A. A Short History of the Institution

The Max Planck Institute for Research on Collective Goods was founded in 1997 as a temporary project group “Common Goods: Law, Politics and Economics” and transformed into a permanent institute in 2003. Its mission is to study the law, economics, and politics of collective goods, defined to encompass all those goods whose provision and enjoyment are treated as community concerns.

In the early years, the institute had teams of lawyers and political scientists, led by Christoph Engel and Adrienne Héritier. When Adrienne Héritier left in 2003 to accept a joint chair at the European University Institute and the Schuman Centre in Florence, the Max Planck Society appointed the economist Martin Hellwig to replace her. At this point, therefore, the institute consists mainly of lawyers and economists.

In addition, there is a small group of psychologists. Initially brought in by Christoph Engel to support his behavioral law-and-economics approach to institutional analysis, in 2007 this turned into an independent Junior Research Group Intuitive Experts led by Andreas Glöckner.

From the beginning, the work of the institute had three main goals: It aimed to better understand collective-goods problems, to find better solutions, and to understand the political and legal processes of defining problems and choosing solutions. In the years of the project group, major research efforts concerned

- the law and politics of waste avoidance, recycling, and disposal,
- the governance of the internet, and
- the transformation of the nation state into a multi-level system of governance.

Today, the major research efforts of the institute are concerned with

- the analysis of incentive problems in public-good provision,
- the behaviorally informed design of institutions for the provision of collective goods,
- the organization and regulation of network industries: sector-specific regulation and antitrust
- the regulation of financial markets and financial institutions in order to safeguard financial stability. The first two lines of research are intended to enlarge our understanding of foundations at a fairly general level. The last two lines of research are concerned with applications. Research objectives and strategies are laid out in this report.

B. The Overarching Framework

Air, atmosphere, the ozone layer, climate, water, the world’s oceans, land, quiet, normal radiation, landscape, fauna and flora, genetic diversity: the policy challenge of providing and distributing such natural resources was the impetus for the Max Planck Society’s deliberations to establish a new research facility in the humanities section. However, even in the process of establishing the facility, it became clear that man-made goods also pose structurally related challenges. The protection of our cultural heritage, language, streets, energy networks, the liquidity of markets, the reliability of finance institutions, the stability of the finance system: all these pose very similar problems. This was the reason that the Max Planck Society did not establish an institute for environmental law or environmental policy, but deliberately founded a project group for research on collective goods.

The document on the founding of a research facility describes the problem that needs to be solved as follows: “While, on the one hand, these goods need protection, on the other hand, it is necessary for human life that they remain accessible and are used. This gives rise to a multilayered
The multilayered governance problem mentioned in that document arises because collective goods always concern numerous people simultaneously, sometimes the community as a whole, including future generations. Were the dealings with collective goods, their provision and financing, left solely to the decentralized decisions of individuals, it is to be feared that the common dimension would be neglected; insofar, collective decisionmaking mechanisms are necessary. Paradigmatic for this view is the economic concept of non-excludable public goods. The individual who merely attends to his own use of the public good neglects the use that others draw from it, insofar contributing less to the cost of providing this good than is socially desirable. To take one example, according to this argumentation schema, the dangers to the natural environment because of human activity, including the well-known “tragedy of the commons”, arise because individuals give their own use of the environment priority over the maintenance of the environment, which, as a public good, benefits everyone.

The concept of collective goods is, however, more encompassing than the economic concept of public goods. It is in principle possible to make the use of the services of law, schooling, or even streets, excludable, but because open access to these goods is thought superior, it is viewed as a constitutive element of the community. The use of other goods, such as the services of the large networks of telecommunications and the post, the energy industry and the railways, is tied to the payment of user fees; here too, however, regulations on non-discriminatory access and the universality of services are to ensure that the communal dimension is accounted for. Finally, in a further class of cases, the concern is with the quality of the services and relations, which are in principle left to the decentralized decision-making of individuals in the markets; here, the communal interest, for example in the reliability of financial transactions, can aim to protect both the parties involved and the system, which can hardly function without reciprocal trust in one another.

The negative assertion that the community dimension will be neglected if the dealings with collective goods, their provision and financing remain solely in the hands of decentralized decision-makers still gives us no positive content: It provides no indication of how the community dimension is to be properly dealt with, or which advantages and disadvantages are implicit in the various institutions and rules for dealing with collective goods. In principle, every system for dealing with collective goods faces the difficulty that the required information is not readily available. Insofar as the assessment of the involved parties is relied upon, a dilemma arises: the individual has an incentive to downplay the value that the common good has for him if he expects that he will be required to pay for it, while he has an incentive to exaggerate the value that it has for him if he expects that it will not cost him anything. This dilemma also occurs for purely private goods, but it plays a subordinate role there if the good is provided in a competitive market, in which the individual has no power to influence prices. This mechanism is not available for common goods; the greater and more anonymous the involved community is, the greater the magnitude of the described dilemma.

There are no one-size-fits-all solutions for this dilemma. It is rather necessary to determine in detail which advantages and disadvantages the rules and institutions under discussion have for each of the various collective goods. Under consideration are governmental activities, i.e., political or administrative decision-making, market-based, contractual solutions, or arrangements based on individuals’ decisions, yet under the influence of state-determined norms about minimal standards, liability laws, etc. The relative advantages and disadvantages of the various alternatives depend on which characteristics the collective goods under discussion possess and what precisely determines the communal dimension of the good in question.

The institute combines basic research and practical applications, for one, by dealing with the theory of collective goods and their provision under diverse abstractly formulated general conditions, and, for another, by developing concrete proposals for the design of (legal and extra-legal) institutions for
the provision of individual collective goods. This is of necessity an interdisciplinary endeavour. Economists are needed to understand and structure the allocation and incentive problems that arise. Political scientists are needed to understand the mechanisms of political decision-making used for these goods. And lawyers are needed to develop proposals for the design of rules and institutions in light of concrete legal norms, so that they fit the legal order. The selective reception of results of the neighbouring disciplines is not enough. Especially in the analysis of concrete problems, it is important that all three disciplines are intensively engaged with one another. For example, the interplay between decentral market mechanisms and political decisionmaking mechanisms needs to be studied jointly by economists and political scientists. To judge the allocation effects of certain decisions of substantive law or procedural law, economists and legal scholars must work in collaboration.

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