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Abstract

Per Magnus Wijkman was the first foreign observer to urge Iceland in print to regulate its fisheries by price. This was in 1975, nine years before the Icelandic fishing quota system came into effect, a system judged discriminatory and unconstitutional by the Supreme Court of Iceland in 1998 (but not in 2000!) as well as by the United Nations Committee on Human Rights in 2007, principally because the advice given by Wijkman and others was not heeded. This paper discusses the human rights aspects of natural resources management in view of the International Covenant on Civil and Political Rights which stipulates the inalienable rights of nations to the rents from their natural resources.

JEL-Codes: Q200.

Keywords: natural resources, human rights.

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From Natural Resources to Human Rights

Thorvaldur Gylfason[1]

Per Magnus Wijkman was the first foreign economist to unreservedly encourage Iceland in print to regulate its overutilized fisheries by price. This was in 1975, nine years before the Icelandic fisheries management system was adopted in an effort to curtail overfishing, clearly documented by marine biologists. The system adopted by Parliament in 1984 was judged discriminatory and unconstitutional by the Supreme Court of Iceland in 1998, but not in 2000 when the Court suddenly saw no discrimination in a virtually unchanged system. The Court´s earlier 1998 verdict was reaffirmed by the United Nations Committee on Human Rights (UNHRC) in 2007, principally because the advice offered by Wijkman (1975) and several Icelandic colleagues from the mid-1970s onward had not been heeded.

The article discusses the economic import of natural resource management as well as its relationship to human rights, the rule of law, and democracy, aspects that are grounded in law and politics and, therefore, are often overlooked by economists and public officials preoccupied by financial concerns. Along the way I draw contrasts between Iceland´s management of its marine resources and Norway´s management of its oil wealth.

[1] University of Iceland and CESifo, Munich. I wish to thank Emil Ems, Thorkell Helgason, Gylfi Magnússon, Thórólfur Matthíasson, and Gunnar Tómasson for their helpful reactions to an earlier version of this article.

From Winston Churchill via Lee Kuan Yew to Jens Evensen

In his autobiography *The Singapore Story* (1998, p. 105), Lee Kuan Yew, the founding father of Singapore, makes a striking point about his thinking when he came to office in 1959:

> "I thought then that wealth depended mainly on the possession of territory and natural resources .... It was only after I had been in office for some years that I recognized that … the decisive factors were the people, their natural abilities, education and training."

This was 35 years before Sachs and Warner (1995) surprised many economists and others by documenting the tendency for some countries to grow sluggishly for reasons that appeared related to their mismanaged dependence on their natural resources, including rent seeking, graft, and the Dutch disease. Lee Kwan Yew might perhaps not have been surprised, however, nor would Winston Churchill have been surprised, for in his book *My African Journey* (1908, pp. 75-76) Churchill writes as follows about Uganda and its natural resources:

> "All this waterpower belongs to the State. Ought it ever to be surrendered to private persons? … in Uganda the arguments for the State ownership and employment of the natural resources of the country seem to present themselves in their strongest and most formidable array … the profits will not go to the Government and people of Uganda, to be used in fostering new industries, but to diverse persons across the sea, who have no concern, other than purely commercial, in its fortunes."

Jens Evensen, arguably the chief architect of Norway´s successful oil management regime, would probably not have been surprised either. Later Norway's Minister of Maritime Law, Evensen was a civil servant in the

Ministry of Finance in Oslo when the first North Sea oil discoveries within Norwegian jurisdiction were made. He convinced the politicians that Norway's oil wealth needed to be viewed as a common property resource. Consequently, no significant rent seeking took place. Fifty years later, oil barons and oligarchs remain few and far between in Norway; the terms hardly exist in the country´s common parlance. This is in sharp contrast to Iceland where, since the 1990s, "sea barons" and "quota kings" have been as ubiquitous in political discourse as "oligarchs" have been in Russia. Norway, unlike Iceland, avoided the fate that Mr. Churchill feared in Uganda.

Norway's approach to the management of its oil wealth has several key features (Gylfason 2008; Holden 2013). As the oil and gas reserves within Norwegian jurisdiction were defined by law as common property resources, the law clearly established the rights of the Norwegian people to the resource rents. Guided by this law, the government has absorbed about 80% of the resource rent over the years, setting most of its oil revenue aside in the State Petroleum Fund, now Pension Fund. Currently at more than USD 1 trillion, or USD 800.000 (EUR 650.000) for every family of four in Norway, the Pension Fund has become the world´s largest Sovereign Wealth Fund.

Parliament also laid down economic as well as ethical principles ("commandments") to guide the use and exploitation of the oil and gas for the benefit of current and future generations of Norwegians. The traditional main political parties have agreed that the national economy needs to be shielded from an excessive influx of oil revenue to avoid overheating and inefficiency.[2] After Norges Bank was granted increased independence from the government

[2] This view is not, however, shared by the Progress Party (est. 1973) that has been part of a governing coalition since 2013.

in 2001, it was tasked with managing the Pension Fund on behalf of the Ministry of Finance. The explicit purpose of this change was to increase the distance between politicians and the fund. Norway managed to avoid rent seeking and related problems that have afflicted other resource-rich countries around the world, from Angola to Zambia.

According to the Global Wealth Report (2017), the distribution of income and wealth in Norway is slightly more equal than in Sweden. This suggests that Norway has managed to avert socially damaging conflicts over the allocation of the oil rent, or at least to prevent such conflicts from resulting in a marked redistribution of income and wealth. Norway was a well-functioning, fully fledged democracy long before its oil discoveries. This matters. Democrats are less likely than authoritarians to try to expropriate natural resources to consolidate their political power.

Economists argue for fishing fees

When fish stocks in Icelandic waters appeared to be under threat of extinction in the mid-1970s, several Icelandic economists and others immersed themselves in the literature on fisheries economics. The origin of this literature was traced to a 1911 paper by the Danish economist Jens Warming (Gíslason 1995). In 1974, Gunnar Tómasson, a Harvard-educated economist and Iceland´s longest-serving senior staff member of the IMF, eloquently recommended fishing fees as a way of restoring balance to Iceland´s inflation-prone and unstable economy (Tómasson 1974). Central Bank economist Bjarni Bragi Jónsson who had studied fisheries economics at Cambridge University also concluded that the most efficient way to regulate the fisheries was through fees which he referred to as a natural resource tax, as was then

customary.[3] Jónsson presented his findings at the 22nd Nordic Economic Meeting in Reykjavík in 1975. His paper was published by the Central Bank of Iceland later that year (Jónsson 1975) along with comments by Førsund (1975), and by Wijkman (1975) who wrote: "A landing fee on catches or the auctioning of fishing permits are probably the best ways to achieve an efficient and non-discriminatory regulation of access to the fishing grounds" (p. 65, my translation, also henceforth, TG).

In a longer, Icelandic version of his paper, Jónsson cites discussions among Icelandic economists from the 1960s onward, recalling how he first recommended fishing fees in public at a conference on Icelandic independence and membership of economic alliances in 1962. Jónsson cites Gíslason´s (1965) advocacy of the establishment of an income equalization fund to be financed by a levy on fishing firms and fishermen; as Minister of Commerce, Gylfi Th. Gíslason had been one of the architects of the economic liberalization effort undertaken in 1960. Jónsson also quotes the government´s chief economic adviser in the late 1950s and throughout the 1960s, Jónas Haralz (1967): "The most direct method [of fisheries management] would have been to levy a special fee on those industries that are in a special position to utilize the fishing grounds around the country in a similar way as special fees are paid by those who utilize oil reserves and mineral deposits in many countries around the world."

[3] Later it was pointed out that in the context of natural resource management 'fee' or 'charge' are more appropriate words than 'tax' because, like rents, fees and charges are typically levied in exchange for the provision of specific services – such as the permission to utilize a common property resource. Accordingly, resource taxes should rather be referred to as fees or resource depletion charges (Gylfason and Weitzman 2003). Some opponents of fees still insist on calling them taxes to incite opposition to regulation by price.

Jón Sigurdsson, Haralz´s successor as the government´s chief economic advisor in the 1970s and 1980s, was of the same view (Sigurdsson 1979) as was his successor for a decade and a half thereafter, Thórdur Fridjónsson who said in a speech: "… the most efficient way to solve the cohabitation problem of the manufacturing industry and the fisheries is to charge a fee of one kind or another for the right to utilize the resource" (Friðjónsson 1994). Thus, one after another, all three of the government´s chief economic advisors from the late 1950s until 2002, when the position of chief economic advisor was abolished with the closing down of the National Economic Institute, spoke out in support of fishing fees.

Hannesson´s (1974) doctoral dissertation at Lund University contains a good discussion of fishing fees. Kristján Fridriksson (1975), a deputy Member of Parliament for the Progressive Party, advocated for fees in Parliament in 1975. Gíslason (1977, 1979) laid out the case for fees in the Central Bank´s *Financial Bulletin* as well as a series of newspaper articles.

Following a conference on fisheries management in 1979, *Morgunbladid*, then Iceland´s largest newspaper, interviewed three local experts. Economist Ragnar Árnason (1979, p. 21) said: "… it matters greatly to select a system that makes it possible that no one becomes worse off. Two ways of doing this seem most promising, either that the government sells the fishing permits or a resource tax, that is, a tax on catches." Earlier, Árnason (1977, p. 210) had written: "… if the right amount of resource tax were levied on either effort or catch, this would result in the most efficient outcome. The same result could be reached more easily by issuing fishing permits provided that they were bought and sold in a perfect market." Physicist Einar Júlíusson (1979, p. 22) said: "Apart from nationalization, which I consider undesirable, a resource tax

is the only way forward." Helgason (1979, p. 25), a mathematician and a life-long proponent of fishing fees, brought up the issue of fairness: "I cannot see any fair solution [to the overfishing problem] other than some kind of resource tax or the sale of fishing permits. At first the tax proceeds could be used to finance a significant contraction of fishing effort by buying up the least efficient vessels. But when the fish stocks have recovered I consider such taxation a natural way to distribute the greatly increased profits from the fisheries to the nation."

Iceland sides with Russia and (sadly) Norway

All these arguments notwithstanding,[4] Iceland chose, in effect, to model its fisheries management on Russian rather than Norwegian oil management, creating its own class of vessel-owning oligarchs along the way, oligarchs who fund political parties in exchange for the preservation of the status quo. One of the oligarchs took over the afore-mentioned *Morgunbladid*, and so on.[5]

The problem with Iceland's Individual Transferable Quota (ITQ) system is that it is founded on an internal contradiction. It rests on an initial allocation of quotas that was arbitrary and discriminatory and, thereby, unconstitutional as certified by the UNHRC in 2007. Further, the system is inconsistent even with the first article of the Icelandic law on fisheries management that states: "Fish stocks in Icelandic waters are the common property of the Icelandic nation." Free transferability of quotas was also part of the system. This was

[4] For more on the arguments under review and subsequent debate, see Gylfason (1992) and Matthíasson (2001).

[5] One individual oligarch recently bought a share in a large fishing firm, HB Grandi, for ISK 21.7 billion from two of his friends, a price equivalent to roughly USD 2.500 (EUR 2.000) for every family of four in Iceland. Where did the money come from? In 2011, one of the failed banks, Landsbanki Íslands, wrote off his debts – you guessed it! – to the tune of ISK 20 billion.

desirable on efficiency grounds, true, but only given a non-discriminatory initial allocation of quotas.

The problem is thus not the quotas themselves or their transferability, but rather the inequitable and thus discriminatory initial allocation based arbitrarily on catch experiences during 1980-1983. Moreover, many fishermen have long maintained that the quota system has led to other violations, including illegal discarding at sea and illegal landings to a larger extent than the authorities have been willing to acknowledge. After all, it is officially acknowledged by the EU that roughly a half of fish catches in European waters has been discarded in the past, a practice that was banned in 2016. The economic incentives for discarding are essentially the same in Icelandic and European waters.

The Icelandic parliament gave in to the demand for fishing fees in 2002 when nominal fees were written into law. The principle behind Pigovian regulation by price was thus acknowledged by Parliament. Even so, according to a recent estimate, the fishing fees suffice only to direct 10% of the resource rent to the right owner by law, the people, leaving 90% in the hands of the vessel owners who continue to receive the quotas from the government virtually, but no longer completely free of charge (Thorláksson 2015).

This arrangement is as far removed as it could be from the Norwegian oil management model. Despite being highly relevant because of the macroeconomic importance of fisheries to the Icelandic economy, the Norwegian model of effective national ownership was not even discussed in Parliament. Rather, Norway´s flawed system of fisheries management carried the day.

The Norwegian system of quota allocations without charge is in use also in

much of the rest of Europe that continues to try to cope with dwindling fish stocks, some on the verge of extinction due to overfishing, discarding at sea, and other forms of mismanagement. A country such as Iceland where fisheries play an important albeit diminishing macroeconomic role cannot permit itself such profligacy.[6]

Why has Norway mismanaged its fisheries? Long ago, the authorities decided to subsidize the fishing industry in northern Norway for regional policy reasons, like agriculture. Because fisheries are unimportant to Norway´s national economy, the efficiency losses incurred were considered affordable. Also, the authorities considered it necessary to stem migration from north to south, partly because Norway shares part of its northern border with Russia. Had marine exports accounted for 60% of Norway´s export earnings in 1980 as they did in Iceland, it seems doubtful that the Norwegian government would have decided to subsidize its fishing industry to the extent that it did by, among other things, allocating catch quotas free of charge.

Human Rights, Democracy, and Rule of Law

By international law the property rights to natural resources belong to the people. Article 1 of the International Covenant on Civil and Political Rights (ICCPR) states that "All people may, for their own ends, freely dispose of their natural wealth and resources." Like other human rights declarations from the United Nations, ratified by its members, the ICCPR supersedes national laws. Local violations of the ICCPR can be referred to foreign human rights courts.

It was on this legal basis that the UNHRC declared in 2007 that the allocation of fishing rights in Iceland constitutes discrimination and hence a

[6] For more on Iceland, see Gylfason and Wijkman (2016).

violation of human rights. The Icelandic government has yet to respond fully to the UNHRC´s binding opinion that the discriminatory element must be removed from the Icelandic fisheries management regime. The UNHRC based its opinion on the observation that the allocation of fishing quotas at no cost to those who went out to sea in 1980-83 violates Article 26 of the ICCPR, which is virtually synonymous with Article 65 of Iceland's 1944 constitution. The arbitrary rule of quota allocations does not satisfy the constitutional requirement that all citizens shall have equal opportunities, be equal before the law, and enjoy human rights without discrimination.

The government reacted by changing the wording of the law without, however, changing its substance and by declaring that a new constitution was under preparation with a provision on natural resources that would address the issue. The UNHRC took Iceland off the hook in 2012, citing partial fulfillment of the committee's original instructions, but ignoring the government's failure to compensate the two fishermen who had brought the case.[7] Had Icelandic fisheries been regulated by price from the outset as many recommended at the time, including Per Wijkman, no violation would have occurred and the matter would not have needed referral to the UNHRC.

To add insult to injury, the Icelandic Parliament has failed to ratify a new constitution drafted and unanimously passed by a nationally elected Constituent Assembly in 2011 and approved by 67% of the voters in a national referendum called by Parliament in 2012. The bill contains a key provision designed to answer the call of an earlier (2010) National Assembly attended by 950 citizens drawn randomly from the national registry, as well

[7] The Icelandic government stated in its reply to the UNHRC that it could not possibly compensate the two fishermen because then it would have to similarly compensate countless other victims.

as to address the opinion of the UNHRC. The provision states that "Iceland's natural resources which are not in private ownership are the common and perpetual property of the nation." This provision received the endorsement of 83% of the voters in the 2012 referendum.

Around the world, in keeping with international laws and human rights covenants, constitution makers increasingly view natural resources as common property resources that belong to the state on behalf of the people if not to the people directly. For example, the Ugandan constitution from 1995 states: "All minerals and petroleum in Uganda are held by the Government on behalf of the people of Uganda."

Russia´s post-communist constitution from 1993 is more equivocal: "The land and other natural resources may be in private, state, municipal and other forms of ownership." The explicit permission of "other forms of ownership" may encourage the oligarchs in the oil and gas industry to think that they have little to worry about at home. As Wenar (2008) explains, however, there can be grounds for cross-border litigation in cases where the people have been demonstrably deprived of their rightful share in the rents from their natural resources. Under unfettered democracy, the people can defend themselves against resource expropriation. Without democracy and the rule of law, on the other hand, the people can be defenceless, unable to shelter their rights to their natural resources. Perhaps even democracy is not enough if the rule of law is grossly deficient.

By stating that "All people may, for their own ends, freely dispose of their natural wealth and resources," Article 1 of the ICCPR implicitly makes an important distinction between the people and the state. The article does not say: "All states may …". The distinction is important. State ownership (e.g.,

government office buildings) means that the state can sell or pledge such assets at will. National ownership (e.g., cultural assets and natural assets) means that the state cannot sell or pledge such assets because they are considered invaluable and losing them would violate the rights of future generations, which might later realize that earlier generations had plundered the nation's common heritage.

Conclusion

To paraphrase U.S. Supreme Court Justice Hugo Black, the rights of the governed supersede the rights of the governors. This is the key to the human rights perspective on natural resources and their management, be they oil or gas or fish or timber or what have you. Natural resources belong to the people as a matter of universal human rights.

In many countries state ownership by law has not sufficed to secure the right of the people to the rents from their resources. This is why national ownership needs to be secured in national laws and constitutions, anchored as it already is in international human rights covenants. National ownership, if well implemented, will help to promote peoples´ rights to the rents from their natural resources, as well as their individual freedom from discrimination and injustice, and thereby strengthen the civil rights and political liberties of ordinary people against self-dealing elites.

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