RECIPROCAL HARM AND THE COMMON CONDITION: COASE AND THE QUESTION OF WHO REORGANIZES

O dano recíproco e a condição comum: Coase diante da pergunta sobre quem reorganiza

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ABSTRACT

In The Problem of Social Cost, Ronald Coase holds that all harm is reciprocal: to avoid harm to B imposes a sacrifice on A, so that the question "who harms whom" does not by itself decide whom the law should favour. This paper examines what that thesis reaches when the conflict concerns access to a common condition: a path, a spring, an aquifer. Two situations that yield the same material results are distinguished: crossing because access depends on no one's will, and crossing because someone always authorizes it. It is argued that the reciprocity of sacrifices is compatible with a difference of object between the relations of authorization each attribution institutes, and that comparison by the value of production may remain indifferent to that difference; the leap occurs when the result of the comparison is taken as sufficient ground for instituting the winning position. Coase's English cases are reread with a uniform criterion, and none is found to involve a common condition in the sense fixed. Three dimensions are then separated, the diagnosis of a transformation of participation, its justification, and the distribution of competences, and the hard case of a community administering a scarce resource is examined in each. The result is a proposed interpretation of the defended book's criterion, with an examination of its consequences, and a contribution to the broader terms Coase acknowledged and left without content: identifying the transformation of a relation of participation determines what requires justification and before whom; the economic advantage of the arrangement does not by itself supply that justification.

Keywords: Coase; reciprocity of harm; common condition; authorization of access; normativity; participation.

RESUMO

Em O problema do custo social, Ronald Coase sustenta que todo dano é recíproco: evitar o dano a B impõe um sacrifício a A, de modo que a pergunta "quem prejudica quem" não decide, por si, a quem o direito deve dar razão. Examina-se o que essa tese alcança quando o conflito envolve o acesso a uma condição comum: um caminho, uma nascente, um aquífero. Distinguem-se duas situações que produzem os mesmos resultados materiais: atravessar porque o acesso não depende da vontade de ninguém e atravessar porque alguém sempre autoriza. Sustenta-se que a reciprocidade dos sacrifícios é compatível com uma diferença de objeto entre as relações de autorização que cada atribuição institui, e que a comparação pelo valor da produção pode permanecer indiferente a essa diferença; o salto ocorre quando o resultado da comparação é tomado como fundamento suficiente para instituir a posição vencedora. Os casos ingleses de Coase são relidos com critério uniforme, e conclui-se que nenhum deles envolve uma condição comum no sentido fixado. Separam-se então três dimensões, o diagnóstico da transformação de uma participação, a justificação dessa transformação e a distribuição de competências, e examina-se nelas o caso difícil de uma comunidade que administra um recurso escasso. O resultado é uma proposta de interpretação do critério da obra defendida, com o exame das suas consequências, e uma contribuição aos termos mais amplos que Coase reconheceu e deixou sem conteúdo: identificar a transformação de uma relação de participação determina o que exige

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justificação e perante quem; a vantagem econômica do arranjo não fornece, sozinha, essa justificação.

Palavras-chave: Coase; reciprocidade do dano; condição comum; autorização de acesso; normatividade; participação.

1 INTRODUCTION

A path crossed a piece of land, and by it one reached the well, the fields, and the houses beyond. No one asked leave to pass, not because the land had no owner, but because preventing passage was no part of what the path was. One day the owner closed it with a gate. He forbade nothing: he merely required that each person ask his permission before crossing, and he always granted it. No traveller turned back, no garden went unwatered. And yet something changed. Before, one crossed because access depended on no one's will; afterwards, one crosses because someone authorizes it. The case belongs to O amanhã é possível? [Is tomorrow possible?] (DIETRICH, 2026, ch. 16), and the distinction it makes visible is this: two situations may yield the same material results, the same passage, the same water, the same output, and differ in the relation between the participants. Permission that is never refused is still permission.

There is an objection that seems to strike this distinction at the root. Ronald Coase held, in 1960, that harm is reciprocal in nature: to avoid harm to B imposes a sacrifice on A, and the real question is not how to restrain A but which of the two sacrifices to accept (COASE, 1960, p. 2). Transposed to the path, the objection says that finding for the passers-by sacrifices the owner, and finding for the owner sacrifices the passers-by; that the law must delimit the positions before any bargaining is possible; and that, once they are delimited, the parties will bargain their way to the arrangement that maximizes the value of production, whatever the starting point. If the objection reaches the distinction between participation and permission, the difference between the two situations described above is merely one more item in the account, and the position of the one who authorizes is an effect of the legal attribution, with no normative relevance of its own.

What is examined is the reach of that objection, and the question must be put with care, because a hasty formulation would make it false. The question is not whether the asymmetry between the one who authorizes and the one who asks is a fact of the form of participation or an effect of the law, as if the two excluded each other. A legally instituted position may produce effective and observable dependence; its institutional origin does not make it fictitious, and its factual existence does not show independence from institutions. The question is another: whether the thesis of reciprocity, and the value-of-production criterion that accompanies it, account for what changes when access to a common condition comes to depend on someone's

authorization. It is argued that the reciprocity of sacrifices is true and compatible with an asymmetry in the relation of authorization; that this asymmetry can be identified by analysing the concrete relation and assessed by a criterion that does not reduce to the law in force; that the value-of-production criterion may remain indifferent between arrangements that differ only in that relation; and that economic compensation for dependence does not, by itself, legitimize subjection to another's authorization. The terms "social cost" and "transaction costs" belong to Coase's technical vocabulary and appear only in the reconstruction of his position.

Some terms of the book under discussion must be fixed, because the argument depends on them. A common condition is a condition on which many live and which none of them produced or can present as his own work: the spring a village drinks from, the path by which one reaches the fields, the current of air that ventilates a cellar. Participation is the way someone lives on such a condition, and a form of participation is the whole of what constitutes it as the participation it is. Among the conditions of a form, a distinction is drawn between constitutive conditions, without which the form ceases to be what it was, and convenient ones, which merely enrich or ease its exercise; the test consists in removing the condition and asking whether the same form remains or another (DIETRICH, 2026, ch. 10). The floor of a good is the threshold below which it ceases to be the same good; the floor does not measure utility or importance, only the permanence of identity (DIETRICH, 2026, ch. 18). Finally, a power to grant and refuse access (the book's term is faculdade) is a position through which someone's access to a common condition passes, case by case, through another's decision; it is distinguished from a rule that holds for everyone and that no one administers in each case (DIETRICH, 2026, ch. 17 and 22). These are stipulations, and their usefulness is measured by what they allow one to see in the cases; the normative justification that accompanies them is left to sections 6 and 7, and the word faculdade is rendered throughout as "power of concession" in the technical sense fixed here.

2 THE OBJECTION RECONSTRUCTED

The reconstruction must be the strongest possible, and also the most precise, because the 1960 article is often read as if it claimed more than it does. Coase begins from the traditional approach, for which a factory whose smoke harms its neighbours should be made liable, taxed, or removed, and declares that the question is badly put: "We are dealing with a problem of a reciprocal nature. To avoid the harm to B would inflict harm on A. The real question that has to be decided is: should A be allowed to harm B or should B be allowed to harm A? The problem is to avoid the more serious harm" (COASE, 1960, p. 2). The confectioner whose machinery

disturbs the doctor and the doctor whose consulting room obstructs the machinery are, in that description, two activities that do not fit in the same place.

From this first thesis the others follow. It is necessary to know whether the damaging business is liable or not, "since without the establishment of this initial delimitation of rights there can be no market transactions to transfer and recombine them. But the ultimate result (which maximises the value of production) is independent of the legal position if the pricing system is assumed to work without cost" (COASE, 1960, p. 8). When bargaining is expensive, what Coase calls transaction costs, the attribution comes to matter, and it is desirable that courts, in delimiting rights, take the economic consequences of their decisions into account (COASE, 1960, p. 19). The final step generalizes: factors of production are to be thought of as rights, and "the right to do something which has a harmful effect (such as the creation of smoke, noise, smells, etc.) is also a factor of production" (COASE, 1960, p. 44). The critique of Pigou is the practical consequence of this chain: to impute the harm to the one who "causes" it presupposes a causal asymmetry the case does not contain, since, "if we are to discuss the problem in terms of causation, both parties cause the damage" (COASE, 1960, p. 13).

It matters to separate what these theses assert from what they do not. They assert that avoiding a given harm imposes another sacrifice; that the initial attribution of rights is necessary for bargaining and, with transaction costs, affects the result; and that causation, taken by itself, does not distinguish the parties. They do not assert that the parties occupy structurally identical positions, nor that no asymmetry between them has normative relevance of its own. Coase can acknowledge that an owner controls a passage at his discretion and hold, at the same time, that restricting that control has economic consequences. The reciprocity of sacrifices and the asymmetry of a relation of authorization are properties that can coexist in one case, and nothing in the 1960 article requires denying it. The target, then, is not reciprocity, which is true, nor a philosophical generalization Coase does not sign. The target is narrower and more important: the sufficiency of the value-of-production criterion for assessing arrangements that differ in the relation of authorization, and the passage, which Coase's analysis does not assert but which its use as a sufficient criterion of delimitation would involve, from the economic compensability of a dependence to its legitimacy.

Two remarks of Coase's own mark out the ground. The analysis "has been confined, as is usual in this part of economics, to comparisons of the value of production, as measured by the market", although the choice between social arrangements ought to be made "in broader terms" (COASE, 1960, p. 43); and, among the rights that limit a landowner, "some people may have the

right to cross the land" (COASE, 1960, p. 44). The right of way thus figures among the attributions Coase considers, and it is by that right that the objection must be tested.

3 RECIPROCAL SACRIFICES AND THE RELATION OF AUTHORIZATION

Let Coase be granted everything he says about sacrifices. In the case of the path, there is loss on one side or the other depending on the attribution: if the owner prevails, the passers-by lose free passage; if the passers-by prevail, the owner loses exclusive disposal of the land. The book under discussion does not contest this; it holds, on the contrary, that effects by themselves never said who answers for them (DIETRICH, 2026, ch. 22). The question it asks is another: after the gate, is there someone on whose decision, case by case, the access of the others to what they live on has come to depend? After the gate, each traveller's passage depends on the owner's decision; before it, the owner's use of the land depended on no traveller's decision. And the relation would run in the same direction even if authorization were never refused, because not exercising a power is not the same as abolishing it (DIETRICH, 2026, ch. 17).

The strongest Coasean reply must be stated in its best form. Positions are what the law delimits; the law may attribute to the passers-by a right of way; once it has done so, it is they who hold the capacity to prevent the owner from closing the path, and they may even, for a price, waive that right. If the relation of authorization appears on one side when the law finds for the owner and on the other when it finds for the passers-by, it is an artefact of the attribution, and there is nothing in it that economic analysis cannot treat as one more right to be bargained over.

The reply is right about more than it seems, and what it gets right should be acknowledged before what it does not. It is right that a right of way is a legal position: it institutes holders, obligated parties, powers to demand respect for access, and limits on the use of the land. It is also right that, over the strip of the path, the relation is reversed: fencing it, building on it, or diverting it comes to depend on the consent of the holders of the right of way. Taking the same object, the strip, the relation of authorization is symmetrical under the two attributions; only the decider changes. The asymmetry the book describes is therefore not an asymmetry of direction over the same object. It is an asymmetry of object. Under one attribution, another's decision bears on the access of many to a condition they already lived on; under the other, it bears on the alterations an owner may make to a strip of his land. The right of way eliminates one determinate position, that of discretionary concession over crossing, and creates others, over the strip. To say that this is a difference that matters presupposes that access to a common condition has normative relevance of its own, and that presupposition is exactly

what sections 6 and 7 have to ground. Nothing in the asymmetry, taken by itself, grounds it; what it establishes is only that the two attributions do not institute the same kind of relation, and that a description registering only who gains and who loses has no way of seeing the difference.

Four properties that the word "extinguish" tends to run together must be kept apart: the impossibility of unilaterally refusing a passage; that of negotiating a change in the regime; that of alienating or waiving the right; and the material impossibility of blocking access. A right of way secures the first and not, by itself, the others. And here the book is more demanding than the right of way, in a way that must be stated exactly. Chapter 17 asks whether, after the response, a mechanism remains by which someone could again grant or refuse passage, and it defines what counts as a mechanism: one is internal to a participation when it "acts on what is exercised in it" and "remains available while that exercise lasts" (DIETRICH, 2026, ch. 17). This disposes of an obvious objection, that the owner already had, before the gate, the legal power to fence what is his, so that the path was already permission: the general power to fence did not act on the crossing until it was instituted over it; the gate is the mechanism, not the ownership. But it also disposes of a convenience: if the gate with its lock remains after the right of way is recognized, the material mechanism subsists, and by the criterion of Chapter 17, which makes the case of the unlocked gate turn on lock and key, the constitutive condition has not been restored. The right of way is the legal half of the response; whether removing the mechanism is the other half, or whether a mechanism subject to duties and effective review may remain, is what section 7 will have to say and apply back to the gate. Whether the book's criterion is material, structural, or legal, that is, whether what it requires to be suppressed is any physical capacity to block, a stable position of unilateral control, or a recognized competence to grant and refuse, is a question the excerpts do not settle and that section 7 will have to face before a case in which the three readings yield different results. Deciding what counts as a common condition, as constitutive participation, as a mechanism or as the mere application of a rule is a matter of interpretation, and the book acknowledges as much when it suspends judgment where equally defensible descriptions diverge (DIETRICH, 2026, ch. 10).

It also matters not to restore the asymmetry by the wrong road. Richard Epstein rejected Coasean reciprocity by appealing to causal paradigms: A hit B, A compelled B to hit C, A created a dangerous condition (EPSTEIN, 1973). The controversy over causation need not be settled here; it is enough to note that the asymmetry at issue does not depend on accepting Epstein's causal answer, because it is not causal. The man who inherited the signature on the licences caused nothing, instituted nothing, promised nothing, benefited from nothing, never refused, and occupies a position (DIETRICH, 2026, ch. 22). The relation of authorization lies

on other ground, and that ground has, in a neighbouring tradition, a familiar formulation. Philip Pettit separated suffering an interference from remaining subject to someone who can interfere, and made the second relation, domination, the contrary of freedom, even where the dominator never interferes (PETTIT, 1997). Coase's harm is interference: smoke that enters, noise that disturbs, cattle that trample the crop. The gate that is never shut interferes with nothing and has already instituted a power. Pettit is the closest interlocutor, and the book diverges from him at a precise point: for Pettit, a power forced to track the avowable interests of those affected, exercised by known rules and open to contestation, ceases to dominate; for the book, any power to grant or refuse has already converted participation into permission, controlled or not (DIETRICH, 2026, ch. 17, n. 88). Whether that divergence holds, and in what terms, is what the case in section 7 will decide.

4 WHAT THE CRITERION EVALUATES AND WHAT IT LEAVES INDIFFERENT

The Coasean criterion compares the total value of production under alternative attributions, and is invoked, where bargaining is expensive, as one of the factors in choosing between them. It sees every difference that alters quantities or values, including amenities, quiet, a view, and clean air, which enter the calculation like any good for which someone is willing to pay (COASE, 1960, p. 15, 44), and it compares without difficulty different goods and different compositions of output: in Bass v. Gregory, cheaper beer with worse amenities against dearer beer with better ones. A common measure does not presuppose that the objects measured are identical, and the objection to the sufficiency of the criterion cannot consist in saying that it is unable to compare goods that have changed identity. It must consist in something else.

A village drank from a spring that belonged to no one. Someone fenced it, organized its distribution, and took to opening and closing. The vein did not run dry, the water reached every house in the same quantity and of the same quality, and the owner distributed it with absolute fidelity (DIETRICH, 2026, ch. 18). What the book shows in this case is a describable difference: before, the water was something one participated in; afterwards, it became something one receives from whoever administers it. There was no diminution; there was a change of register. Three questions must be kept apart about that difference: whether it can be described; whether it can be given economic value; and whether it is legitimate to allow it to be compensated by other advantages. The first is answered by the description of the case itself. The second must be conceded to Coase: if dependence alters the villagers' willingness to pay, their expectations or their security, it can appear in the evaluation, and water in constant quantity

does not imply constant economic value. The spring experiment assumes, in order to isolate the phenomenon, that none of this changes; and the precise result of that assumption is not that the criterion is blind, but that it may remain indifferent between arrangements the book regards as normatively distinct. Evaluative indifference is not descriptive incapacity, and indifference obtained by stipulation is not, by itself, an objection: any criterion is indifferent between arrangements assumed equal in everything it measures. What the spring establishes is only that a non-economic description of the difference exists, and that its normative relevance, if any, must come from elsewhere.

It is the third question that sustains the objection, and it must be put without attributing to the comparison more than it does. Even if a monetary value is placed on independence, it does not follow that paying a given sum legitimizes subjecting someone to another's authorization. Economic comparison does not assert that legitimation; it can compare consequences without settling the admissibility of the positions compared. The leap occurs elsewhere: when the result of the comparison is taken as sufficient ground for instituting the position that won, that is, when one passes from "this arrangement produces more" to "this arrangement may be instituted", and the position of concession over another's access enters the account as if it were already admissible, needing only to be worth more. What the book holds against that leap is a thesis about compensability: the loss of a constitutive condition of a participation is not repaired by enriching convenient conditions, because the response owed follows the structure of what was altered, and where what was altered is constitutive and the alteration is not justified the response consists in restoring, not in compensating (DIETRICH, 2026, ch. 16). The thesis holds for the unjustified transformation; a transformation identified by the identity test is not yet that. That thesis requires the grounding that sections 6 and 7 build. What is established here is more modest: equivalence of productive results does not suffice to establish normative equivalence between relations of access, and Coase himself, in confining the analysis to value as measured by the market and referring the choice between arrangements to broader terms (COASE, 1960, p. 43), left open the space in which that difference is decided.

5 COASE'S CASES REREAD

The best ground on which to measure the reach of the distinction is Coase's own, and the cases of section V of the 1960 article must be read with a uniform criterion applied at the same moment in each: the situation before the decision, the positions instituted by the decision, and the bargaining powers that follow it. The criterion is the question already framed: is there

someone through whose decision, case by case, another's access to a common condition, in the sense fixed in the introduction, passes? What results is an interpretive hypothesis, not a confirmation, because applying the criterion involves qualifying each condition as common or not, and that qualification is itself interpretive.

In Sturges v. Bridgman, a confectioner had for decades used, in Wigmore Street, two mortars that disturbed no one, until the neighbouring doctor built a consulting room at the end of his garden, against the confectioner's kitchen, and found he could no longer auscultate his patients. The court granted the doctor an injunction (COASE, 1960, p. 8-10). Before the decision, neither use passed through the other's decision. After it, the doctor came to hold a right he may exercise or bargain away: he may stop the machinery and may, for a price, waive his right to stop it (COASE, 1960, p. 9). There is, then, a subsequent power exercised case by case over the confectioner's activity. The reason it is not a power of concession in the technical sense lies in the object: the quiet of the consulting room is not a condition many live on without having produced it, but a private use in conflict with an adjoining private use, and the injunction institutes a limit between two uses; it does not administer anyone's access to something he participated in. The example of the cattle and the crops receives the same treatment, as does Cooke v. Forbes, which Coase regards as analytically identical to the cattle example (COASE, 1960, p. 11).

Bryant v. Lefever is not a borderline case. The neighbours raised a higher wall and stacked timber on the roof; the plaintiff's chimneys began to fill the house with smoke, and the Court of Appeal, reversing the jury, held that the one who caused the nuisance was the one who lit the fire (COASE, 1960, p. 11-13). Coase draws from this the reciprocity of causation: given the fire, the wall causes the smoke to be retained; given the wall, the fire causes it. The book founds no duty on causation, and the case does not test the relation of authorization: there are two uses of adjoining properties and a limit between them. What it shows is that the disagreement with Coase does not lie in causation.

Bass v. Gregory deserves closer examination than usual, because it is the case in which the temptation to see a common condition is strongest and in which the facts forbid it. Beneath the Jolly Anglers public house was a cellar cut into the rock; from the cellar, a shaft had been cut into an old well in the neighbour's yard, so that the well had become, for more than forty years, the ventilating shaft for the brewing. The neighbour stopped up the well; the court presumed, by the doctrine of the lost grant, a right to the current of air, because it ran through "a strictly defined channel", and distinguished the case from Bryant, where what was involved was "the general current of air common to all mankind" (COASE, 1960, p. 14). Three facts prevent the

case from being qualified as access to a common condition in the sense fixed here. The shaft was produced, and produced from the public house's side; one brewery lives on it, not many; and the flow is the air impregnated by the brewing, expelled through the neighbour's yard, that is, the use of adjoining property as the chimney of a private activity. The court itself classed as "common to all mankind" the air in Bryant, not in Bass. By the article's criterion, Bass is a conflict between adjoining private uses as much as Sturges is, and the difference between the two lies in the remedy, not in the structure: a negative injunction against a use on one side; a positive easement of access on the other. To read in the remedy in Bass the structure of the extinction of a power of concession would be to read the criterion off the desired result, and the neighbour's act, a single obstruction, institutes no regime of concessions.

What can be salvaged from Bass is smaller and worth stating. The doctrine of the lost grant presumes a legal origin for the prolonged exercise of a right; it infers a lost grant, it does not show that there was never a grant. What it registers is a continued relation of dependence exercised as of right, without renewed individual authorization, and the distinction between the act that constitutes a right and the continued relation it sustains is the distinction the form of participation requires. Coase declares the doctrine "about as relevant as the colour of the judge's eyes" for the economic choice between beer and amenities, and in the next sentence distinguishes that choice from the question of who has the legal right to do what (COASE, 1960, p. 15). For the question the form of participation asks, the instrument the court used is exactly what matters, because it is made to register continued relations of dependence; and that is true even though, in Bass, the relation registered is that of one cellar with one yard.

The balance must be stated in proportion to what was done. None of the four cases in Coase's section V, nor the cattle example, presents a common condition in the sense fixed: all are conflicts between adjoining private uses, in which reciprocity describes the case well. Nothing follows from this about Coase's selection of examples; he chose the cases for the problem he had, that of harmful effects between neighbouring businesses. Something else follows, more modest: the hypothesis that the distinction between participation and permission has a domain of its own is not tested by Coase's cases, because none of them belongs to that domain; and the uniform reading of the five confirms that, outside it, reciprocity is the adequate description and the book does not decide. The test of the hypothesis has to be made on the book's own cases, and that is what the following sections do.

6 FROM DIAGNOSIS TO DEMAND: THREE DIMENSIONS

Identifying someone who controls access is not enough to conclude that the control ought to disappear. Between the description of a relation of authorization and the demand that it cease lie three distinct questions, and the argument advances only if it does not confuse them: whether the participation was transformed; whether that transformation is justified; and who may do what about it. The first is diagnostic, the second normative, and the third institutional. The book answers the first well, answers the second only with a declared premise, and does not answer the third. This must be said before any of the three is used.

The first dimension is the transformation of the participation, and the instrument is the identity test: with a condition removed or instituted, does the form of participation remain the same, or is something else there? (DIETRICH, 2026, ch. 10). The test decides whether independent access has become authorized access. It does not ask whether the path is important or whether authorization is a nuisance; it asks whether crossing by participation and crossing by permission are the same thing, and the answer is that they are not, for the same reason that the fenced spring faithfully distributed is no longer the spring one participated in. What the test determines is what requires justification and before whom. What it does not determine, and it would be a mistake to ask it to, is whether the transformation is justifiable: the identity test says that there was loss or conversion, not whether it ought to have occurred. A transformation may be justified by reasons that do not preserve the earlier form, and the safety of persons is the clearest example: restricting a dangerous passage alters the form of crossing and may be owed. To convert the diagnosis into an absolute obligation to preserve the form would be to pass from description to norm without argument, and the book does not do so: it declares that it does not measure and that weighing between forms is not its business (DIETRICH, 2026, ch. 18).

The second dimension is justification, and here the passage from diagnosis to normative demand must be grounded, not declared. The proposed ground is this. Whoever institutes a position of concession over others' access to a condition they already lived on acquires over their participation something he did not have, and acquires it by an act of his own. The book assumes, as a declared premise and not as a deduction, that whoever reorganizes a condition in which others participate cannot keep that action as his exclusive affair and owes a response to those whose participation was affected (DIETRICH, 2026, ch. 13). It does not follow that the position must disappear; it follows that it must be justified before those subjected to it, and that the burden lies with whoever instituted it, because it was his act that created it. The participant's claim is, at bottom, a claim to directed justification, close to the one Forst formulates as the right

of each affected person to reasons that can be presented to him (FORST, 2012), with two refinements. The first concerns the holder: not everyone affected, but whoever already participated in the condition, because the relation between the condition and those who lived on it did not begin with the act, it was found by it, whereas the affected party enters the action through its consequences (DIETRICH, 2026, ch. 11); and the holding derives from participation in the form, not from the person's priority in time, so that whoever comes to live on the condition after the act is a holder like the others, and the concession that "changed hands" still owes a response to whoever depends on it today (DIETRICH, 2026, ch. 22). The second concerns the content: what must be justified is not every effect of the act, but the position acquired over access. And what counts as sufficient justification cannot be settled here by a general principle, because that would require the theory of weighing between forms that the book declares it does not possess. What can be said, and it suffices for the argument, is negative: the reason offered must be a reason for this person's access to pass through another's decision, and not merely a reason for the land to have an owner, for the regime to exist, or for the arrangement to produce more. The general justification of an institution does not transfer automatically to each position it imposes: a licensing regime over an aquifer may be fully justified by the aim of preventing exhaustion, and that reason reaches each of those who draw, because a withdrawal that by itself exhausts nothing belongs to a practice that cumulatively exhausts, so that a collective reason can justify individual subjection to limits, and a justification directed to the person need not be a reason exclusive to her. What the collective reason does not show by itself is something else: that general limits require individual authorization, rather than a rule each person applies to himself, and that the concrete distribution of quotas is legitimate. Those two steps require additional reasons, and it is in them that the administrator's position has to be justified. At the gate, the only reason available is the owner's wish to dispose of what is his, and that is a reason for him to have the land; it is not, without more, a reason for the others' crossing to pass through him. There may be others, the safety of livestock, erosion of the strip, liability for accidents, and if there are they enter the second step, that of weighing, which this article does not take. What is established is that compensation is not a reason of that kind: it answers the question of what the loss is worth, and the position demands an answer to the question of why it exists.

The third dimension is the distribution of competences, and in it the single-author thesis must be corrected with a distinction the book did not use: holding a claim and having the competence to alter a result are different things. A reason that grounds a claim grounds an objection to the result; it does not thereby ground anyone's competence to change it. The question "who owes what" therefore has more than one answer, and all of them determinate.

Whoever instituted the concession owes the response as long as he occupies a position over the condition. Whoever sustains it without the competence to abolish it owes what lies within his reach: not to exercise it beyond what the rule imposes, not to pass it on as if it were his, to acknowledge before whoever asks that the position he occupies is the one that owes justification. Whoever has the competence to abolish it or convert it into a rule owes an examination of the claim and a response to it; abolition or alteration is owed when the justification offered is insufficient, and to the extent of the defect identified, not by the mere existence of the competence. The book held that the response has a single possible author, defined by the place he occupies (DIETRICH, 2026, ch. 22); what survives is that the addressee is determinable by position rather than by history, but distributed among as many as occupy distinct positions over the same concession. And there is a question in this dimension that the argument does not resolve and must leave open: the availability of the claim. Ceasing to exercise it, consenting to a determinate restriction, and alienating it for good are three things, and holding the claim does not, by itself, show that the position is available in any of the three senses. Buying the removal of an obstacle does not imply being able to sell the position recovered, which is another object. What can be said with confidence is only that no participant may dispose of the position of the others, because a constitutive condition does not divide into parts (DIETRICH, 2026, ch. 22). Whether the consent of all present participants suffices, and what happens with future ones, is a limit of the argument: the consent of the present does not by itself show authority over those who come later; but neither does it follow that the latter acquire a claim to the earlier form, and the article asserts neither.

7 THE HARD CASE AND ECONOMIC COMPARISON

The argument must face the case that tests it far harder than the owner who installs a gate without need. Consider a community of irrigators that, facing an aquifer that no longer suffices for everyone, fixes quotas, revises them in assembly, charges someone with verifying withdrawals and authorizing those within quota, and sanctions excesses. It is the regime Elinor Ostrom described in many variants, with delimitation of users, monitoring, graduated sanctions, and conflict resolution (OSTROM, 1990), and nothing in it is the absence of administration. By the book's note 88, any power to grant or refuse converts participation into permission, controlled or not; on one possible reading of the book, that would make the community of irrigators a regime of permission whose response owed is extinction, which no one would accept; section 6 showed, however, that being a regime of permission calls for an examination

of its justification and does not determine its extinction. The case must be examined in the three dimensions of the previous section, and the result must appear as the conclusion of the examination, not as an advance decision about what the book ought to have said.

In the dimension of diagnosis, the identity test gives an answer that should not be softened: the participation was transformed. Drawing water by participation and drawing within a quota verified by someone are not the same form; scarcity converted a condition one participated in into an administered condition. To deny this in order to save the regime would be to refuse the test when its result displeases. What the diagnosis does not say, and section 6 showed why it does not, is that the transformation is unjustified.

In the dimension of justification, the regime offers a reason of the kind required: scarcity is a reason for each person's withdrawal to pass through a rule, because without a rule the condition ceases to sustain everyone's participation, and the reason can be presented to each person subject to the regime as a reason concerning the water and the equal participation of the others. It is not a reason for the aquifer to have an owner, nor for the arrangement to produce more; it is a reason for withdrawals to be disciplined. What it does not justify by itself are the two steps section 6 separated: that the discipline require individual authorization, rather than a rule each person applies to himself, and that the concrete distribution of quotas be legitimate. Those steps remain demands that the configuration described has to meet with reasons of its own. The transformation is, in that sense, justifiable, and justifiable without preserving the earlier form, which confirms that the identity test and justification are distinct dimensions.

In the institutional dimension, the decisive question is whether the regime instituted a power to grant and refuse in the technical sense, and it requires separating three things the case of the gate left together: the material capacity to block, the competence to verify requirements, and the power to decide whether someone may participate. The verifier has the first, because he operates the sluice-gate. He has the second, because it falls to him to check whether a withdrawal is within quota. He does not have the third, if the regime is as described: whoever meets the requirements has an enforceable claim to access, and the verifier has a duty to recognize it. Here the difference from the owner's promise is one of structure, not of use. The promise never to shut the gate creates no enforceable claim and leaves the competence where it was; the binding rule removes from the administrator the competence to refuse those who meet the requirements. If he refuses, he does not exercise a competence the regime gave him; he violates a duty the regime imposes on him. The possibility of breaching a duty is not the competence to determine another's right, and that is why "he may err or refuse" does not by itself show that he retains a power of concession.

But legal structure does not exhaust the question, and the case must be carried to the point where effective control is examined. What happens when the verifier refuses someone who was entitled? There are three situations. In the first, the refusal is reviewed within a useful time by another body, access is restored, and the verifier is replaced or sanctioned: the practical dependence is the dependence of anyone on any administered rule, and the participant does not depend on him. In the second, review exists on paper but is slow, uncertain, or costly enough that the refusal produces, while it lasts, the same as a denied concession, and the participant learns that it pays not to cross the one who operates the gate: the legal structure removed the competence, but a practical position of unilateral control subsists, and it is that position, not the formal competence, that Chapter 22 describes when it says that whoever holds the sluice-gate occupies the place on which access depends. In the third, there is no review, and the enforceable claim is a name: the regime is a concession in other words. What the examination shows is that eliminating the power of concession requires both things, the removal of the competence and the absence of a practical position of unilateral control; and that the second is not shown by the legal structure, but by what actually happens when the administrator refuses.

The conclusion of the examination, as regards the book, can now be stated, and it consists in an interpretation of the criterion and an examination of its consequences. The criterion of Chapter 17, which makes the case of the gate turn on the existence of the mechanism, and note 88, which refuses the distinction between controlled and uncontrolled power, read as requiring the suppression of any material capacity to block, make every governance of a scarce resource impossible, including the one that Chapter 22 itself reserves for Ostrom's work. Read as requiring the suppression of a stable position of unilateral control over participation, distinguished from the mere capacity to cause harm by the same distinction with which Chapter 22 separates power from position, they are compatible with the community of irrigators in the first situation and incompatible with it in the second and third. This second reading is the one the texts support better, and what is proposed here is an interpretation, which the book did not formulate and may reject: to understand the mechanism whose permanence matters as a stable position of unilateral control over participation, examined by legal structure and effective control together, and not as any device that merely verifies. The interpretation has to be applied back to the gate, or it remains incomplete. A gate subject to the same guarantees as the sluice-gate, that is, with a rule saying who passes, an enforceable claim for whoever meets it, a duty on the keeper to recognize it, and effective review of a refusal, would be treated as the sluice-gate is treated: the mechanism remains and the position of decision about the person does not exist. What distinguishes the gate of the book's case is not the lock; it is that there is no rule

there to apply, because there is no scarcity or other reason requiring one, and a mechanism without a rule institutes, by default, a decision about the person. What is required there is the suppression of unilateral control; whether that means dismantling the gate or some other measure that removes the decision about the person depends on concrete necessity, and section 3 left that decision open for that reason. As for Pettit, what is established at this stage is a difference of diagnosis, not yet a demonstrated normative divergence: the identity test identifies the object of the dependence and the transformation of the participation, and it is that explicit identification that is offered as a contribution; whether a control satisfying Pettit's conditions leaves the problem identified here in place is a question that would require specific demonstration, and the irrigators' case, in which the transformation is justifiable without preserving the form, does not supply it.

With this, the relation to economic comparison can be formulated as a contribution, not a refutation. Coase does not hold that the value of production decides the delimitation of rights. He says that, "questions of equity apart", what matters under costless bargaining is that rights be well defined; that, with transaction costs, it is desirable that courts understand the economic consequences of their decisions and take them into account "insofar as this is possible without creating too much uncertainty about the legal position itself", along with other factors (COASE, 1960, p. 19); and that the choice between arrangements should be made in broader terms than the value of production (COASE, 1960, p. 43). What he does not say is what those terms are. The hypothesis of taking the maximization of the value of production as a sufficient ground for the delimitation of rights is a different thesis, not attributed here to any particular author without examination of his text, and it is with that hypothesis, not with Coase, that the thesis defended here is incompatible. The contribution offered to the terms Coase left empty is this: identifying the transformation of a relation of participation makes it possible to determine what requires justification and before whom; the economic advantage of the arrangement does not by itself supply that justification, because it answers a question about consequences, and the position of concession demands an answer to a question about the reason why someone's access comes to depend on another. Economic comparison can inform the weighing, in the second step; it cannot replace the first, and the leap consists in taking it as if it could.

Two interlocutors from Coase's tradition confirm that the dimension in which the argument works is recognizable from within it. Guido Calabresi and Douglas Melamed distinguished the attribution of an entitlement, the form of its protection, and the possibility of its transfer, and showed that the law sometimes protects entitlements by rules of inalienability (CALABRESI; MELAMED, 1972). Inalienability is not extinction; what the distinction

supplies is the demonstration, internal to economic analysis, that what may be done with a position is a dimension distinct from what it is worth, settled for reasons the value of production does not capture, and it is in that dimension that the question of the claim's availability, left open in section 6, would have to be answered. Harold Demsetz explained the historical emergence of property by the gains from internalizing external effects and treated communal property as a configuration of rights (DEMSETZ, 1967). The case of the spring does not refute that explanation; it shows a conceptual possibility, that enclosure may occur with nothing to internalize, and asks the explanation to say by what reason the concession instituted there is justified to those who drank.

8 CONCLUSION

Coase showed that, on the plane of sacrifices, all harm is reciprocal, and that the question "who harms whom" does not by itself decide whom the law should favour. The demonstration is valid for what it demonstrates, and it is compatible with the existence, within each attribution of rights, of relations of authorization of different kinds: in one, another's decision bears on the access of many to a condition they already lived on; in the other, on what an owner may do to a strip of his land. That difference may be legally constituted and still be effective and open to normative criticism. The value-of-production criterion is not unable to describe the difference or to assign it value; it may remain indifferent to it, and the indifference becomes a problem only when the result of the comparison is taken as sufficient ground for instituting the position that won.

What was added is the separation of three questions that the diagnosis of a relation of authorization leaves together. The identity test decides whether a participation was transformed into permission, and thereby determines what requires justification and before whom. Justification is another question, and the reason required is a reason for this person's access to pass through another's decision, not a reason for the land to have an owner, for the regime to exist, or for the arrangement to produce more; compensation is not a reason of that kind. The distribution of competences is a third question, in which the single-author thesis becomes the determinability of several addressees, while the availability of the claim and the position of future participants remain as declared limits. The hard case, the community of irrigators, showed that a transformation can be justified without preserving the earlier form, and that eliminating a power of concession requires both the removal of the competence and the absence of a practical position of unilateral control, ascertained by what happens when the administrator

refuses. As regards the book, the examination concludes with a proposed interpretation of Chapter 17: the mechanism whose permanence matters is a stable position of unilateral control over participation, not any device that merely verifies; applied to the gate, the proposal explains why unilateral control there must be suppressed, because there is no rule for the mechanism to administer, leaving it to the concrete case whether that requires removing the physical object. As regards Coase, it concludes with a contribution to the broader terms he left without content: the economic advantage of an arrangement does not by itself supply the justification of the position it institutes over someone's access to what he lives on.

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