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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

El daño recíproco y la condición común: Coase ante la pregunta de quién 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

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determina o que exige 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.

Resumen: En El problema del costo social, Ronald Coase sostiene que todo daño es recíproco: evitar el daño a B impone un sacrificio a A, de modo que la pregunta «quién perjudica a quién» no decide, por sí sola, a quién debe dar la razón el derecho. Se examina el alcance de esta tesis cuando el conflicto implica el acceso a una condición común: un camino, un manantial, un acuífero. Se distinguen dos situaciones que producen los mismos resultados materiales: atravesar porque el acceso no depende de la voluntad de nadie y atravesar porque alguien siempre lo autoriza. Se sostiene que la reciprocidad de los sacrificios es compatible con una diferencia de objeto entre las relaciones de autorización que instituye cada atribución, y que la comparación por el valor de la producción puede permanecer indiferente a esa diferencia; el salto ocurre cuando el resultado de la comparación se toma como fundamento suficiente para instituir la posición ganadora. Los casos ingleses de Coase se releen con un criterio uniforme, y se concluye que ninguno implica una condición común en el sentido definido. Se separan entonces tres dimensiones —el diagnóstico de la transformación de una participación, la justificación de esa transformación y la distribución de competencias— y se examina en ellas el caso difícil de una comunidad que administra un recurso escaso. El resultado es una propuesta de interpretación del criterio de la obra defendida, con el examen de sus consecuencias, y una contribución a los términos más amplios que Coase reconoció y dejó sin contenido: identificar la transformación de una relación de participación determina qué exige justificación y ante quién; la ventaja económica del arreglo no proporciona, por sí sola, esa justificación.
Palabras clave: Coase; reciprocidad del daño; condición común; autorización de acceso; normatividad; participación.

1 Introduction

A trail crossed a plot of land and provided access to the well, the fields, and the houses beyond. Nobody asked permission to pass, not because the land had no owner, but because preventing passage was not part of what the trail was. One day the owner closed it with a gate. He prohibited nothing: he merely began requiring everyone to ask his authorization before crossing, and always granted it. No traveler turned back, and no vegetable garden went without water. Yet something changed. Before, people crossed because access depended on nobody's will; afterward, they crossed because someone authorized it. The case comes from O amanhã é possível? (DIETRICH, 2026, ch. 16), and the distinction it makes visible is this: two situations can produce the same material results — the same passage, the same water, the same production — while differing in the relationship between participants. Authorization that is never refused remains authorization.

There is an objection that seems to reach that distinction at its root. Ronald Coase argued in 1960 that harm is of a reciprocal nature: avoiding harm to B imposes a sacrifice to A, and

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the real question is not how to restrict A, but which of the two sacrifices to accept (COASE, 1960, p. 2). Transposed to the track, the objection says that reasoning the passers-by sacrifices the owner, and reasoning the owner sacrifices the passers-by; that law needs to delimit positions before any negotiation is possible; and that, delimited, the parties will negotiate until the arrangement 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 will be only one more item to be taken into account, and the authorising officer's position will be an effect of the legal attribution, without regulatory relevance of its own.

What is examined is the extent of this objection, and the question must be asked carefully, because a hasty wording would make it false. There is no question as to whether the asymmetry between the authorizer and the applicant is a fact of the form of participation or an effect of law, as if the two were excluded. A legally established position can produce effective and observable dependence; its institutional origin does not make it fictitious, and its factual existence does not demonstrate independence from the institutions. The question is whether the thesis of reciprocity, and the criterion of the value of production that accompanies it, account for what changes when access to a common condition becomes dependent on someone's authorization. It is argued that the reciprocity of the sacrifices is true and compatible with an asymmetry in the authorisation relationship; that this asymmetry can be identified by the analysis of the concrete relationship and assessed by a criterion which is not reduced to existing law; that the criterion of value of production can remain indifferent between arrangements which differ only in that relation; and that the economic compensation of dependence does not, by itself, legitimize the submission of the authorisation to others. The terms 'social cost' and 'transaction costs' belong to Coase's technical vocabulary and only appear in the reconstruction of his position.

Some terms of the criticized work need to be fixed, because the argument depends on them. It is called a common condition a condition in which many live and which none of them have produced or can present as their own work: the fountain from which a people drink, the path through which they reach the fields, the stream of air that ventilates a cellar. It is called participation, the way in which a person lives from a condition of these, and form of participation in the whole of what constitutes it as the participation that it is. A distinction is made between the constitutive conditions of a form, without which the form ceases to be what it was, and the convenient conditions, which only enrich or facilitate its exercise; the test

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consists in removing the condition and asking whether it remains the same or another form (DIETRICH, 2026, cap. 10). It is called the floor of a property below the boundary under which it ceases to be the same property; the floor does not measure utility or importance, it only measures the permanence of identity (DIETRICH, 2026, cap. 18). Finally, it is called the power to grant or deny a position whereby one person's access to a common condition is decided on a case by case basis by another; it is distinguished by the rule which applies to all and which no one administers in each case(DIETRICH, 2026, cap. 17 e 22). These are stipulations, and their usefulness is measured by what can be seen in the cases; the accompanying normative justification is for sections 6 and 7, and the word faculty will be used in the technical sense set out herein.

2 The objection reconstructed

Reconstruction must be the strongest possible, and also the most precise, because the 1960 article is often read as if it said more than it said. Coase is part of the traditional approach, in which a factory whose smoke harms its neighbors must be held accountable, taxed or removed, and declares that the question is wrong: "We are facing a problem of a reciprocal nature. Preventing damage to B would inflict damage to A. The real question 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 most serious damage"(COASE, 1960, p. 2, tradução nossa). The confectioner whose machines disturb the doctor and the doctor whose office prevents the machines are, in this description, two activities that do not fit in the same place.

From the first thesis, the others follow. It is necessary to know whether or not the damaging company is liable for the damage, 'because without this initial delimitation of rights there can be no market transactions to transfer and recombine them. But the final result (which maximizes the value of production) is independent of the legal position if the price system is assumed to operate at no cost.' (COASE, 1960, p. 8, tradução nossa). When negotiation is expensive, what Coase calls transaction costs, the allocation becomes important, and it is desirable that the courts, when limiting rights, take into account the economic consequences of their decisions(COASE, 1960, p. 19). The final step is generalizing: the factors of production must be thought of as rights, and "the right to do something that has a harmful effect (such as the production of smoke, noise, smells, etc.) is also a factor of production" (COASE, 1960, p. 44, tradução nossa). The criticism of Pigou is the practical consequence of this chain: imputing the damage to the 'cause' presupposes a causal asymmetry that the case does not contain,

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because, "if we are to discuss the problem in terms of causation, both parties cause the damage"(COASE, 1960, p. 13, tradução nossa).

It's important to separate what these theses say from what they don't say. They claim that avoiding a particular injury entails another sacrifice; that the initial allocation of rights is necessary for the negotiation and, with transaction costs, affects the outcome; and that causation, taken by itself, does not distinguish the parties. They do not state that the parties occupy structurally identical positions, nor that any asymmetry between them has its own regulatory relevance. Coase can acknowledge that an owner controls a passage discreetly and maintain, at the same time, that restricting that control has economic consequences. The reciprocity of the sacrifices and the asymmetry of an authorization relationship are properties which can coexist in the same case, and nothing in the 1960 article obliges us to deny this. The aim, therefore, is not reciprocity, which is true, nor a philosophical generalization that Coase does not sign. The objective is narrower and more important: the sufficiency of the production value criterion to assess arrangements which differ in the authorisation relationship, and the passage, which Coase's analysis does not state, but which its use as a sufficient delimitation criterion would involve, of the economic compensation of a dependence on its legitimacy.

Two observations from Coase himself delineate the terrain. The analysis 'confined, as is usual in this part of the economy, the comparisons of the value of production as measured by the market', although the choice between social arrangements should be made 'in broader terms' (COASE, 1960, p. 43, tradução nossa); and, among the rights that limit a landlord, "some people may have the right to cross the land" (COASE, 1960, p. 44, tradução nossa). The service of passage is thus one of Coase's considerations and the objection must be tested.

3 Reciprocal sacrifices and the relation of authorization

Coase is granted everything he says about the sacrifices. In the case of the track, there is loss on either side according to the allocation: given the reason to the owner, the passers-by lose the free passage; given the passers-by, the owner loses the exclusive disposition of the land. The criticised work does not dispute this; on the contrary, it states that the effects alone have never said who is responsible for them(DIETRICH, 2026, cap. 22). The question she asks is another: after the gate, is there anyone whose decision has come to depend, on a case-by-case basis, on others' access to what they live on? After the gate, the passage of each traveler depends on the decision of the owner; before him, the use of the land by the owner was not dependent on the decision of any traveler. And the relationship would run in the same direction even if the

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authorization was never denied, because not exercising a power is not the same as suppressing it(DIETRICH, 2026, cap. 17).

The strongest Coasian replica should be said in its best form. Positions are what the law delimits; the law can assign passers-by a passing bondage; having done so, they are the ones who have the ability to prevent the owner from closing the track, and may even, for a price, waive that right. If the authorization relationship appears on the one hand when the law justifies the owner and on the other when it justifies the passersby, it is an artifact of attribution, and there is nothing in it that economic analysis cannot treat as another right to negotiate.

The replica is more right than it seems, and what it is right must be recognized before what it is wrong. It establishes the legal position of the tenant, obliged subjects, powers to require respect for access and limits on the use of the property. It also states that, on the track, the relationship is reversed: to enclose it, build on it or divert it becomes dependent on the consent of the bondholders. Taking the same object, the band, the authorization ratio is symmetrical in the two assignments; it changes only who decides. The asymmetry that the work describes is therefore not an asymmetry of meaning about the same object. It's an asymmetry of object. On the one hand, the foreign decision focuses on the access of many to a condition they already lived in; on the other, it focuses on the changes that a landlord can make to a stretch of his land. Slavery eliminates a certain position, that of discretionary concession over the crossing, and creates others over the band. To say that this is an important difference assumes that access to a common condition has its own regulatory relevance, and this assumption is precisely what Sections 6 and 7 have to justify. Nothing in the asymmetry, taken for granted, underlies it; what it establishes is only that the two attributes do not establish the same kind of relationship, and that a description that registers only who wins and who loses cannot tell the difference.

Four properties that the word 'extinguish' tends to confuse need to be separated: the impossibility of unilaterally refusing a pass; the impossibility of negotiating a change of regime; the impossibility of alienating or renouncing the right; and the material impossibility of preventing access. A maid ensures the first and not, by herself, the others. And here the criticised work is more demanding than servitude, in a way that needs to be said accurately. Chapter 17 asks whether, after the answer, there is a mechanism by which one can again grant or deny the pass, and defines what counts as a mechanism: it is within a participation that one "acts on what is exercised in it" and "remains available as long as that exercise lasts" (DIETRICH, 2026, cap. 17). This removes an obvious objection, that the owner already had,

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before the gate, the legal power to encircle what is his, and that therefore the trail was already permission: the general power to encircle did not act on the crossing until it was instituted upon it; the gate is the mechanism, not the property. But it also removes an easy one: if the locked gate remains after the servitude is recognised, the material mechanism remains, and by the criterion of Chapter 17, which makes the case of the unlocked gate dependent on lock and key, the constitutive condition has not been restored. Servance is the legal half of the answer; if withdrawal from the mechanism is the other half, or if a mechanism subject to duties and effective review can remain, that 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 is to suppress any physical ability to prevent, a stable position of unilateral control or a recognised competence to grant and deny, is a question that the excerpts do not decide and that section 7 will have to deal with in a case where the three readings give different results. Deciding what counts as a common condition, constitutive participation, mechanism or mere application of a rule is work of interpretation, and the work acknowledges this by suspending judgment where equally defendable descriptions differ (DIETRICH, 2026, cap. 10).

It's important not to restore the asymmetry the wrong way yet. Richard Epstein rejected Coasian reciprocity by appealing to causal paradigms: A hit B, A forced B to hit C, A created a dangerous condition(EPSTEIN, 1973). The controversy over causality need not be resolved here; just note that the asymmetry in question does not depend on accepting Epstein's causal response, because it is not causal. The man who inherited the license signature did not cause anything, did not institute, did not promise, did not benefit, never refused, and occupies a position (DIETRICH, 2026, cap. 22). The authorization relationship is in another field, and that field has, in a neighbouring tradition, a known formulation. Philip Pettit separated suffering an interference from remaining subject to who can interfere, and made the second relation, domination, the opposite of freedom, even though the dominator never interferes (PETTIT, 1997). Coase's damage is interference: smoke entering, noise disturbing, cattle stepping on the harvest. The gate that never closes doesn't interfere with anything and has already established a power. Pettit is the closest interlocutor, and the criticised work diverges from him on one specific point: for Pettit, a power forced to track down the legitimate interests of the affected, exercised by known rules and subject to dispute, ceases to dominate; for the work, any power to grant or deny has already converted participation into permission, controlled or not (DIETRICH, 2026, cap. 17, nota 88). Whether this divergence is sustained, and in what circumstances, is what the case under section 7 will decide.

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4 What the criterion evaluates and what it leaves unaffected

The Coasian criterion compares the total value of production under alternative allocations and is invoked, where negotiation is expensive, as one of the factors in choosing between them. He sees any difference that changes quantities or values, including amenities, tranquility, sight and clean air, that come into the calculation as any good for which someone is willing to pay (COASE, 1960, p. 15, 44), and compares without difficulty different goods and different compositions of production: in Bass v. Gregory, cheaper beer with worse amenities versus more expensive beer with better amenities. A common measure does not presuppose that the measured objects are identical, and an objection to the sufficiency of the criterion cannot consist in saying that it is incapable of comparing goods that have changed identity. It has to be something else.

A people drank from a spring that belonged to no one. Someone surrounded her, arranged the distribution and started opening and closing. The vine did not dry up, the water reached all the houses in the same quantity and with the same quality, and the owner distributed it with absolute fidelity (DIETRICH, 2026, cap. 18). What the work shows in this case is a distinction that can be described: water was once a part of life; later it became a part of life that was received from the person who administered it. There was no decrease; there was an exchange of records. Three questions must be separated regarding this difference: whether it can be described; whether it can receive economic value; and whether it is legitimate to allow it to be offset by other advantages. The first is answered by the very description of the case. The second is to be granted to Coase: if dependency changes the willingness to pay, the expectations or the safety of residents, it may appear in the assessment, and water in constant quantity does not imply constant economic value. The nascent experiment assumes, to isolate the phenomenon, that none of this changes; and the precise result of this assumption is not that the criterion is blind, but that it can remain indifferent between arrangements that the work considers normally distinct. Evaluative indifference is not descriptive inability, and indifference obtained by stipulation is not in itself an objection: any criterion becomes indifferent between arrangements that are assumed to be equal in everything it measures. What the source establishes is only that there is a non-economic description of the difference, and that its regulatory relevance, if any, has to come from elsewhere.

It is the third question which underlies the objection, and it must be put without attributing more to the comparison than it does. Even if monetary value is attributed to

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independence, it does not follow that paying a certain legitimate amount will subject someone to the authorization of others. The economic comparison does not affirm this legitimacy; it can compare consequences without resolving the admissibility of the comparing positions. The leap occurs at another point: when the result of the comparison is taken as a sufficient basis to establish the winning position, that is, when it goes from 'this arrangement produces more' to 'this arrangement can be established', and the concession position on the access of another enters the account as if it were admissible, just worth more. What the criticised work supports against this leap is a thesis on compensation: the loss of the constitutive status of a share is not compensated by the enrichment of suitable conditions, because the response due accompanies the structure of what has been changed, and where the change is constitutive and the change is not justified the response consists in returning, not compensating (DIETRICH, 2026, cap. 16). The thesis applies to the unjustified transformation; a transformation identified by the identity test is not yet that. This thesis requires the substantiation that Sections 6 and 7 establish. What is established here is more modest: the equivalence between productive results is not sufficient to establish normative equivalence between access relations, and Coase himself, by confining the analysis to the value measured by the market and by referring the choice between arrangements to broader terms (COASE, 1960, p. 43), left open the space in which that difference is decided.

5 Rereading Coase's cases

The best terrain for measuring the scope of the distinction is that of Coase himself, and the cases in Section V of the 1960 article must be read with a uniform criterion, applied at the same time in each case: the situation before the decision, the positions established by the decision and the subsequent negotiating powers. The criterion is the question already asked: is there anyone whose decision, on a case-by-case basis, transfers the access of another to a common condition, in the sense set out in the introduction? What you get is an interpretative hypothesis, not a confirmation, because applying the criterion involves qualifying each condition as common or not, and that qualification is itself interpretative.

In Sturges v. Bridgman, a confectioner, used two pillars decades ago on Wigmore Street that didn't bother anyone, until the neighboring doctor built an office in the backyard, leaning against the confectioner's kitchen, and couldn't hear the patients. The court granted the injunction to the doctor (COASE, 1960, p. 8-10). Before the decision, neither use passed through the decision of the other. After that, the doctor has a right which he can exercise or

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negotiate: he can stop the machines and can, for a price, renounce preventing them(COASE, 1960, p. 9). There is therefore a later power to be exercised on a case-by-case basis over the confectioner's activity. The reason it's not a faculty in the technical sense is the object: the silence of the office is not a condition that many live without having produced it, but a private use in conflict with another contiguous private use, and the injunction establishes a limit between two uses, does not administer someone's access to something they participated in. The example of cattle and crops receives the same treatment, and also Cooke v. Forbes, which Coase considers analytically identical to cattle (COASE, 1960, p. 11).

Bryant v. Lefever is not a border case. Neighbors erected a higher wall and stacked wood on the roof; the perpetrator's chimneys filled the house with smoke, and the Court of Appeal, reforming the jury, held that whoever caused the inconvenience 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 retention of smoke; given the wall, the fire causes it. The criticised work does not base any duty on causation, and the case does not test the authorization relationship: there are two uses of contiguous properties and a boundary between them. What he's showing is that disagreement with Coase isn't about causation.

Bass v. Gregory deserves closer examination than usual, because it is the case where the temptation to see a common condition is greater and the facts disapprove of it. Beneath the Jolly Anglers tavern was a cellar dug into the rock; from the cellar, a conduit had been cut to an old well in the neighbor's yard, so that the well had become, more than forty years ago, the brewing vent chimney. The neighbor covered the well; the court presumed, by the lost grant doctrine, a right to the airstream because it ran through "a strictly defined channel", and distinguished the Bryant case, in which it was "the general airstream common to all mankind" (COASE, 1960, p. 14, tradução nossa). Three factors prevent the case from being classified as having access to a common condition in the sense set out herein. The pipeline was produced, and produced by the side of the tabernacle; from it lives a single brewery, not many; and the flow is the air impregnated by manufacture, expelled by the foreign yard, that is, the use of neighboring property as a chimney of a private activity. The court itself classified Bryant's air as "common to all humanity", not Bass's. Based on the criteria of the article, Bass is a conflict between contiguous private uses as much as Sturges, and the difference between the two lies in the remedy, not the structure: in a negative injunction against one use, on the one hand; in a positive access service, on the other. To read in Bass's remedy the structure of the extinction of a college

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would be to read the criterion from the desired outcome, and the neighbor's act, a unique obstruction, does not institute a concession regime.

What's left of Bass is smaller and worth mentioning. The lost grant doctrine presupposes a legal origin for the prolonged exercise of a right; it implies a lost grant, it does not prove that there has never been a grant. What it records is a continuing relationship of dependency exercised as a right, without renewed individual authorization, and the distinction between the constituent act of a right and the continuing relationship it supports is the distinction required by the form of participation. Coase declares the doctrine "approximately as relevant as the color of the judge's eyes" for the economic choice between beer and amenities, and subsequently distinguishes this choice from the question of who has the legal right to do what (COASE, 1960, p. 15, tradução nossa). For the question posed by the form of participation, the instrument used by the court is precisely what matters, because it is designed to record continuous relationships of dependence; and this is true even though, in Bass, the relationship recorded is that of a single cellar with a single yard.

The balance sheet shall be stated in proportion to what has been done. None of the four cases in Section V of Coase, nor the cattle example, presents a common condition in the fixed sense: they are all conflicts between contiguous private uses, where reciprocity well describes the case. There is nothing to be drawn from the selection of Coase's examples, who chose the cases for the problem he had, that of harmful effects between neighbouring companies. Another, more modest thing is extracted: the hypothesis that the distinction between participation and permission has a domain of its own is not tested by the Coase cases, because none of them belong to that domain; and the uniform reading of the five confirms that, outside of it, reciprocity is the appropriate description and the criticised work does not decide. The hypothesis test has to be done in the case of the work itself, and that's what the following sections do.

6 From diagnosis to requirement: three dimensions

Identifying someone who controls access is not enough to conclude that that control should disappear. There are three distinct questions between the description of an authorization relationship and the requirement that it cease, and the argument only goes forward if it does not confuse them: whether participation has been transformed; whether this transformation is justified; and who can do what about it. The first is diagnostic, the second is normative and the third is institutional. The criticised work responds well to the first, responds to the second only

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with a stated premise, and does not respond to the third. You have to say that before you use any of the three.

The first dimension is the transformation of participation, and the instrument is the identity test: is a condition withdrawn or imposed, does the form of participation remain the same or is there another? (DIETRICH, 2026, cap. 10). The test shall decide whether the independent access has become authorised. It does not ask whether the trail is important or whether authorization is inconvenient; 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 source surrounded and distributed faithfully is no longer the source of which one participated. What the test determines is what needs to be justified and to whom. What he doesn't determine, and it would be a mistake to ask him, is whether the transformation is justifiable: the identity test says there was a loss or conversion, not whether it should have occurred. A transformation can be justified for reasons that do not preserve the previous form, and people's safety is the clearest example: restricting a dangerous passage changes the way through and may be due. To make the diagnosis an absolute obligation to preserve form would be to go from the description to the standard without an argument, and the work does not: it declares that it does not measure and that the weighting between forms is not its subject (DIETRICH, 2026, cap. 18).

The second dimension is justification, and here the transition from the diagnosis to the normative requirement has to be justified, not declared. The proposed basis is this. Whoever establishes a concession position on the access of others to a condition they already lived on acquires on their participation something they did not have, and acquires it by an act of their own. The work assumes, as a stated premise and not as a deduction, that whoever reorganizes a condition in which others participate cannot retain that action as his sole subject and must respond to those whose participation has been affected (DIETRICH, 2026, cap. 13). Hence it does not follow that the position must disappear; it follows that it must be justified before those who are subject to it, and that the burden is on the one who instituted it, because it was his act that created it. The participant's claim is essentially a claim for directed justification, close to that which Forst asserts as the right of each person concerned to any reasons which may be presented to him(FORST, 2012), with two precisions. The first is about the person concerned: not everyone affected, but those who already participated in the condition, because the relationship between the condition and those who lived in it did not begin with the act, it was found by him, while the person concerned enters into action by the consequences (DIETRICH,

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2026, cap. 11); and ownership comes from participation in the form, not from the person's previous life, so that the person who comes to live from the condition after the act is the owner like the others, and the concession that "changed hands" continues to be the responsibility of those who today depend on it (DIETRICH, 2026, cap. 22). The second is about the content: what needs to be justified is not the whole effect of the act, but the position acquired on access. And what counts as sufficient justification cannot be decided here by a general principle, because that would require the theory of weighing between forms that the work claims to have no. What can be said, enough for the argument, is negative: the reason presented must be a reason for this person's access to a foreign decision, and not just a reason for the land to be owned, for the scheme to exist or for the arrangement to produce more. The general justification of an institution does not automatically translate into every position it imposes: a licensing scheme for an aquifer can be fully justified in order to prevent depletion, and this justification reaches each of the withdrawers, because a withdrawal that alone does not exhaust anything integrates a practice that cumulatively exhauses, so that a collective reason can justify individual limitation, and a justification addressed to the person need not be an exclusive reason for it. What collective reason itself does not demonstrate is something else: that general limits require individual authorization, and not a rule that everyone applies to himself, and that the concrete distribution of quotas is legitimate. These two steps require additional reasons, and it is in these that the manager's position has to be justified. At the gate, the only reason available is the owner's will to dispose of what is his, and it is a reason for him to have the land; it is not, without a doubt, a reason for others to pass through it. There may be others, livestock safety, erosion of the tracks, liability for accidents, and if any, they go into the second step, weighing, which the article doesn't. What is established is that compensation is not such a reason: it answers the question of how much is lost, 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 thesis of the sole author must be corrected by a distinction that the work has not used: to have a claim and to have competence to change a result are different things. A reason which justifies a claim justifies an objection to the result; it does not, therefore alone, justify the competence of anyone to modify it. The question "who owes what" therefore has more than one answer, and they are all determined. The person granting the concession owes the answer while taking a position on the condition. He who supports it without the power to abolish it owes what he can: not to exercise it beyond what the rule imposes on him, not to transmit it as if it were his own, to acknowledge

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before the applicant that the position he occupies is justifiable. The person who has jurisdiction to abolish or convert it into a rule must examine the claim and respond to it; the abolition or amendment is due where the justification presented is insufficient and to the extent of the defect identified, not merely by the existence of jurisdiction. The work argued that the answer has only one possible author, defined by the place it occupies (DIETRICH, 2026, cap. 22); what survives is that the recipient is determined by position and not by history, but distributed by those who occupy different positions on the same concession. And there is a question in this dimension that the argument does not solve and must leave open: that of the availability of the claim. To cease to exercise it, to consent to a certain restriction and to definitively alienate it are three things, and ownership by itself does not demonstrate that the position is available in any of the three ways. Purchasing the removal of an obstacle does not imply being able to sell the recovered position, which is another object. The only thing that can be said with certainty is that no participant can have the position of the others, because the constitutive condition is not divided into parts(DIETRICH, 2026, cap. 22). If the consent of all the present is sufficient, and what happens to the future is a limit of the argument: the consent of the present does not in itself demonstrate authority over who comes after; but it also does not follow that the future acquires a claim in the former way, and the article does not state either one thing or the other.

7 The hard case and economic comparison

The argument has to face the case that tests it stronger than the owner who installs a needless gate. It is considered a community of regents who, in the presence of an aquifer that is no longer sufficient for all, fix quotas, review them in assembly, charge someone to verify withdrawals and authorise those that fit the quota, and sanction excesses. It's the regime that Elinor Ostrom described in many variants, with user delimitation, monitoring, gradual sanctions, and conflict resolution(OSTROM, 1990), and nothing in it is an absence of administration. According to footnote 88 of the work, any power to grant or deny converts participation into permission, controlled or not; in a possible reading of the book, this would make the regent community a permission scheme whose due answer would be extinction, which no one would accept; section 6 showed, however, that being a permission scheme requires examining the justification, not determining extinction. The case should be examined in the three dimensions of the previous section, and the result should appear as the conclusion of the examination, not as an advance decision on what the work should have said.

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In the dimension of the diagnosis, the identity test gives a response that should not be softened: participation has been transformed. Withdrawing water per share and withdrawing within a quota verified by someone are not the same thing; scarcity has turned a condition from which one participated into an administered condition. To deny that to save the regime would be to refuse the test when the result is unpleasant. What the diagnosis doesn't say, and Section 6 showed why it doesn't, is that transformation is unjustified.

In the justification dimension, the scheme presents a reason of the kind required: scarcity is one reason why the withdrawal of each person is subject to a rule, because without a rule the condition ceases to support everyone's participation, and the reason can be presented to each of the subjects of the scheme as a reason concerning water and equal participation of others. It is not a reason that there is an owner of the aquifer, nor that the arrangement produces more; it is a reason that withdrawals are disciplined. What it does not justify by itself are the two steps that Section 6 separates: that discipline requires individual authorization, not a rule that each applies to himself, and that the concrete distribution of quotas is legitimate. These steps remain requirements that the configuration described must satisfy for reasons of its own. The transformation is therefore justifiable and is justifiable without preserving the previous form, which confirms that identity testing and justification are distinct dimensions.

At the institutional level, the decisive question is whether the regime has instituted a power to grant and deny in the technical sense, and it requires separating three things that the gate case left together: the material ability to prevent, the ability to verify requirements and the power to decide whether anyone can participate. The verifier has the first one because it operates the gate. You have the second one, because you have to check if the withdrawal fits the quota. It does not have the third, if the scheme is what was described: whoever meets the requirements has a claim for access, and the verifier is obliged to recognise it. Here the difference with the owner's promise is structure, not use. The promise never to close the gate does not create an enforceable claim and leaves competence where it was; the binding rule removes from the administrator the competence to deny whoever meets the requirements. If he refuses, he is not exercising a power given to him by the regime; he is breaching a duty imposed on him by the regime. The possibility of defaulting on a duty is not the competence to determine the right of another, and therefore 'he may err or refuse' does not in itself demonstrate that he retains a power to grant.

But the legal framework does not exhaust the question, and the case must be taken to the point where effective control is examined. What happens when the verifier denies who was

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entitled? There are three situations. In the first, the refusal is reviewed within a reasonable time by another body, access is restored and the verifier is replaced or sanctioned: practical dependence is anyone's dependence on any rule administered, and the participant is not dependent on it. In the second case, the review exists on paper, but it is slow, uncertain or expensive to the extent that the refusal produces, as long as it lasts, the same as a refused concession, and the participant learns that it is good for him not to oppose the operator of the conveyance: the legal structure has removed the competence, but a practical position of unilateral control remains, and it is this position, not formal competence, that Chapter 22 describes when it says that the holder of the conveyance occupies the place on which access depends. Thirdly, there is no revision, and the claim to be made is a name: the scheme is a concession in another language. What the examination shows is that the elimination of the faculty requires both, the withdrawal of competence and the absence of a practical position of unilateral control; and that the latter is demonstrated not by the legal structure but by what actually happens when the administrator refuses.

The conclusion of the examination of the work can now be said and consists of an interpretation of the criterion and an examination of its consequences. The criterion of Chapter 17, which makes the case of the gate dependent on the existence of the mechanism, and footnote 88, which rejects the distinction between controlled and uncontrolled power, read as requiring the removal of any material capacity to prevent, make impossible any government of a scarce resource, including what Chapter 22 itself reserves to Ostrom's work. Articles such as those requiring the abolition of a stable position of unilateral control over participation, distinct from the mere ability to cause harm by the same distinction with which Chapter 22 separates power of position, are compatible with the ruling community in the first situation and incompatible with it in the second and third. This second reading is the one that the texts support best, and what is proposed here is an interpretation, which the work has not formulated and which it can refuse: to understand the mechanism whose permanence matters as a stable position of unilateral control over participation, examined by the legal structure and effective control together, and not as any mere verification mechanism. The interpretation must be applied back to the gate, at the risk of becoming incomplete. A gate subject to the same guarantees as a gateway, that is to say, with a rule that says who passes, a claim to be made by who fulfils it, a duty of the guard to recognise it and an effective review of the refusal, would be treated as the gateway is treated: the mechanism remains and the decision position on the person does not exist. What distinguishes the gate from the book case is not the lock; it is that there is no rule

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to be applied there, because there is no scarcity or other reason that requires it, and a mechanism without rule imposes, by omission, a decision on the person. What is required here is the abolition of unilateral control; whether this is by dismantling the gate or by another measure removing the decision on the person depends on the specific need, and Section 3 left that decision open for that reason. As for Pettit, what is established at this stage is a diagnostic difference, not yet a demonstrated regulatory divergence: the identity test identifies the object of dependence and the transformation of participation, and it is this explanation that is offered as a contribution; whether a control satisfying Pettit's conditions leaves the problem identified here unresolved is a question that would require specific demonstration, and the case of the regulators, where the transformation is justifiable without preserving form, does not provide it.

Thus, the relationship with the economic comparison can be formulated as a contribution, not as a refutation. Coase does not argue that the value of production determines the delimitation of rights. It states that, 'fairness aside', what is important in costless negotiation is that rights are well defined; that, with transaction costs, it is desirable that the courts understand the economic consequences of their decisions and take them into account 'to the extent possible without creating too much uncertainty about the legal position itself', together with other factors(COASE, 1960, p. 19, tradução nossa); and that the choice between arrangements should be made on a broader basis than the value of production (COASE, 1960, p. 43). What he doesn't say is what those terms are. The hypothesis of taking the maximization of the value of production as a sufficient basis for the delimitation of rights is another hypothesis, which is not here attributed to a given author without conferring on his text, and it is against this hypothesis, not against Coase, that the hypothesis here defended is incompatible. The contribution offered to the terms that Coase left blank is this: identifying the transformation of a partnership relationship allows us to determine what requires justification and to whom; the economic advantage of the arrangement does not alone provide that justification, because it answers a question about consequences, and the concession position requires an answer to a question about why one person's access becomes dependent on another. The economic comparison can inform the weighing in the second step; it cannot replace the first, and the leap is to take it as if it could.

Two interlocutors from the Coase tradition confirm that the dimension in which the argument works is recognizable from within it. Guido Calabresi and Douglas Melamed distinguished between the assignment of a position, the form of its protection and the possibility of its transfer, and showed that law sometimes protects positions by rules of inalienability

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(CALABRESI; MELAMED, 1972). Inalienability is not extinction; what the distinction provides is the demonstration, within the economic analysis, that what can be done with a position is a dimension other than its value, decided for reasons that the value of production does not capture, and it is in this dimension that the question on the availability of the claim, left open in Section 6, should be answered. Harold Demsetz explained the historical emergence of property by gains from internalizing external effects and treated communal property as a set of rights(DEMSETZ, 1967). The case of the fountain does not refute this explanation; it shows a conceptual possibility, that the enclosure takes place without anything to internalize, and asks the explanation why the concession there instituted is justified in the eyes of the drinker.

8 Conclusion

Coase showed that, in the matter of sacrifices, all harm is reciprocal, and that the question "who harms whom" does not decide, by itself, to whom the right should give reason. The demonstration is valid for what it demonstrates and is compatible with the existence, within each assignment of rights, of authorisation relationships of a different type: on the one hand, the other decision concerns the access of many to a condition they already lived in; on the other, what a landlord can do to a part of his land. This difference can be legally constituted and, nevertheless, effective and normally objectionable. The production value criterion is not incapable of describing the difference or assigning value to it; it can remain indifferent to it, and indifference becomes a problem only when the result of the comparison is taken as a sufficient basis to establish the winning position.

What was added was the separation of three questions that the diagnosis of an authorization relationship leaves together. The identity test determines whether a participation has been converted into a permit, and thereby determines what requires justification and to whom. The justification is another question, and the reason required is a reason why this person's access passes through a foreign decision, not a reason why the land has an owner, why the scheme exists or why the arrangement produces more; compensation is not such a reason. The distribution of competences is a third question, in which the single author's thesis becomes the determination of multiple recipients, while the availability of the claim and the position of the prospective participants remain as declared limits. The difficult case, the ruling community, has shown that the transformation can be justified without preserving the former form, and that the elimination of a faculty requires the withdrawal of competence and the absence of a practical position of unilateral control, as evidenced by what happens when the administrator refuses. On

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the criticised work, the examination concludes with a proposal for the interpretation of Chapter 17: the mechanism whose permanence matters is the stable position of unilateral control over participation, and not any device which merely verifies; applied to the gate, the proposal explains why unilateral control should be abolished there, because there is no rule that the mechanism administers, leaving it to the individual case to decide whether this requires the removal of the physical object. On Coase, he concludes with a contribution to the broader terms which he left empty of content: the economic advantage of an arrangement alone does not provide the justification for his position on one's access to what one lives by.

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