

Faculty Scholarship

2-2-1993

Farmers and Ranchers

Roger A. Lohmann

West Virginia University, roger.lohmann@mail.wvu.edu

Follow this and additional works at: https://researchrepository.wvu.edu/faculty_publications



Part of the [Law and Society Commons](#), [Nonprofit Administration and Management Commons](#), [Nonprofit Organizations Law Commons](#), and the [Public Affairs, Public Policy and Public Administration Commons](#)

Digital Commons Citation

Lohmann, Roger A., "Farmers and Ranchers" (1993). *Faculty Scholarship*. 869.

https://researchrepository.wvu.edu/faculty_publications/869

This Article is brought to you for free and open access by The Research Repository @ WVU. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

***Order without Law: How Neighbors Settle Disputes.* Robert C. Ellickson. Harvard University Press. 1991. \$39.95.¹**

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. Informal cooperation, in the sense that he uses the idea, is guided not by formal laws and regulations but rather by social norms and social institutions. Such cooperation is fundamental to voluntary action.

The first seven chapters are a paradigm of good social science theorizing. The author introduces an important 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 of legal theorists. What is at stake, however, goes well beyond those local debates, 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 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 resort to the law.

Ellickson's study reaches well beyond its modestly limited presentation in terms of the legal debate between the law-and-economics and law-and-society views. 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 "psychological" and "social" elements like custom, envy, gossip, ritual and hero-worship. Here is Hardin's tragic commons in the guise of a cowboy western not unlike the plot of the Broadway musical *Oklahoma*: California range not descending into a Hobbesian war of each against all, nor rescued by the long

¹ A revised and edited version of this review was published in *Nonprofit and Voluntary Sector Quarterly*, 22.3. (Fall, 1993). 271-273.)

arm of the law, but rather bound tightly together by the informal ("voluntary", that is, uncoerced) cooperation of neighbors.

NVSQ readers 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 ideologue, and not out to prove his mathematical prowess. His feet are planted squarely in the reality of the Shasta County example (with a few enlightening digressions into the whaling industry, the photocopying practices of professors and other strange customs). Ellickson interprets many of the cattle practices of Shasta county with the aid of game theory and his mathematics don't stray beyond ordinary algebra. 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 their (typically five-acre) ranchettes.

So why should scholars interested in nonprofit organizations, voluntary action and philanthropy be interested at all in the Ellickson world of Shasta County? For a number of reasons, both negative and positive: Negatively, it portrays a social world without a Third Sector. Cooperation is 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 a small set of traditional ranches and their equally atomistic (equally Anglo, equally male) neighbors who have moved into the community recently to live on "ranchettes". 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, family members other than the "owners" (*pater familias*) have no recorded impact upon the law, property or informal social order of Shasta county. Fathers 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 "college educated" which seems to increase his cooperation at least to a degree, but any theoretical implications are lost or ignored.

The rational ranchers of Shasta County are also never portrayed in their full complexity as citizens, 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) are not explored.

At a general level of the guiding theoretical model, Ellickson's terminology reduces the complex interactions of self, other and community to a set of slightly jarring legalisms: "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: 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 explored. The discussion concentrates exclusively on the "common goods" implications for the diads of farmer-neighbors actually separated by any particular fence.

Cooperation in the Ellickson-world of Shasta County does not contain a third sector or commons, or indeed, any space between the purely public realm of public law and the private world of the individual landholder's actions: There is no sharing of purposes or resources, and a sense of mutuality is variable, although voluntary cooperation and indigenous norms of justice are clearly evident. The entire non-governmental social world of families, markets and religious, political, social and other commons is reduced to Ellickson's own variant on three sectors: "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 for his theory.

Even so, there is much to be admired here: Ellickson develops his legal analysis from a complete, real-life case study rather than a set of cardboard cut-out "rational economic" strawmen. Understandings 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) 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. Their first choice is typically resort to informal cooperation and voluntary action. Further, 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 for readers of this journal are the implications of Ellickson's theory of cooperation for the study of nonprofit organizations. Organizations are ordinarily created to be "systems of cooperation" in the words of Chester Barnard's pioneering theory of organization, 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 cooperation over fences and wandering cows of Shasta County.