



Order Without Law: How Neighbors Settle Disputes

Robert C. Ellickson

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In *Order without Law*, Robert Ellickson shows that law is far less important than is generally thought. He demonstrates that people largely govern themselves by means of informal rules--social norms--that develop without the aid of a state or other central coordinator. Integrating the latest scholarship in law, economics, sociology, game theory, and anthropology, Ellickson investigates the uncharted world within which order is successfully achieved without law.

The springboard for Ellickson's theory of norms is his close investigation of a variety of disputes arising from the damage created by escaped cattle in Shasta County, California. In "The Problem of Social Cost"--the most frequently cited article on law--economist Ronald H. Coase depicts farmers and ranchers as bargaining in the shadow of the law while resolving cattle-trespass disputes. Ellickson's field study of this problem refutes many of the behavioral assumptions that underlie Coase's vision, and will add realism to future efforts to apply economic analysis to law.

Drawing examples from a wide variety of social contexts, including whaling grounds, photocopying centers, and landlord-tenant relations, Ellickson explores the interaction between informal and legal rules and the usual domains in which these competing systems are employed. *Order without Law* firmly grounds its analysis in real-world events, while building a broad theory of how people cooperate to mutual advantage.

Order Without Law: How Neighbors Settle Disputes Details

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David says

The primary theme of the book is how people settle disputes or decide how to share work or costs by informal means rather than using a government legal system or other organized institutions. I would think, in terms of humans, this could be done by using anthropological studies of hunter-gatherer or other pre-government societies. Perhaps, the author wanted to study the question in a context in which there was a government structure available as a potential choice. To the extent the purpose was to consider the applicability to modern society, I had question about the choice of areas to focus investigations.

The most emphasized example was a community dominated by cattle ranchers in very rural area in far northern California. (The discussion surrounding these ranchers and the relevant laws takes up the first 1/3 of the book.) The author didn't simply stumble across the community and decide it had something to say. He searched for the "right" ranching area and chose this one. In that it is rural, has many people who try to ranch as was done in the "good old days," that these people are small businesses with some employees, that ranches must be very large so they are even more spread out than family farms, that these are more homogeneous communities, that in such small communities it's possible to know everybody's reputation, and such reasons these might not be fully translatable to much of developed nations. The other examples he repeatedly and/or at length describes are atypical of modern society - the whalers of the 1700s / 1800s, lobster trappers, etc. There are passing references to other examples which are more related to modern society, but are not central pillars of the work.

(The authors discussion of game theory's Prisoner's Dilemma seemed especially distant from these communities in which people know each other and their reputations, and can communicate and meet with each other. and are real people with social emotions and norms.)

Only in the closing chapter is there real consideration of informal arrangements in contexts such as residential neighbors, or between business and consumer, or landlord and tenant. Since the ranchers do employ ranch hands, the ranching study could have taken a look at this. This could have been significant as the book discusses the question of why or under what circumstances ranchers, whalers, etc. tend to choose informal as opposed to legal routes to resolve issues.

The book suggests a few reasons for which social norms develop / survive and are preferred to legal approaches. One is "transaction costs" - the expense of each method's procedures, and the difficulty in establishing / getting agreement on how a rule applies to a particular case. Sometimes, a question of the fairness of third parties who will make a decision using a certain route is a factor. It sounds as if there can also be more of a sense that this is "our" norm, more than a feeling this is "our" law. I had the impression the ranchers seem as if they may feel a sort of social pressure or community membership in not questioning "the way it's always been done." The author also talks about "welfare maximizing." That may make sense in that it can be more efficient for one of the ranchers to fix a border fence rather than coordinating both ranchers on the same job. However, in something like an employer-employee agreement the question may be more like having a pie and deciding how to divide it.

One way or the other, the ranchers studied were stuck in their view based on their social norm. They believed a part of their norm was also the law - and when they found court judges and insurance adjusters telling them the law was not the same as their norm, they concluded the judges and adjusters were incompetent and kept

believing their norm was also the law.

On the rare occasion the book refers to conscience as a factor, it treats conscience as a strictly learned motive. The book was written when the universality of conscience in all cultures was not yet widely treated as indicating an innate conscience with more specific rules being developed by each culture.

Near the end of the book, the author suggests ways to check his hypothesis about choices of informal rather than legal approaches - in situations more typical of modern society. And he tends to give passing references to information which is consistent with his hypothesis in those modern situations. For instance, he discusses landlord-tenant issue handling. He tells us that a study indicated that in Green Bay, WI, landlord-tenant issues tend to be dealt with informally and people seem generally satisfied. But in NYC, he tells us these issues tend to be handled legally, and he thinks NYC is atypical. I can see there may be truth in this. In smaller communities there are at least two factors which may contribute to greater cooperation. First, there's greater familiarity with others' reputations and, therefore, concern about one's own reputation. Second, those who don't want to be bound by the effects of reputation, people who are more greedy / ambitious, and people who want to take advantage of larger numbers of others will gravitate to cities and other larger communities. Small communities end up with a smaller percentage of people who would weaken informal channels, and larger communities end up with higher percentages. But the author doesn't develop the question for larger communities. Rather, he argues that rent control laws just make landlords do less maintenance, so those laws don't really help. His perspective is that a reasonable landlord-tenant deal is a rent consistent with market-rate values - so less rent "requires" making the housing of lower market value. He also refers to rent control harming symmetry. My impression is that he views landlord and tenants in a free market as on a level playing field, and rent control disrupts that.

So, I have various questions about his thesis. Do we want to be strictly market-based, and does market-based actually provide a just neighborly arrangement in general? Are there problems with agreements between more powerful and less powerful individuals? How do we maintain enough of the benefits of informal arrangements while having a legal system for cases in which one side is not motivated by or corrected by informal mechanisms?

My personal experience includes having felt a need to take a company to Small Claims Court a few times. What I observed about Small Claims Court in general is this: Average people waiting for hours for their case's turn to come. In the large majority of cases, a representative from the company's law firm would stand up and give an unimpressive reason for postponing the case. The trick was that the companies were permitted to postpone on two occasions without any special reason. So, it appeared companies virtually always postponed twice. Meanwhile, if the average person ever failed to be in the room at the moment the case was called, the case was permanently closed. So postponing meant three chances the claimant would have the case dropped. It's hard for me to imagine that the same companies that would play the game this way would be inclined to make fair deals via informal agreements. Generally, I ask, if informal arrangements can serve the purpose, what lead unions, consumer groups, environmental groups, etc. to go to the expense and effort to establish laws? Surely, there were labor disputes in small communities in the good old days which weren't settled informally to mutual satisfaction.

So, what is the relative benefits of informal and legal paths in modern society? Business interests can exert much influence on legislation, so the legal system may not be a level playing field. City people and such often assume there is limited sense of social norms of fairness or opportunities to get a better deal through informal interactions with businesses. But I've known some instances when people talked businesses into

taking better action than I would have expected was possible. It would be interesting to see a thorough study indicating what consumers / employees / tenants can actually get from businesses through informal approaches as opposed to what they can get through formal approaches (legal action, union contracts, etc.)

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This is an issue for large societies: How do we have the egalitarianism which is maintained in small societies in which everyone knows each other's reputation? How do we minimize the tendency to view the people we know (or have been told of by people who know them personally) as the well-behaved "us" and the people who we don't have the personal knowledge of as less well-behaved "them"? How do we balance the fact that individuals practicing reciprocity can maintain community spirit and a more directly perceived interdependence, and a social safety net that provides more security for the needy but makes the reciprocity indirect and "hidden"?

Richard says

Recommended by Cass Sunstein in *Five Books to Change Liberals' Minds* :

Having read these books, you might continue to believe that progressives are more often right than wrong, and that in general, the U.S. would be better off in the hands of Democrats than Republicans. But you'll have a much better understanding of the counterarguments -- and on an issue or two, and maybe more, you'll probably end up joining those on what you once saw as "the other side."

April says

one of my favorite ever social science books. This guy has forgotten more about property rights than most other "experts" will ever learn.

This book presents the best study I've seen on how much formal rules effect actual behavior with respect to property rights. The answer was, by the way, not so much. The finding has been confirmed in more recent work by researchers looking for (and usually failing to find) impact from the oh-so-popular land titling projects in developing countries which aim to "free up" informally held real estate assets by giving owners formal title.

Sasha says

Thank god Ellickson is an engaging writer, because this is a doozy about cattle ranchers in Shasta, CA, and their interpretations of liability law relevant to cow-car accidents in open and closed ranges! Ya know, it's another institutions classic, and I don't want to complain about the engaging writing...the sort of ~intrigue~ approach he took, including a few Big Reveals that Change Everything!, was not the best for this type of thing, or for a reader who has like 3 days to read this thing and just wants the most important points up front.

John Carter McKnight says

Brilliant. One of the best academic books I've read. Both an outstanding ethnography (dispute negotiation among Northern California cattle ranchers in the 1970s) and a strong, rigorous and useful theoretical core.

Ellickson breaks from both the law and economics and law and society movements of the 1980s to develop a rigorous theory of choice of dispute resolution mechanisms informed both by games theory and anthropological investigation across a range of contexts. His theory is clear, falsifiable, and well-fit to his and others' data.

My only regret is the age of the work: I don't know what's been done more recently in the field, and I'd certainly like to read a contemporary sequel by this excellent author.

Alex Weiss says

Compellingly argues that social norms are underrated, in that they promote efficient outcomes in close-knit communities. The argument would have benefited from addressing surplus extraction (why does it not interfere with efficiency) and the endogeneity of close-knit communities (is the argument backwards? do close-knit communities form when social norms are efficient?).

The book suffered from skirting more controversial, but widespread norms, that are not obviously welfare-enhancing, such as sexual taboos, and intra-household gender disparities.

Paul Klinger says

Recommended by Joe Sanders

Damian says

Pros: good research and thorough.

Cons: heavy on theory and seems to be what Coase already said

Coase says efficiency occurs regardless of initial property right allocation, assuming bargaining is possible and not too costly.

What did Ellickson find? Close-knit groups achieved the welfare-maximizing outcome regardless of what the law said the property rights were because they knew each other and spoke with one another.

It's slightly different but I fail to see the key distinction here. Anyone care to elaborate?

Margaret Sankey says

This seems to be the flipside of the "amoral familism" of the Italian village--a study of the legal anthropology of Shasta County California and its evolution of informal enforcement of necessary fence-building, stray livestock and damages norms amongst farmers, ranchers and town residents, as well as conflicts with hobby farmers and outsiders. Good reputations, the need for reciprocal help (brushfires, snow removal, construction tools), likelihood of long association between neighbors, as well as the unsuitability of California law (open and closed ranges, tort rules on collisions with cows in the road, etc.) and absence of people to enforce it have produced a working system Ellickson studies as it comes into conflict with a couple of persistent free-riders (Frank Ellis, outsider and obnoxious hobby rancher) and travelers whose cars get smashed up and sue. This is a system intimately familiar to me from Gem County, and I wish Ellickson would follow up with a study of what must be more conflict as more outsiders come in and disrupt it. With useful comparisons to evolved norms amongst orchardmen (joint responsibility for bees), whalers and, amusingly, academic photocopying banditry.

Doug Cornelius says

An interesting read on the philosophy of law and social norms. Surely, it's a read for libertarians.
