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Farmers and Ranchers

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Robert Ellickson has written an interesting and challenging book on the role of informal cooperation which offers a basis for interdisciplinary dialogue among lawyers, economists, policy scientists, political theorists and researchers interested in community and organizational phenomena.

The first seven chapters are a paradigm of good social science. The author introduces the theoretical issue—in this case, the Coase “social cost” theorem—and a detailed case example upon which to evaluate the issue. Coase uses the parable of the Farmer and the Rancher to argue the counter-intuitive proposition that when transaction costs are zero, a change in the rule of liability will have no effect on the allocation of resources. Among legal scholars, the theorem is a hot potato in the contesting between the “law-and-economics” and “law-and-society” factions. What is at stake, however, goes well beyond those local debates among legal scholars, and has major implications and possibilities for informing future research on nonprofit organizations, voluntary action and philanthropy.

Ellickson chooses a clever and highly appropriate real-life example, involving “ranchers” and “farmers” in the northwest sector of Shasta County in Northern California, a checkerboard of open and closed ranges, fences, roving cattle, and remarkably uninvolved lawyers and law enforcement agencies. Shasta Countians have developed on their own a complex culture of cooperation with rules for retrieving stray cattle, constructing and repairing fences, assigning compensation for damages, and other relevant norms. In Ellickson’s account, all of this occurs counter to Coase-predictions and almost completely without formal resort to the law.

Ellickson’s study reaches well beyond its modestly limited presentation in terms of the legal debate between the two scholarly perspectives. His is a full-blown rational-choice model of cooperation, built up not from the usual arid logic of the armchair theorists but from a challenging real-life example including full measure of social and psychological elements like custom, envy, gossip, ritual and hero-worship. Here is Hardin’s tragic commons in the guise of a cowboy western; a potential California range war not descending into a Hobbesian war of each against all, nor rescued by the long

1 A revised version of this review was published as Ellickson, Robert C. Order without Law: How Neighbors Settle Disputes. Nonprofit and Voluntary Action Quarterly. 22. 3 (Fall, 1993)
arm of the law, but rather bound tightly together by the informal ("voluntary", that is, uncoerced) cooperation of groups of neighbors.

Readers of this journal who may be weary (or wary) of the artificiality of this style of academic discourse and suspicious of the mathematical pyrotechnics which often accompany it should take heart. Ellickson is no idealogue, and not out to prove his mathematical prowess. His feet are planted squarely in the realities of Shasta County (with enlightening digressions into the whaling industry, the photocopying practices of professors and other strange and esoteric customs) and his mathematics don’t stray beyond ordinary algebra.

Ellickson interprets many of the cattle practices of Shasta county with the aid of game theory. In particular, he follows up on Robert Axelrod’s “Tit-for-Tat” cooperative solution to the Prisoner’s Dilemma with his own interesting “Specialized Labor” game to account, among other things, for the asymmetric fence-building division of labor among ranchers and ranchettes.

Readers of this journal might well be asking: why should scholars concerned with nonprofit organizations, voluntary action and philanthropy be interested at all in Ellickson view of the world of farmers and ranchers in Shasta County? Actually, there are a number of reasons, both negative and positive: Negatively, it portrays a social world without a formal third sector. Cooperation is evident only among individual property owners. Although the Shasta County farmers (like American farmers everywhere) are prone to organize a series of political and self-help associations for petition drives, cattle retrieval and other forms of community action, these do not figure into the analysis or theory in any way.

Also, the social world of Shasta County is portrayed as a nearly picture-perfect Hobbes-Locke world of atomistic (Anglo male) individuals who live on ranches and their equally atomistic (equally Anglo, equally male) neighbors who have moved into the community recently to live on “ranchettes”. One wonders at times where all the women in Shasta County may have gone! The historical backdrop for the case study is the familiar one of male ranchers who carved civilization out of the apparently empty wilderness, reclaiming the land from a state of nature with no apparent ecological consequences, and the apparently complete cooperation of the prior residents (whether Amerindian or Hispanic.) Some ranchers appear to have families, but, unbelievably, for all intents and purposes family members other than the “owners” (pater familias) have no recorded impact upon the law, social order or property in Shasta county. Fathers seem to never send their kids or wives to retrieve the cows, and the race, religion, and other factors which influence and condition cooperation in other contexts never enter in. At least one rancher is said to be “college educated” which seems to affect his cooperation at least to a degree, but any theoretical implications are lost.
These rational male ranchers of Shasta County are never portrayed in their full complexity as citizens, family members, friends and neighbors and consequently, the full implications for the theory of their choice to be welfare-maximizing in these circumstances (along with the equally rational choices to be income-maximizing and for the affluent to forego maximization altogether and engage in philanthropic acts) are not explored.

At a general level of the guiding theoretical model, Ellickson’s terminology demonstrates many of the limitations of legal (and other) rationalism. It seemingly reduces the complex interactions of self, other and community to legal formalisms: “first party control (actor)” and “second party control (person acted upon)”. However, these labeling inadequacies are offset by the detailed discussions which follow.

There are also certain definitional problems of particular interest to commons theorists: A fence between two properties is defined as a “public good”, yet the public good aspects (e.g., protection of the community at large from cattle contained by the fence) are not discussed. The discussion concentrates instead upon the “common goods” implications for the diads of farmers and ranchers separated by the fences.

Cooperation in the Ellickson-world of Shasta County does not contain a third sector or commons: Apparently, there is no opportunity for sharing of purposes or resources, and a sense of mutuality is variable, although voluntary cooperation and norms of justice are evident. In fact, the entire non-governmental social world of families, markets and religious, political, social and other commons is reduced to abstract “social forces (norms)”, “organizations (rules)” and “government (law).” There is only one very brief (and inconclusive) reference to “charity”. This seems more a bow to past preoccupation with charity issues in the rational choice literature than to any relevance to the overall argument.

Even with all these caveats, however, there is much to be admired here: Ellickson develops his analysis from a complete, real-life case study rather than a set of cardboard cut-out “rational economic” strawmen. Understanding of the role of cooperation in nonprofit organizations, voluntary action and philanthropy would benefit from close study of both the findings and the methodology employed here.

All those who hope to find solutions to social problems in the adoption of particular laws or “policies” would do well to study Ellickson (and Axelrod’s Tit-for-Tat strategy) more closely: In the real world of Shasta County, people don’t ever appear to solve their problems through first-order resort to law or policy. Moreover, social policies which embody sanctions typically employ them after the manner of a single round Tit-For-Tat game, while the problem itself may be a multi-round game.
Most important of all are the implications of Ellickson’s theory of cooperation for the study of nonprofit organizations. Organizations are ordinarily created to be “systems of cooperation”, but the descriptive literature documents a vast and sorry history of departures from that norm. The problems of programs and policies, oligarchic leadership, bureaucratic empire building and programmatic “turf” all seem strangely analogous to the fences and wandering cows of Shasta County.