

The Price of Ownership: Property Relations in the Market Society

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Contents

Introduction: Linking Polanyi with Commons	1
Classics: Conceiving property as social relation	3
Polanyi's commons: The commodification of nature	5
Commons' property: The turn to the exchange-value	8
Synthesis: The property regime of market society	11
References	13

Introduction: Linking Polanyi with Commons

Karl Polanyi started his career as a doctor of law, but he gained his reputation as an economic historian, economic sociologist, or economic anthropologist. His *The Great Transformation* (1957b [1944]) begins with a section on ‘the international system’, which lists the key institutions of the political-economic order of the nineteenth century: the ‘international gold standard’, the ‘balance-of-power system’, the ‘self-regulating market’, and the ‘liberal state’ (ibid., ch. 1). Studying the foundations of the modern market society, Polanyi naturally engaged with international law. One may even identify in his work the ingredients of a ‘sociology of international economic law’ (Frerichs 2016), which centres around the ‘fictitious commodities’ of ‘land’, ‘labour’, and ‘money’ (Polanyi 1957b [1944], ch. 6). Many scholars interested in the legal framework of the reinvigorated market society of today draw inspiration from Polanyi’s work (e.g., Joerges and Falke 2011; Perry-Kessaris 2012; Lange and Thomas 2013).

Within the interdisciplinary field of socio-economics and the sociological sub-discipline of economic sociology, *The Great Transformation* (1957b [1944]) is rightfully regarded as a classic, which introduces and substantiates the ‘embeddedness paradigm’. However, the role of the law in ‘embedding’ or ‘disembedding’ market exchange was not given much attention in the socio-economic field, until more recently, a call was made to develop an ‘economic sociology of law’ (Swedberg 2003; 2006). This enterprise can build on the work of the sociological classics, who were still concerned with the interaction of law, economy and society in the formation and transformation of modern capitalism. At the same time, the initiative to bring the law back into sociological and socio-economic thinking can also be understood as a response to the recent boom of ‘law and economics’ (Mackaay 2000) as well as ‘new institutional economics’ (Klein 2000) within the economic discipline. In these distinctive but intersecting areas of scholarship (Medema et al. 2000, 439-440), the role of law is no longer taken for granted, as it has long been the case in the neoclassical mainstream. Instead, it is studied what differential effects public and private (legal) ordering or formal and informal (legal) institutions may have on economic performance.

Taking a ‘Polanyi-inspired’ approach (Randles 2003, 409) to property relations in the market society, this chapter continues earlier work outlining a ‘Polanyian’ economic sociology of law (Frerichs 2011; 2013; 2016). Even though property was not an explicit focus of Polanyi’s institutional analysis (Polanyi 1957a), his interest in the commodification of land, labour, and

money implies a deep concern with the capitalist overhaul of property relations. In modern capitalism, market exchange, which is premised on the individual assignment and alienability of property rights, has become a major principle of social organisation. Moreover, one of the three fictitious commodities highlighted by Polanyi, 'land', which is the result of the commodification of nature, is commonly seen as the prototype of property. Historically, the expansion of agricultural and industrial capitalism entailed the "commercialization of the soil" not only in the Western European countries, which were the pacemakers of capitalist development, but also in their colonies elsewhere in the world, whose natural resources were appropriated as well (Polanyi 1957b [1944], 179). According to Polanyi, the 'mobilisation' of land and its produce was required to fit them "into the scheme of a self-regulating world market" (ibid.), which is behind our ideas of free trade and the international division of labour.

However, Polanyi's work is not the only source of inspiration for this chapter. As pertinent to an understanding of the configuration of property relations in the market society is the work of John Roger Commons, which forms part of the "first wave of law and economics" (Mackaay 2000, 69). This antedates the neoclassical and neo-institutional 'law and economics' movement, which dominates the 'economics of property rights' of today. The first wave of law and economics involved various strands of scholarship within the economic discipline, which are considered 'heterodox' from the perspective of modern standard economics, including the (German) Historical School and what is now referred to as Old (American) Institutionalism. The proponents of this older 'law and economics' movement shared with the sociological classics an interest in historical-comparative scholarship, which took shape in the question "how property and other rights were determined, historically and functionally, across different societies" (ibid.). Commons' *The Legal Foundations of Capitalism* (Commons 1924) is a case in point. Focusing on "federal court decisions before and during the industrial period", it documents a change in the "legal understanding of property and property rights" in US-American jurisprudence in the second half of the twentieth century (McCally 2015, 21).

By juxtaposing the works of Polanyi and Commons, this chapter demonstrates that the 'old' economic sociology and the 'old' institutional economics indeed had much in common, as scholars in both fields were interested in the institutional, or constitutional, premises of the modern market society. In contrast, in much of the 'new' economic sociology and the 'new' institutional economics, these premises are taken as given, and institutional analysis is confined to with-in variety in a capitalist setting. In this sense, the difference between 'old' and 'new'

approaches is bigger than the difference between ‘economic’ and ‘sociological’ approaches that share the same, or a very similar, research paradigm. Be this as it may, this chapter takes a relational approach to property, with property rights not being confined to the “relation between an individual and a good” but extending to “social relations between individuals”, owners as well as non-owners (Hodgson 2015, 689). Moreover, given the legal nature and enforceability of property rights, they also include relations “between individuals and the state” (ibid.).

Classics: Conceiving property as social relation

Is property a right or a thing? Lawyers may easily concur in that it is a right, or a bundle of rights. For economists this has not always been that clear. It was long held that the land owned or the commodities exchanged on the market were property. And even in today’s economics of property rights a sharp distinction between property as the legal right of ownership and possession as the actual control over things seems to be missing (Hodgson 2015). And sociologists? They may beg to differ from both lawyers and economists and emphasise that property is a relation and, eventually, a relation of power. However, in the works of the sociological classics, who were naturally influenced by the economic and legal discourse of their time, property relations were not yet explored in full. Traces of a one-sided understanding of property as a relation between thing and person, to the exclusion of all others, can still be found both in Durkheim’s and Weber’s work.

Writing in the late nineteenth century, Durkheim identifies law as an indicator of social solidarity, with ‘restitutory’ and ‘repressive’ law suggesting different forms of social integration (Durkheim 1984 [1893]). Whereas repressive law, which is characterised by punitive sanctions, was more typical for traditional societies, and can still be found in criminal law, the prevalent type of law in modern societies is restitutory in orientation. This is namely true for the law ordering the market economy, whose rationale is to restore rightful relations, such as by claiming damages for breaches of contract. Property law certainly forms part of modern ‘economic law’, but Durkheim distinguishes it from other areas of private law, such as “contractual law” and “commercial law”, not to mention public law, including “procedural law, administrative and constitutional law” (Durkheim 1984 [1893], 77). What makes property law special, in Durkheim’s perspective, is that it is about the “negative relationship [...] which joins a thing to a person” (ibid., 72), whereas (all) other fields of law would concern relations

between persons. Accordingly, “[t]he relationships that are regulated by these [other] laws [...] express a positive contribution, a co-operation deriving essentially from the division of labour” (ibid., 77). In other words, they further the integration of modern societies, which are highly differentiated in nature, by balancing the rights and duties of the different parties to a relationship.

Writing in the early twentieth century, Weber distinguishes between ‘open’ and ‘closed’ relationships and introduces property relations as a special case of the latter, which would exclude ‘outsiders’ (Weber 1978 [1922], 43). Put differently, closed relationships are characterised by “monopolized advantages”, which may be allocated or distributed in different ways in a group of ‘insiders’ (ibid., 44). However, in the case of “[a]ppropriated advantages” everybody else is excluded but the owner, who enjoys “[property] ‘rights’” (ibid.). This is what private property is about. Accordingly, “the individual may enjoy his rights on a purely personal basis” as well as bequeath them to his heirs (ibid.). Moreover, depending on the property regime in place, “it may be that the [rights-]holder is more or less fully empowered to alienate his rights by voluntary agreement” (ibid.), such as by selling them to somebody else. Including this aspect of alienability, Weber speaks of “‘free’ property” (ibid.), which obviously plays a central role in the market economy. In the context of production, appropriated advantages include “the opportunities of disposing of, and obtaining a return from, human labor services [...], the material means of production; and the opportunities for profit from managerial functions” (ibid., 126; references omitted). This suggests that not only the ‘physical’ production factors of land and capital can be considered objects of property but also the ‘opportunities for profit’ derived from management and labour (cf. Commons 1959 [1934], 251).

Historically, the debate about property rights can be structured around two poles: the natural rights school and the conventional school. The natural rights school argues that private property is natural, fair and efficient. Accordingly, private property corresponds to the “original state of humans” or is at least considered to be “more consistent with human nature” than common property (Obeng-Odoom 2016, 11). For the conventional school, private property is not natural but conventional, and it is held that common property was the historical “norm” (ibid.). The idea that private property is not given but may become ‘naturalised’ in social discourse and practices obviously forms part of conventionalist thinking, which can also be labelled ‘constructivist’ today. This perspective can be condensed as follows: “The meaning of property

is not constant. The actual institution, and the way people see it, and hence the meaning they give to the word, all change over time.” (Macpherson 1978, 1). Moreover, the “basic question” of who owns what, which purportedly “existed throughout human history” (Furubotn and Richter 2010, 79), is premised on an answer to the even more fundamental questions of who can own and what can be owned in the first place, that is, the definition of legitimate ‘subjects’ and ‘objects’ of property (Carruthers and Ariovich 2004). Finally, even the distinction between subjects and objects of property is nothing fixed. In reality, certain objects of property (slaves, spouses, animals, companies) could also become legal subjects and, thus, right-holders and potential owners by themselves.

Within Marxist scholarship, it has long been emphasised that “[c]apitalist society is above all a society of commodity owners”, of which the concepts of private property, contract of will, and legal personhood are regarded as constitutive (Pashukanis 1980 [1924], 75). According to this line of thinking, the concept of ownership is inherently connected with the institution of the market: “only the development of the market initially makes possible and necessary the transformation of man, who appropriates objects by means of labour (or theft), into a legal owner” (ibid., 84). Accordingly, the relation between thing and person is not interpreted in ‘naturalist’ ways, say, of man controlling a piece of land and his belongings, but in ‘constructivist’ terms. In fact, thing and person are regarded as mutually constituted entities that owe their ‘existence’ to the concepts of private property and legal personhood, which both arise from the capitalist principle of market exchange. The emphasis of this approach is not so much on the relation between thing and person than on how the “relation of objects, commodities”, exchanged on the market, is reflected in “will relationships of individuals independent and equal to one another – legal subjects” (ibid., 79). Against this backdrop, the task for a sociology of property rights is to understand property not in ‘absolutist’ terms but to emphasise its ‘relational’ qualities in a network of social, or capitalist, relations. Characteristically, these relations involve the exchange of commodities and, concomitantly, the transfer of ownership, but also the coordination of different property claims.

Polanyi’s commons: The commodification of nature

Polanyi’s *The Great Transformation* includes an assessment of the English ‘enclosure movement’, which turned common land into private property. Whereas the overall process “started in the fifteenth century and went on [...] until the nineteenth century” (Boyle 2003,

34, fn. 2), Polanyi first deals with the enclosures between the late fifteenth and seventeenth century only, which preceded, and literally prepared the ground for, the industrial revolution. In the chapter entitled “Habitation versus Improvement” (Polanyi 1957b [1944], ch. 3), which alludes to the political rhetoric of the time, he characterises the enclosures as furthering “economic progress [...] at the price of social dislocation” (ibid., 34). Moreover, he replicates the assessment that this ultimately was “a revolution of the rich against the poor” (ibid., 35). In line with critical scholarship before and after him (Marx 1990 [1867], ch. 27; Thompson 1991, ch. 3), Polanyi points out that the appropriation of the commons was premised on the negation of customary rights. This is evident in the following passage: “The lords and nobles were upsetting the social order, breaking down ancient law and custom, sometimes by means of violence, often by pressure and intimidation. They were literally robbing the poor of their share in the common, tearing down the houses which, by the hitherto unbreakable force of custom, the poor had long regarded as theirs and their heirs’.” (Polanyi 1957b [1944], 35)

Regarding the trade-off between ‘habitation’ and ‘improvement’, Polanyi’s argument is not that economic progress, which was meant to be facilitated by the enclosures, could never compensate for the social dislocation which they eventually entailed, but that “[t]he time-rate of change compared with the time-rate of adjustment will decide what is to be regarded as the net effect of the change” (ibid., 38). Along these lines, he suggests that the enclosure movement in pre-industrial England turned out to be “less devastating” (ibid.) than it possibly could have been, given that “the Tudors and the early Stuarts used the power of the Crown to slow down the process of economic improvement until it became socially bearable” (ibid., 34). Put differently, even if legislation did not really manage to keep the enclosures in check, at least it did not accelerate them. This was already Marx’ point, who noted that, at first, “the process [of turning arable into pasture land] was carried on by means of individual acts of violence against which legislation [...] fought in vain” whereas “[t]he advance made by the 18th century shows itself in this, that the law itself becomes now the instrument of the theft of the people’s land” (Marx 1990 [1867], ???).

Polanyi returns to this matter in a later chapter, which is entitled “Market and Nature” (Polanyi 1957b [1944], ch. 15) and which elaborates on ‘land’ as a fictitious commodity, next to ‘labour’ (ibid., ch. 14) and ‘money’ (ibid., ch. 16). The concept of fictitious commodities is formulated against the backdrop of a ‘substantivist’ approach which emphasises the close interrelation of man and nature in traditional societies. However, the idea of an intact social metabolism does

not have to reflect a historical, or premodern, condition only, but it can also be found in contemporary, or postmodern, concepts of sustainable development. Moreover, it also informs the original understanding of the embeddedness paradigm, even though the latter can be given a more ‘constructivist’ reading as well (Frerichs 2011). For Polanyi, the defining feature of fictitious commodities is that they are traded on the market but have not been produced for the market in the first place. Instead, “[l]abor is only another name for a human activity which goes with life itself”, “land is only another name for nature, which is not produced by man”, and “actual money [...] is merely a token of purchasing power which [...] comes into being through the mechanism of banking or state finance” (Polanyi 1957b [1944], 72). Whereas the true substance of money is harder to define (Frerichs 2013), labour and land are, in the uncommodified state, “no other than the human beings themselves of which every society consists and the natural surroundings in which it exists”, and “[t]o include them in the market mechanism means to subordinate the substance of society itself to the laws of the market” (Polanyi 1957b [1944], 71).

In the case of land, the commodification process can now be identified with the enclosure movement as a whole, including its continuation, with the sanction of the English Parliament, in the eighteenth century, which was a premise for accomplishing the “industrial-agricultural division of labor” of today, “first on a national, then on a world scale” (ibid., 181). Polanyi describes the overall process as consisting of three stages: abolishment of feudal structures preventing the commercialisation of land, increase of the productivity of the land to feed a rapidly increasing urban population, and “the extension of such a system of surplus production to overseas and colonial territories” (ibid., 179). As to the latter step, he adds that “[t]o effect this change was the true meaning of free trade” (ibid., 181), which hints at the role of international economic law, or of the law of a market society going global.

From a neo-Polanyian point of view, the enclosure movement is far from over. Instead of understanding enclosure “as a periodizing concept set prior to the ascent of capitalist property relations” only, it can also be considered “as an ongoing process that in different capacities and forms preceded, initiated and continues to accompany ongoing capital accumulation” (Goldstein and Johnson 2015, 69). Along these lines, social scientists have come to apply “the lens of enclosure” (Geisler and Makki 2014, 29) to phenomena that go far beyond the commercialisation of the soil as such. While some scholars have preserved a substantivist approach and now speak, in more general terms, of the commodification of natural resources,

which “extend beyond land to water bodies, subsurface minerals, wildlife habitats, genetic substances, carbon sequestration zones, and seascapes” (ibid.), others have turned to the commodification of intellectual resources, or knowledge (Jessop 2007), or what Boyle refers to as “the enclosure of the intangible commons of the mind” (Boyle 2003, 37). Arguably, then, there is a new dimension to the enclosure process, or a shift of emphasis from real property to intellectual property. This change in the subject of enclosure is obviously premised on a change in the concept of property itself: from more concrete to more abstract notions of what can be ‘enclosed’, or from a more substantivist to a more constructivist understanding. This is where Commons comes in.

Commons’ property: The turn to the exchange-value

As a representative of the earlier ‘law and economics’ movement, “Commons probably did more than anyone else to establish the importance of legal matters for economics” (Hodgson 2003, 548), with two of his books “now serv[ing] as a benchmark for institutional law and economics” (Medema et al. 2000, 427): *The Legal Foundations of Capitalism* (Commons 1924), which was already mentioned above, and *Institutional Economics* (Commons 1959 [1934]), an outline of what is now dubbed ‘old institutionalism’. For Commons, legal institutions were crucial for an understanding of capitalist development. In his writings, he was able to draw on insights gained by “his [...] involvement with the courts, his service on government commissions and his drafting of legislation” in the US-American legal system (Medema et al. 2000, 428-429). In *The Legal Foundations of Capitalism*, Commons retraces the evolution of the concept of (private) property in the case law of American federal courts in the late nineteenth and early twentieth century. His study exposes the historical contingency of property law as ‘man-made law’ as opposed to the timeless quality of ‘natural law’ (McCally 2015, 16). Characteristic of the first wave of law and economics, Commons was as much interested in “how economy influences law” as in “how law influences the economy” (Medema et al. 2000, 429), that is, how the development of economic structures and the development of legal concepts go hand in hand.

What the US case law in the period under scrutiny reveals is that the concept of property changed from a preoccupation with the ‘use-value’ of things to emphasising its ‘exchange-value’ (Commons 1924, ch. 2). Whereas in an earlier stage of capitalist development, the concept of property was confined to absolute control over things, in the later stage it came to

include more abstract privileges, or opportunities for profit. Accordingly, the Supreme Court first had held that the Fourteenth Amendment of the US Constitution protected only the exclusive use of physical property by its owner (ibid., 12). This “primitive definition of property as the mere holding of physical objects for one’s own use and enjoyment” (ibid., 15) was still the majority position in court cases decided in the early 1870s, while some justices were already dissenting. In 1890, then, it was acknowledged by the majority of the court that property may not only rest in the monopolisation of the use-value of concrete, physical things, but also in the ‘propertisation’ of the exchange-value of potentially more abstract things. In 1897, the court ruled that “selling property is an essential part of liberty and property as guaranteed by the Fourteenth Amendment”, and thus made more explicit that the exchange-value is linked to market access (ibid., 17). Indeed, a constitutive feature of modern capitalism seems to be that all things or rights owned are ultimately tradeable: they can be transferred for a market price.

To illustrate the different dimensions of property, Commons distinguishes between corporeal and incorporeal property as well as intangible property. Whereas incorporeal property consists of “debts, credits, bonds, mortgages, in short, of promises to pay”, intangible property may consist of the “exchange-value of anything whether corporeal property or incorporeal property or even intangible property” (ibid., 19 [sic]), or, in short, of “opportunities for profit” (Commons 1959 [1934], 251). Commons points out that “anything” can have an exchange-value, “whether it be one’s reputation, one’s horse, house or land, one’s ability to work, one’s goodwill, patent right, good credit, stocks, bonds or bank deposit” (Commons 1924, 17). In turn, the exchange-value of property includes “anything that enables one to obtain from others an income in the process of buying and selling, borrowing and lending, hiring and hiring out, renting and leasing, in any of the transactions of modern business” (ibid.). Put differently, it consists in the ‘earning potential’ of any form of property in any form of market exchange. Hence, whereas the ‘primitive’ concept of property focused on physical things and their more or less concrete uses, the more ‘sophisticated’ concept of property of the turn of the twentieth century includes all kinds of “marketable assets”, even the most intangible ones (ibid., 18). These alternative understandings are also contrasted as the traditional “common-law meaning” and the modern “business-law meaning” of property (ibid., 20). It is the latter which better reflects the advances of industrial capitalism.

The legal cases analysed by Commons concern the question to what extent state regulation may interfere with constitutionally protected individual rights. This is also the setting of the famous *Lochner* case of 1905, in which it was held that a state law limiting the working hours of employees in the baking industry would violate the freedom of contract. Even though Commons does not elaborate on this case in specific (ibid., 63, fn. 19), he was much concerned with economic power, or the relative bargaining power of the parties of a contract, which is determined by the market price. He argues that state laws, such as “[p]ublic-utility laws, usury laws, labor laws”, some of which have been declared unconstitutional by the courts, were “designed [...] to curb the bargaining-power of property where it seems to be excessive” (ibid., 29). For him, there is thus a legitimate public interest in controlling the economic power derived from property (ibid., 33). With the ‘propertisation’ of the exchange value, the economic lever of property owners has arguably increased.

Commons’ interest in the unequal bargaining power on the market can only be understood if property rights are conceived in strictly relational terms. The starting point is a conception of capitalism as a form of social organisation, which consists in “production for the use of others and acquisition for the use of self” (ibid., 21). In other words, economic survival is premised on market exchange, or what Commons refers to as ‘transactions’ (ibid., ch. 4). Under these conditions, property can no longer be perceived as absolute control but has to be understood as relation of power: “the power of property [is] the economic power to withhold from others what belongs to self but is needed by others” (ibid., 32). It is against this backdrop that the transition from use-value to exchange-value in the understanding of property rights can also be understood as “a change from a concept of *holding* things for one’s own use to *withholding* things from others’ use” (ibid., 52; original emphasis). Thus, a constitution that protects private property and the freedom of contract automatically also sanctions the use, or abuse, of economic power based on these principles. Applying this conceptual framework to the *Lochner* case, the core issue was “the power of property over employees” (ibid., 62), which mirrors Polanyi’s concern with the commodification of labour. Whereas neoclassical economics works against the background assumption of a liberal state that protects private property rights, without analysing it any further (Furubotn and Richter 2010, 15-16 and 80-81), old institutional economics considers the state as a ‘third party’ that can never be neutral, as by defining rights it either privileges the one side or the other (Hodgson 2015, 688). In short, the bargaining power on the market is shaped by the legal framework.

Synthesis: The property regime of market society

In the market society, property relations are commodified in the sense that they are mediated by the market price, which expresses, according to Commons, the relative economic power of the parties. Quite obviously, then, property can no longer be equated with the thing owned, be it corporeal, incorporeal or intangible. However, what stood at the beginning of modern capitalism was, precisely, a reified understanding of property. This is suggested in a passage by Macpherson, which helps to connect Polanyi's account of the enclosure movement with Commons's account of the transition from use-value to exchange-value. With regard to England, Macpherson argues that, until the seventeenth century, "the great bulk of property was [...] property in land, and a man's property in a piece of land was generally limited to certain uses of it and was often not freely disposable", while "another substantial segment of property consisted of those rights to revenue which were provided by such things as corporate charters, monopolies granted by the state, tax-farming rights, and the incumbency of various political and ecclesiastical offices" (Macpherson 1978, 7). Obviously, these property rights concerned material as well as immaterial 'things', uses of land as well opportunities for profit, which were granted by the authorities. However, because ownership titles were either lacking exclusiveness or alienability, there was, as yet, little risk to conflate rights with things.

This changed with "the spread of the full capitalist market economy from the seventeenth century on", which entailed "the replacement of the old limited rights in land and other valuable things by virtually unlimited rights" (ibid.). In other words, property rights took the form of "full or complete ownership", which includes the right to use (*ius utendi*), the right to derive income from (*ius fruendi*), and the right to consume or alienate (*ius abutendi*) the thing owned (Furubotn and Richter 2010, 89). Macpherson's argument continues as follows: "As rights in land became more absolute, and parcels of land became more freely marketable commodities, it became natural to think of the land itself as the property. And as aggregations of commercial and industrial capital, operating in increasingly free markets and themselves freely marketable, overtook in bulk the older kinds of moveable wealth based on charters and monopolies, the capital itself, whether in money or in the form of actual plant, could easily be thought of as the property." (Macpherson 1978, 7) Hence, in a nutshell, modern capitalism changed the idea of property from "limited and not always saleable rights *in* things" to "virtually unlimited and saleable rights *to* things", that is, from relative, or divided, property rights to absolute, or

exclusive, property rights, which could easily be equated with the things themselves (ibid., 7-8; original emphasis).

Whereas the popular understanding of property is thus characterised by a certain confusion between rights and things, the distinction obviously matters from a legal point of view. At the same time, the link between capitalist development and the development of legal concepts, which ‘old’ institutionalists were interested in, is preserved. One could thus claim that the reification of property as a thing, in terms of the commodification of natural and human resources, is complemented by the commodification of the right of ownership, which was fictitious to begin with but which has now become exclusive and alienable enough to be traded on the market. The idea that it was not the (material or immaterial) object of property but “ownership that was bought and sold” can already be found in the work of Henry Dunning MacLeod, which dates back to the second half of the nineteenth century and is discussed at length in Commons’ *Institutional Economics* (Commons 1959 [1934]). For Commons, MacLeod was “the first lawyer-economist” (ibid., 394) and ultimately the “originator” of institutional economics (ibid., 399).

In a market society, which relies on commodity exchange as allocation mechanism for almost anything, trade obviously has a central function. At the same time, the (relative) economic weight of different sectors of production – agriculture, industry, and services – has significantly changed over the last two centuries. This is reflected in adaptations of the institution of property in terms of its main subjects, its main objects, and its core conditions. Agricultural capitalism was premised on the enclosure of land, with big landholdings furthering economic progress while depriving rural people of their livelihoods. With the industrial revolution, the focus changed from land to capital as the key property, and from individual to corporate owners as the key actors driving capitalist development. The propertyless had to turn to wage labour in the new factories to make a living, often under highly exploitative conditions. Today’s informational capitalism is marked by an emphasis on immaterial property, or the commodification of knowledge. With the proliferation of inherently integrated intellectual properties with multiple interdependent owners, the old property rights absolutism becomes dysfunctional, and once again leads to the abuse of economic power, be it in the way that the utilisation of knowledge is blocked by ‘fractional’ ownership rights, such as in the case of patent hold-ups, or that the rights of small owners, whose economic survival depends on their

rights being observed, are disregarded by powerful multinational corporations, which can risk extended court proceedings.

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