

WRESTING LAND FROM THE SEA:  
AN ARGUMENT AGAINST  
PUBLIC GOODS THEORY

PHILIPP BAGUS

The best that mankind ever knew:  
Freedom and life are earned by those alone  
Who conquer them each day anew.

*Johann Wolfgang von Goethe*<sup>1</sup>

ACCORDING TO MANY ECONOMISTS we need the state to provide public goods.<sup>2</sup> The assertion seems to be so crystal-clear that it is not even worth discussion in the mainstream. One typical and popular example of public goods in Germany is the case of dikes or levees. In *Vahlens Kompendium der Wirtschaftstheorie und Wirtschaftspolitik* (2003), maybe the most widely used German economics textbook, Heinz Grossekkettler claims:

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PHILIPP BAGUS is a graduate student in economics at the Universidad Rey Juan Carlos. The author would like to thank Prof. Dr. Heinz Grossekkettler, Barbara Hinze, Dr. Guido Hülsmann, Ingolf Krumm and Massimiliano Neri for their very helpful comments and suggestions on this article. All translations in this article, except for the Goethe quote, are by the author.

<sup>1</sup>Goethe (1990, part 2, pp. 468–69). The following are Faust’s dying words as he describes to Mephistopheles his highest admiration for the heroics of the free dike builders.

*Ja! Diesem Sinne bin ich ganz ergeben,  
Das ist der Weisheit letzter Schluß:  
Nur der verdient sich Freiheit wie das Leben,  
Der täglich sie erobern muß.*

<sup>2</sup>For a general critique of the theory of public goods, see Block (1983), Fielding (1980), Hoppe (1989), Holcombe (1997) and Rothbard (2001, pp. 883–90).

The aim of the state should be to satisfy needs for those who would be willing to pay, except that this willingness is inhibited by organizational costs that are too high. . . . High organizational costs exist . . . mainly in the area of public goods. The most important applications are infrastructure goods like dikes and road networks. (Grossekettler 2003, p. 564)<sup>3</sup>

Although Walter Block (1983) has shown the weaknesses in the case for public roads, the German argument for dikes as a public good remains to be addressed. After Hurricane Katrina and the collapse of the government dikes (or levees) infrastructure of New Orleans, the dike argument could gain momentum as well in the United States. In this article I examine the theoretical aspects, as well as the historical evidence from the Frisia region in Germany for this government-legitimizing argument.

#### THE ECONOMICS OF DIKES

The argument goes like this: Dikes are a proto-public good, since the two characteristics of a public good are fulfilled. First, there is non-rivalrous consumption. That means that if a dike is built for one person, additional consumers can benefit from its services, i.e., protection from flooding. The second feature is the nonexcludability of public goods. Once a dike has been built, no one living behind the dike can be excluded from its service, whether he participated in financing it or not. Hence, we are told, on the free market a free rider problem arises. People wait for others to build a dike hoping to enjoy the dike without having to pay for it. But when everyone waits, the dike that everyone needs is not built.

Hence, people and properties might be drowned in the next flood. Everyone is worse off. The dilemma is that, in principle, people would be willing to pay for a dike, but high organizational costs inhibit agreement and the building of the dike. Here the government steps in and “activates”—via force—the willingness to pay.<sup>4</sup> The government taxes the people for the future dike and sees that it is built. The dilemma is solved and everyone is better off.

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<sup>3</sup>Surprisingly, Grossekettler later qualifies and contradicts this view by stating that private dike projects would be possible; however, he still sees other problems (Grossekettler 2003, p. 576).

<sup>4</sup>See for this line of reasoning *ibid.*, p. 564.

This reasoning suffers from some typical defects of mainstream economics. Individual actions and their sequence in time are neglected. Hence, intermediate steps and processes are not seen. Moreover, the existence and the detection of a collective will by government is readily assumed.

*Dikes through Isolated Individual Work*

To bring individual action back into place, let us look at a simple scenario for a possible dike project and see if state action might be necessary or justified. Let us imagine person A arriving at a piece of land near the sea, homesteading or buying it. There might have been several reasons why A chose to leave the old cultivated land. For instance, he wanted to flee servitude in the cultivated lands or he might be attracted by the prospect of wresting very fertile land from the sea; the reason is not relevant for this discussion.

Person A now has to make the decision either to build a dike at his own expense to protect his property, which would be a dike provided by isolated individual work, or live with a high risk of flooding. When he does not build a dike, he clearly demonstrates by his very inaction that he is willing to take the higher risk.<sup>5</sup> Hence, no dilemma arises that need be fixed by state action in this scenario.

*Dikes through Unpaid Cooperation*

But now let us imagine that after weighing the advantages and disadvantages, person B, following the example of person A, leaves his old home, and considers settling next to A. Let us consider four options that face person B.

First, he could settle and build a dike himself at his own cost, which would lead us back to the case of isolated individual work. It should be pointed out, that in our scenario the problem of non-excludability could easily be settled. B could simply build a dike only around his property. From a dynamic perspective there might also exist other forms of exclusion. If there is currently no chance to exclude someone from a good, a profit opportunity for entrepreneurs arises for them to find a way to exclude others. There might arise very innovative and efficient ways of exclusion in the case of dikes, unknown today.

Second, he could ask A if he would like to share the burden of building a dike if A has not built a dike yet. This is the case of unpaid cooperation, where a group of individuals agrees to finance a project. On the one hand, of course, there is the possibility that after B's

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<sup>5</sup>On the concept of demonstrated preference, see Rothbard (1997, p. 212).

proposal, A prefers to build a dike since he only shares the costs. He might also consider the social sanctions that will confront him if he does not help build the dike, resulting in poor neighborly relations. Moreover, charity, pride, honor, friendship, or other reasons might induce A to participate in financing the dike.

When A and B come to an agreement on building the dike they are likely to consent to a covenant to insure the future maintenance of the dike. Through the covenant they can tie restrictions to the properties protected by the dike that would hold even should the properties be sold to a new owner. The restriction to the dike protected properties specified in the covenant might entail rules about splitting of costs of dike maintenance and repair and procedures for changing the terms of the covenant. In this way A and B could procure long-term cooperation to reduce the risk of flooding.

If A on the other hand continues to prefer taking the risk rather than financing the other part of a dike, B falls back to option 1. A might also not be willing to negotiate with B at all, because he prefers to do something else. In this case the costs, sometimes called transaction costs, are too high for reaching an agreement. Yet, why would it be wrong for A to be willing to take on the risk of flooding and use his resources for other uses? Costs are a subjective concept. Therefore, it does not make sense to claim that forcing A to build the dam would lower (transaction) costs. Maybe A even loves the adventure of sitting on his roof being surrounded by the blue foaming sea.

In the real world one type of subjective costs that individuals face are transaction costs. If the subjective costs including the transaction costs are very high, the best choice from the viewpoint of freely interacting individuals might be not to build the dike. Why would someone, a state, be legitimized to force A to do something he obviously does not want to do in order to help B? Is B always allowed to use violence when A refuses to help him? What if A refuses to play tennis with him? Would not an ethical theory outside the realm of value free economics be necessary to make the claim that B should force A to cooperate? And why would A be better off if he is forced by the government to finance the dike?

Yet, if B feels that he would need a dike for his security and A refuses to help him build the dike there is a third option, which is not to settle there. He could move to another place that he regards to be safer or simply stay at his old place.

The fourth option for B is to ask the government or someone else to force A to help build the dike. In this fourth option it is hard to see that both A and B would be better off as some economists state, since

A demonstrates that he prefers another action rather than participating in the dike project.

It should be clear that this analysis is not restricted to two persons A and B, but rather it is applicable to situations involving larger groups of newcomers and settlers as well. In other words, the analysis does not change qualitatively with the addition of persons C, D, E, etc., or when groups of persons arrive at the sea with the intent to settle. However, as the number of individuals who want to build a dike rises, the social pressure on an individual to participate in the dike project might also increase.

*Dikes through Profit-Oriented Cooperation*

However, there is another possibility for construction of the dike: entrepreneur C could see a profit opportunity in building the dike and selling (or renting) the slots to A and B. In fact, there are always entrepreneurs looking for profitable projects in land improvement. As MacCallum has pointed out:

By modifying the environment of a site (and, correspondingly, its economic location) in ways that make the site better suited for its intended range of uses, landowners make it more valuable to present or prospective tenants who are then willing to bid more for it. (2003, p. 3)

Building a dike or levee around a site near the sea or wresting land from the sea by a dike might indeed greatly improve its market value. Hence, the dike project could be a profitable business opportunity. However, in undertaking such a business, the entrepreneur would face risks; for instance, the dike might be destroyed by storm flood during construction or he might not find people willing to buy or rent the land at a profitable price once the dike is completed. The entrepreneur will probably add a covenant to make the land more attractive to settlers by imposing restrictions on the properties that ensure the buyers can expect long-term dike protection from the sea. For instance, he could set up a dike association. Hence, the working out of an agreement for further dike maintenance and getting people to agree is, in the case of profit-oriented cooperation, conducted by entrepreneur C.

This kind of division of labor in the provision of the covenant, i.e., the “production” of an agreement concerning the dike project, has the advantage that specialized entrepreneurs would hammer out agreements relatively quickly to which interested settlers could simply consent by buying the properties. This might greatly reduce “transaction costs” and therefore be attractive for settlers.

A variation of profit-oriented cooperation and a final theoretical opportunity for a dike to be built consists in C buying land and building a dike around the property of A and B.<sup>6</sup> When a storm flood occurs and water rises around the dike, C might ask A and B to transfer to him a specific amount of goods and services as payment for keeping the flood gates secured until the flood waters recede. Though this opportunity is theoretically imaginable, it is not likely to occur. C could not be sure that A and B would comply with his demands, and even if they were to do so, C's revenues from this venture would likely be irregular and insecure. Another reason that would suggest this situation might not occur is A and B's anticipation of such a possibility. In this case they might either choose to buy or appropriate the land to avoid the possibility that a diking project might change the severity of any flood damage were the gates to break or be opened during the flood; or if C has already built a dike, they might choose to build a dike on their own property within the boundaries of C's dike.

*Market Choices vs. State Mandate*

Every individual living on the old cultivated land could rank, on his value scale, the above-mentioned scenarios concerning dike construction. Each scenario entails risk or chance. Everyone will choose the combination that best suits him: (1) the individual might just stay where he is; (2) rely on isolated individual work; (3) enjoy a site near the sea without a dike; (4) try to arrange an unpaid cooperation; or (5) organize or resort to profit-oriented cooperation.

Hence, if A in our scenario is unwilling to finance the dike, either by unpaid or profit-oriented cooperation, he has demonstrated his preference to live near the sea without protection. It would then be absurd, and a rather Orwellian interpretation, to say that his "no" toward dike financing means "yes" and demand that the government should tax A and B for the dike and then have it built.

But let us change our scenario again to come more closely to the way the argument is presented in the economic mainstream. Let us assume that A and B have already settled for some years near the coast and then change their minds. Suddenly, they subjectively fear the sea more than before, or an old dike collapses or natural changes raise the sea level. People already living near the sea suddenly want a dike. How should it be financed? Would not a free rider problem arise now? Would not state action be needed now? Again, it is basically the

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<sup>6</sup>I am indebted to Gabriel Calzada Álvarez for making me aware of this possibility.

same scenario as before. A and B could take the higher subjective risk or come to an agreement of sharing the burden. Also A and B could leave this dangerous area and sell their properties. Why should every dangerous spot on earth be settled by people? Which places should be settled? Should this decision be left to individuals pondering costs and benefits or to state planners? The sale of the properties would also give entrepreneur C the opportunity to engage in profit-oriented cooperation by buying the properties, building the dike, and then reselling or renting them out.

Free-market decisions of how many, how high, and what kinds of dikes to be built are left to individual action based on subjective preferences in a dynamic process. Government interference with this process can only worsen the outcome from the perspective of free-acting individuals.

## THE HISTORY OF DIKES

### *The Beginnings of Private Dike Building*

Let us now have a look at history. As other public goods that allegedly need government provision,<sup>7</sup> dikes have been built on the private market for a long time. In Germany, mainly in Frisia and Dithmarschen, the first dikes were built without any government help about 1,000 years ago.<sup>8</sup>

Before the invention of dikes, dwelling mounds were the practice (Jacob-Freisen 1937, p. 106). Houses were built on them. When there was a flood people would take refuge on the dwelling mound and wait for the flood to recede. The great disadvantage of this strategy was that the fields were flooded by salty seawater which made them less fertile. At some point someone saw a profit opportunity in the building of a circular dike (ring dike) around the whole village, including houses, animal dwellings, and fields (Reinhardt 1983, p. 15). As in our theoretical analysis, it might have been a group of people, a family, a clanship, or a farming community that forged an agreement to build a dike. The dike invention can be

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<sup>7</sup>For historical examples of private production of allegedly public goods, see Coase (1974) and Hoppe (2003).

<sup>8</sup>Frisia is a coastal region along the southeastern corner of the North Sea which extends from the northwestern Netherlands across northwestern Germany and into a little part of southwestern Denmark. Dithmarschen is also on the North Sea, on the west coast of the Jutland peninsula between the Eider and Elbe rivers and is now included in the Schleswig-Holstein area of Germany.

regarded as a tremendous success and an entrepreneurial profit opportunity was born. Farmers left the crowded areas, where fertile land was more scarce, and tried to wrest more land from the sea with these new ring dikes. This procedure provides us with a very clear example of homesteading in which the creative nature of the homesteading process can be seen.<sup>9</sup> Very fertile land was put into use for mankind. *Deus mare, Frise litora fecit* (God created the sea; the Fries created the coastal land).

In many cases the land wresting process was successful; however, some entrepreneurial miscalculations occurred, as when storms flooded the diked area and repair became too costly to reconstruct the damaged dike and reclaim the land. In these rare occurrences, the land was given up and returned to the sea (Schröder 1999, p. 34; Woebcken 1987, pp. 74 and 204). As the option in our theoretical analysis, people came to the conclusion that it was better to leave that dangerous spot.

Over the years the villages grew and with them the ring dikes. As the ring dikes became connected to each other, the total amount of newly wrested land increased. By 1300, the land between the ring dikes in Frisia was fully connected and a sea castle, the “Golden Ring” was formed (Schröder 1999, p. 15; Reinhardt 1983, p. 21). This magnificent result stemmed from the choices of free individuals, forming cooperatives without any state involvement. The church, however, was involved. As the monasteries owned much land in the area they were members of the dike associations (*Deichverbände*) and participated in its conventions. The monks did not avoid helping in cases of emergency; nonetheless, the majority of the association members were free farmers.

The population grew quickly in these very fertile areas made accessible by diking. As the population grew and became wealthier, monumental churches were built, symbolizing the success of private dike building (Reinhardt 1983, p. 22).

#### *The Absence of the State in the Diked Areas*

The newly diked areas were almost independent territories. Although they nominally formed part of the Holy Roman Empire,

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<sup>9</sup>The creative process of diking is beautifully described in German literature and made famous by Goethe in *Faust II*. Here Faust wants to create his own land, a fertile, comfortable, and free land inhabited by free people who merit their liberty and life by fighting for it every day. Enthusiastically, he looks out over the ongoing work of the dike-builders, and he dies at what is for him, his happiest moment. See Goethe (1990, part 2, pp. 464–69).



only in some cases were they required to support the army in case of war and pay taxes (Goldbeck 1981, p. 70).<sup>10</sup> They were also autonomous with their own jurisdiction and diplomatic contacts (Brandt 1957, p. 86; Mangels 1957, p. 5; Marten and Mäckelmann 1927, p. 52). Membership within the dike association was always territorial. Social organizational structures, however, within these territories overlapped. Memberships within the various social structures could also, at the same time, be personal. Determining factors were by blood relationship, farming community, or parish. In other words, one person at a particular site could be a member of more than one social structure (Goldbeck 1991, p. 70).

While in the newly created areas people were free, in the old settled areas farmers were not (Mangels 1957, p. 134). Hence, the possibility to live in a free community would have been a strong argument to dike new areas. Goldbeck supports this view about the intentions of the dike communities by stating that: “[t]he life in the communities was oriented around the free decision to live together cooperatively and at defending themselves from the interest of authorities” (Goldbeck 1991, p. 66).

In feudal Europe the land of the Fries was without a feudal order or without feudal overlords. Neither the feudal system nor the empire succeeded in establishing a permanent rule in the coastal area. The struggle against the sea had brought about the building of dikes, an enterprise which developed self-government and resisted every attempt by foreign princes to gain a foothold. (Hatch and Hatch 1999, p. 14)

Sometimes the new areas even enjoyed the advantage of being protected from the sea in front and from swamps behind, making them inaccessible to cavalry attack (Lammers 1953, p. 51). According to Mangels (1957, p. 134) this explains the calm interior development and the prosperity in the fourteenth century of the Hadeln region.

Therefore, diking not only had the incentive to create new fertile and profitable land but also to create free land. Here the analogy of the American Wild West comes to mind where individuals escaped slavery or poverty in Europe to homestead land in the New World. Diking could be regarded as an opportunity to secede from the old territories. The institution of diking could have been one of the main reasons for the liberty in Frisia along with the “unique autonomy” (Woebcken 1987, p. 222) the Fries enjoyed in Germany.

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<sup>10</sup>See also Aubin (1955a, p. 25). On p. 27 Aubin uses the term anarchy to describe the area.

The unique liberties enjoyed by the Frisians might have been the result of, first, the daily struggle to hold back the sea which most certainly strengthened the cohesiveness of the community against outside enemies,<sup>11</sup> and the resulting pride of being self-reliant. Second, if a king or other authority were to become too oppressive the subjects could simply secede by diking; thus they could leave the territory and the usurping authority. This, in the beginning, prevented government from gaining a foothold in the areas.

In the free communities there developed a special body of law governing dikes due to the organizational structures of the communities and the danger of the sea. As Waldemar Reinhardt points out:

[c]ommon work of all entitled associates leads to the practicing of autonomy, to co-determination and joint responsibility, legal agreements, and therefore to a care for the law as a basis for the life together under hard natural conditions. (1983, pp. 22–23)

The duties for maintaining the dike were first handed down verbally. In the fifteenth century we find the first instances of the common dike law codified (Stadelmann 1981, p. 124). There were two fundamental principles in dike law: the dike duty for maintaining one's own section of the dike and the duty to help others in cases of emergency dike repairs. As in the theoretical analysis of a covenant, both duties were tied to the property so that the property could only be sold with them.

Penalties for violating common dike law could be rather draconian. Whoever did not help in maintaining the dike or did not help in time of emergency would lose his property inside the dike area: "Whoever will not dike, has to move away" (Marten and Mäckelmann 1981, pp. 124–25). According to Steding (a region near Bremen and Oldenburg) dike law, he who did not manage his part of the dike and therefore was the cause of a dike break would be buried alive in the dike. A member of the association who wanted to relinquish his dike duty would place a shovel in the dike thereby giving up his property. However, dike laws allowed for the burdens of extraordinary tasks, like the repair of heavy damage done by extreme flooding, to be arranged by the dike association.

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<sup>11</sup>Teschke (1966, p. 33) relates the liberties of the Fries to the institution of diking. Aubin (1955b, p. 328) sees the dike construction as community building power.

The second pillar of dike law, the duty to help in case of emergency, referred to cases of dike breaks and storm floods. The penalties for not fulfilling this rule were also rather harsh. In 1533, certain Frisians who did not help the island of Pellworm with a dike break were beheaded (Stadelmann 1981, pp. 124–25).

In dike jurisdiction the dike reeve was an important figure. He presided over the dike court with the help of jurymen (Mangels 1957, p. 28). The dike reeve, along with his jurymen, was also in charge of dike inspection (*Deichschau*), where the condition of the dike was examined. The dike reeve was, depending on the region, either elected by the dike association or appointed by the duke or archbishop. He was normally the mayor of the community and had to own a minimum size piece of property in the dike association. Sometimes the dike law demanded that he be of legitimate birth and of a specific age. His job was honorary and the office often shifted between a small number of the leading families (Mangels 1957, p. 7).

It is striking to realize that dikes were not only built without the state, but also that the dike areas can be regarded as seceding areas, that came close to private law societies. “The government of Friesland in the thirteenth century has been characterized as a ‘harmless anarchy.’ Officials were not appointed by a higher authority but were chosen by the free farmers” (Hatch and Hatch 1999, p. 16).

Hence, medieval Frisia might serve as an historical illustration of what Hoppe names as the consequences of secession, which he describes as a strategy toward liberty:

The further the process of secession proceeds . . . the more likely it will be that a few individuals, based on the popular recognition of their economic independence, outstanding professional achievement, morally impeccable personal life, superior judgment, courage, and taste, will rise to the rank of natural, voluntarily acknowledged elites and lend legitimacy to the idea of a natural order of competing (non-monopolistic) and freely (voluntarily) financed peacekeepers, judges, and overlapping jurisdictions as exists even now in the arena of international trade and travel. A pure private law society—as the answer to democracy and any other form of political (coercive) rule. (Hoppe 2001, p. 106)

It does seem here in the case of diking that the strategy of secession that Hoppe recommends had been used by these Frisian communities. Even though it is not clear whether political freedom was the main intention of their diking and settling the new land, they did, in effect, achieve political freedom. There was autonomy. There

were competing overlapping jurisdictions.<sup>12</sup> A natural elite had evolved. The result was a prospering, freedom loving, and proud society (Brandt 1957, p. 197; Woebcken 1949, p. 46; Lammers 1953, p. 122).<sup>13</sup>

*The Emergence of a Business—The System of the “Oktrois”*

It is not surprising that along the way the state got involved in the lucrative business of diking. In one case, the Bishop of Bremen made a contract with a group of Dutch colonists who were granted permission to build a dike and put wilderness land into use for mankind. As Reinhardt writes:

The first sign of a planned colonization in the archbishopric Bremen is entailed in a document from 1106. . . . The content is a settlement contract, which the Archbishop Friedrich I made with a group of Dutch settlers from the Utrecht area: “We give the named applicants the uncultivated swampy needless land located in our diocese.” . . . It follows an agreement about the interests to pay. Then free jurisdiction is granted. The high jurisdiction remains with the Bishop. (1983, pp. 24)

Later, sovereigns wanted to participate in the “dike industry” that started to flourish. Robert Stadelmann writes:

While originally farmers were the ones responsible for dike building, from 1500 on, more and more sovereigns and princes became interested in the business of land gaining and dike building. Later rich merchants began with the business of “land gaining” as well. (1981, p. 123)

The sovereigns started to demand *Außendeichregal* (exterior dike seigniorage). In other words, they claimed ownership of “polders” (reclaimed land) that were to be built by virtue of “sovereign fiat.” These demands were strongly opposed. Schleswig and Holstein, however, stood in confederation with the Danish king at that time, and so the *Außendeichregal* was enforced there. This led to the system of *Oktrois* (Goldbeck 1991, pp. 143, 166, 171). The *Oktrois* was the right to build a dike and this practice was common in the Netherlands. At this time Stadelmann writes:

The “Oktrois” as the rights were called, were tied to a number of liberties, for instance, tax and duty liberty for a number of years,

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<sup>12</sup>On the concept of functional, overlapping, and competing jurisdictions see Frey and Eichenberger (1999).

<sup>13</sup>Aubin (1952, p. 30) describes the freedom loving Frisian as saying: *Lieber tot als Sklav* (“Rather dead than being a slave”).

property rights for the fouling, freedom for inns, breweries and mills, free hunting and fishing, freedom for the building of churches and schools, etc. Often the “Oktrois” polders were autonomous, having their own jurisdiction and police power. (1981, p. 123)

Due to the extensive liberties the rights of the *Oktrois* polder were very attractive. Religious refugees, even from the Netherlands, came for this reason.<sup>14</sup> The rights were sold by the authorities to well-funded groups, such as public servants, entrepreneurs, soldiers, and merchants, who would then trade the rights. The well-funded groups would finance the dike, taking the risk of a storm flood destroying the site during its construction, and sell the slots. Sometimes the prince would help to found a dike association. The dike builders also made the rules concerning the maintenance of the dike and other issues in the polder (Goldbeck 1991, p. 182). Hence, the historic example of the *Oktrois* can be regarded as a nice illustration of the case of profit-oriented cooperation mentioned above in our theoretical analysis where an entrepreneur builds a dike to improve a site and sells the slots to individuals.

For the prince with a low time preference the system of the *Oktrois* polder was a very lucrative investment. By selling the right to the dike in the beginning, he would receive payment for these time-limited rights. Then for a number of contracted years the community would prosper in a state of anarchy and the population would grow. After a number of free years the prince could impose taxes, like property taxes, which would generate solid revenues for him. Therefore, the system of the *Oktrois* worked very well, as demonstrated by the fact that in Schleswig and Holstein in the sixteenth century 19 polders were diked and in the seventeenth century 26 polders were diked (Goldbeck 1991, p. 179).<sup>15</sup>

#### *The End of Private Dike Building*

The dike associations had an autonomy that the developing territorial states found difficult to tolerate. Over the course of 500 years, sovereigns of nearby states gained control over diking and the dike areas by employing a strategy of carrot and stick. As Goldbeck puts it:

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<sup>14</sup>East Frisia was also a refuge for all kinds of religious sects that were not welcome in their homeland (Grochowina 2003, p. 395). Again the analogy to settling in the New World for reasons of religious freedom comes to mind.

<sup>15</sup>Bantelmann et al. (1996, p. 137), names 50 diked polders in North Frisia in the sixteenth and seventeenth centuries.

The ambitions of the sovereigns, first of the counts of East Frisia and later of the kings of Prussia and Hannover, to gain influence over the autonomy and jurisdiction of the dike associations, did not prevail *ad hoc*. However, over time, a certain transfer of power from some administrative units to the superior political institutions became apparent. This process took place gradually and can be traced through development of ever more closely meshed dike legislation. (Goldbeck 1991, p. 142)

In East Frisia, the development of governmental dike building and administration started by the Dukes of Cirksena began expanding their influence over diking areas and over the settling families: the dynasty of the Dukes of Cirksena ruled until 1744, when it died out. At this time East Frisia came under Prussian rule (Woebcken 1949, p. 89; Teschke 1966, p. 55). In Dithmarschen, no dynasty comparable to that of a count came to power and the farmer republic stayed independent for more than 300 years (Marte and Mäckelmann 1927, p. 207). As Goldbeck (1991, p. 104) writes:

This farmers' republic only lost its free status in 1559 after long and grimly fought battles, when it lost against an allied army of the Danish king, and the Schleswig and Gottorfish Dukes. (Brandt quoted in Goldbeck 1991, p. 104)

The Fries of Wursten, that had built a comparable community, were placed under the fiefdom of the Archbishop of Bremen and suffered the same fate. (Lehe quoted in Goldbeck 1991, p. 104)

The military defeat was a consequence of new advancements in drainage methods which made it possible to dry out the swamps. Prior to this there were only one or two entries to the marshes; now with the ability to dry the marshes, huge cavalry armies were able to reach the free seceded territories (Goldbeck 1991, p. 105).

But the extension of state power was not always accompanied by openly bloody violence. Normally, it was achieved gradually and seductively. One of the first steps taken by the sovereigns was to gain more influence in the dike association by choosing the dike jury. Another attempt was their claim to *Außendeichregal* out of a fiscal interest, which resulted in resistance by the free farmers. In response, free farmers complained to the German Kaiser about their sovereigns (Goldbeck 1991, p. 147). This controversy with the dike associations was only resolved in 1744 when Frisia was placed under Prussian rule. After the storm floods of 1717 and 1721 and the subsequent rebuilding, dike associations in Frisia were heavily indebted. In 1744, Prussia took over the debt payments of the dike associations and began to dike on its own account. In 1752, the first polder was diked in the name of King Friedrich II and the land was

sold partly to privateers and partly to the East Frisian community (Hoogstraat 1996, p. 37; Woebcken 1949, p. 136).

The sovereign also tried to merge the dike associations into larger ones and to gain influence in the dike administration. State supervision and an organizational restructuring were introduced by the Allgemeines Deichreglement (general dike regulation) in 1805. A dike commissar was appointed as a public servant by Prussia in 1807. In 1815, after the Congress of Vienna, Frisia was placed under the rule of the Hanoverian Kingdom. In 1853, the DSOfo [Deich- und Sielordnung für Ostfriesland] (dike and sluice legislation) was adopted, which gave government agencies supervisory power over the dike associations (Goldbeck 1991, p. 149). Hence, the formerly autonomous dike associations increasingly became state entities in the nineteenth century.

The state paid for this growing influence with subsidies in the form of credits or guarantees. In this regard, the DSOfo also stated that if the burden of repairs was too heavy for a dike association, the state would pay two-thirds of the costs (Goldbeck 1991, p. 153). Moreover, soldiers and prisoners were deployed to help build and rebuild dikes, without wages. Other workers were forced to work for a wage lower than free-market wages. Finally, in the twentieth century, the dike jurisdiction went to state entities, namely to Prussia, who by 1866 had gained complete control over Schleswig-Holstein and Hanover. The Prussian Wassergesetz (water law) of 1913 denoted another strong shift of power from the single dike association to the Prussian State. Dike protection and land gaining were increasingly performed by state organizations with the Prussian agriculture department having the ultimate control (Goldbeck 1991, p. 196). With the new water laws of 1937 (Wasserverbandsgesetz and Verordnungen über Wasser- und Bodenverbände), the state finally controlled all elements of the dike associations. Not surprisingly, the National Socialists doubled the state funding of diking from one million to two million Reichsmarks. It was argued that where it was not profitable for a private business to regain German land (Lebensraum) by diking from the sea, the state should step in. For the National Socialists the state funding of diking had two other advantages. From an ideological point of view there were new autonomous German farming communities created. Furthermore the huge building projects served as providing public work for potential supporters. Thus monuments for two of its leaders, the Adolf-Hitler-Koog and the Hermann-Göring-Koog, were built.<sup>16</sup>

<sup>16</sup>See for the National Socialist dike building Stadermann (1937, pp. 62–70).

In 1963, the legislation in Lower Saxony was partly refined to provide public work, and in Schleswig-Holstein legislation was complemented in 1971, and changed in 1979. The Schleswig-Holstein water laws of June 7, 1971 (§58a, par. 2), show a final total shift of responsibility for all aspects of dike management from construction to damage repair from property owner to the state:

The maintenance and rebuilding of land protection dikes and of dikes on holms [flat low land surrounded by water], as long as they are now the task of water and soil associations, will come under public law liability on January 1, 1971, as a closed part of these associations to the state. Simultaneously the property of the water and soil associations goes free of charge to the state. (Stadelmann (1981, p. 123)

Stadelmann points out that

the new law is a radical renunciation of principles that were in effect for 1,000 years, beginning with the building of the first dikes in North Frisia: The property owner in the marsh and in the polder is released from the personal dike duty. (1981, p. 123)

For the dikes that are not land protection dikes or on holms, for which the state has not explicitly assumed property and maintenance, the state has sweetened the control of the dike associations with more subsidies. Today the financial budget of the dike associations is divided into two categories. The first category covers ordinary expenses. The second category covers extraordinary expenses. Ordinary expenses are paid by the members of the dike associations. These expenses finance the management and daily running of the dike association (dike openings, water drawing machines, etc.). The extraordinary expenses, which are financed by the state, serve for the building of new dikes (Goldbeck 1991, p. 207). The state, having ended the period of private dike enterprise, now covers the building of new dikes, not only to protect old land but also to wrest new land from the sea (Stadelmann (1981, p. 124). The budget for extraordinary expenses also serves to improve the height of the existing dikes, to build new Landesschutzdeiche (land protection dikes), to improve water protection entities, flood barrages, the building of groins,<sup>17</sup> and foreland work (Goldbeck 1991, p. 211). The costs are split between the states and the federal government. A dike association receives subsidies if the membership fee is much higher than the average membership fee of other dike associations and if there are extraordinarily high damages to the dike.

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<sup>17</sup>A groin in this context is a frame built across a beach to collect and keep round stones and pebbles.



As we have seen, the state today is involved in the maintenance and building of dikes. But this simply does not show that dikes would not be built without the mandate of the state. To the contrary, historical records shows that there have been dikes—without state mandate—and that these dikes served as protection for communities of free people. Even in the twentieth century three dikes in North Frisia were built by private means (Stadelmann 1981, p. 124). Only over time has the government assumed control over the dikes by force or with corrupting subsidies. Now the government maintains control over the formerly almost independent territories, whose residents are delighted by the subsidies. Politicians can claim to have protected the land from the sea by public dikes and subsidies, but the costs in reality are paid by the larger tax paying public. To make an argument, in Germany, for public goods provision by the state on historical grounds, therefore, seems ridiculous.

Table 1  
The History of Dikes in Germany: An Overview

1000 A.D.	The first private dikes are built along the North Sea.
1300	The Golden Ring protecting all of Frisia is completed.
1300–1500	A period of great prosperity exists in the diked area.
15th century	Common dike law is codified.
from 1500 on	Sovereigns get involved in the flourishing private dike industry (A system of <i>Oktrois</i> develops).
1559	Dithmarschen is conquered by the Dukes of Schleswig and Gottorf and the Danish king.
1744	Prussia comes to rule Frisia and starts assuming power of the dike associations while starting to subsidize them.
1853	DSOfO further increases the government's control over dikes and the subsidies for dikes.
1913	Prussian Wassergesetz (water law) shifts more responsibility to the Prussian state.
1937	A new water law allows total control over dike associations.
20th century	The last three private dikes are built in Germany.
1971	Schleswig-Holstein water laws are passed; dikes become partly public property; public diking increases while private responsibility for diking is released.

## CONCLUSION

At first glance the public good argument for states makes sense and is nicely constructed, especially in such clear cases as dikes. Yet, it does not—at least in the case of dikes—fulfill its purpose. There is no need for the government to provide the public good of dikes. The analyses of single human actions have shown that if people do not build dikes or not “enough” dikes, they demonstrate that they want to use their resources for something they value more highly. If people are not in agreement to share the burden, forcing them by taxation to an “agreement” they do not want, and building a dike, obviously lowers social welfare. By merely interpreting an individual “no” as a “yes” of the collective will, the government justifies its provision of dikes. But interpreting a “no” as a “yes” can justify anything.

We have seen that empirically the business of dike building and maintenance has historically been private but over the years that responsibility was assumed by the power-seeking state. Dike polders were partly autonomous areas that can be regarded as seceded private law societies. Today public dike provision has become a simple device to redistribute wealth to those who benefit from dikes. Relying on governmental protection from the sea can have devastating consequences. For sometimes this is not even an adequate protection, as has been shown by the case of government mismanagement with respect to Hurricane Katrina and the failure of the levees in New Orleans.

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