

State Power and Commoning



Transcending a problematic relationship

A report on a Deep Dive Workshop convened by
the Commons Strategies Group in cooperation
with the Heinrich Böll Foundation

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State Power and Commoning: Transcending a Problematic Relationship

A Report on a Deep Dive Workshop convened
by the Commons Strategies Group
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By David Bollier¹

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The commons – as a constellation of specific projects, a transnational network, and a discourse that makes bracing moral and political claims -- is on the rise. It can be seen in renewed interest in classical commons such as farmland, fisheries, forests and water as well as in efforts to build communities around shared digital resources and re-imagine governance of city resources as commons, among many other initiatives. Much of the focus of commons is not on the resource alone, but on the social practices and norms of working together in equitable ways for shared ends, often known as “commoning.”

Commoning is often seen as a way to challenge an oppressive, extractive neoliberal order by developing more humane and ecological ways of meeting needs. However, as various commons grow and become more consequential, their problematic status with respect to the state is becoming a serious issue. Can commons and the state fruitfully co-exist – and if so, how? How might state authority, law and policy be re-imagined to affirmatively support commoning?

These are important issues because commons offer many promising, practical solutions to the problems of our time – economic growth, inequality, precarious work, migration, climate change, the failures of representative democracy, bureaucracy. Yet, stated baldly, the very idea of the nation-state seems to conflict with the concept of the commons. Commons-based solutions are often criminalized or marginalized because they implicitly challenge the prevailing terms of national sovereignty and western legal norms, not to mention neoliberal capitalism as a system of power.

The challenge is not just a matter of how to manage common-pool resources that extend beyond national boundaries, such as oceans, space and the Internet. What is needed is a reconceptualization of state power itself so that it can foster commoning as a post-capitalist, post-growth means of provisioning and governance. Can commoners re-imagine “the state” from a commons perspective? Can “seeing like a state,” as famously described by political scientist James C. Scott, be combined with “seeing like a commoner” and its ways of knowing, living and being? What might such a hybrid look like? What can on-the-ground experiments in cities like Barcelona, Bologna and Seoul tell us about these possibilities?

To address these and other related questions, the Commons Strategies Group in cooperation with the Heinrich Böll Foundation convened a diverse group of twenty commons-oriented activists, academics, policy experts and project leaders for three days in Lehnin, Germany, outside of Berlin, from February 28 to March 1, 2016. The goal was to host an open, exploratory discussion about re-imagining the state in a commons-centric world – and, if possible, to come up with creative action initiatives to advance a new vision.

The Commons Strategies Group consists of three commons activists – German author and speaker Silke Helfrich, American author and scholar David Bollier, and Belgian Michel Bauwens, a political scientist, economist and founder of the Peer to Peer Foundation. The Heinrich Böll Foundation is a publicly financed foundation affiliated with German party Alliance 90/The Greens. The Foundation has been supporting work around the theories and practices of the commons since 2007. Much of the Böll Foundation’s work on the commons is directed by Heike Löschmann, Head of the Department of International Politics.

PART ONE:



UNDERSTANDING STATE POWER

I. UNDERSTANDING STATE POWER

To help “set the table” for the Deep Dive discussions, Silke Helfrich prepared a framing paper synthesizing some of the relevant scholarship that theorizes the state. Her paper introduced key issues that arise when we begin to talk about “the state.” One of the first insights is that “a theoretically valid general definition of the state” is not really possible. “The state appears as a complex institutional system that solidifies power relationships in society, and potentially has the capacity to shift them,” writes Helfrich. “Thus it is not ‘the state’ as such that acts, but in each case specific groups with concrete interests and positions of power act.” These groups and interests will of course vary immensely from one instance to another.

Despite this variability of “the state,” there are four basic aspects of statehood that seem to apply in every case: *Political control of territory*; *functional power* in setting and enforcing rules; *institutional capacities* such as bureaucracy and organized power; and *social control* in subjecting people to state authority. These criteria of states and “statehood” were formulated by Professor Bob Jessop in his 2013 book, *The State: Past, Present and Future*. Based on this understanding, Helfrich notes, “the state” consists of “territorialized political power over a society that is exercised on the basis of rules and norms, but also by procedures and practices and accustomed ways of thinking about things whose socially constructed functions are accepted as binding by the people governed.”

State power introduces distinct principles of order that shape how we experience and understand the world, said Helfrich. In modern states, human society tends to be separated between *the private and public spheres*, with the state asserting control over the latter. State power also separates the worlds of *production and reproduction* and tends to give it a binary gender association (males involved in production/work, women with reproduction/family).² Finally, state power separates public life into “*the economy*” and *politics*, casting the “free market” as natural and normative

² While some states in the West are more actively promoting gender equity, serious problems persist for social reproduction, care work and gender-based divisions of work.

and politics as the realm for subjective disagreement and (presumptively illegitimate) social intervention.

No state rules and institutions are permanent or *a priori*; they are always the result of societal struggle and debate. So a state is less a subject or entity in itself than an *ongoing expression of political power (state power)* that expresses a culturally determined web of changing social relationships, writes Helfrich. In this sense, one might say that “The State” does not really exist as a thing because state and statehood must constantly be re/produced. For this reason, Professor Bob Jessop, a workshop participant and Distinguished Professor of Sociology at the University of Lancaster in the UK, suggested that it is more useful to talk about *state power* than “the state,” and about *commoning* than “the commons.” This shift in vocabulary helps underscore the fact that “the state” is constituted by dynamic social and power relationships, and helps us avoid reifying “the state” and “commons” as fixed, concrete entities.

A national state emphasizes its territorial borders, but a nation-state conjoins the nation and the state, and uses state power to in effect invent national identities and determine who are legitimate citizens. Nation-states have asserted this power in various ways since the French Revolution of 1789 as a way of naming and controlling who is a subject of state power and who is not, and as a means to exercise its power with minimal interference. Helfrich cited James Scott’s 1998 book *Seeing Like a State*, which shows how the nation-state has taken steps to “simplify” the “legibility” of social interactions and processes through such means as uniform measures, weights, family names and land ownership, all of which helps ensure the controllability of citizens. “Just as modern forestry gradually transformed biodiverse forests into monocultural plantings to make timber production predictable, so did prescribing family names and establishing land registries and bureaucracies regulate the countability of social matters, thus creating a prerequisite for governing forcefully and without regard to opposing views,” writes Scott.

In the process, nation-states introduce – and coercively enforce – a new idea of “a people” and “citizens” – one that is quite different from anthropological or cultural definitions of people in which membership is fuzzy and evolving. When “the nation” as a system of organized power is

conflated with the anthropological and ethnic realities of the term “nation,” it becomes why it is a “dangerous amalgamation” of concepts that leads to nationalism, said Helfrich. When cultural identities are incorporated into the nation-state, it gives rise to the phenomenon of Balkanization, for example, and the democratically elected Nazi regime. This prompted Hannah Arendt to write: “The inability of precisely this state form to survive in the modern world was proven long ago, and the longer it is maintained, the more viciously and ruthlessly the perversions not only of the nation-state, but also of nationalism, will prevail.”

The idea of the nation-state has not just incorporated national and social identities; it is conflated with the economic system itself, which is based on generalized commodity production, otherwise known as capitalism, said Helfrich. States dominated by capitalist relations of production, as described by Antonio Gramsci, rely upon “an apparatus of state coercive power.” It is used to bring the masses of the people in line with the needs of a specific mode of production. This does not necessarily involve state force but rather methods of moral suasion and mobilizations of societal consensus. It can be seen in German Chancellor Angela Merkel’s stern calls for “democracy in keeping with the market.”

The nation-state additionally organizes gender identities in tandem with economic production, as feminist analysis has shown us. The state helps assure that the commodified economy (connoted as masculine) works together with the non-commodified world of social reproduction (connoted as feminine) to construct an extractive economic system that functions smoothly. This dynamic is predicated on routine “enclosures of the commons,” experienced as social dispossession and ecological destruction in the service of capital accumulation.



Why State Theory Should Matter to Commoners

In an opening presentation on state theory, Professor Bob Jessop, outlined his “strategic-relational” approach to understanding the state, which rejects the idea of a unitary, fixed state and focuses on the power and social relationships among elites in a given nation. Jessop writes that:

states are not neutral terrains on which political forces struggle with equal chances to pursue their interests and objectives and with equal chances of realizing their goals whatever they might be. Instead the organization of state apparatuses, state capacities and state resources [...] favor some forces, some interests, some identities, some spatio-temporal horizons of action, some projects, more than others.³

Jessop argues that “the state itself is constituted as a division between itself and its ‘other,’ which may be markets, society, the church, family, civil society, among others.” Such dualities are important, he explained, because “the state must impose dividing lines to exist and to clarify itself. Any theorization of the state is about such dividing lines. The question is, Can those lines be transcended by certain interests? Or does the state justify

³<http://bobjessop.org/2014/12/02/the-strategic-relational-approach-an-interview-with-bob-jessop>.

itself in the name of an antagonism that it then proposes to control and manage?”

Jessop noted that the very juridical language of the state creates distinctions that establish structural antagonisms even before getting to classic ‘others’ such as class, race or gender. Take the commons, for example: “Is the commons to be defined *within* a state or does it transcend the state itself?” asked Jessop. Answering this question is extremely complicated, he said, “because *there is no general theory of the state and commons.*” The two tend to have little or no formal juridical relationship.

Jessop believes that “state power and commoning” is such a complex relation that it is inappropriate to rely on only one analytic approach: “The topic invites multiple entry points for different purposes. In adopting one, you will not be able to see others. Multiple perspectives provide a more rounded view of the subject. So we must ask what are the appropriate entry points for thinking about state power and commoning. If we want our approach to commoning to be consistent with state power, then problems and paradoxes will arise later.” Silke Helfrich of the Commons Strategies Group agreed: “there cannot be ‘the one and only general social theory’ of either the commons or state,” let alone one theory of their tangled interactions.

Clearly the state, allied with markets, has made it a priority to make a preeminent commitment to individual property rights at the expense of the commons and human rights. Benjamin Coriat noted how the Napoleonic civil code negated any form of common property when it went into effect in 1804: “France had been covered with commons – forests, fisheries, lakes, etc. – but the civil law denied any form of common property,” said Coriat. The juridical privileging of property rights, defined in terms of individuals, also served to override collective human rights because individual property rights in practice can be used to negate human rights.

This should not be entirely surprising, said Coriat, because the state has no institutional commitment to the commons, and its allegiance to human rights is generally bounded by its prior commitments to property rights and “free markets.” “This is the battle that we need to address,” Coriat said. He urged that we deconstruct the familiar definitions of private

property and human rights, and “create new institutional and juridical forms so that commons can develop their own forms. These must be voluntary forms for creating new types of freedom,” he said.

Weber and Gramsci on State Power

Jessop believes there are two especially powerful perspectives for understanding state power and commoning. One is the German or Weberian tradition about general state theory (*allgemeine Staatstheorie*), and the other is based on the ideas of Italian theorist Antonio Gramsci. “Max Weber defines the modern state as that human community that claims as legitimate its monopoly over the means of coercion over a given territory,” said Jessop. [‘Community’, or *Gemeinschaft*, actually refers here to a state apparatus and its staff] “By contrast,” said Jessop, “Gramsci regards the state not as a juridico-political apparatus governing a territory, but as “the whole complex of practical and theoretical activities with which the ruling class not only justifies and maintains its dominance, but manages to win the active consent of those over whom it rules.” In short, Weber starts with institutions, and Gramsci starts with power. Gramsci warns that we must not fetishize the formal, juridical features of the state, but focus rather on how power is actually exercised. For Gramsci, the state apparatus indicates a division of labor in a society between those who specialize in political rule and citizens/subjects.”

“What is missing from the three-component theory of the state (territory, apparatus, people),” said Jessop, “is a fourth component, which is absolutely crucial in understanding the state: *the idea of the state*. You need to be able to talk about the state itself, as a subject. You have to state the conditions under which you can talk about the state. What is the justification of the state that lets us talk about ‘the state’? This is the missing fourth component.”

The idea of the state is important because it helps conceptually link the Weberian and Gramscian perspectives, said Jessop. For this defines the nature and purposes of the state for the wider society, and thereby involves *both* state institutions and social relationships and practices. The idea of

the state helps clarify how the political class deliberately blends itself with civil society to establish “the state,” or alternatively, how it establishes and protects its hegemony using the armor of coercion. It becomes clear that Gramsci does not truly attempt to define the state; he focuses on describing state powers and how they are exercised.

There is a danger in fetishizing the state, its institutions or the population, said Jessop, because “one must also consider how state power is exercised. This forces you to consider the broader issues of legitimacy and the state. How is support mobilized from the wider society? You need to look at political power in relation to civil society. You can’t understand the power of the state without looking at its ability to project its power and the capacities of people to resist the state, i.e., the probability that state authority will be obeyed.”

Gramsci’s analysis of the state was concerned with the western state after 1870 and the masses acquired influence and mass politics became important. This required that hegemony be legitimized, said Jessop. Gramsci also contrasted the state in the West, where there were robust civil societies, with the state in the East, such as Russia, where civil society is comparatively weak and gelatinous. In either case, Gramsci’s contribution to state theory is significant because it goes beyond issues of inclusive hegemony and coercion, to discuss such issues as “inclusive hegemony” and “passive revolution” (i.e., co-optation and social transformation without mass participation); the uses of force, fraud and corruption; and open class struggle.

Jessop stressed: “We need to take Weber seriously regarding the complexities of the unique logic of the state as a set of political/judicial institutions that organize power. But we can’t be happy with Weber without the Gramscian idea of the state because, for the powerful, the state is only one resource among many. The powerful don’t fetishize the state; commoners engaged in commoning should not, either. What are the practical and theoretical resources we need to engage in commoning? What combination of state power, markets and social solidarity are needed to deliver the wider commoning project?”

The State as an Instrument of Social and Power Relations

It is clear from Jessop's theoretical analysis that state power is a jealous, self-perpetuating force. It is an enabling mechanism for certain factions, especially capital and business, to further their interests. What does this mean for commoners who seek to use commoning to develop a better world, one of greater ecological responsibility, social and gender justice, and personal security? How might commoners use the state to advance their interests and freedom?

These questions immediately bring to mind the history of socialism. "Do commoners really oust the privileged classes and seize state power?" asked Stacco Troncoso, the P2P Foundation's strategic director and cofounder of Guerrilla Translation. "If so, is there a way to safeguard against a reactionary lock-in of existing forms of state power? What is the 'transition strategy' to a new type of state? How might state power itself be transfigured?"

Pablo Solón Romero, a long-time Bolivian activist and the former Ambassador of the Plurinational State of Bolivia to the United Nations (2009-2011), told a cautionary tale of how insurgent social factions took power in his nation in the early 2000s: "Fifteen years ago, we had a lot of commoning in Bolivia - for forests, water, justice, etc. To preserve this, when our enemy was the state and privatizing everything, we decided we would take the state. And we succeeded! And we were able to do good things. Now we have a plurinational state. That's positive. *But....*ten years later, are our communities stronger or weaker?" Solón asked. "They are weaker!" he concluded. "We can't do everything that we wanted to do via the state. The state and its structures have their own logic. We were naïve. We didn't realize that those structures were going to change us."

He explained how the incoming President Evo Morales and his team wanted to avoid appointing "liberal technocrats" to head government ministries; instead they appointed the leaders of various social movements. But once those people began earning \$1,000 a month, after years of earning

\$50 a month, -- enabling them to afford cars, apartments and travel - their living conditions changed, and so did they.

“We wanted to overcome extractivism - the export of silver, rubber and tin, and now natural gas. We nationalized the gas and redistributed the benefits. It worked!” said Solón. “Suddenly the state had a lot of money. It went from \$1 billion to \$15 billion. But it all ended up in a different way because of the logic of power. People want to stay in power, and the best way to do that is to get easy money - which means the extractivism of resources, even if prices are low.”

What are the lessons to be learned from the left’s taking of state power in Bolivia? Solón: “You need to build a counterpower outside of the state. Our biggest mistake was not doing that. We brought the communities inside the state, and that destroyed them. Because the power of the state is too strong. We should have said to indigenous people, we are going to support you as a counterpower.”

But even that would not be enough, Solón suggested. What is needed is “a different vision of society and concrete plans for building it. We had the principles and vision of *buen vivir* [the Indigenous peoples’ ethic and practices of “good living”], but no plan for achieving it through specific projects. And it is so difficult to build a social counterpower. That can only be built by developing an alternative society in more concrete terms.”

This report looks more closely at commoning as a counterforce to state power in Part II below. For now, it is worth noting what Jessop calls “a paradox at the very center of the state.” “The state claims to represent the wider interests of society,” he said, “but in fact it is only one part of that society with its own interests and limited capacities to reorder the wider society.” The point is succinctly captured by an old joke that Jessop told: “There is more in common between two government deputies, one of whom is a communist, than there is between two communists, one of whom is a deputy.” He added that state intervention can nonetheless transform the wider society and people’s interests even if this often involves unintended effects.

Unequal power tends to make civil society very dependent on the state - and this power can then be used to discourage or outlaw commoning, said Henry Tam, a lecturer at the University who writes extensively about governance. He added: "Commoners may have few resources to sustain their commoning and to resist state power. At the same time, they may also be vulnerable to corporate hegemony without the intervention of state power. Many civil society organizations are not sufficiently prepared for the fact that the state might come under the control of political groups that are hostile to them," he said. Meanwhile, the state is all too eager to foster dependency upon it by strategically dispensing its largess and legal approval.



Variations in State Power

It bears emphasizing that the recurring patterns of state power play out in different ways around the world. State power among the agrarian states of Africa, for example, expresses itself in very different ways than in it does in Latin America, Europe or the United States. This stems largely from basic geographical and resource differences among nations, but also from the diverse policies, cultures and social norms for blending state power and markets. Below, a brief tour of some of the more salient differences.

Authoritarian and neoliberal state power in Latin America.

Multinational corporations have long looked to Latin America for its natural resources - oil, gas, minerals, biodiversity. But the situation has gotten worse over the past fifteen years, said Pablo Solón, as state leaders have become co-opted by state power and capitalism. At one time commons were ascendant in Latin America and people were trying to stop privatization and extractivism. Now, said Solón, the state in Latin America is being transformed by two trends - business takeovers as corporate officials become presidents and government ministers, and an intensification of authoritarian rule, especially in countries such as Bolivia, Ecuador and Chile. The general goal is to adopt and extend neoliberal “structural adjustment” policies so that governments can more effectively sell their countries’ resources to global investors.

But these trends have caused a new set of problems, said Solón. “Now that the global economic crisis has reached Latin America – in a way that was not true ten or fifteen years ago – basic government services are being squeezed. Even if a state has nationalized its oil and gas, it now receives less money from those resources. Lower prices means less tax revenue. So, as social services now deteriorate ‘from the inside,’ we are seeing how the welfare state is very much linked to the extractive economy. Groups of citizens used to ask the state to solve problems, and that was possible because the state had money,” said Solón.

But this is not financially possible any more because governments no longer have the money. This is an especially worrisome development in light of the ecological havoc being caused by climate change and El Nino weather patterns.⁴ Solón believes that “something new will have to emerge.” He speculated that perhaps fiscal austerity will “reinvigorate old practices of commoning and indigenous communities.”

The Agrarian States of Africa. While we may think of European or western states as the norm, Liz Alden Wily, an independent political economist who specializes in land tenure issues in Africa, pointed out that agrarian states deserve more attention: “Despite 300 years of industrialization, 156 of 196 modern states are agrarian; that is, their economies remain land based. Their assets cover two-thirds of the world’s land area and cater to 87 percent of its population. Directly dependent rural dwellers number three billion, or 42 percent of the world’s population.”⁵

In most African states, there is a profound conflict between the on-the-ground practices of commoning the land and natural resources, and the state’s staunch commitment to neoliberal free markets in land. Why do governments persist in upholding a narrow idea of “property”? Alden Wily writes: To be short and blunt, the norms of wealth accumulation by

4 See, e.g., Pablo Solón, “From Paris with love for Lake Poopó, El Observatorio Boliviano de Cambio Climático y “Desarrollo,” December 21, 2015, at <http://therightsofnature.org/useful/from-paris-with-love-for-lake-poopo>.

5 Liz Alden Wily, “Communities & the State: Rethinking the Relationship for a More Progressive Agrarian Century,” forthcoming July/August 2016 issue of *The Environment Forum*. Environmental Law Institute, Washington, D.C.

dispossession by which old feudalism and capitalism got their grip die hard. For agrarian states following classical paths to wealth creation, it remains convenient to keep millions of hectares of valuable land close to hand as disposable assets to companies and well-heeled elites despite the fact these lands are traditionally and presently the active domains of their citizens.” It is not only hunter-gatherer, pastoral and indigenous peoples who resist the marketizing of land, many “modern settled farming communities....see this arrangement as a foundation for shared culture, practical social security and an ultimate bulwark against bad decisions and involuntary losses,” she said.

However, there is a growing trend to resist the state’s claims to be the rightful owner of unfarmed lands and “wastelands.” More Africans are challenging state threats to local land tenure. In countries such as Tanzania, Mozambique, Uganda, Kenya and Burkina Faso, communities are using new constitutional provisions to protect their customary rights in land. Wily reports: “Almost without noticing, it is accepted that agrarianism is here to stay; not merely an unhappy phase to be endured while factory-based industrialization and corporate rurality take root, but a basis for growth in its own right.” Wily believes that “an entirely new phase of the agrarian state could be in the making.”

Fiscal Austerity, Enclosures and the Crisis of the European Union. Discussion about the commons in the context of Europe invariably focused on fiscal austerity that has starved education, healthcare, infrastructure and other social services, and the diverse enclosures that are expanding patents for pharmaceuticals and seeds, attempting to erode “net neutrality,” privatize coastal lands and urban spaces in Croatia, and transfer public control of resources to private corporations in many areas. These assaults on commoners have intensified since the 2008 financial crisis, especially for southern European nations such as Greece, Italy and Spain.

The commons is starting to gain more traction in these countries, it was noted, because there is a widespread belief that the prevailing neoliberal framework provides no answers for meeting basic needs in social equitable ways, let alone addressing larger issues such as climate change. There are a variety of post-capitalist, pro-democracy movements that are attempting to challenge the failures of European states – degrowth, the

social and solidarity economy, political factions disillusioned by the Socialist Party in France and SYRIZA in Greece, various commons-based projects, and urban commons initiatives, among others.⁶ The former finance minister of Greece Yanis Varoufakis in February 2016 launched DiEM (Democracy in Europe Movement), which is “a new coalition of democrats demanding that the *demos*, the people, is put back into democracy” on a pan-European basis.

The United States. David Bollier described some of the characteristics of the US as a market/state system and the role that commons play there. He noted that the US, as one of the world’s largest and most robust economies, is arguably the most aggressive, extreme champions of the neoliberal state. Domestically, this has made the US a pioneer in developing systems for enclosing common wealth, from water, land and air to genes, information and culture. Internationally, the US commitment to neoliberal policies manifests itself through extractivist market activity in Latin America, Asia and Africa; fierce expansions of copyright and patent law and enforcement powers; broad trade and investment treaties that seek to maximize the power of markets and large transnational corporations; and a general conflation of economic growth with societal well-being and progress.

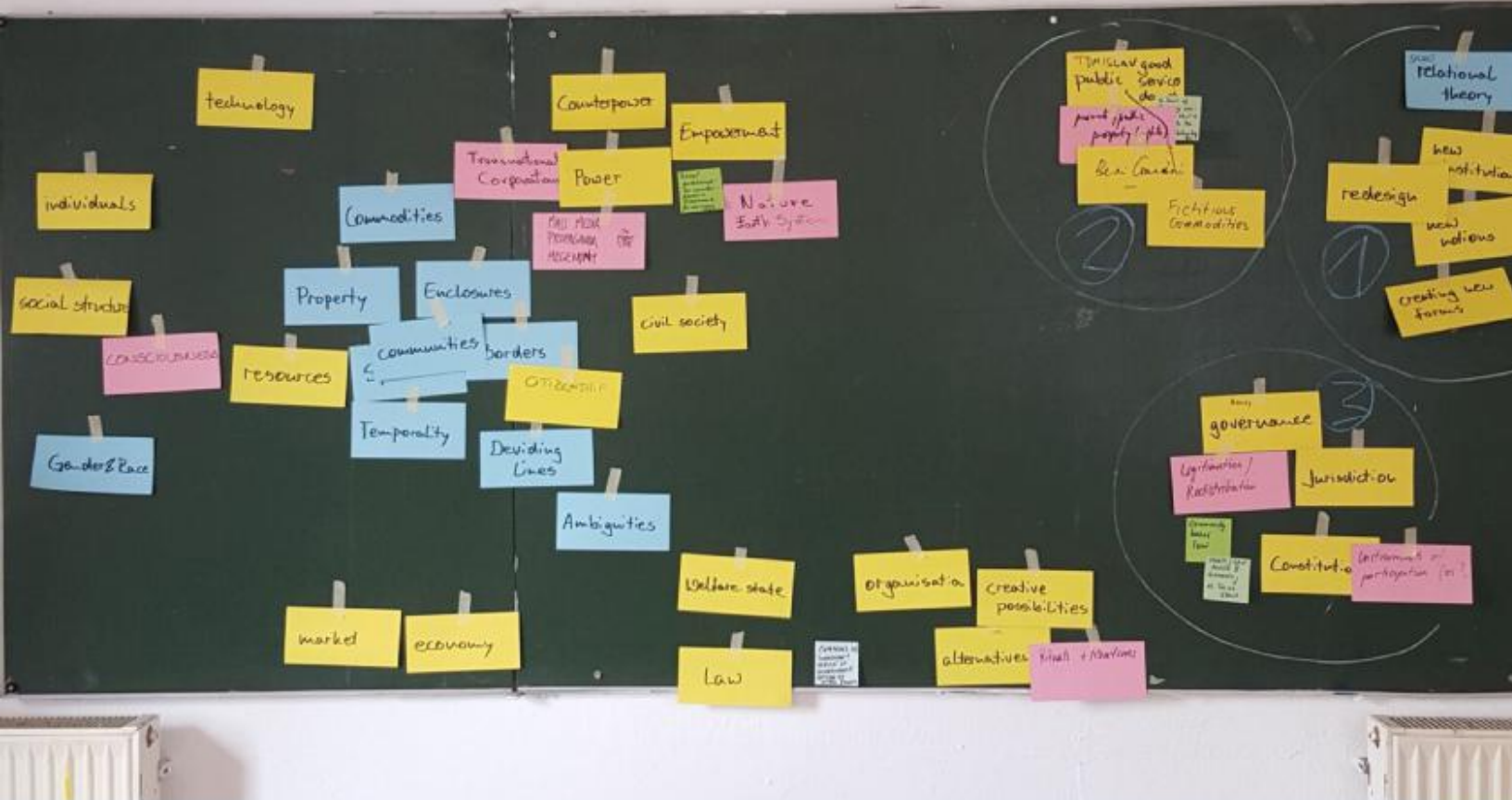
In such a cultural environment spanning much of North America, commons as a counterpoint or social/economic alternative is largely invisible, said Bollier. It is seen primarily in certain niches such as digital creativity (open source code, design and manufacturing; information and culture) and activism to defend water, food, local ecosystems and local economies. Although there are many citizen-led fights against enclosures, they tend to be fought as protests against social dislocation or unfairness, not as larger political battles against privatization or the marketization of shared wealth. There is such a consensus about neoliberal economic principles in mainstream American politics that most politicians are reluctant to invoke dissenting philosophical positions; it is seen as tactically advantageous to confine one’s protests to the specific issue alone. However,

⁶A recent book, *The Enigma of Europe*, surveys the state of European resistance to the neoliberal crises there and constructive proposed alternatives. See Walter Baier, Eric Canepa and Eva Himmelstross, *The Enigma of Europe* [transform! Yearbook 2016], Merlin Press, 2016.

as the recent presidential campaigns have shown, the younger generation has a far more critical perspective on neoliberalism.

Not surprising, the commons discourse has not been able to get much traction in the US. Bollier speculated that there are many reasons for this: the dominance of a two-party system that celebrates free markets, the great influence of corporate media on politics, the expense of participating in mainstream national politics in such a large country, the timidity of American foundations in their grantmaking, and the deep American cultural traditions of individualism, pragmatism and anti-intellectualism. However, this historic indifference or aversion to the commons is changing gradually as the American left and even some elements of respectable politics - prodded by the urgency of climate change - begin to realize that some sort of profound "system change" is necessary.

PART TWO:



COMMONING AS A COUNTERFORCE TO STATE POWER

II. COMMONING AS A COUNTERFORCE TO STATE POWER

A recurring subject of the Deep Dive was how commoning might serve as a counterforce to check state power and possibly reconfigure it. “What are we going to do with the state?” asked Pablo Solón. Clearly one of the first goals in modifying state power would be to decriminalize and legalize acts of commoning; this would at least open up new spaces for alternatives to neoliberalism to emerge. A longer term goal would be to use state power to creatively support commoning and the value(s) that it generates.

This entire terrain is treacherous and tricky for the reasons illustrated by the left’s takeover of the Bolivian state: power tends to change those who begin to wield it, and states tend to be more responsive to other nation-states than to their own people. In the end, there is also a question about whether the state and conventional law have the capacity to assist commoning. Can large, impersonally administered systems of the nation-state actually foster commons-based governance and human-scale commoning? Is it possible to alter conventional bureaucracies to recognize and support commoning?

We might start this inquiry by noting, as Tomislav Tomašević of the Institute for Political Ecology in Croatia did, that “the state is a playing field for different types of actors,” with commoners one among many others. So it is logical for commoners to try to influence how state power is used. If the state is accustomed to using its policies, subsidies and elite relationships to make markets, “the commons movements and players must re-appropriate and redefine the state, to change the power relationships,” said Tomašević.

This task then needs to go transnational, he said: “Once you manage to redefine the state, how can this be done in other states? How to scale up commons-based society to other countries? How to go global, and not just local? What notions of universality are needed to govern the commons *through* the state? The commons movement cannot ignore this challenge,” said Tomašević.

He agreed with Solón that “counter-power must emerge from outside of the state. We can’t leave that field untouched, if only because we agree that we can’t abolish the state.” Heike Löschmann, Head of International Politics for the Heinrich Böll Foundation in Germany, agreed: “The ‘crisis’ of the state is going to persist unless we re-imagine the state and statehood.

The group identified three basic questions of state power and commoning that must be addressed in transforming state power:

- What is preventing commoning within the context of the state?
- What do we want to change to enable commoning to exist and expand?
- How are states and governments standing in the way of commoning today?

In addressing these questions, Solón believes commoners must develop a compelling vision that incorporates a structural analysis, strategy and tactics into one integrated package. But, he stressed, we must start with political questions as our point of entry. What particular political issues are timely, urgent and amenable to commons-based advocacy? Benjamin Coriat believes that this requires commoners to “clarify our relationships with those on the political left” and also to clarify our notion of citizenship and thus how commoners should relate to the state. This is part of a larger task, said Liz Alden Wily – the challenge of “re-structuring the relationships that comprise the state.” Not only must the existing control of the state by various elite factions change, so must the idea that the state represents the public will and imagination.

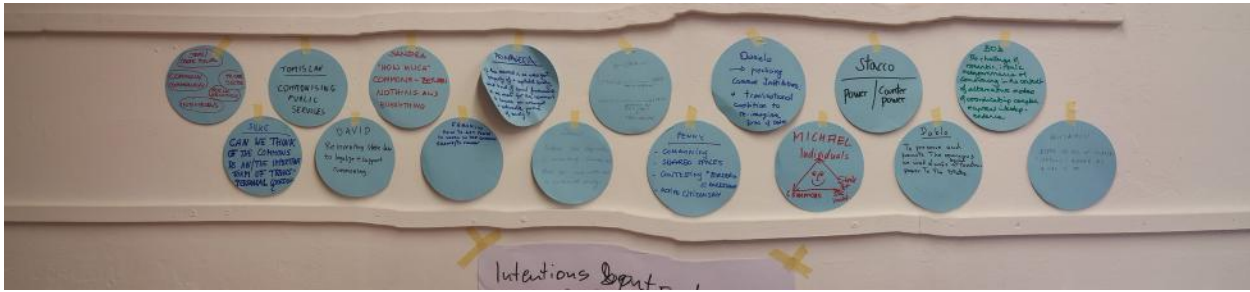
Commons activist Silke Helfrich urged that we think of the commons as “an important form of transpersonal rationality and coordination – a new category that describes the individual-in-relation-with-others.” The state can potentially help develop new ways to help bring together the wisdom, experience and creativity of diverse people, she said.

David Bollier, who has proposed “reinventing law for the commons,” suggested that state law itself needs to change in order to legalize and

support commoning.⁷ Right now, he noted there are a wide variety of “hacks” around law for contracts, trusts, co-operatives, municipal government, copyright, patents, and other bodies of law; the shared aim is to protect common assets and the social practices of commoning. One might say that this experimentation and exploration are producing a new, not-yet-recognized body of socio-legal-political innovation, “Law for the Commons.” But these makeshift legal innovations are often viewed with skepticism or hostility by the state, which tends to see commoning as a competing nexus of power and moral authority – one that is often at odds with neoliberal economic policies for intellectual property, trade, land rights and so on. By inventing socially based forms of commons law, by often adapting conventional state law, commoners are trying to bridge the gap between *legality* and *legitimacy* – i.e., the gap between the formal structures of state law and bureaucratic rules adopted by political and corporate elites (“legality”), and the real-life experiences and vernacular norms and practices of ordinary people (“legitimacy”).

To make commoning fully legitimate and recognized within the state requires that state power find new ways to “re-imagine space and sociality,” said Penny Travlou, a cultural geographer at the Edinburgh School of Architecture and Landscape Architecture, University of Edinburgh. Travlou, who has worked firsthand with the refugee crisis in Greece, observed that states do not take adequate account of the social and economic needs of “mobile citizens, precarious workers, migrants and refugees.” Yet these people constitute a cohort of millions whose lives exist outside of the official channels of law, citizenship and state support.

⁷<http://bollier.org/reinventing-law-commons-memo>



What Do We Mean by the Commons?

At this point in the dialogue, the point was raised that before we can propose changes in state power, we must first clarify a vision of the commons and a commons-based society. “We need to define commoning if we are to engage with state power and clarify what we can do about it,” said Benjamin Coriat, the French economist. Silke Helfrich added that “we need a clear idea about the core elements of the commons, the ones we cannot forgo if we are going to prevent co-optation and capture,” such as shared knowledge, indirect reciprocity and decisionmaking by all of those affected by decisions. “We have to know the meaning of the commons if we are going to work to protect it.”

Helfrich’s vision of a “commons-based society” is a society that is “free, fair and sustainable” – that is, the social, ecological and personal are all pursued simultaneously, and not with one pitted against the other. Such a society minimizes the tensions between individuality and commonality, and tries to learn from the best of different ideas and synthesize and apply them.

At an economic level, Helfrich said that the commons constitutes the “cell form” of a new type of production whose goal is to produce commons and to fairly share them, as opposed to commodity production as the core of an economic system. The commons form changes people because it is based on and therefore reproduces a very different subjectivity, she noted: “If in a commodity-based economy we are in competition with each other, in a commons-based society we rely on structurally different relationships – among commoners and between commons-based systems. The system

forms us as human beings, and the more time we spend in this world, the better.”

Tomislav Tomašević from Croatia said that his vision of commoning is the idea of ethical reciprocity, but going beyond that to the simple, universal idea of solidarity.” Yet this is not a monolithic solidarity, he stressed; everyone belongs to multiple communities – geographic, digital, cultural, and at different scales. Tomašević said that we need to develop the idea of “transferrable reciprocity,” which means that when people contribute to a commons, they will have access to the commons when they need it, without a *quid pro quo*. We need to go beyond direct reciprocity as a matter of principle.”

To be sure, any reciprocity must work within the natural limits of ecosystems; everyone cannot just take what they want. Reciprocity is thus linked to the *physical regeneration* that occurs within natural systems. The specific means by which limits on usage are set and enforced can take many forms, each based on some form of collective solidarity. But such processes of commoning can give rise to a new form of state over time, suggested Tomašević. As more people participate in direct democracy, participatory budgeting, and other commons-based processes, they could lead to a “commonification” of the welfare state,” he said.

For Michel Bauwens, Founder of the P2P Foundation, commons-based production for the first time allows everyone to choose how they will engage with the world – as opposed to the current labor system of market societies, which imposes its own strict rules for what work is to be done, and how (i.e., work that advances capital accumulation). “This is a recipe for more happiness in the world,” said Bauwens, “because it allows people to engage with the world on their own terms.”

The commons must be seen as “key to human survival on this planet,” said Bauwens. “It is not just a nice thing to do or a strategic approach. The shift to the commons requires that we move from an extractive economy to a generative form, and from the conventional state to state forms that facilitate commons.” Bauwens’ colleague John Restakis has written about the idea of the “partner state,” in which the state affirmatively helps

commons-based peer production to flourish.⁸ “At its essence,” writes Restakis:

the Partner State is an enabling state. It facilitates and provides the maximum space and opportunity for civil society to generate goods and services for the fulfillment of common needs. It is a State whose primary orientation is the promotion of the common good, not private gain. And in contrast to a view of the citizen as a passive recipient of public services, the Partner State requires a new conception of productive citizenship. Of citizenship understood as a verb, not a noun. In today’s representative democracies, citizenship is passive.

Camila Moreno, a Brazilian activist now at Federal Rural University in Rio de Janeiro, urged that we compare the commons to a stem cell, a living system that can transform itself into many different types of body cells – muscle, brain, organ, etc. Marx argued that the “commodity form” is the “cell form” of capitalism, as Marx argued, branching out into many different forms to help reproduce capital. To extend the stem cell metaphor, if we put the commons at the center of analysis, it can be regarded as a stem cell of great “pluri-potentiality,” capable of transforming itself into many different forms to sustain cooperation, fairness and sharing.

The problem is that capitalism is using and capturing the new commons forms, said Moreno: “The new forms of enclosure are much more sophisticated than we may think,” she said. This raises the question of whether our subjectivity can detect and respond to contemporary enclosures: “How far can the commons truly transform our subjectivity? Can we elaborate the commons form enough to promote the right forms of commoning, and prevent them from being captured by capitalism?” asked Moreno.

Michael Brie, a social philosopher at the Institute for Social Analysis at the Rosa Luxemburg Foundation in Berlin, expressed doubts that commoning is a “stem cell form”: “I’m wondering if cooperation, not commoning, is the more general form. Commoning is a quite special

⁸John Restakis, “Civil Power and the Partner State,” Good Economy Conference, Zagreb, Croatia, March 2015, at <http://commonstransition.org/civil-power-and-the-partner-state>.

activity, with its own logic. Are we being too narrow? Should we be more open about this?”

Pablo Solón of Bolivia agreed that the commons offers an important vision for transformational change. But he warned that “the commons is just one piece of the puzzle. It deals with social relations and self-governance, which are elements that many other movements do not deal with directly. We need other pieces of the puzzle to build the vision.” Solón believes we should try to combine the strength of many different movements, and together build a shared vision.

In building a vision, he warned that we should not try to go from cell form to the whole, but start instead with “the whole” first: “What is the whole? It is an ‘earth community’ that includes both humans and nature; the vision can’t be anthropocentric. Earth is itself a community of which we are a part; it’s not only about sustainability for human beings. So we need to discover the whole and measure everything in relation to the whole.”

In developing a larger vision, Solón urged that we pay attention to two key concepts – *asymmetry* and *complementarity*. “In Indigenous communities, reciprocity is between equals,” said Solón. “But we live in a very unequal world, so we need relations that are not reciprocal, but asymmetrical and complementary. We can only complement each other in our unequal, asymmetrical state if we know what each of us is missing. This is a weakness of the commons.”

There is another key element that we must embrace, said Solón – *time*. “We cannot have a vision without the notion of time. What moment are we in right now? How much time do we have?”



Situating the Commons in Contemporary Politics

The discussions did not yield a single, consensus vision of the commons, but on the other hand, that may be impossible when the commons manifests itself in so many different contexts. Liz Alden Wily, the expert on land tenure rights, wondered if a shared, universal vision of the commons is in fact a “futile pursuit.” Maybe the answer lies in describing or publicizing the tremendous varieties of commoning, and making them more accessible. This could help bring more clarity to the surface.

This exchange points to a vexing aspect of the commons: its enormous diversity and thus the difficulty in talking about it. “There are so many entry points into the commons,” said Franklin Obeng-Odoom, Senior Lecturer in Property Economics at the School of Built Environment, at the University of Technology Sydney, Australia. “It is impossible to have only one way of talking about it. It’s probably not even desirable to have one grand framework.”

Not surprisingly, the sheer variety of commons and the multiple ways of talking about it sometimes result in confusion, and often, political disagreements. Whether these disagreements are based on misunderstandings or substantive issues, there are often serious tensions between organized labor and commoners, and between the traditional left and commoners.

Michel Bauwens noted that as commons-based production surges, it is challenging many old-style forms of labor, and this is intensifying political

conflict between labor and commoners. Each has a very different vision of the economy: Labor remains oriented towards a conventional industrial economy based on proprietary processes, extractivism and the growth paradigm, whereas commoners and peer production practitioners seek to build an economy based on open platforms, easy and inexpensive access, and an ethic of abundance, not scarcity. As this shift in labor occurs, said Bauwens, “Labor is no longer the binding force for progressive politics. The idea of a leftwing labor revolution is not going to re-emerge.”

Bauwens suggested that the commons will become “a new focal point for politics because social networking spaces are changing social conditions and people’s subjectivity.” But developing a new politics based on the commons will require “changing the social imaginary of progressive forces,” he said.

Another political tension can be seen in relations between commoners and the traditional left. Benjamin Coriat said that the left sometimes accuses commoners of being part of the neoliberal/right agenda because commoners are supposedly destroying the welfare state. This is a difficult disagreement, he said, “because the traditional left is our necessary ally in the near future. We want to *rebuild* and renovate true commoning and make it attractive again. But it is in crisis right now.”

If commoners are to reach some rapprochement with the left, at least in the context of the European welfare state, said Coriat, “commoners need to answer, What will we keep of public services the way they are delivered, and what will be let go of? They need to develop new ideas for remaking public services and for linking universal human rights with commons. Will there be state-of-the-art public services, or will services be dependent on communities instead of the state?” Coriat insists that the rights of citizens to public services and the core of those services must be maintained. There must also be an emphasis on law and an infrastructure of rights for commoning.

One reason for these political conflicts with labor and the left, said Pablo Solón, is the misconception about commons as the “state-ification” of shared resources. Oil on state land is seen as the commons, as expressed by claims like “the oil is ours” or *bien communs*. But state administration of

shared resources is an idea that gets further and further from the actual practice of commoning. The problem is that self-administered commons are often not seen as a third option distinct from both market-based and state-administered solutions, said Solón. “We need to work on this issue. Otherwise, the idea of the commons is erased and it simply becomes linked to the state.” Daniela Festa of Ecole des hautes études en sciences sociales, in Paris, agreed: “In Italy, some politicians regard the commons as a way to regenerate the state. This is very problematic. We need to use commons in a revolutionary way.”

Workshop participants suggested several important ways to anchor the idea of the commons in recognized legal or policy terms. The ideas of *community-based governance* and *customary law*, for example, can be considered commons-based; each accents the important of community-based authority, control and primary decisionmaking, said Liz Alden Wily. This type of law is quite widespread, and stands apart from law defined or imposed by the state.

The commons is helpful in elevating these forms of governance because they are “about naming what already exists and as explaining why they work,” said Alden Wily: “The [local geographic] community is still the most successful socio-political institution in human history. David Bollier added: “It is critical to name existing practices of commoning to help make them culturally visible and to develop self-aware cohorts of commoners. This is the connective tissue for different types of commons.”

PART THREE:



RECONCEPTUALIZING STATE POWER TO SUPPORT COMMONING

III. RECONCEPTUALIZING STATE POWER TO SUPPORT COMMONING

The preceding discussions - about the nature of state power, its variations among different nation-states, and the nature of commons and commoning - lead us to the central question of this Deep Dive: *How can state power be re-imagined and altered in ways that support commoning?* What are the strategies for the “commonification” of the state? How might a commons-based state work?

Silke Helfrich offered a starting point for answering this question: “It may be true that ‘there is no commons without commoning,’ but there can be *contributions* to a commons without commoning. This is where the state comes in. The state can contribute to commons without necessarily participating in commoning. It should also secure the rights of all citizens, not just the rights of commoners and support constructive relations *among* commons,” said Helfrich.

One must immediately distinguish between how a political progressive might imagine the state aiding commons, and how a commoner would. A commoner sees commoning as a way to provide nearly every type of good or service, from hospitals to water systems to social services, said Helfrich. In principle, it provides new ways to empower people and tap into new generative capacities. A liberal, by contrast, may see commoning as a threat to progressive values and the welfare state because commoning could encourage the state to shirk its responsibilities and expenditures.

Bob Jessop, the political theorist, added that the point is not how to reform “the state” or how the state could aid commons. “We need to take the Gramscian approach and its focus on the complex of practical and theoretical activities that cross-cut the public-private divide and serve to maintain class domination and hegemony. If we’re interested in commoning, the question is not how we bring the state apparatus in to aid commons - as if the state were somehow outside of our activities - but to identify which strategies might transform state power by altering the

balance of forces inside and outside the state system. We need to talk about 'revisiting state power and commoning: mutual learning for strategic action.' "

Pablo Solón put it a different way: "The issue is about power and counterpower. How can commoning build counterpower? We can't transform state power otherwise." He added an important secondary point: "In which context is this discussion occurring? State power differs a great deal in Europe compared to Latin America or the US."

Tomislav Tomašević of the Institute for Political Ecology in Zagreb believes that the answer must start with new social practices that incrementally claim control over parts of the state, such as public services. This, then, becomes a kind of commons law in its own right. For example, fifteen years ago in Córdoba, Spain, he said, citizens wanted to have greater social control over the water system. Once this was implemented, the incoming conservative government was not willing to challenge the social consensus in order to rescind the new management system. The point is that new practices of social control and social relations can "commonize" parts of the state. Incidentally, Tomašević added, we ought to try to commonize markets as well.

Bob Jessop pointed out that building the commons as a counterpower requires that we focus on "the preconditions of creating commons as a dynamic force that will produce positive effects and perhaps a tipping point. We need to think about how commons can become 'strange attractors' [a term from chaos theory that describes a stable order towards which dynamic forces tend to evolve]. How can we make the commons a strange attractor for a new form of civilization? How do we recommend the dynamic, beneficial effects of commoning? The goal is not to smash the state, but to discover how can you creatively destroy the state. We don't want to abolish it, but creatively reconstruct it. What obstacles do we need to overcome?"

Like many other participants, Jessop worries that commoning could easily become subsumed or absorbed by capitalist logics. In the UK, for example, food banks functioning as commons could simply save money for the capitalist state and indirectly strengthen it. In such scenarios, "there is

a risk that commoning will simply become another form of utopian socialism,” he warned. Thus commoning projects are not enough; we must address the preconditions that prevent commoning from becoming a strange attractor – preconditions such as the dynamic of capitalist financialization; the ability of the rich to offshore wealth; the tax system; and the military-industrial complex.

Michel Bauwens suggested that such preconditions could be overcome by developing strategies to reverse the commodification of labor that capitalists deliberately put in place in the 1800s. The abolition of a basic income in 1834, as described by economic historian Karl Polanyi, allowed capital to use money to buy not just machines and raw materials, but labor, too, said Bauwens. “That’s when capitalism really kicked in. For commoners, the question is, What measures can they take to protect themselves and enable an accumulation from the commons, or ‘cooperative accumulation’? We need to create successful structures for cooperative accumulation to wean ourselves away from capitalism.”

Bauwens added that this process entails many subjective and cultural shifts as well, which is why so many successful commons are focused on changing the social practices and consciousness of their members. The transition also requires recognizing the many commons that already exist, and helping them to grow in impact and self-awareness. This means identifying and exploiting the “cracks in capitalism” that provide an opening for change, said Stacco Troncoso of the P2P Foundation. “We need to map the political actors and realities that could enable commoning, and exploit windows of opportunity,” he said.

It is an open question whether representative democracy is still the operational framework for pursuing political change, said Troncoso – or whether the strategies for aggregating political power must take place *outside* of “the system.” Former SYRIZA member Andreas Karitzis recently made the persuasive argument that “popular power, once inscribed in various democratic institutions, is exhausted. We do not have enough power to make elites accept and tolerate our participation in crucial decisions. More of the same won't do it. If the ground of the battle has shifted, undermining our strategy, then it's not enough to be more competent on the shaky battleground; we need to reshape the ground. And

to do that we have to expand the solution space by shifting priorities from political representation to setting up an autonomous network of production of economic and social power.”⁹

There is one state form – city governments – that may offer opportunities to advance the commons, said Michel Bauwens. “Cities are prefigurative forms for a new type of state. Barcelona, Bologna, Seoul and Amsterdam are among the cities that are actively thinking about how to unlock common resources and dynamics to help make cities stronger,” he said. He also noted that there are a growing number of urban initiatives using peer networks to improve city services; new types of government/commons partnerships; and strategies for using popular arts, culture and commoning to reinvigorate cities.¹⁰

⁹Andreas Karitzis, “The SYRIZA experience: lessons and adaptations,” Opendemocracy.net, March 17, 2016, at <https://www.opendemocracy.net/can-europe-make-it/andreas-karitzis/syriza-experience-lessons-and-adaptations-0>.

¹⁰ See, e.g., Sheila Foster and Christian Iaione, “The City as a Commons,” *Yale Law & Policy Review*, 34(2): 2016, at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2653084; European Cultural Foundation and Krytyka Polityczna, *Build the City: Perspectives on Commons and Culture* (2015); Duncan McLaren and Julian Agyeman, *Sharing Cities: A Case for Truly Smart and Sustainable Cities* (MIT Press, 2015), at <https://mitpress.mit.edu/books/sharing-cities>; and International Association for the Study of the Commons conference, “The City as a Commons: Reconceiving Urban Space, Common Goods and City Governance,” November 6-7, 2015, in Bologna, Italy, at <http://www.labgov.it/urbancommons>.



Public Services and Commons

An unresolved issue, alluded to earlier by Benjamin Coriat, is how the commons shall relate to the concepts of public services, public goods and the public domain. “The state oversees these functions,” he said, and “it has the right to determine access rights or pass on ownership to private companies. But the idea of a *common asset* introduces the idea that the state cannot privatize the resource or service. It introduces new protections for the commoners because the state is a privatization machine today.” The larger question is *how* we might “commonify” our understanding of public services and goods.

Coriat stressed that the idea of common goods is not simply about “re-municipalization” of assets and services, but about the transformation of public goods into common goods” – a new conceptual category. This creates new rights of protection for commoners, he said. If we start with a simple chart differentiating the key characteristics of a state and the commons, we can see that the idea of “common goods” introduces a hybrid space within this conceptual grid, he said. Common assets and goods require involvement by both the state apparatus *and* commoners.

Coriat stressed that public administration and commons are not the same thing. Publicly owned enterprises, for example, do not necessarily provide public services. A state mining or oil company, as in Latin America, tends to be a market player whose revenues may (or may not) fund public services. In such cases, public services directly depend upon the revenues of a regressive economic regime of extractivism and developmentalism. This is clearly a significant difference from commons-based approaches to asset-management or public services, which aim to be ecologically regenerative, socially benign and not market-driven.

Defining Characteristics of...

| | A State | Commons |
|----------------------------------|------------------------------------|---|
| TERRITORY | Frontiers of national state | Borders of the commons |
| INSTITUTIONAL APPARATUS | Bureaucracy | Self-organized governance system |
| SOCIAL DIMENSION | People as citizens of nation-state | Commoners (of multiple commons, not just of a nation-state) |
| THE VERY IDEA OF STATE | National subjects/identity | A different subjectivity |
| Common Assets & Goods | | |

At a time when many governments are aggressively privatizing public services, as in Europe, it can be hard to push for commons-based alternatives because there is such political urgency among the left to defend state control and management (which supposedly will benefit citizens). But the “state-ification” of common assets does not enact commons principles because centralized state control without meaningful public participation is corruptible and ultimately not transformative. By providing free or discounted access to common assets, states frequently end up strengthening the prevailing neoliberal paradigm. State control also risks of “tokenist participation,” making it seem as if there is popular control when in fact elites and bureaucracies continue to dominate policymaking and management. So there must be new and stronger types of hybrid governance to assure that benefits from common assets (including nonmarket uses) actually accrue to commoners.

One innovation that is increasingly being explored is creative “public/commons partnerships” in the provision of public services. A prominent example is the Bologna Regulation for the Care and Regeneration of Urban Commons, a socio-legal template for self-organized citizen groups and neighborhoods to work with city governments in

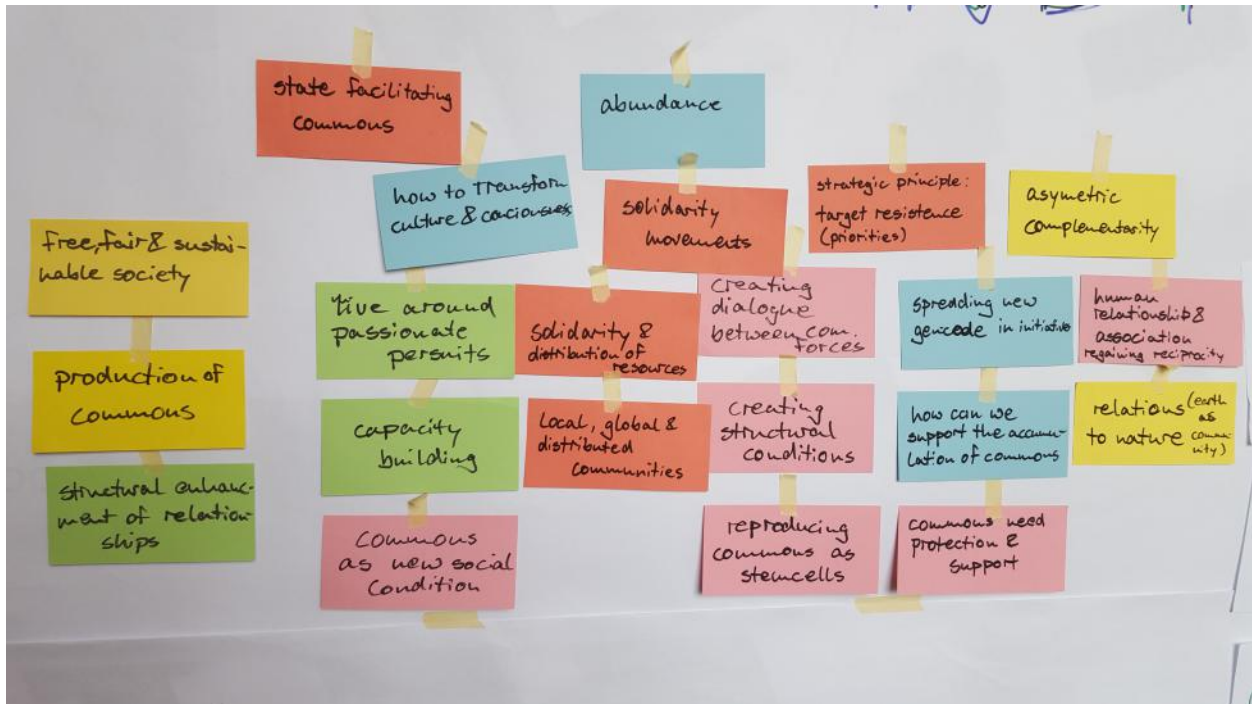
managing shared resources (public spaces, kindergartens, buildings, services, etc.). Citizens are given wide opportunities to initiate and manage resources, and to reap benefits from them, with active legal and financial support from the state, and without bureaucratic meddling. Other examples include participatory budgeting, as pioneered in Brazil, and the experiment in commons-based management of the municipal water system in Naples, Italy.

Henry Tam, the British author and commentator, told of his experiences as the head of the Civil Renewal Unit, Department of Local Government and Communities in the British government, whose responsibilities included the promotion of transfer of state assets to communities for them to manage, sometimes generating income for the communities. The government set up an “asset transfer unit” independent of government and run by a voluntary sector organization. The “Opening the Transfer Window” recommendations led to an increase in the transfer of buildings, land, and other facilities to communities and avoiding private capture of those assets. Tam explained that the program included an “asset lock” that required any transferred assets to be used for the entire community in perpetuity, upon penalty of the asset reverting to state ownership.

Commons-based models of public services are attractive because they offer the possibility of re-introducing *participatory human care* to services that are otherwise provided by impersonal, rules-driven bureaucracies. Michel Brie, the social philosopher at the Rosa Luxemburg Foundation, noted how the neoliberal privatization of healthcare, education and other public services had led to a loss of caring for others. “An important task for the commoning movement,” he said, “is to re-integrate commons principles back into public services provided by teachers and healthcare workers, for example.” One successful innovation for doing just this, it was pointed out, is multistakeholder co-operatives that provide direct social care to elderly and sick people in Italy.

The question was raised, What specific strategies might advance commons-based systems for providing needed services or transferring assets to commoners? A number of ideas were suggested:

- Use constitutions as a legal tool to protect commoning;
- Convene regional meetings for “deeper dives” to assess the on-the-ground realities and develop concrete alternatives;
- Use political parties as instruments of advocacy for common assets and commoning;
- Develop new types of “relational institutions” that regenerate and circulate value -- as opposed to ones that merely privatize value or administer or regulate behaviors; and
- Popularize commoning as a cultural phenomenon through events, initiatives and social media.



Imagining a Paradigm Shift in Governance and Law

Can we imagine a paradigm shift in state power with respect to commoning? This was the subject of one segment of discussion and a small breakout group. Such a paradigm shift would require new and different circuits of power, new types of governance, and in a larger sense, a widely recognized *idea of the commons* that could serve as a counterpoint to the idea of the state -- *Staatsidee* -- mentioned earlier by Bob Jessop.

Developing different circuits of power require that we clarify how the internal governance of commons can work and how state/commons relations could be structured. For starters, a commons must become effective and legitimate as a form of governance, and this generally requires:

- Development of inclusive ethic and shared goals (while retaining certain rights of exclusion and even expulsion of troublemakers);
- Systems for accountability;
- The ability of commoners to initiate and participate in rule-making;
- Benefits that accrue to the group in mutually satisfactory, respectful ways;
- The right of all members to challenge the assumptions of current rules and practices.

Legitimation of commons power and governance is a key issue that is often neglected, noted Daniel Schläppi, a postdoctorate researcher at the University of Bern, Switzerland, who has studied common property, collective resources and their impact on political culture. The legitimacy of a given commons must be earned. Frequently this will lead to clashes with state power because power-holders often regard commons governance as a threat to their own legitimacy and authority. “If commons start to provide public services or redistribution of benefits, they legitimate the political power of the commons – and call into question the effectiveness of the state,” said Schläppi.

While state recognition of commons must be sought, said Liz Alden Wily, “it is not always clear at what point you need the state to legally recognize the commons and give it authority.” Elinor Ostrom’s eighth design principle for successful commons notes that commons are nested within larger systems, suggesting a need for legal recognition or at least working state relations with commons. However, the blurry, symbiotic relationship between commons and states makes it difficult to know exactly when and how the state/commons relationship needs to be formalized.

A case in point is the way that volunteers in Germany have self-organized their own humanitarian commons for helping Syrian refugees, said Michael Brie. Under German law, local communities have a certain leeway to act, within the constitution, without having to first ask authorities for permission. The humanitarian commons are serving functions that government cannot necessarily perform well itself, or that it prefers not to perform. In this sense a symbiotic dependency of the state (or state power) and commons has arisen – along with tensions. Tensions, because it is

unclear by what legal authority of the state commons groups are working and what the constitutional rights and entitlements of the refugees should be. As a practical matter, many commoners may be too fragile to be sustained without modest government support - but if government becomes involved, a whole body of legality and due process is triggered as well as potential state interference.

Franklin Obeng-Odoom of the University of Technology Sydney, in Australia, noted how the boundaries of communities - and therefore responsibilities and entitlements in commons - are often difficult to determine. "In Namibia, young men go off to work in the cities and send money home. So at what point do those who remain deny absent fathers and brothers the right to make decisions about common problems and resources as members of the community, or to be members in other than a social sense? What are the rights of members and how should they be established?" While this is a problem, it is also an advantage of community-based or customary law: a commons can be more flexible and resilient because it is more capable than conventional law of evolving to address new circumstances. Yet one must also acknowledge that localized norms can be ingrown and regressive, such as patriarchal norms.

The difficulty here is that "communities are pluralistic, not homogenous," said Daniela Festa of L'Ecole des hautes études en sciences sociales. To clarify the idea of a commons, she suggested that it may help to contrast "community" with "the state" (in its various permutations) to reveal each as different modes of social organization and power. Communities consist of relations among unique individuals who nonetheless share a certain common humanity. A state polity, by contrast, tends to see its citizens through the lens of sameness and uniformity, as required by law.

Larger cultural forces can also complicate commons-based governance, noted Silke Helfrich. For example, if the notion of community is important to commons discourse, what happens in cultures in which the very idea of community is 'broken'," as in countries socially atomized by modernization or traumatized by war or civil strife? In some cases, right-wing reactionaries are laying claim to the idea of commons, arrogating to themselves a cultural heritage to exclude immigrants. Others regard commons and community in utopian terms. The integrity of the commons

can get muddled, too, by sentimental, distorted caricatures of commons-based culture, such as *buen vivir* or *ayllu* (Andean) in Latin America, which westerners sometimes project on to indigenous peoples.

The very ambiguity of the commons as a legitimate form of governance may be a serious problem here. The group's moderator, Jascha Rohr, Cofounder of the Institute of Participative Design, asked "What idea of the commons might serve as a counterpoint to the *Staatsidee* (the idea of the state)? Earlier that day, Deep Dive participants had visited the site of the 1945 Potsdam Conference at which Churchill, Stalin and Truman had brokered new political boundaries of European states following World War II.¹¹ The Big Three leaders each had a very different idea of what "the state" should be and how it should be administered. At the Potsdam Conference, each state carefully devised its own performative rituals - military bands, ceremonial events, diplomatic symbols - to express its power.

All of which raised obvious questions for commoners: "So how do commoners publicly demonstrate the power of commons?" asked Jessop. "Tractors?" It is an important challenge: How to effectively communicate the idea of the commons to an entire society? Tomislav Tomašević of the Institute for Political Ecology in Croatia noted that efforts are often made to personify state power itself, usually in the image of its leaders. "But the commons is a de-personalization," he said. "How can the commons have a face, a symbolic face? I don't know if that is even possible. Are there leadership or charismatic personalities within a commons? Most people don't even know that commons are there." It was suggested that perhaps elevating representative *commoners* from different kinds of commons might provide an answer. Making the power of the commons visible poses a difficult conundrum, especially when the state can so easily project its power, leaving the fate of ordinary people anonymous and even invisible.

¹¹https://en.wikipedia.org/wiki/Potsdam_Conference

CONCLUSION

State
Capitalism
Territorial
apparatus
NS
idea
Another State is possible

Commons
terrestrial
Appen
Commons
idea
Another State is possible

1) Since relational theory
institutions have to be under-
stood relationally
double relation
social on relational
terms
Commons + Soc arise based on
relational terms
create new or break existing
evolutionary institutions

process of codification
lead to institution
with as word/cult/form
value grad signifying the
commons
new words
need for constantly adaptive
evolving institutions
shared function - memory



- 2) GOVERNANCE
- Key criteria for a good commons
1. Membership: inclusive / open to all
 2. History: clear + then + clear + shared
 3. Power distribution: equitable
 4. Decision making: all equals
 5. Shared concerns (not exploitation)
 6. Mutual benefit
 7. Right to challenge norms/practices
 8. Mutual priority - able to group
- Shared concerns + Mutual benefit = shared + equity

CONCLUSION

Clearly state power and its complicated relations with commons will only grow more important in the future as the advocates of neoliberal policies seek to prevail over resistance and as commoning itself becomes more widespread and stronger. While the Deep Dive produced no blueprint for resolving such a confrontation, it helped clarify the often-murky topic of “the state” by providing useful new concepts for thinking about state power and its relations with commoning. The workshop discussions will help guide commoners in strategizing about how to engage with states, and how to re-imagine better configurations of state power, law and policy.

Progress on this topic will necessarily take time and further deliberation among commoners. In the near time, it will be quite instructive to learn how different nations attempt to carve out legally sanctioned commons within their borders, whether it is a “Plan C” in Greece, concrete policies to promote *buen vivir* in Latin America, court rulings protecting natural resource commons in India, or expansions everywhere of the commons as a parallel, post-capitalist economy. Taking stock of such developments will require region-specific “deeper dives” to assess the on-the-ground realities and develop alternatives. It will also require new conversations with the traditional left and labor to find some sort of working rapprochement on issues of livelihoods, basic income, public services and economic policy. Can the commons be integrated politically and legally with traditional liberalism and state authority? This is a delicate and complicated dialogue, but a necessary one.

It may well be that the new constellations of commons-based projects and institutions will first have to mature and become publicly recognized before it is possible to change the movement politics seeking system transformation. After all, it is difficult to institute new state laws and policies or reconfigure state power without first having those social realities and political movements in place. In the meantime, commoners can begin to think about how to take account of state power as they plan “how to build the commons.” This opens a rich and urgently needed discussion at the very moment when commoners are beginning to engage with other social

movements, political parties and state officials to address the limits of mainstream political discourse. It is too early to know what these new encounters will yield, but it seems clear that the crises of our time will not be resolved without serious changes in the topography of state power.



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Credits

State Power and Commoning: Transcending a Problematic Relationship

Report on a Deep Dive Workshop convened by the Commons Strategies Group in cooperation with the Heinrich Böll Foundation. The Deep Dive took place at Kloster Lehnin, near Potsdam, February 28 - March 2, 2016.

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