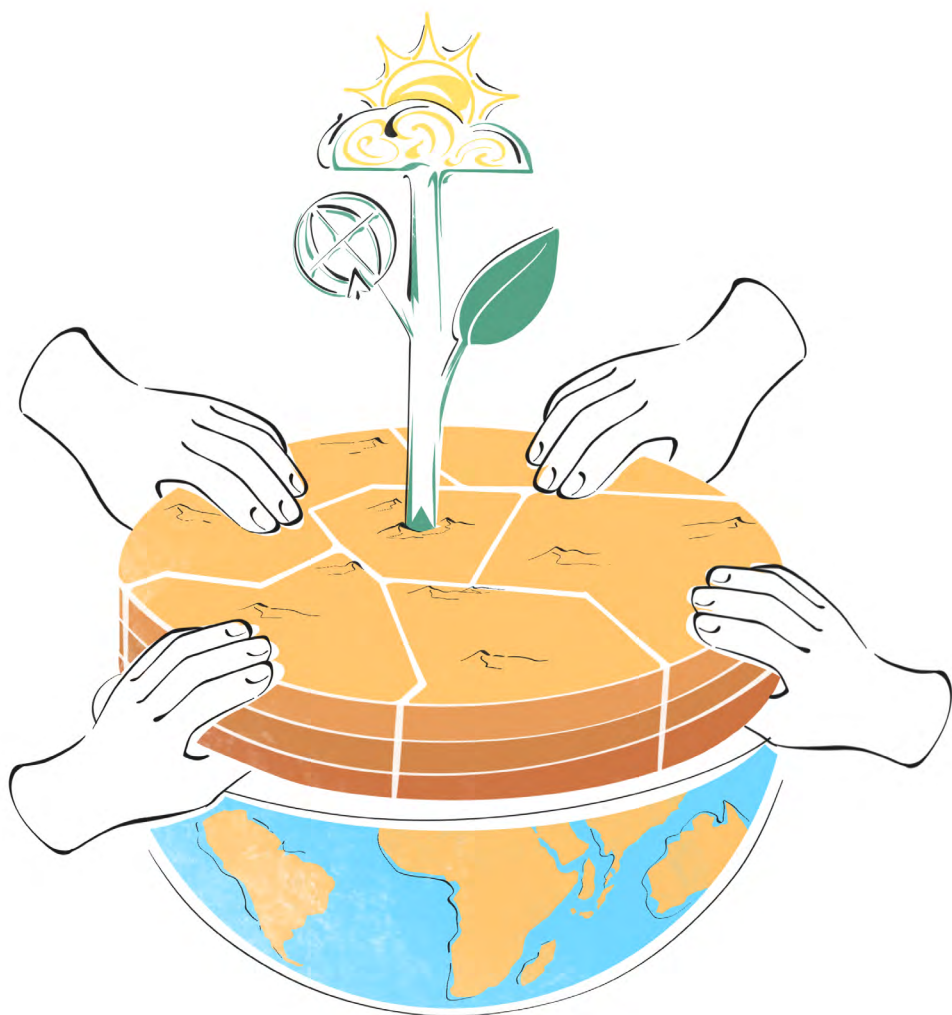


COMMONS

Patient Mulumeoderhwa Polepole and Fergus O'Leary Simpsom

Illustration by Odile Uwera



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ABOUT THE AUTHORS

PATIENT MULUMEODERHWA POLEPOLE is a PhD Student in Political and Social Sciences at the Catholic University of Louvain (Belgium) and a lecturer and researcher at ISDR-Bukavu (DR Congo). His research focuses on land dynamics, gender, customary authority, and research ethics.

FERGUS SIMPSON is a postdoctoral researcher at the University of Antwerp's Institute of Development Policy (IOB). His research focusses on the intricacies between Indigenous Peoples, natural resource conflicts, and environmental policy in Central Africa.

ABOUT THE ILLUSTRATOR

ODILE UWERA is an illustrator and writer based in Kigali, Rwanda. Her work explores the interconnection between individual and collective identity in a diverse world. She combines images and words in comic books and screenwriting.

COMMONS

Patient Mulumeoderhwa Polepole and Fergus O’Leary Simpsom¹

‘The commons’ refers to shared resources and can include public lands, water bodies, cultural assets, and even digital spaces. It can also refer to forms of knowledge that are held collectively rather than privately. Highlighted by Garrett Hardin in his seminal work ‘Tragedy of the Commons,’ the concept underscores the risk of over-exploitation by individuals prioritizing their self-interests. However, research on common property regimes demonstrates that communities can, under certain conditions, develop governance structures to effectively manage shared resources. Yet, this research often struggles with global commons, such as the climate, and has faced criticism for its insufficient recognition of the roles that culture, history, and power play in collective governance challenges.

Concept

The concept of ‘the commons’ has a multifaceted history and varies in interpretation. It is derived from the Latin ‘cum-munis’, signifying the mutual responsibilities shared among people, especially in the context of public office obligations (Brossaud & Laval, 2018). In Roman legal terms, ‘res communis’ denoted common property, set against ‘res nullius’—property that is unclaimed and belongs to no one (Wetter, 2017). This framework established a dichotomy, categorizing ‘res publica’ as public property because it was state-owned, and ‘res communis’ as

¹ Artificial intelligence tools were used to simplify the terms used in our scientific texts, making them easier to understand.

naturally for communal use, being non-excludable by nature (Brossaud & Laval, 2018).

More recently, the concept of the commons has been employed in research related to the management of natural resources: i.e. fisheries, forests, grazing systems, wildlife, water resources, irrigation systems, agriculture, and land tenure. It is also cited in debates around the global commons, encompassing issues like climate change, air pollution, and transboundary disputes. New research addresses unconventional and emerging commons, including urban commons like apartment buildings, parking spaces, playgrounds, as well as resources like the Internet (Colding et al., 2013; De Angelis, 2019).

Different actors and disciplines approach the commons in different ways, leading to conflicting interpretations. Consequently, certain frameworks have come to predominate, shaping the discourse and justifying specific management approaches.

Within all this literature, as well as in policy debates, different actors and disciplines approach the commons in different ways, leading to conflicting interpretations. Consequently, certain frameworks have come to predominate, shaping the discourse and justifying specific management approaches. In the following discussion, we delineate four conceptual confusions or tensions evident in conversations about the commons.

The first confusion revolves around the different ways the notion of the 'commons' is used. The term typically describes resources that are difficult to privatize, such as oceanic fish or

small rangelands, where usage by one individual diminishes availability for others. However, it can also refer to common or collective management of resources not owned by the state or private individuals. While there is a link between common resources and collective management, the relationship is not inherently causal. Some common pool resources may remain

unmanaged, as open access regimes, while others may be nominally overseen by the state. The literature often fails to clearly delineate these different understandings of the notion of the commons, contributing to conceptual confusion. De Angelis (2019, p.124) addresses this by defining the commons through three aspects: (1) a commonwealth of resources, (2) governed by a community of commoner; (3) who engage in communing, thus sustaining their communal life and resources. This definition is broader and more inclusive, compared to most definitions of the commons.

While there is a link between common resources and collective management, the relationship is not inherently causal.

The second tension arises around the management of common pool resources. Garrett Hardin's (1968) concept of the 'Tragedy of the Commons' describes a scenario where unrestricted access to commons leads to resource overuse and depletion. Individuals, driven by their own self-interest, are inclined to maximize their personal consumption or utilization of a common resource. However, when everyone prioritizes their self-interest without regard for the collective impact, it results in the overexploitation, deterioration, and eventual depletion of the shared resource. Economists describe this issue as a negative externality, a type of market failure where individual actions have adverse effects on others who did not consent to bear those consequences. This rationale, now widely accepted, is often cited to support the enforcement of stringent state controls or the establishment of private property rights (Ostrom, 1990).

However, Hardin's assumption that collective and decentralized management is unfeasible, has been challenged by New Institutional Economists (North, 1990; Ostrom, 1990). In particular, the Nobel-Prize winner Elinor Ostrom gathered empirical evidence that communities are capable of successfully managing common-pool resources without reproducing the tragedy dynamic. She conducted extensive research on various

communities around the world and identified cases where communities had developed just, effective and sustainable systems for managing shared resources. Her work challenged the notion

When everyone prioritizes their self-interest without regard for the collective impact, it results in the overexploitation, deterioration, and eventual depletion of the shared resource.

that central regulation or privatization were the only solutions to prevent the tragedy of the commons.

The third confusion concerns whether institutions for managing common resources can be intentionally designed, considering the cultural, historical, and political contexts that influence governance. Anthropologists and Critical Institutional scholars argue that community-based resource man-

agement depends on specific factors that are far from universally applicable at a local level (Cleaver, 2012). They highlight that community governance does not automatically equate to 'good' governance (Agrawal and Gibson, 1999; Blaikie, 2006), given that disparities, inequities and injustices exist within communities in a similar way as they do within broader societies and nations.

Critical Institutional scholars scrutinize the complex fabric of institutions that are woven into everyday social life, exploring their historical roots and the interplay between traditional and modern, formal and informal frameworks (Lund, 2006; Cleaver, 2012). These scholars frequently critique the narrow focus of mainstream property scholarship on local institutions, which they argue leads to depoliticized analyses of socio-ecological issues (Robbins, 2011). Consequently, they question the feasibility of 'designing' effective institutions for managing natural resources (Mosse, 2005; Cleaver, 2012).

The fourth area of tension concerns the possibilities of commons management to realize radical alternatives to the incumbent capitalist system, which is predicated on perpetual growth and consumption. In a capitalist system, resources are typically held

in private ownership, with their allocation determined by the market forces of supply and demand. As a counterpoint to this, Marxist thinkers have harnessed the notion of the commons to envision a post-capitalist future (De Angelis, 2021), challenging hegemonic neoliberal conceptions of social order (Laval 2016). Building on this logic, Dardot and Laval (2015) call for the re-politization of the commons as a countermeasure to global capitalism. In doing so, they reconceptualize the commons as a form of self-government at the local level that can inspire new kinds of non-exploitative interactions among people, territories, work and culture.

However, global commons such as the climate presents unique challenges due to their expansive scale and the multitude of stakeholders involved. It's often impractical to implement systems for monitoring and penalizing free riders in such contexts. Local management systems may also struggle to address non-linear dynamics, feedback loops and system-wide effects associated with global commons. While the concept of the commons offers a compelling political vision at a local level among groups with shared resource interests, its applicability dwindles at larger scales where cooperative action is less certain. The scale and complexity of crises like climate change may therefore require a degree of top-down regulation to address.

Institutions for managing common resources can be intentionally designed, considering the cultural, historical, and political contexts that influence governance.

Case study

Let us now take our reader to the Democratic Republic of the Congo's (DRC) South Kivu Province. The importance of the commons in this context, but also the multiple interpretations, may help us to illustrate the complexity of this concept.

In many parts of sub-Saharan Africa, land holds significant political, economic, symbolic, and identity value. It is a crucial element of individual and clan identity, family honor, traditional authority, and the linkage between current generations and their ancestors. Moreover, land is integral to wealth accumulation and the establishment of collective social order (Mubalama, 2021). Typically, chiefs serve as custodians

The re-politization of the commons as a countermeasure to global capitalism.

of communal resources such as land. Their roles and responsibilities are shaped by established customary norms and practices (Polepole et al., 2013).

After Independence, the Congolese State reinforced its control over land tenure through the implementation of new state laws and institutions. The Constitution of the Republic (1967) and the Land Law (1971 & 1973) established state ownership over the soil and subsoil (Mugangu, 1997). These laws reduced the 'sovereignty' of the customary power of ethnic groups, tribes and clans, and transferred it to the Congolese State. As a result, rural or local communities' land became legally included in the state's public domain. However, various interpretations emerged on what this meant.

One perspective sees collective land as ownerless property—*res nullius*—while another views it as a resource divided among local community members (Clement, 2013). The latter interpretation treats the land of local (peasant) communities as an inalienable asset. For example, among the Bashi community in South Kivu, the custom states that no single individual owns the land;

rather, it belongs to the entire community (Polepole et al., 2013). However, community members are entitled to obtain usage rights to the land, allowing them to cultivate, harvest, excavate, or raise livestock, in accordance with established local norms. The Bashi customs define how these rights are determined, legitimized, allocated, and their duration.

Luvumbu hill, in Walungu territory, provides a concrete example. The right to harvest lettuce is granted by membership of the community, in order to meet subsistence needs. These rights are passed on from father to son and are regulated by local customs. Ultimate ownership is retained by the collective, personified in the figure of the traditional authority, the Mwami, who is represented locally by the Group Chiefs (Polepole et al., 2013).

Customary norms ensure land is not overexploited. A person can be excluded from a community for several reasons, leading to loss of land use rights. Failure to comply with collective standards

of resource maintenance is one reason for expulsion. 'In the Kanyantende marshlands, four farmers lost the right use of their fields for failing to pay the contribution for the maintenance of the canals and preservation of the marsh. In the Luvumbu watershed, three people were accused of failing to maintain the collective hedgerows which cross their fields' (Polepole et al., 2013: 7). Two of them apologized then complied with the norms of the natural resource governance committee. Another man failed to comply, even after being warned by the customary chief. He was then denied access to the hill.

While the concept of the commons offers a compelling political vision at a local level among groups with shared resource interests, its applicability dwindles at larger scales where cooperative action is less certain.

To link this back to our conceptual discussion above, common pool resources do not always lead to a tragedy-of-the-commons

situation, resulting in the unavoidable degradation of a resource. In fact, decentralized, common property regimes can provide in the enforcement of collective norms that lead to sustainable usage of common pool resources. Yet, that does not mean common property regimes are always socially inclusive. In fact, common property regimes represent the same power dynamics as those grounded in the broader society.

For example, under Bashi custom, land rights are transferred exclusively through the male members of a family. If a man passes away without male heirs, the right to use the collective land ceases for his family and reverts to the customary chief. The chief then redistributes these rights to another family head who lacks land, or to a young man who has reached the age of responsibility as defined by custom (Polepole et al., 2013). In this system, women, with their significantly restricted opportunities to inherit these collective land rights, are distinctly disadvantaged.

Furthermore, common land governance regimes in South Kivu have evolved over time, and have been disrupted by diverse societal dynamics (Polepole & Mudinga, 2024). First of all, decades of land speculation coupled with multiple crises have shifted perceptions of land towards viewing it as a private commodity (Polepole et al., 2023). Increasing privatization of land poses a challenge to common property arrangements. It can jeopardize collective belonging, while facilitating land grabbing, the impoverishment of peasants, and the intensification of land conflicts (Mudinga et al., 2017). An illustration of land privatization is seen in the practice of sharecropping, where private landowners lease out plots from their concessions to tenant farmers without state or customary approval. In return, the tenant farmers pay the private landowner royalties by way of lease or rental income. Land has also been privatized through various mining concessions across South Kivu, often held by international companies (Geenen, 2014).

Second, large areas of land once managed by local communities through decentralized arrangements have now been incorporated into state-managed protected areas. Thousands of people were for example expelled from South Kivu's Kahuzi-Biega National Park during the 1970s (Barume, 2000). The park was initially intended to supplant local governance structures with state-managed territory, prioritizing biodiversity conservation, scientific research, and tourism above the local use of resources (Simpson & Geenen, 2023). However, regional conflicts and the rise of non-state armed groups have significantly weakened state oversight of the park (Simpson & Pellegrini, 2023). Yet, this has not seen a revival of common property management. Instead, the last thirty years have seen armed groups increasingly engage in poaching, mining, and timber harvesting, leading to profound ecological changes. Parts of the park now operate under neither collective, state, nor private governance. Rather, access to and exploitation of park resources are now predominantly controlled by the ability of various groups to exert (coercive) force, marking a stark departure from the traditional commons.

In South Kivu, as well as more broadly, 'the commons' face escalating threats. The remaining common property regimes are buckling under the weight of social, political, and economic upheavals. At the same time, communities and nations worldwide are increasingly experiencing polarization, divisive debates, and continual crises as their new norm. Despite these challenges — or perhaps because of them — the concept and ambition of the commons are more crucial than ever.

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