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# **Destroying (by not integrating) Culture and Environment: The Legal Implications of the Common Property Movement**

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John Wiener received his AB from Kenyon College in 1970, his JD from New York University in 1977, and his PhD (geography) from the University of Colorado in 1990. He has worked in private practice specializing in federal coal leasing and related issues. Disciplinary histories unexpectedly piqued his interest, and he did his dissertation on the cultural incompatibility of the Alaska Native Claims Settlement Act and traditional subsistence management. Subsequent work focused on natural hazards, resource management, and water management issues.

## **ABSTRACT**

This paper will briefly review some fundamental concepts from anthropology and cultural ecology to establish the relationship between subsistence practices and cultural continuity. Next, a sketch view of colonial and economic development will describe the impacts of European style property rights institutions on indigenous resource management and subsistence practices. The common property movement will be described as a historical and intellectual reaction to these impacts, in more detail. The unfortunate congruence between gratuitously oversimplified economic views and the badly mischaracterized (Garret Hardin) "Tragedy of the Commons" – in truth, the tragedy of the open access – will be explained. A profound (but pleasantly clear and easily understood) example of the implications for management of natural resources will be shown, to illustrate the importance of correct specification of property rights (rather than dogmatic misspecification). It is important that this affects not only the people but also the resources themselves. Finally, the legal implications of the common property movement will be noted, with reference to current controversies in the Arkansas Valley water situation in Colorado for a return to more common conference topics.

The goals of this presentation include: (1) showing the change and evolution of some very powerful sets of ideas and ideologies. In particular, the development of development thinking should provide a useful perspective on how major investments and manipulations of whole economies, governments, and peoples have been based on ideas frequently contested. (2) It may also be of value to the conference to be aware of the common property movement and the problems with the Hardin model, as an informative example of an attractive idea which has been badly misused to the detriment of millions. And, (3) the legal implications of the current understanding are far more honored in lip service among intellectuals than in

practice, in the United States as well as the rest of the world. The presentation will be quickly paced with some attempts at humor, and the one graphic (as opposed to some bullet-point overheads or PowerPoint) will be simple.