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Cultural Commons & Urban Dynamics

Edited by  
Emanuela Macrì, Valeria Morea,  
and Michele Trimarchi



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## Governance as a spectrum of rules: A suggested approach<sup>1</sup>

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**Abstract:** We point out that governance is better viewed as existing along a spectrum of rules rather than as either-or trade-offs in kinds of rules. This means that governance concepts at polar extremes, such as “abstract” and “concrete” orders, though useful heuristic tools for analysis and modeling, are also more properly interpreted as being nuanced in nature. Indeed, when considering governance of different types of goods, the factual record indicates that most goods are actually governed at the interstices between spontaneity and design. This calls, we ultimately suggest, for the application of more pragmatic concepts and methods of social analysis that blend Hayek’s views on governance with those of Ostrom and Buchanan.

**Keywords:** Commons, governance, Buchanan, Hayek, Ostrom, rules, order, clubs.

**JEL Classification:** B52, D02, H40

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<sup>1</sup> This work is a companion piece to Emma Galli and Giampaolo Garzarelli, 2020, “From Goods to Orders and Rules of Governance: A Preliminary Exploration,” in Emanuela Macrì, Valeria Morea, Michele Trimarchi (Eds.), *Cultural Commons and Urban Dynamics*, Springer, pp. 3-10, doi: 10.1007/978-3-030-54418-8\_1, on which it also draws.

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## **1. Introduction**

Economists are mainly accustomed to defining – and comparing – different types of goods in terms of their intrinsic properties. A private good is rival (consumption of one unit of the good by an individual precludes the consumption of the same unit by another individual) and excludable (the person who does not pay a good, cannot consume it). A public good is instead defined by the polar opposite intrinsic properties, namely non-rivalry and non-excludability. Over the years, other goods have been defined along intermediate lines. Thus, a club (or quasi-public) good is non-rival (up to congestion), but excludable; and a commons (or an open access) good is rival but non-excludable. Most of the discipline of public finance effectively verges on how the intrinsic properties of different goods create problems for standard welfare reasoning, leading to so-called market failure.

Equipped with these intrinsic categories, economists usually determine which type of governance ought to be used. When goods are private, markets work. However, as soon as one enters the realm of other types of goods, markets fail, which means advocating for direct government intervention (Samuelson 1954; Musgrave 1959). We suggest that non-market goods should be considered not just in terms of their intrinsic properties, but also in terms of different “production-consumption” (Buchanan 1965) arrangements or, more fashionably, governance. Reasoning in terms of governance of goods, rather than intrinsic properties of goods, reveals that governance concerns differences in kinds of rules as much as degrees of rules (Garzarelli 2006). And this means that the advocacy for direct government intervention is not as straightforward as commonly thought.

## **2. Governance and goods**

The degree of “publicness” of goods – and therefore the nature of the governance structure that manages the provision and consumption of the good – depends on the number of individuals who either consume the good or who contribute to its provision – or both. As Buchanan (1965: 11) suggested, the dividing line between private and public goods – hence the extent of publicness of a good – is “variable.” When studying public goods, Buchanan asserted that what matters is the collective decision to provide and consume goods – that is, the focus should be mostly on what individuals

decide about goods (Buchanan 1960: 237). This does not, of course, mean that the intrinsic properties of goods are irrelevant. Rather, it means that what matters more is individuals' willingness to devise arrangements to govern the good. It is only in this fashion that, for example, we end up with club goods. That is, those goods that do not contain much *publicness*, because it is few or very few individuals that decide to act collectively to provide the good through a club. And an increasing size of the club means a good that contains more publicness for the individuals partaking in the production-consumption arrangement (Buchanan 1965). A similar reasoning, we shall see, applies to commons.

Therefore, there exists a continuum of situations between private and pure public goods. Differently put, no "sharp dividing line between 'social wants' and 'private wants' is present" (Buchanan 1960: 237). At the same time, recall that this does not mean that intrinsic characteristics of goods do not exist. The suggestion is that what also matters is how individuals decide to act collectively to deal with a good (Marciano 2021).

### 3. Governing the commons

The problem Samuelson and Musgrave, among others, had identified for the provision of public goods was that individuals free ride. Following their self-interest, individuals realize that they can benefit from the good without contributing to it. One need simply recall the Samuelsonian statement that, given the negative incentive that a public good engenders for preference revelation, there is the impossibility "of a decentralized spontaneous solution" for the supply of public goods (Samuelson 1954: 388). That was precisely the problem Tiebout wanted to – and suggested how to – solve. Tiebout (1956), of course, provocatively (Fischel 2001) proved Samuelson wrong with the well-known notion of spontaneous consumer-voter sorting – later dubbed voting with the feet. If individuals can move where their preferences are satisfied, they will no longer free ride.

To a certain extent, this was also what Buchanan argued with his club theory. When individuals agree on a governance solution to deal with a good, then free riding should not exist. For free riders are, in effect, excluded from the club. Thus, exclusion and control of excessive free riding is, in a way, built into the governance structure itself (Buchanan 1965; see also Skarbek 2014).

Garret Hardin (1968) missed this nuance when he warned that commons generated a tragedy. To him, commons were as if public goods *à la*

Samuelson. The tragedy resulted from the fact that, rational and self-interested as they are, individuals behave as free riders. In a pasture open to all, Hardin (1968: 1244) explained,

herdsmen will try to keep as many cattle as possible on the commons ... to maximize gain ... Each man is locked into a system that compels him to increase his herd without limit – in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in the commons brings ruin to all.

In light of this, as Samuelson and Musgrave and many other economists had already pointed out, Hardin posited that the tragedy of the commons was occurring because of a lack of a governance solution considering the intrinsic properties of a rival and nonexclusive good. Hence, commons, for their appropriate governance, require public intervention, which abolishes private autonomy to reduce over-exploitation, i.e., the state, or the opposite, the establishment and enforcement of property and exclusion rights, i.e., the market. In other words, Hardin had missed the intrinsic nature of commons and, as a result, also their feasible possible non-market, non-state governance. Hence, the resulting tragedy.

Among those who realized that individuals' willingness to cooperate can generate endogenous commons governance solutions were Vincent and Elinor Ostrom and their collaborators (Frischmann et al. 2019): there are different governance solutions that solve problems tied to different types of rival and nonexclusive goods. Two paradigmatic examples of commons are fisheries and forests, where we find different governance solutions for them around the world. The governance world – *even for the intrinsic properties of the same good* – is not in black and white, but in shades of gray.

So, the work of Buchanan (1965) and Ostrom (e.g., 1998) and, less directly, of Tiebout (1956) can be seen as entailing a shift from the polar governance categories of market and state to more nuanced categories of governance. Governance trade-offs are no longer either-or choices, but, like goods, occur along a spectrum where governance categories are linked to goods.

In this respect Hayek provides a useful perspective by thinking about feasible, alternative governance structures – what he called social orders – in terms of abstract and specific rules. Yet the original issue of reasoning

according to polar extremes that one finds in the taxonomy of goods, one finds in Hayek's theory of governance. Our interest is to see how reasoning according to a different good, namely the commons, can offer insights about orders that are not just at polar extremes but operate at different degrees of abstraction.

#### 4. Social orders and types of rules

Hayek (2013) long ago pointed out that it is possible to conceive different social orders in terms of different types of rules. A market is governed by rules that are abstract and as such they are not directed toward any specific end. Rather market rules are about conveying a general mode of acting sensibly under specific situations that we cannot fully predict and act upon through traditional economic reasoning (maximization subject to constraints). Anticipating many (e.g., Smith 2003; Gigerenzer 2014), Hayek asserts that the way to deal with the complexity of everyday choices is by means of rules that do not deal with concrete scenarios. The market is the quintessential abstract-rule governance: it coordinates behavior spontaneously through relative prices as the need emerges. Each time, coordination is an outcome of idiosyncratic adjustment processes, not of a predefined static optimization.

When rules are not abstract but specific (or concrete) we have direction toward a specific end. This marks the passage from spontaneity (market order) to design in governance (a planned order that is an organization). Organization is instead a type of social order that is directed towards an end (Hayek 2013: 36, 41). Therefore, the rules of an organization are more specific than those of an order. They are less abstract and more concrete, in the sense that they depend on a purpose and designed to pursue an end. A paradigmatic Hayekian illustration of designed governance is the state that *should* supply public goods at efficient cost. One can easily think of other illustrations of designed governance (multinational, bureau, department of defense, etc.).

This taxonomy served Hayek's purpose well, as he was engaged in the defense of freedom against social planning. Social planning (specific rules) suppresses spontaneity (abstract rules), meaning that it stifles individual ability to adapt to unforeseen circumstances and initiative, such as entrepreneurship, which cannot but lead to misery.

At the same time, note that there is no in between. The choice is at polar extremes: we either have one or the other type of governance. In other



words, a spontaneous order reflects the highest degree of abstraction while the planned order (organization) reflects the highest degree of specificity. Yet already in 1945 we know, for example, that in the planned governance of a Prisoner of War camp design does not fully eradicate spontaneity: economic relations, such as trading, remained (Radford 1945). Similar cases are documented more recently for, e.g., US prisons (Sharbeck 2014). Rules can plan governance, but not fully, some spontaneous relations still emerge. In theoretical terms this entails that Hayek lacks a full spectrum of rules (Whitman 2009).

### 5. Tailored governance systems within general principles

In *Governing the Commons: The Evolution of Institutions for Collective Action* (1990), Ostrom describes a variety of tangible, actual, *sui generis* situations where a community did self-organize by implementing an efficient governance system of commons resources without resorting to either government (regulation) or privatization (market). Using the framework of game theory, Ostrom develops a series of “design principles” that are aimed to capture the interests of both the individuals and the community limiting overuse and freeriding.<sup>2</sup>

The principles are abstract, even though based on factual situations; and empirical evidence supports their validity (Cox et al. 2010). The reasoning

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<sup>2</sup> The principles, which can be maintained through successive generations of users, are (e.g., Ostrom 1990: 90):

1. Boundaries: clear definition of the boundaries of the resource and of the group of users;
2. Rules: search of a balance between the appropriation of resources for consumption and those used to guarantee the provision, i.e., the demand and supply equilibrium;
3. Participation: use of decision-making methods that guarantee the democratic participation of the community in defining and modifying the operational rules, when needed;
4. Monitoring: control of the resource users’ conduct vis-à-vis the rules;
5. Sanctioning: definition of a system of gradual sanctions with respect to the violation of the operational rules whose aim is to elicit conformity;
6. Conflict resolution: design of easy and low-cost mechanisms for conflict resolution among users and users and officials;
7. Autonomy: recognition of the right of self-determination for the community which is not challenged by an external authority;
8. Nested enterprises (for a commons good that is part of a larger system): preferably, design of a polycentric organization in multiple layers to manage appropriation, provision, enforcement, conflict resolution and governance activities.

they embody seems to be abductive: the research process starts with empirical observations that cannot be explained by the existing range of theories, and so there is a search for the ‘best’ explanation among many alternatives (e.g., Bryman and Bell 2015). Abductive reasoning is characterized by lack of completeness, which may concern either the empirical evidence or the theoretical explanation or both, and shows potential heuristic value from intuition. The intuitive gap-filling implicit in abduction resonates with Hayek’s notion of abstract rules.

Ostrom’s work does not provide a theoretical solution to the tragedy of commons; rather, it proposes a general method, which is the search for the most efficient governance solutions in light of the “particular circumstances of time and place,” (Hayek 1945: 521) – that is, the specific, concrete characteristics of the resource and the needs of the community. In this search of the solution both the autonomy of the individual and of the community become fundamental parts of the solution in a continuous, pragmatic search for the most adequate governance solution. And this is based on a second-generation paradigm of rationality, according to which individuals are “complex, fallible learners who seek to do as well as they can, given the constraints that they face and who are able to learn heuristics, norms, rules, and how to craft rules to improve achieved outcomes” (Ostrom 1998: 9). This is also in line with Hayek’s notion of abstract rules.

Therefore, each case has its own specificity and the tragedy of the commons can be avoided through a tailored governance solution for the community within the framework of Ostrom’s general principles (Ostrom 1990; 1994). This means that we can envision a bottom-up approach of sorts, where the design principles become unique in terms of time and place, reflecting an intermediate, rather than polar (market or state governance?), degree of abstraction. Through the creation of a tailored governance system the commons become an order of intermediate abstraction (like, after all, a club). Many commons orders are therefore possible. Recent work has started to focus on which sets of principles are more relevant, or are more easily implemented, depending on the context (Baggio et al. 2016; Schlager 2016; Villamayor-Tomas and Garcia-Lopez 2019).

## **6. Conclusion**

In order to explain different orders, including organizations, the absolute concepts of abstraction versus concreteness are limited. While Hayek formulates a well-defined theory of social orders even though he does not

apply it to solve governance problems in general, Ostrom pragmatically proposes a method to solve the problem of intermediate cases resorting to *sui generis rules* which are contained within a spectrum whose extremes are order (i.e., the market) and organization (i.e., the state). A similar reasoning applies to Buchanan's club theory.

We need degrees of abstraction rather than absolute concepts or reasoning by extreme. The need is not just conceptual (Whitman 2009), but also empirical. For the governance of most types of goods actually lies at the interstices between spontaneity and design. We do not have just have either-or trade-off in kinds of governance, but also trade-offs in degrees of governance (Langlois and Garzarelli 2008).

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