

Ostrom – intellectual property

Duke University: Law and Contemporary Problems

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Ideas, Artifacts, and Facilities: Information as a Common-Pool Resource

p.118 The problem with the “tragedy of the commons” theory:

“It is assumed that the resource generates a highly predictable, finite supply of one type of resource unit (one species, for example) in each relevant time period. Appropriators (this who harvest from a resource system, such as fishers and pastoralists) are assumed to be homogeneous in terms of their assets, skills, discount rates, and cultural views. They are also assumed to be short-term, profit-maximizing actors who possess complete information. In this theory, *anyone* can utilize the resource and appropriate the resource units. Appropriators gain property rights only to what they harvest. The harvested resource units are then privately owned and can be sold in an open, competitive market. The open-access condition is a given and the appropriators make no effort to change it. Appropriators act independently and do not communicate or coordinate their activities in any way.”

p.120: “Common-pool resources may be owned by national, regional or local governments, by private individuals or corporations, or used as open-access resources by whoever can gain access. Each of the broad types of property regimes has different sets of advantages and disadvantages, but at times may rely on similar bundles of operational rules. Examples exist of both successful and unsuccessful efforts...to manage common-pool resources.”

p.121: “[There is a crucial difference] between property regimes that are *open-access*, where no one has the legal right to exclude anyone from using a resource, and *common property*, where members of a clearly defined group have a bundle of legal rights including the right to exclude nonmembers from a resource.”

p.122 “[Some] open-access regimes are the consequence of conscious public policies to guarantee the access of all citizens to use a resource within a political jurisdiction. The concept of *jus publicum* applies to their formal status but effectively these resources are open-access.”

P.123 “Common-property regimes are essentially share contracts [e.g. like private corporations]. As such, they face the potential of opportunistic behaviour and moral hazard problems. Common-property regimes, however, are much more likely to have beneficial consequences for a resource system and its users than open-access regimes.”

P.124:

Edella Schlager and Elinor Ostrom identify five major bundles of rights that are most relevant for the use of common-pool resources: access, extraction, management, exclusion, and alienation. These are defined as:

Access: The right to enter e defined physical area and enjoy non-subtractive benefits (for example, hike, canoe, enjoy nature);

Extraction: The right to obtain resource units or products of a resource system (for example, catch fish, divert water);

Management: The right to regulate internal use patterns and transform the resource by making improvements;

Exclusion: The right to determine who will have access rights and withdrawal rights, and how those rights may be transferred; and

Alienation: The right to sell or lease management and exclusion rights.”

P.127: “A key finding from multiple studies is that no set of property rights work equivalently in all settings.”

P.131: “...Hayek...wrote in 1945 that while we are used to respecting scientific knowledge gathered by experts, it is only in combination with ‘local knowledge’ that the knowledge takes on a real value. All of the valid research on common-pool resources involves this combination of scientific knowledge with time and place analysis, or as Hayek puts it, the “special knowledge of circumstances.”

Citations:

Footnote 10: CHARLOTTE HESS, A COMPREHENSIVE BIBLIOGRAPHY OF COMMON-POOL RESOURCES (CD ROM, 1999). This bibliography contains 22,500 citations of works on the commons. A searchable version of this bibliography is available at <http://www.iascp.org/cprbibs.html> (last updated Dec.16, 1999). A new edition with 35,000 citations is forthcoming.

Footnote 16: Charlotte Hess, *Is There Anything New Under the Sun? A Discussion and Survey of Studies on New Commons and the Internet*, presented at Constituting the Commons: Crafting Sustainable Commons in the New Millennium, the eighth biennial conference of International Association for the Study of Common Property (May 31 – June 4, 2000), available at <http://dlc.dlib.indiana.edu/documents/dir0/00/00/05/12/dlc-00000512-00/iasp2000.pdf> (last visited Dec.3,2002).

Inventories of CPRs include (footnote 73): “studies of surfer’s waves, sports, national budgets, public radio, traditional music, knowledge and information, air slots, campus commons, urban commons (apartment communities and residential community associations, streets, parking places, playgrounds, reclaimed buildings etc.), highways and transboundary transportation systems, the Internet (domain names, infrastructure, acceptable use policies), tourism landscapes, cultural treasures, car-sharing institutions, garbage, and sewage.”