Reclaiming commons – old and new

Presentation by John Hepburn to the "Other World's conference"
University of Technology, Sydney, April 2005.

The law will jail the man or woman
Who steals the goose from off the common
But leave the greater villain loose
Who steals the common from the goose

I was lying in bed the other morning, listening to the radio news. On came the soothing and comforting voice of our Prime Minister, John Howard. In amongst his posturing about some issue or another, he said "*Nothing is ever free – and nor should it be.*" It rolled off his tongue like a truism. Sure - nothing is ever free – and nor should it be. Actually, lots of things used to be free – and some things still are. Others should be. They're called commons.

One of the first and the best books that I've ever read about the global environmental and social crisis is a book called "Whose Common Future" by the publishers of *The Ecologist*. It is a scathing response to the Brundland Report titled "Our Common Future" – which resulted from the 1992 Rio Earth Summit (UNCED – United Nations Conference on Environment and Development).

There is a quote from the book that sticks in my mind as one of the best summaries of the essence of commons, and of the struggle to defend them:

> *The best that can be said for the Earth Summit is that it made visible the vested interests standing in the way of the moral economies which local people, who daily face the consequences of environmental degradation, are seeking to re-establish. The spectacle of the great and good at UNCED casting about for "solutions" that will keep their power and standards of living intact has confirmed the scepticism of those whose fate and livelihoods were being determined… For them, the question is not how their environment should be managed – they have the experience of the past as their guide – but who will manage it and in whose interest.*

The key question remains – who makes the decisions and in whose interests – and for me, this speaks to the essence of what is important about commons.

A common is a resource (be it physical, spatial, conceptual) that is managed by the community, for the community. The contentious question then becomes 'who is the community'. The answer invariably depends on the resource in question.

There is a widely held, and somewhat romantic myth that 'commons', by definition, have no boundaries, and are open to all. However, if we look at the most commonly celebrated example of commons, we see that this wasn't generally the case. In the common lands of England, the common was managed by the community for the community. But the community didn't extend to everyone in the world, or even to everyone in England. It was a common for a particular geographical community of people. The management of common was mediated by the social relationships between the people within the community. Everyone in that community benefited from the common, and they therefore had a stake in its management. But people were accountable for their use (or mis-use) of the common through the social relationships in the community in which they lived.

Commons are fundamentally about people being able to access resources and to make decisions about those resources to the extent that they are affected by those decisions. If you aren't going to be

impacted by a decision, then you have no right to participate. If you are impacted, then you do have a right. In this way, commons are a very real embodiment of direct, participatory democracy.

The vexing problem that commons pose to capitalism is that commons are not owned by anyone. If something isn't able to be owned, how can you put a value on it? If something doesn't have a market value, how can you steal it? Or more to the point, why would you want to steal it if you can't sell it to somebody else later at a higher price? If it can be said that capitalism has an essence, then the vast body of empirical evidence over the past century points to that essence being the appropriation of wealth from the many by the few. Of course, appropriation is just a polite word for theft. And the process of theft is necessarily preceded by a process of enclosure – of putting boundaries around, and values upon resources.

The enclosure of the commons in England has been widely documented. In order to undo the system of commons that supported so many rural communities in England, the aristocracy introduced a series of 'enclosure bills' that effectively put boundaries around – or enclosed – land in order that it could have a defined value and be redistributed as private property.

So if you're interested in predicting where the next big transfer of wealth from public to private hands is going to happen, you need to look for processes of enclosure. In 17th and 18th century England it was the enclosure of common lands. Today, the enclosure of commons, and the defense of commons looks very different.

Many of the important struggles over commons today relate to cutting edge technologies in information technology, biotechnology and nanotechnology. In times gone by, land was the primary basis of economic wealth. Hence the importance of controlling land. Today, the basis of wealth in our economy has shifted and continues to shift. We moved from the Agricultural revolution in the 18th century (accompanied by the enclosure of common lands) to the industrial revolution in the 19th century (accompanied by the development of a patent system for intellectual property), to the information revolution in the 20th century (with an expansion of the patent and intellectual property system) and now the biotechnology and nanotechnology revolutions – accompanied by patents on life and now patents on matter.

As the basis of economic wealth has become more mobile and more global, the struggle over the commons has also become more global. The global nature of information and trade, as well as the emergence of global environmental problems such as climate change and the hole in the ozone layer, create another layer of complexity and abstraction in terms of the management, enclosure or defense of commons.

When we think of defending the commons today, the first image that springs to mind is a historically rooted one – of the landless people of Brazil occupying private farms to reclaim them for food production. But a lot of the key contemporary struggles are far less romantic than this - and the politics less obvious.

The internet is a newly created common – the most celebrated part of which is the 'open source software' movement. This is a common that is under threat in a variety of ways that technological illiterates such as myself can only barely understand.

Broadband and radio frequencies? Who gets to define who has access to these common resources and at what price, and in whose interest? Large corporations didn't get virtually exclusive access to the airwaves by osmosis. They did it by establishing rules, defining boundaries – by a process of enclosure that has resulted in exclusive access rights for the already powerful media conglomerates.

The biotechnology revolution has been hyped up to be the next industrial revolution – and it was preceded by the development of patents on life. Like other examples, the enclosure happened without much media fanfare, most people didn't hear about it and many still don't know about it now.

The idea of patents and of intellectual property has been around for a very long time. Galileo received a patent in 1594 for his horse-driven water pump. Cooks were granted one year monopolies over new recipies in the 7th century B.C. The right to a copyright or patent is the only right included in the body of the US constitution (the Bill of rights was adopted later as a separate document). What is new is the degree to which patents (monopolies) have been extended.

The boundaries were gradually pushed. In 1873, Loius Pasteur was awarded US patent No.141,072 for a strain of yeast – the first of several patents for life forms. However the patent was for the use of the organism within a process, not just the organism itself.

In 1972, a researcher with General Electric filed for a patent in the US on a genetically engineered soil micro-organism that was useful for cleaning oil spills. Finally, after various rejections and appeals by the parts of the US patent office, in 1980, the US supreme court, in a 5:4 ruling (Diamond vs Chakrabarty), affirmed that a living, human-modified organism is patentable[1]. In 1988, the first patent was granted on a living animal – the Harvard oncomouse[2].

The extension of patents to cover living organisms – and parts thereof – has laid the groundwork for the next big heist. The biodiversity that the capitalist industrialist system has spent the last 100 or so years trying frantically to destroy, is now regarded as the basis for the next industrial revolution and is rapidly increasing in value. The framework for enclosure is in place and our genetic heritage – the biological diversity that is and that sustains the richness of life on planet earth - is now up for grabs. Research teams of some of the world's largest corporations are scouring the surface of the earth for potentially valuable genetic property and taking patents on anything from cell lines from indigenous people in Papua New Guinea, to seeds of staple food crops.

Food is an interesting example. Most people don't really think of food as a common. To be truthful, most people in our culture don't really think about where their food comes from at all. But most of the basic foods that we eat today have been developed over thousands of years by peasant farmers in different parts of the world. It's true to say that food grows on trees, but most foods didn't just develop by accident – they were actively bred. The genetic diversity of our foods is really a common. It has been managed through reciprocal relationships between farmers for millennia – growing, developing and sharing seeds.

The combination of plant breeder rights and patents on life has enabled food to be at least partially enclosed and privatized. The development of genetically engineered foods and in particular, 'terminator technology' (breeding sterile seeds) is the extreme example.

But the process of enclosure and commodification of food is also strongly supported, and in some ways even led by a process of enclosing our imagination – of shifting our desires and the way that we think about food.

Wholefoods are part of our common heritage – they are difficult to enclose (notwithstanding the aggressive attempts to do so) because they grow freely on trees and in the earth. However, if corporations can create a demand, indeed an addiction, for processed, synthesized foods that cannot be replicated easily by everyday people – they can be trademarked or have some other form of monopoly protection. So the process of enclosure of our food commons proceeds not only through the

[1] Diamond vs Chakrabarty, 477 U.S. 303 (1980)
[2] U.S. Patent No. 4,736,866 (U.S. Patent and Trademark Office)

increasing monopoly control over seeds – but also through the social control of how we think about food and the kinds of food that we want to eat – by limiting our collective imagination.

For example, many people are no longer willing to eat fruit with blemishes, or vegetables with worms. Indeed fruit and vegetables themselves are off the menu for an increasing number of people whose sustenance derives almost exclusively from highly processed industrial foods. A similar shift is also evident in countries such as India where the majority of people currently exist outside of the formal food economy (ie they grow their own food, and trade within their community) but where corporate marketing is being used effectively to encourage people to abandon traditional food systems and adopt much more passive roles as consumers of industrial food.

Our current industrial food system represents an unprecedented human experiment, whereby virtually an entire generation will grow up with only a cursory understanding of where their food comes from, and will be largely unable to produce their own food. As time progresses, the limiting of our imagination will be reinforced by the limiting of our lived experience and our skills, ensuring the effective privatization of food – through either legalized monopolies or through, as Vandana Shiva would say, 'monocultures of the mind'.

The latest frontier is the patenting of matter – of the building blocks of our universe – in order to pave the way for investment in the nanotechnology revolution. There are already existing patents on elements (Americium and Curium – granted to Glenn Seaborg) and it is commonly agreed that you can secure patents even on an existing element.

Scientists are manipulating matter at the nano scale (one billionth of a metre) and finding that common materials assume radically different properties. Much as with genetic engineering, they argue that nano materials are new and different in order to secure patents, but then argue that the materials are in fact the same everyday stuff we've been using for millennia in order to avoid regulation and safety testing. So far this strategy seems to be working.

The launching pad of the global nanotechnology industry is being built with around 3,000 new nanopatents a year – around 90% of which are applied for in the USA. If previous technological revolutions are anything to go by, the nanotechnology revolution will once again result in the wholesale transferal of wealth from the many to the few – as further commons are enclosed and appropriated.

The struggle of commons against enclosure is an ongoing, historical struggle. The terrain is shifting…from land, to ideas, food, water…to the very building blocks of life and matter. Amongst the new enclosures, however, there is a resurgence in the creation of new commons – of creative commons – and networks of resistance. The open source software movement has defied critics and emerged as a potent economic and political counter to Microsoft and other monopoly patents. And like the fence jumpers and squatters of the physical world, the cyber world has given expression to thousands of creative ways of undermining intellectual property.

Our challenge is to resist the enclosure of our imagination….to imagine new ways of reclaiming and creating commons. For the commons are not static. There is no fixed quantity of common. They are created and renewed endlessly by people in communities the world over. Woven like an endless, shifting tapestry. We need to be bold enough to remember our common heritage. We need to look for emerging enclosures and name them for what they are – theft. And we need to imagine not only our common futures, but also our future commons.

As a celebration of the resistance that is already happening, I'd like to share a poem that captures the spirit of the creative commons – an open source poem…

This poem is copyleft,
you are free to distribute it, and diffuse it
dismantle it, and abuse it
reproduce it, and improve it
and use it
for your own ends
and with your own ending

This is an open source poem
Entering the public domain
Here's the source code,
the rest remains
for you to shape, stretch and bend
add some salt and pepper if you want
share it out amongst your friends

Because I didn't write this poem, I molded it.
picked up the lines out of a skip and refolded it
as I was walking on over here,
rescued leftover ideas,
on their way to landfill,
found screwed up fragments
and found them a use.

Because, think about it
I can't tell you anything truly new.
There can only be few more new ideas to be thought through.
So should we treat them as rare commodities, high value oddities?
Probe the arctic reserves and other sensitive ecologies
for new ideas buried deep beneath the permafrost?
hunt them out of the cultures till the cultures are lost?
then suffocate them with patent protection?
No! we should re use and recycle them
Pile our public spaces high with ideas beyond anyone's imagining..

So I steal a riff here and a rhyme there,
a verse here and a line there
pass them on around the circle,
roll the words, add a joke
here go on.. have a toke,
does it get you high?

This poem is indebted to Abbie Hoffman, Gil Scott Heron, Jim Thomas and Sarah Jones,
This poem is indebted to all the words I've read and the voices I've known
This poem is a composite of intellect, yours and mine.
This poem is RIPPED OFF! every single time

Because intellectual property is theft
and piracy our only defence left against the thought police.
when no thought is new
its just rewired, refined, remastered and reproduced
The revolution will be plagiarised
The revolution will not happen if our ideas are corporatised.

So STEAL THIS POEM
Take it and use it
for your own ends
and with your own ending

This poem is copyleft,
All rights are reversed

(stolen from Claire Fauset)