construct we have to rely on. But when it comes to natural
39 resources the idea and narrative of "I own therefore I am" becomes an obstacle, hindering the
40 discussion of alternative methods of governance and an alternative understanding of property
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rights: Since ownership and property rights are a pillar of western market societies, a social construct not only accepted but also widely displayed (like described above), most people might not even consider that there are functioning alternatives to private or state-owned property.

Thus stereotypes – as is to be proven through further research – might also play an important role in understanding property rights and how they are perceived. Researchers focusing on (historical) stereotypes assume that stereotypes are collective attributions with foremost emotional context that can be comprehended through researching their linguistic or visual manifestation – i.e. for example literature, movies, paintings or news reports. Research on stereotypes in its core does not try to prove that stereotypes are “right” or “wrong” but looks at the role they play in social discourses. When for example discussing historical developments stereotypes can be an essential factor for forming collective identities essential for political and social communities. There are essentially two kinds of stereotypes: Autostereotypes are the perception people or groups have of themselves, while heterostereotypes are used to distinguish (oneself from others) and characterise others. Both are emotionally charged (Hahn, 2013). “We” and “them” are both part of an identity forming process and can be applied to property rights as well, for example when discussing indigenous ideas in comparison to western values of property, the latter often valued higher. Discussing stereotypes can distinguish how they hinder or improve the management of natural resources – especially considering forthcoming changes through climate change.

Looking at narratives altogether opens up new dimensions: How socially accepted are certain types of property rights? Which stereotypes do exist? Which alternatives are discussed? More so: How do people see themselves in the social construct determined by property rights especially when people are directly affected for example through mining, water scarcity or climate change effects and how natural resources are distributed? Property rights are determined by narratives, social convention and the common understanding of what is mine and what is yours. Changing the narrative can change how property rights are perceived and ultimately implemented as ‘law in action’. In short: With narrative analysis, the focus of attention shifts from ‘what actually happened in the construction of a property right?’ to ‘how do people make sense of what happened?’. The last point can be expanded to ‘how do people make sense of what happened and to what effect?’, because stories are nearly always told with a purpose in mind – there is an intended effect (Bryman, 2012).

Narratives can help building local and regional (historical) knowledge and understanding and makes knowledge exchange about property rights, their impacts on society

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3 and experiences with property rights easier and more approachable. A shift in how personal or
4 collective identities are perceived, a shift in the narrative also changes the acceptance of new
5 regulations – and this can become critical for climate change adaptation.
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8 To give an example of how to research narratives, one can look for example at the
9 United Kingdom, a country highly interesting with regard to property rights, natural
10 resources, narratives, stereotypes and identities. The UK for instance has a complex, multi-
11 level administration where state legislation not always addresses local necessities, where local
12 authorities often feel let down by the central government perceived to be too far away to truly
13 understand local problems.
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16 In the UK a tension between national strategies and policies in relation to rights to
17 water and local, catchment based planning can be observed. An example from Wales in the
18 1960s showcases this and even provided a further push for devolution (Wyn, 2015). The
19 Trweryn Valley was drowned between 1960 and 1965 to provide water for the city of
20 Liverpool. This was accompanied by huge protests in Wales. It uprooted the community of
21 Capel Celyn, where people lost their homes, the school and their church. Despite protests in
22 Wales and the fact that every single Welsh MP voted against the scheme it was overruled by
23 central government and allowed for compulsory purchases of land. Liverpool City Council
24 obtained authority through an Act of Parliament thereby avoiding to gain consent from Welsh
25 planning authorities. Protests against the scheme were dramatic – protestors placed an
26 explosive device at the base of an electrical transformer and microphone wires were cut
27 during the opening ceremony. Even today “Cofiwch Dryweryn” (Remember Trweryn) graffiti
28 can be found on walls and bridges in the area upholding the narrative of an unjust scheme.
29 After the opening concessions were made towards Wales, for example creating the position of
30 Secretary of State of Wales or passing the first Welsh Language Act (ibid.).
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33 Devolution in the UK for example today has shifted power to subnational authorities
34 in Wales, Scotland, Northern Ireland and London, although with differing competences.
35 However, this has also disturbed old and shaped new identities and stereotypes – or in a
36 worst-case scenario this administrative shift has destroyed existing identities without creating
37 new ones. A current discussion is if and to what extent England lacks a unique identity –
38 compared to for example Scotland or Wales.
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How important identities and narratives are in the power struggle between regional authorities and the centralist government can be observed in current debates and political processes, lately in the discussions following the 2016 EU referendum, concerning where in the future for example fishing rights in Scottish waters or agriculture laws are determined. In early March during Prime Ministers Question Time, Theresa May refused to guarantee that the decision making authority in these cases will indeed be the Scottish parliament, Holyrood, and not Westminster – as promised during the referendum campaign (Learmonth, 2017). Scottish National Party (SNP) leader Nicola Sturgeon already criticised in a speech at the David Hume Institute on 28 February that the Tory led UK government was undermining the very foundations of devolution (David Hume Institute, 2017). The Welsh first minister also warned of devolution tensions (Pickard, 2017). In these debates not only different and tangible political requirements, but also the narratives collide: On the one hand the idea of a centrally governed United Kingdom, on the other the struggle of Scottish or Welsh authorities to make decisions more independently from Westminster and according to local or regional needs. But also in accordance with regional identities and self-perception.

5. Conclusion or whom does nature belong to?

Property rights make an important contribution to the understanding of the modern state (Williams, 1977) but if we solely rely on property rights in natural resource management this can restrain the governance of natural resources. As mentioned in the introduction, when introducing property rights, customary laws are often neglected or ignored, mostly because they are not understood or seem to complex (Eimer, 2012). The TEEB study itself remarks that the discussion on the implications of attaching new forms and concepts of property to nature and culture is overdue in environmental sciences and conservation policy (TEEB, 2010a).

To give a very brief example, in the European water sector we have seen a change from private companies in the late 19th century to state owned water companies and, beginning with the liberalisation phase in the 1980's, back to quasi-state owned or private companies. These days, we can observe in many places around the world (Pigeon et al., 2012, Barraqué, 2012) for instance in Germany or France, the re-municipalisation of water to become (again) a public rather than a private service because citizens were either dissatisfied with the way water was managed, water prices have increased or more importantly they wanted to reclaim water as a public good. Hence, privatisation which usually includes the allocation of property

rights does not seem to be the ideal solution in any case. It is ironic that while on the one hand liberalisation, including the liberalisation and privatisation of resources, went on, we find a rising interest in environmental issues expressed for example through nature conservation, the fight against biodiversity loss and for more sustainability. Looking for an example outside of Europe: Kapfudzaruwa and Sowman (2009) analysed that traditional water governance in South Africa, based on customary law and the cultural, spiritual and religious meaning of water, has been overlooked so far although it has the potential to mediate in cases of conflicts. Instead water management is guided by “state-driven policies and strategies which have based on statutory legal systems” (Kapfudzaruwa and Sowman, 2009). Aubin (2013) asks whether property rights are always prevalent. He concludes that property rights are not the only means to get access to a resource. Instead, multiple strategies can be deployed for example negotiation, persuasion or claims for coercion.

Eimer (2012) states that property rights for intangible ideas are based on socio-mythological assumptions, yet patents depend upon the application of modern property rights. This can be transferred to intangible resources as well. We argue that property rights always have the notion of excludability as shown above. It becomes clear that property rights are a social agreement. Whoever is the proprietor of a natural resource determines access and allocation, which may cause inequalities. The notion of property rights is also bound to the idea of a social contract and subsequently to the idea of a state. As shown in chapter 2 by entering a contract one may give up certain (natural) rights but other rights are protected under the state for example property. For Locke property protection is the key feature of any state. Hobbes is willing to give up the access to what nature offers only to have a piece of nature protected by the state through property rights. For Rousseau living under a contract, where the accumulation of property is allowed, is only an intermediate stage on the way back to the state of nature. Adam Smith’s state conception is also about protecting property but he sees it as defence of the rich against the poor in reality. Proudhon goes into the same direction but is more radical by saying that property is robbery and that there can either be property or society.

By reducing the value of natural resources to its economic value and the introduction of property rights, TEEB and the Nagoya Protocol neglect the social and cultural value of natural resources. Thus, they both give an old answer to a question which lies at the heart of our current discussion about the future of natural resources. Property rights should therefore be introduced only when necessary and be based on Daly and Farley’s (2011) “position that

property rights belong to the people, as represented by the state, until otherwise assigned, and their distribution should be decided by a democratic process that respects future generations.”

Whereas older theories and new regulatory approaches like TEEB and the Nagoya Protocol fail to address underlying issues of (indigenous) identities and people’s understanding of property rights, narratives open up a new perspective: Instead of introducing (failing) concepts, narratives allow a bottom-up approach where people affected get a voice through storytelling. It is an approach so far neglected in research on natural resource governance. Narrative analysis may provide answers to questions such as: How do people see themselves in the social construct of property rights? Where do they see shortcomings and injustices? Are there different perspectives according to social class or gender? This can also inspire new discussions and open up new channels of communication between researchers, decision makers and the public.

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