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Addressing the commons: normative approaches to common pool resources

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Abstract

Some of the critical natural resources, i.e. lakes, the seas, clean air and the atmosphere, exemplify structures of common pool resources. They are rival but non-excludable, at least highly non-excludable. Therefore, common pool resources are particularly vulnerable. In order to protect them, it has been argued that entrance barriers need to be modelled against the background of two criteria: (1) Overuse and forms of harmful use need to be prevented; and (2) access conditions need to correspond to justified claims of participation in common pool resources. Both criteria respond to normative claims. The first condition can be spelled out in terms of sustainability. The second claim has been discussed in theories on ecological justice. The particular theoretical challenge that I wish to address in this paper results from an apparent tension between both criteria. In this contribution I shall *first* introduce the concept of a common pool resource and discuss its meaning in environmental ethics. As a *second* step, I shall discuss aspects of the theory of the commons of Elinor Ostrom. Her approach includes a differentiation of the category of property which helps to address both normative criteria simultaneously. Most importantly, her discussion includes debate over a normative perspective on the commons which needs to be made explicit. As a *third* step, I shall go back to the concept of environmental rights and group rights and ask whether or not these categories are helpful in discussing legitimate access to common pool resources. My overall aim is *not* to present a normative approach to common pool resources, but rather to introduce and test whether or not the categories of property and of rights are useful in addressing the theoretical challenge of the two conflicting criteria mentioned above.

Keywords: common pool resources, group rights, public goods, environmental rights

Common pool resources

Common pool resources are a subclass of public goods. Public goods are characterized by non-excludability and non-rivalry among potential beneficiaries (Kallhoff, 2011). Different from private goods, public goods do not have mechanisms which help to exclude unwanted profiteers. Instead, they are open to all and therefore also prone to the 'tragedies' which Garrett Hardin famously attributed to them (Hardin, 1968). Since goods which have both characteristics are rare, most authors refer to the so-called 'impure public goods' (Kaul *et al.*, 1999), which possess only one of the characteristics mentioned or which have both of them to some degree. Common pool resources belong to the first class. They are non-excludable, but – to some degree – rival in consumption.

According to Hardin's view, common land, fishing grounds, and even welfare goods are self-destructive systems. A pasture without entrance barriers will invite herdsmen to over-exploit the soil. Unlimited access to the sea endangers productivity and beauty. And even natural parks are endangered by too many visitors. Since Hardin's contribution to the commons, the label 'tragedy' sticks to environmental goods such as lakes, the seas, and land. Yet, Hardin's analysis overlooks one special trait of the commons. He identifies the commons with open access-regimes. Recent contributions in public goods-theory, instead, lay emphasis on the fact that the goods that Hardin identified as public goods are *not* non-exclusive goods in the strict sense (Kallhoff, 2011; Kaul *et al.*, 1999). Instead, all that can be said is that the patterns of

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exclusion are irregular and often not clear-cut. In particular, common pool resources are characterized as goods which are – to some degree – non-exclusive. This definition serves as a starting point for political scientists and philosophers to discuss mechanisms and strategies to regulate access.

Obviously, some critical environmental goods belong to the group of common pool resources. As goods whose entrance barriers are not clear-cut, the seas and lakes, space in terms of land and soil, water systems and even the sunshine qualify as common pool resources. Applying the category of public goods to natural goods is particularly helpful in understanding two unresolved problems regarding natural resources.

First, common pool resources stimulate a behaviour which was classified as ‘free-riding’. Some authors argue that rational decisions regarding these goods need to be compared to a situation which was illustrated in the ‘prisoners’ dilemma’ (For a critical reassessment see Little, 2002). As goods whose access conditions are not regulated, a rational person will not invest in these goods voluntarily, even though it would be the overall best solution for this person and further persons involved in them. As for environmental goods, the category of common pool resources has *explanatory force*. It helps to understand dilemmas which were analyzed in public goods-theories as problems of collective action (Tullock *et al.*, 2002). In particular, these problems result in exploitation and disastrous overuse of natural goods. They are worsened by mechanisms of rivalry among potential beneficiaries. Understanding the underlying mechanisms can contribute to developing solutions to the unsolved problems.

Secondly, the category of common pool resources does not only serve as an analytic instrument; it also explains the necessity to shift the focus of attention to a debate on the underlying normative assumptions. In order to avoid over-exploitation and false use of common pool resources, regulation of entrance barriers becomes necessary. As an effect, some types of use will be rejected. Yet, for justifying this, solutions must also pass a normative test.

Moreover, the question of allowances and forbearances needs to be discussed from diverse perspectives. It implies a discussion of legitimate conditions of appropriation; it needs to articulate justified basic claims of persons in profiting from common pool resources; and it also needs to ask for the various meanings which natural goods have to persons who do not only wish to profit from them, but who also understand them as part of their culture and their identity (Kallhoff, 2011).

A normative approach to the commons

In her theory of the commons, Elinor Ostrom chooses a particular perspective on common pool resources (Ostrom, 1990, 2002). This approach is helpful in focusing on normative elements in the theory of collective goods. Even though commons differ from public goods – their main characteristics is joint supply –, the perspective on public goods-theory given in the first section contributes to the possibility to compare both categories. Both common pool resources and the commons are goods which cannot be produced by individuals. Instead, they need to be supported and regulated by societies who wish to invest in them.

Elinor Ostrom argues that commons are situated in communities. These communities develop rules in order to prevent overuse and depletion. To think of commons without such a framework of regulation is an abstraction. In reality, these goods exist within normative frameworks. The examples which Ostrom discusses comprise communal tenures of meadows and forests in Törbel, Switzerland, common pool resources in Japanese villages, irrigation institutions in Spain, Turkey, and the Philippines and the collective management of common fishing grounds in various regions of the world (Ostrom, 1990). In particular, her analysis shows that self-governed institutions of control and enforcement are an effective

way of regulating access to and simultaneously support for these goods. These common rules even play an important role for the communities: they have a stabilizing effect on them. Yet, her analysis does not go beyond examples which all meet two conditions: the goods are situated in local communities; and the local communities depend on them for their own survival.

In order to translate the examples that Ostrom discusses into modern societies and into a framework of political institutions, it is necessary to study the underlying premises which lies behind each regulatory framework. In my view, three arguments are particularly important:

- First and very basically, a critical reassessment of the political institutions which regulate common pool resources needs to include the question of why appropriation and use of common pool resources is justified. This claim holds even when property law and regulatory frameworks have already been elaborated. Different from private goods, common pool resources might be regarded as some type of collective property. Different from private goods, some common pool resources appear to belong to the heritage of societies, not of private persons alone. In his provocative contribution on collective goods, Michael Brown asks: 'Who owns native culture?' (Brown, 2003). And his answers include the view that natural goods as well as cultural goods belong to the people who cultivated the land for decades. In an extreme case, even when property rights say the opposite, the use and appropriation of common pool resources still needs to be justified.
- Secondly, in order to justify appropriation of common pool resources, the normative meanings of the goods need to be taken into account. In environmental ethics, authors demonstrate that living entities as well as nature on a large scale comprises a variety of values for persons. The same holds for natural resources as common pool resources. Land, i.e. is not only a resource, but also a realm where animals and persons can flourish and are at home. In particular, environmental goods are multi-functional goods. Land, i.e. is part of a landscape which persons enjoy; simultaneously, land is part of the water system and of the ecological system. Moreover, it is a resource for agriculture. In order to evaluate the normative meaning of common pool resources, it is necessary to take into account the many facets of their meaning for different groups of persons. Ostrom lays emphasis on the stabilizing effect which regulatory and self-imposed frameworks will have on groups of persons. In modern societies, a discussion of the many different meanings of environmental goods to various groups of persons needs to fill this normative space.
- Third, a normative discussion also needs to comprise a debate over the categories which are suited best to express the normative perspectives. Following a proposal of Hanna and Munasinghe (1995), the 'tragedy of the commons' can be interpreted as 'an environmental outcome that results from an inadequate specification of property rights to environmental services' (Hanna and Munasinghe, 1995: 15) In particular, property rights relate ecological systems to human systems (Goodin, 1990). In order to develop optimal fit, legitimate interests of profiteers need to be outweighed against conditions of legitimate use which focus on whether or not the resilience of a natural system is endangered when the legitimate interests are being met. Besides discussing methods of good governance, this normative background also needs to be explained. Normative theories on property are one path which according to Ostrom *et al.* helps understand the complex link between common pool resources and the commons (Ostrom *et al.*, 2002).

So far I have argued that the theory of public goods as applied to environmental goods has two advantages. *First*, it helps understand a critical problem: it contributes to the view that natural resources need to be surrounded by barriers which regulate the entrance. *Secondly*, it also points to a normative direction. It says that without a thorough examination of normative assumptions, this regulation will not meet the test of legitimacy. In particular, this approach to the commons argues for the general claims that appropriation needs to be justified in each case, that the normative meaning of environmental goods for various persons need to be made explicit, and that a normative theory of property rights might be one way of channelling access to common pool resources.

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Another promising approach to discuss the legitimacy of appropriation is provided by theories on environmental rights. Even though it is not the place here to explain these approaches at length, some comments shall be given on why these approaches are particularly important in debates about common pool resources.

Environmental rights and the concept of group rights

The discussion of common pool resources leads to the debate on justified claims in profiting from natural goods. In ethics, the most basic legitimate interests of persons have been discussed in terms of basic rights or human rights (Freeman, 2011). Many constitutions and international contracts also imply a list of environmental rights.

On the one hand, environmental rights appear to be suited because they are restricted to most basic interests of persons. In particular, environmental rights can be derived from the right to good health and freedom from environmental hazard. On the other hand, environmental rights can be criticized as normative claims which are too general and therefore also too less specific in dealing with environmental challenges. As for legitimate interests in common pool resources, this is a major flaw. Common pool resources need regulatory frameworks which relate to the given local circumstances and the particular groups of persons who are interested in profiting from them.

The view which I shall discuss in the remainder of this paragraph does not focus on environmental rights alone. Moreover, it is not the place here to discuss environmental rights in more length. Instead, it adds the category of group rights to the discussion on environmental rights. In my view, the category of group rights can mitigate some negative side-effects of the more general category of basic rights. In particular, this category appears to be suited for discussing the balance between legitimate interests on the one hand and conservationist duties regarding common pool resources on the other hand. In order to explain the interpretation of group rights which I shall start with, I shall first give a short summary of the category as introduced by Will Kymlicka.

When Kymlicka introduced the category of a group right in political philosophy (Kymlicka, 1999), two insights were critical: *First*, in multicultural societies, the state promotes certain cultures and also disadvantages others; therefore the question of justice for minorities needs to be raised. *Secondly*, persons derive their values from communities; yet they also are to some degree independent of them. Group rights serve the aim to protect these communities; yet, they are not extensions of liberal rights, but rather reservations to individual rights (Kymlicka, 2001, 2007). In order to apply the category of group rights to collective goods such as common pool resources, a further distinction needs to be made. As minority rights, group rights might either refer to rights of minority-groups members or to collective rights of minority groups. In my view, the latter is suited to respond to the normative layer of common pool resources for two reasons.

First, interests in benefiting from common pool resources gain legitimacy through a process which identifies not primarily most basic interests, but most basic interests which are simultaneously shared by persons who identify as a group. Besides most basic interest such as interests in a healthy environment, fundamental interests can also be identified as interests that are shared by a group of persons who profit from that good. In order to avoid misunderstandings, it is necessary to add that the debate on group rights does not replace the debate on environmental rights. Instead, it adds the insight that some rights have the status of collective rights. Since decisions over environmental goods frequently depend on an unequal share in power, these groups might simultaneously be disadvantaged. Moreover, they might deserve the name 'minority' in terms of groups of persons whose interests are often not main stream-interests. Yet, the justification of collective rights also addresses the questions of how common pool

resources belong to the culture of a group and whether or not duties of stewardship have already been carried out by that group.

Secondly, in multicultural and liberal societies, interests in common pool resources cannot entirely be judged against the background of environmental rights. Instead, persons have diverse interests. These specified interests often do not relate to health issues alone; they rather portray the preferences which persons have. Usually, basic rights and individual interests are two extreme cases on a scale which measures the objectivity and urgency of interests. Again, collective rights might add a reasonable way of integrating interests which do not belong to both categories.

Environmental rights can be subdivided in several groups of rights. In particular, procedural rights such as the right to information, the right to participation in democratic processes also belong to the group of environmental rights. In order to give groups and minorities the chance to articulate rights which they claim for themselves, these procedural rights are critical. In order to defend collective rights regarding common pool resources, the procedural rights have a protective function. Moreover, they are necessary in order to give groups the chance to demonstrate that their interests really are basic. Even though the articulation of legitimate interests is an open process, explaining them in terms of group rights implies a second step. It says that these rights are not only basic in terms of general environmental rights, i.e. the right to have access to healthy water and food. Instead, it implies that groups could defend a set of special rights through mechanisms which imply open access to information and a defence in the public.

Summary

Many critical environmental goods belong to the group of common pool resources. These goods suffer from access conditions which are not clear-cut. Yet, this situation also contributes to questioning the underlying normative presumptions. In order to make a normative layer explicit, some aspects of the normative background of Elinor Ostrom's theory of the commons were outlined.

Even though this short discussion could not include solutions to the tension between the claim (1) to respond to justified claims of potential profiteers of common pool resources and (2) to prevent them from false use and from exploitation, two ideas of how this tension could be addressed were outlined. *First*, common pool resources can be regarded as a special type of collective property. Property rights do not result from contracts alone, but also imply a normative dimension. In particular, concepts of 'heritage', of already delivered duties of stewardship and of cultures which respond to common pool resources need to be taken into account. *Secondly*, environmental rights are a necessary tool for distinctions between fundamental interests and mere preferences. Yet, in order to give a more appropriate distinction between justified interests in common pool resources and mere preferences, a theory of group rights needs to complete the theory of environmental rights. As Kymlicka states, group rights help correct the focus on individual persons. Moreover, procedural environmental rights serve the aim to give a voice to groups which need access to common pool resources and who suffer most from exploitation and overuse.

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