Intellectual Commons as a defensive response to the enclosure of knowledge. A critical view.

Mikel Díez Sarasola

eman ta zabal zazu

Universidad del País Vasco

Euskal Herriko Unibertsitatea

Third International Conference on Cultural Political Economy
7-8 September 2017, Lancaster University, UK

Cultural Political Economy Research Centre CPERC

Emergence of multiple Intellectual Commons

open source initiative

OPEN ACCESS

science commons

OPEN BIOMEDICAL INITIATIVE
WE HELP

CENTER FOR OPEN SCIENCE

creative commons

CC epSos.de

Expansion of proprietary material

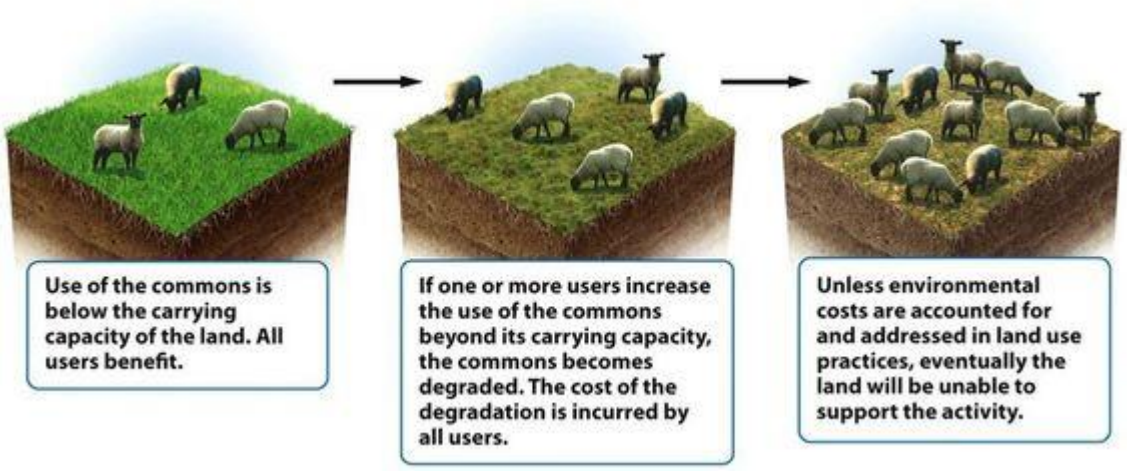
- By commodifying knowledge previously in the public domain. (living materials by isolation –Chakrabarty-, term extension)
- By appropriation of traditional knowledge of (indigineous) communities.
- By expanding IPRs owner prerrogatives to restrict uses of property material:
  - research and experimentation.
  - User and enjoyment of protected works (DMCA)
- By expanding territorial/spatial enforcement of IPRs (TRIPS)

Second Enclosure?

- Some authors observe similarities with the enclosure of Common land in England in the Eighteenth century

Tragedy of the commons: not so tragic

- Tragedy of the commons related with problems of overuse and underinvestment (Garret Hardin)



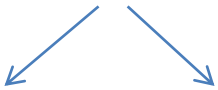
- Elinor Ostrom. Commons no so tragic.

Intellectual Commons: same family?

Traditional Commons

- Unlike knowledge, tangible assets are limited and rival Conflict based on its limited use. Traditional commons answer the question. Who takes what? Sequence of the debate:

1. *Res nullius*
2. Property / Commons



Collective Private

3. Tragedy of the Commons → enclosure individual private property
4. Eventual commons contradicting the announced tragedy of the commons. (Olstrom).

Intellectual Commons: same family?

- Intellectual Commons is a response to a different issue.
- Unlimited. Non-rival. Social value of knowledge: cumulative & network effects.
- Different terms of debate: Not a limited-resources issue. which incentive to maximize social welfare?

  public domain –artificial scarcity (IP)- propertization.
- Sequence:

1. Public domain.
2. Commodification.
3. Privatization.
4. Commons as a defensive reaction against excessive expansion of IP.

Expansion of IPRs. Tragedy of anticommons

- Material and spatial expansion of IPRs generates contradictions and shortcomings:
  - Issues of erosion of experimentation. Madey v. Duke University, which greatly limited the scope of the experimental-use exception.
  - Impairment of academic activity. Availability of materials and knowledge.
  - Blocking follow on innovation.
  - Undermining access to culture.
  - Misappropriation of traditional knowledge
- Contradictions of the capitalist system. *For each capital wishes to pay nothing for its knowledge inputs but wishes to change for its intellectual output (R. Jessop)*
- Tragedy of the anticommons.

Critical approach to Intellectual Commons as the solution to the shortcomings of IPRs regime

- Commons approach some beneficial perspectives: collective and ecological approach.
- Intellectual Commons does not face an objective scarcity but an artifical legal made scarcity.
- It does not question today's IPRs configuration. Determinism. It equates the objective limitation of tangible assets to the more than questionable social and contingent institution of IPRs.
- IPRs as the result of social relations.
- What about adjusting the scope of IPRs themselves?