

LEGAL ISSUES AND INCENTIVES FOR SUSTAINABILITY

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Contents

1. The Problem
 - 1.1 Principles
 - 1.2 The Setting
 2. Getting the Rules Right
 3. Property Regimes
 4. Law and Economics
 5. Resource Management Regimes
- Glossary
Bibliography
Biographical Sketch

Summary

Sustainability is a matter of getting the institutions right so that individuals, as they go about their daily business, will behave in ways that are conducive to the furtherance of environmental conservation. The emphasis must be on the institutional set up of an economy, since it is this structure that informs and guides individual action. To suppose that individuals are inherently predisposed to short-sighted exploitation of nature is not a tenable working hypothesis. Rather, individuals are embedded in settings and circumstances over which we have limited influence and control. Given this situation, most of us act out of necessity. Informed policy, which concerns the crafting of new institutional arrangements—that is, collective action in restraint and liberation of individual action—seeks to modify fields of action open to individuals and groups as they interact with their natural surroundings. These institutional arrangements comprise the legal issues and incentives for sustainability.

1. The Problem

Concern for the legal issues that conduce to sustainability remind us of the fundamental point that all human activity and human interaction is mediated by norms and rules. This structure of working rules (or of institutions) can readily be thought of as the legal basis of the society. Notice that the idea here of legal does not refer to lawyers, judges, and prisons. Instead, the concept of legal must be understood as the prevailing and accepted structure of behavioral guidelines—some of which will be traditional and customary, some of which will be rather recent in origin (though still customary), and some of which will be written down (often called formal rules). In this sense, legal issues and incentives concern those working rules that both liberate and restrain individuals as they go about their daily life. These rules bestow rights on some

individuals within the community, and those rights gain their meaning from a correlated duty on others not to interfere with the actions of those with rights. A property right is precisely this form of a working rule: the owner has the right to undertake certain activities with respect to a particular piece of land or physical asset, while all others have a correlated duty not to interfere with the right holder.

But not all working rules bestow rights and correlated duties. Some merely allow individuals to act in certain ways with complete disregard for how those actions may harm others. Those adversely affected by the actions of another stand in a legal position of no-right with respect to the privilege of the actor. We must also recognize that a wide range of social rules merely coordinate behavior and that widespread adherence to these legal arrangements harms no one. Traffic rules about which side of the road one drives on is an example of this class of coordinating legal rules. It does not really matter to any of us which side of the road traffic shall proceed—it only matters that we all follow the same rules.

The challenge in the social creation of these institutional arrangements is that they work best if they can somehow reinforce the general interests of individuals. Compliance with rules is therefore enhanced to the extent that the evolved and imposed rules are regarded as incentive compatible. The matter of incentive compatibility will be elaborated presently. Before turning to that, it seems appropriate to reiterate here the general principles of sustainability. I have adjusted the wording only slightly to illustrate the pertinence to most of the principles to the topic of legal issues and incentives for sustainability.

1.3 Principles

- (a) Commitment to the effective use, management, and stewardship of natural capital.
- (b) Commitment to human resources—assuring lives of dignity, good health, and decent living conditions.
- (c) Commitment to the effective use and management of constructed capital.
- (d) Commitment to the effective use and management of financial capital.
- (e) Commitment to incentive—compatible institutional arrangements.
- (f) Commitment to governance structures and processes conducive to universal participation and consistent with the basic precepts of justice.
- (g) Commitment to prudence so as to avoid immoderate, yet plausible irreversible actions.
- (h) Commitment to the continual development of useful and valuable knowledge.

1.4 The Setting

It is generally recognized that the major threats to biological resources and sustainability arise in the developing world where poverty, young democracies, precarious governments, and fragile legal systems offer overwhelming challenges. It is in such places that governments have often declared to be the “owner” of a great range of natural resources—groundwater, forests, rangeland, nature reserves, and wild animals. Unfortunately, you do not own what you cannot control and so those declarations of ownership by governments often entail grand pronouncements but a rather complete

absence of managerial capacity and authority out in the countryside where natural resources are used. Overuse and resource degradation are the inevitable result.

Traditional governance structures for the management of natural resources were largely undermined during colonial times, and the new independent governments that have come into power since the 1960s, have not always favored having much political power focused away from the center. The resulting governance vacuum has served no one well, but it has been particularly destructive of much of the indigenous natural resource base.

The practical challenge of sustainability is to bring governance to degraded environmental resources in such a way that: (a) central governments are not threatened by these governance regimes and their institutions (rules) working far from the national capital; and (b) local governance systems have the right incentives and sanctions such that the environment is managed according to the principles of sustainability.

Turning skyward from the rich biological resources of the tropics, we encounter another problem of central importance to concepts of sustainability. If recent research is to be believed, we face fundamental policy choices regarding the emissions of greenhouse gases. These policy choices will challenge the ingenuity of a number of national governments in both the industrialized nations and in the poorer agrarian nations in and near the tropics. There are repeated calls for international cooperation, for a new global climate regime, and for mandated changes in behaviors so as to reduce emissions of—and/or to enhance the processing capacity for—such gases.

Indeed, the Convention on Climate change arising from the 1992 UNCED Conference in Rio de Janeiro (the “Earth Summit”) called for a stabilization of greenhouse gas concentrations in the atmosphere to preclude human actions driving global climate processes. The convention calls for financial assistance to developing countries through the Global Environment Facility. Throughout the negotiations leading up to the signing of the climate convention, concerns were expressed for national sovereignty in the face of demands that individual governments enforce new behavioral norms on their citizens. The more recent meeting in Kyoto, Japan produced yet a new round of negotiated solutions to the problem.

This debate highlights the complex interactions between national policies and the transboundary problems that have long plagued international environmental policy. The essence of the problem is that international law operates in a regime without direct sanctions. Indeed, if we understand the word “law” to encompass not only behavioral norms and sanctions but also a coherent enforcement structure that gives meaning to those norms and sanctions, then international law is a contradiction in terms.

The problem in the international realm is that “law,” to be effective, requires a correlated implementation structure that presumes an authority system with the capacity to bring quick and direct sanction to bear on those who choose to ignore the “law.” We have, in international pollution problems, the vexing problem of governance without government. To clarify the issue of governance in the absence of government, new insights are called for.

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Bibliography

Bromley D. W. (1989). *Economic Interests and Institutions: The Conceptual Foundations of Public Policy*, viii+274 pp. Oxford, UK: Basil Blackwell. [The foundations of economic institutions and institutional change. Attention is devoted to institutions and institutional change as the essence of public policy.]

Bromley D. W. (1991). *Environment and Economy: Property Rights and Public Policy*, xi+247 pp. Oxford, UK: Basil Blackwell. [Explores the relationship between property rights and public policy, with particular emphasis on the concept of property rights and on the various property regimes pertinent to environmental resources.]

Bromley D. W. (1994). Economic dimensions of community-based conservation. *Natural Connections: Perspectives in Community-based Conservation* (ed. D. Western, R. M. Wright, and S. C. Strum), pp. 428-47. Washington, DC: Island Press. [A review of economic and legal principles pertaining to the development of community-based conservation programs in developing nations.]

Bromley D. W. Feeny D. McKean M. A. Peters P. Gilles J. L. Oakerson R. J. Runge C. F. and Thomson J. T. (eds.) (1992). *Making the Commons Work: Theory, Practice, and Policy*, xii+ 339 pp. San Francisco, CA: ICS Press. [The authoritative source of conceptual and practical insights concerning common property regimes and their role in sustainable development.]

Biographical Sketch

Daniel W. Bromley is Anderson-Bascom Professor of applied economics at the University of Wisconsin-Madison. He was Visiting Fellow at Wolfson College, Cambridge in 1986–1987. Professor Bromley has published extensively on natural resource and environmental economics, and on economic development. He has been editor of the journal *Land Economics* since 1974. He has been a consultant to the Global Environment Facility; the World Bank; the Ford Foundation; the US Agency for International Development; the Asian Development Bank; the Organization for Economic Cooperation and Development; and the Ministry for the Environment in New Zealand. He has worked and lectured in Russia, Finland, Norway, Sweden, France, Germany, England, South Africa, Pakistan, Indonesia, the Dominican Republic, the Philippines, New Zealand, Thailand, Haiti, India, and Sudan.

Professor Bromley has written and edited 10 books, the most recent of which are: *Economic Interests and Institutions: Conceptual Foundations of Public Policy* (Blackwell, 1989), *Environment and Economy: Property Rights and Public Policy* (Blackwell, 1991), *Making the Commons Work: Theory, Practice, and Policy* (ICS Press, 1992), *The Handbook of Environmental Economics* (Blackwell, 1995), *Environment and Economics in Project Preparation: Ten Asian Cases* (Asian Dev. Bank, 1999), and *Sustaining Development: Environmental Resources in Developing Countries* (Elgar, 1999). He is now writing *Sufficient Reason: A Theory of Economic Institutions*.