Notes on Communal Rights

Communal rights are appropriate when transaction costs associated with the exchange of the property rights are relatively high compared to any possible misallocation of rights because there is no right of exclusion. However, they can lead to several consequences. As discussed before, they can lead to hyper-congestion. In addition, they also increase the spread of information but may discourage the gaining of information by the first party. How is this possible? This is because if the first party/entity is required to disperse any information that it has collected, it cannot reap nearly as much benefits from its information and so, would lose its incentives to actually incur costs to collect the information.

One relevant example is the patents given to pharmaceutical companies. Patents grant a monopoly on the use of newly created products for about 20 years. These are granted in order to incentivize companies to procure information that has high marginal costs of research, but which can be disseminated at a low marginal cost. However, if certain drugs or cures to illnesses have large benefits to society, different institutions (like the government) can subsidize the research so any findings could be made public much sooner than if private institutions have found the cure.

Patents, however, do not apply to information about exotic plants since the information about these plants are almost costless to collect. Hence, people may not place patents on unique plants.

Another example is with collecting information about photographs. To determine whether a photo is an authentic work of a famous photographer, an individual needs to consult experts (which costs money) to inspect the photograph. The information that that individual garners can then be used for his advantage or else he would not have spent the money to consult the experts in the first place. You can then connect this example to that of oil deposits.

There are times, however, when disclosure has to be made. In terms of house sales, all "latent defects" have to be confided with potential buyers. The difference in this situation is that the information about the house is almost costless for the owner/seller of the house to collect as such information becomes apparent with the ownership of the house. The law then demands that all defects be shared with the potential buyers. If not, each potential buyer will have to utilize resources in order to collect this information. With multiple potential buyers, this can be very costly to society and is very inefficient.

Criminal laws stipulate punishments for individuals who are aware of having AIDS but fail to let their intimate partners of their disease. Although this law was meant to prevent the spread of the disease from the carriers' negligence, it nonetheless creates other problems. It discourages people from actually being tested so that they will not be liable for spreading the information about whether they have the disease or not. Luckily, improvements in the treatment make it so that more people would be willing to undergo testing to know whether they need the treatments or not.

Hence, unless the law states otherwise or the ideas are similar to "latent defects," private information may be used to gain some benefits. However, if information (or "dirt") about an individual is acquired, the person who possesses such information may not sell it back to the individual (blackmail). This is because blackmail encourages costly gathering of information which is of no use except as a transfer. We would rather have the information be used in productive ways and so should not be used for the sake of just blackmailing someone. In other words, we don't want people to dig up dirt and just bury it up again.

How about the names and pictures of celebrities? Given that the public knows them, can they be used as a communal right? Actually, this is not the case. This is because the names and *distinct* pictures (and "phrases") of celebrities are part of their "product." This means that in their line of work (being a celebrity), their pay comes from the names and *distinct* looks associated with them. I am emphasizing the word "distinct" since the product cannot have too many resemblances or else the look that the celebrity has is not exclusive to that individual. This is the same explanation regarding the case with Kim Kardashian v. Old Navy.

Even "catch phrases" must be distinct enough or else, no party can claim a trademark on it. Take the case of Dunkin' Donuts which filed to trademark the phrase "America's Best Coffee." The patenting agency rejected their application, explaining that such a phrase is too generic.