

Commons, Piracy, and the Crisis of Property

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Abstract: This article takes the politicisation of copyright and file sharing as a starting point to discuss the concept of the commons and the construction of property. Empirically, the article draws on a series of interviews with Pirate Party members in Sweden, Australia, Germany, the UK and USA; placed in the theoretical framework of the commons. We argue that piracy, as an act and an ideology, interrogates common understandings of property as something self-evident, natural and uncontested. Such constructions found liberal market ideology. The article has two broad aims: to briefly outline how the enclosure of the commons can be applied to different kinds of resources, from the physical commons, to the institutional and finally the cultural commons.; and to discuss the way that piracy highlights the emergent crisis in private property rights, brought to the fore by the global financial crisis and ongoing privatization of public resources. We conclude by questioning what new modes of enclosure are emerging in a digital economy driven by excessive data mining and centralized streaming services.

Keywords: Piracy, Pirate Party, Commons, Private property, File-sharing

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In the 1995 cult classic film, *The Usual Suspects*, the character played by Kevin Spacey, 'Roger 'Verbal' Kint' states that: "The greatest trick the Devil ever pulled was convincing the world he didn't exist" (Singer and MacQuarrie 1995). 'Verbal' is describing the existence of a master criminal, Keyser Soze, that everyone feels is everywhere and hears everything, yet no one has ever seen and, in fact, no one is really sure exists.

We choose to enter a discussion about the commons, property and piracy from this position because it captures contemporary conceptualisations of property rights. Rather than being understood as something socially constructed, contemporary neoliberal economic orthodoxy imagines property rights as a natural phenomenon that exists everywhere and is never to be challenged. Like Verbal's Devil, neoliberal property rights are invisible, incontestable and undoubted.

1. Introduction

A more conventional way to make this point is to draw on Michel Foucault's "triangle of power" (2003). In his lectures at *College de France* in 1976, Foucault discusses mechanisms that establish a link between "power, right and knowledge" and asks, "What rules of right are implemented by the relations of power in the production of discourses of truth?" (Foucault 2003, 93). The triangle is sourced to sovereign power, whether that of the monarch, or "King" (ibid., 94), the "sovereign power" of states (Agamben 2005), or the current neoliberal regime (Arvanitakis 2007). This is a regime that has re-shaped global economic priorities around deregulation: that is, the removal of economic and other safeguards in favour on unrestrained profit-seeking, as well as reduced government spending on essential services.

In this context, the neoliberal property rights agenda is clear-cut and near universal. Property rights are perceived to be natural and normal, such that alternatives are not seen to even exist (Hardt and Negri 2004; Lewandowska and Ptak 2013). It is important to note then when discussing neoliberalism, we are not only referring to a series of economic policies that

prioritise the unregulated markets and private property rights (Dawson 2013), but in the words of Giroux, “a slavish celebration of the free market as the model for organising all facets of everyday life” (2003, 4). According to Mirowski (2001, 432), this ideological position leads to a predisposition to oppress alternatives leading to a single moral genealogy of our histories.

Socialism, communism and fascism may all be presented as ideological positions, but neoliberalism like “Verbal’s” Devil, is invisible, normalised beyond a tangible existence, simultaneously everywhere at once, yet nowhere to be seen. That is to say, the moral genealogy described by Mirowski (2001) and echoed by Hardt and Negri (2004) and Lewandowska and Ptak (2013) means that the private ownership of property and market dynamics are rooted “in nature, rendering them autonomous and determined by the natural “laws” of supply and demand” (Milberg 2001, 411)

Over the last decade, our research has focussed on alternatives to private property rights with specific attention to the commons. The commons have existed both in parallel to private property and as an alternative to it. The complex interplay between the commons and private property rights has been well documented (see Ostrom 1990, 2009; Lessig 2004)—as have the many processes of enclosure in both the material and immaterial world (Bollier 2002; Linebaugh 2014). Our interest here is to further explore the relationship between commons and neoliberal property rights, and also to look at how conflicts over the enclosure on immaterial resources, such as art and information, expose the arbitrary nature of property.

Here, we find that acts of “piracy” are a driver *and* a consequence of this relationship and the associated interactions. As such, this paper has two broad aims: the first is to briefly outline how the enclosure of the commons can be applied to different kinds of resources, from the physical commons, to the institutional and finally the cultural commons. In doing this, our aim is to weave together a cross section of literature that has delved into these processes over the last three decades. Such processes can be traced back centuries and have taken many different forms.

The second aim is to investigate how piracy both creates and responds to the enclosure of the commons and, in so doing, highlights a crisis in private property rights. Our driving research question then, is: is piracy merely an act of individual gain or a response to the enclosure of neoliberal private property rights?

Before continuing, it is important to outline our methodological approach. We combine theoretical and analytical perspectives with empirical examples that capture how the concepts of property and the enclosure of the commons are reflected in the acts and politics of piracy. These examples draw on a series of semi-structured interviews with representatives and activists associated with pirate parties across Sweden, the UK, Germany, Australia, the USA and Canada. The data mainly consist of semi-structured interviews; alongside material such as websites and party platforms. The majority of the interviews were conducted individually, with the exception of three interviews that included 2-3 participants. All interviewees play important roles in their local Pirate Party, but these roles differ significantly due to the heterogeneity of the parties. Two of the interviewees are members of the European Parliament, and thus professional politicians, while the vast majority are amateurs, dedicating their spare time to party work.¹

Additionally, we are actively engaged in the debates that are outlined here—as activists and scholars. This engagement is driven by an aspiration for justice: it is dynamic, reflective, participatory and interactive. We draw on feminist insights such as those of Mies (1991) and Livholts (2012), as well as post-colonial authors including Said (1979) and Nandy (1983). As participant-researchers we are agitating to identify and confront injustice and alienation, not simply observing and reporting. This approach rejects the concept that there is one objective form of inquiry or knowledge (Stanfield 1998). The benefit of this approach is in creating a pluralism that is reflective of the heterogeneous nature of society, property rights and all those we engage with from the broader community.

¹ Riksbankens Jubileumsfond—The Swedish Foundation for Humanities and Social Sciences, in large part funded the project described in this paper. For a more detailed account please see Fredriksson (2013; 2015).

2. The commons: their existence and enclosure

The concept of the commons can be traced back to Ancient Rome with discussions of the *Res Commons* (Barnes et al 2003). At the time, the Romans distinguished between three basic types of property: *res privatae* was private property; *res publicae* was public property owned by the authorities and *res communes*—natural things used by all, such as air, water and wild animals. This latter category represented what everyone shared but no one owned (Arvanitakis 2007).

Over the centuries we have come to understand different types of commons. The common lands of the United Kingdom in the Middle Ages, for example, were used by villagers for foraging, hunting, planting crops, and harvesting wood (Reid 1995). These rights were set down in the Magna Carta of 1215 (Barnes et al 2004). We also have global commons: the atmosphere and the high seas—oceans beyond the territorial zones of nation states. The concept has also been applied to represent other resources, including the infrastructure that allows our society to function (such as the water delivery and sewerage systems) and public space such as parks (Blomely 2008). Within this broader category we can identify institutional commons: public hospitals, public broadcasters and public education—institutions whose benefits are spread throughout the community (Bollier 2002).

This institutional dimension of the commons is also an important part of the work of renowned economist, Elinor Ostrom (1990). Ostrom argues that our relationship to commons such as water requires different institutional arrangements. Ostrom's behavioural economics approach proposes that while resource markets often fail, institutional arrangements focussed on the commons create robust management structures and programs built on cultures of context, cooperation, communication and reciprocity (Ostrom 1990). As such, we include within the institutional commons management structures based on principals that extend beyond commercial exchange, which she describes as 'adaptive governance'. This is not a free exchange, but one that requires institutional arrangements that assist all stakeholders to identify the 'fair value' rather than create a market mechanism that excludes those who cannot afford to pay.

The concept of the commons has also been used to describe biodiversity, or "genetic commons" (Shiva 2000). Included here is the human genome that makes us a unique species and the biological diversity that makes Earth a unique planet (Robinson et al 2014).

The concept is not limited to the material, but is entering the immaterial. For example, David Bollier (2002) and Lawrence Lessig (2004) explore what they describe as the 'knowledge commons'. This is the information and knowledge that come to define communities and create common reference points. Knowledge commons range from literature to the performing and visual arts, design, film, radio, community arts and heritage sites. Bollier and Lessig are referring to the actual knowledge that emerges as well as the infrastructures of provision, such as the Internet and public institutions that produce knowledge—universities, technical colleges, schools of art and drama. Recently, these kinds of immaterial commons have also been explored in relation to the material commons that Ostrom and her colleagues began investigating in the 1990s (Hess and Ostrom 2006; Frishmann et al. 2014).

The immaterial conceptualisation spreads into the 'information commons' that has had a particular political impact in the copyright debates that emerged since the late 1990s. A cornerstone here is James Boyle's (2003) extensive research on the *Second Enclosure Movement*. In several works Boyle discussed how intellectual property is used as a means to privatise a growing range of previously common resources. Many other scholars had made a similar point, but by speaking of a second enclosure process, Boyle conceptualised the privatisation of immaterial resources as analogous to the enclosure of public space and agrarian land (Boyle 1997, 2003; 2008; c.f. Thompson 1963)—and as we note below, a process of primitive accumulation.

Continuing Boyle's line of argument as we outline each of these, it is also possible to track how each form of the commons has also been the subject of enclosure. From the old English common land to the ongoing enclosure and privatisation of public institutions, these commons have slowly disappeared (Lessig 2004; Arvanitakis 2007; Linebaugh 2014). They have

been privatised and gradually sold off, and like the enclosure of the lands, the benefits have been unevenly shared (Bollier 2002 Lessig 2004). And as the enclosure of the commons land in the United Kingdom drove the industrial revolution and led to unprecedented levels of highly concentrated material wealth, so have the benefits that flow from the enclosure of the institutional commons and knowledge commons been concentrated and led to the material expansion and benefit to very few (Boyle 2008).

Let us return to 'Verbal's' Devil: the slow progression of enclosure has been identified as inevitable and occurs in an almost invisible process (Blomley 2008). Tracing back to E.P. Thomson's (1963) description of the commodifying tendencies of capital that led to the enclosure of the commons, to Garret Hardin's (1968) essay of the "Tragedy of the Commons" that argued only privatisation could save shared space, to the 'end of history' thesis that argues for clear private property rights (Fukuyama 1992), commons have essentially been labelled as "economically useless" (Wood 2003: 13). In fact, Bollier (2006) argues that both the concept and term "commons" have become unfamiliar in the modern world and are often simply ignored in literature (Blomley 2008). We see this in the majority of economic textbooks that argue, if private property rights are not or cannot be appropriately defined then market failure will result (see McTaggart et al 2010). Those wanting to keep institutions in the public domain—or more accurately, in the domain of the commons—are accused of having a left-wing bias and retarding economic development (Hughes 2004). As such, the removal of institutions that have been built over generations from the commons to private hands is not ideology—it is presented as efficient, normal and a form of economic progression—rather, is the "right" that was described by Foucault (2003).

3. The social and cultural commons

In response to the invisible and "natural" processes of enclosure, we want to argue that both the existence and reciprocated exchange of the commons is fundamental in the functioning of authentic and vibrant communities (Arvanitakis 2009). The specific focus here is the knowledge commons and we can start this journey by concentrating on the community of academics. As academics, we rely on the knowledge commons for our community to function: the free and open sharing of our intellect, research, theorising, reflection and hard work. This is the process of peer review, conference attendance, engagement, feedback and discussion.

This approach to academic knowledge has historical significance and each one of us, to use a vernacular phrase, "stands on the shoulders of giants". But over the last few decades, this process has been under constant threat through the processes of enclosure described by Boyle (2003). According to David Bollier, only a generation ago academic researchers regarded the patenting of discoveries as "a contemptible affront" to their mission of serving the public (2002, 135). To make his point, Bollier presents various examples of researchers that refused to patent either "their" discoveries or techniques, including John Salk, Albert Sabis and John Endes: the team that developed the polio vaccine. The argument is a simple one: any "breakthrough" is built on the hard fought successes and failures of previous researchers over centuries if not millennia.

This sharing of knowledge in an open, free and reciprocated environment has been described as "intellect"—which has been discussed elsewhere as a social (Lessig 2004) or cultural commons (Arvanitakis 2009). This is an exchange that has served the academic community over centuries and in opposition to this free and open exchange is the strict adherence to "Intellectual Property"—placing clear property rights around once open information.

The enforcement of property rights on what was once considered openly shared intellect can be traced back to the 1980s when the US Supreme Court in the 1980s to set a wide reaching precedent by granting the first patent on a living organism (Anderson 2000). While this was meant to create an environment to inspire researchers as it offered to safeguard their "discoveries", the unintended consequence was that it created a crisis of "scarcity" where once abundance existed (Westphal 2002). Such scarcity emerges because those who now own patents can demand payment if others use their intellect – often causing research-

ers to turn away from research areas where they fear they may breach established patents (ibid).

As noted, despite rhetoric that appropriate private property rights are required to promote research, the opposite often occurs (Westphal 2002; Arvanitakis and Boydell 2012). We are not saying that knowledge should not be attributed to the authors, researchers or artists, but rather that clearly defined property rights around ‘intellect’ limits the free and open exchange of knowledge and again, the benefits are concentrated in the hands of the very few – a conclusion well supported by much academic research over the last decade (Benkler 2006; Boyle 1996, 2003, 2008; Coombes 1998; Drahos 1997; Drahos and Braithwaite 2002; Gillespie 2007; Halbert 2005; Hemmungs Wirtén 2004; Lessig 1999, 2001, 2008; McLeod 2001; Vaidyanathan 2004).

This enclosure of the immaterial has not been limited to “intellect” and has had impacts on both an individual and communal level.² Individually, this results on an enclosure of our ‘imagination’ as we see no alternatives. On a community level, it creates sense of scarcity and an undeniable truth that the best way to manage resources is through the enforcement of private property rights. This is the materialisation of Foucault’s (2003) triangle of power: an indisputable right encased in the knowledge of ‘truth’. And like the enclosure of the lands and the institutional enclosure, this is accepted as both natural and normal—and like Verbal’s Devil, we do not actually see it.

Whenever power is made visible, however, it provokes counter-power. As capitalism’s need for expanding markets pushes the processes of privatisation to new levels where genes, organisms and information are increasingly privatised as intellectual property, this also provokes resistance in a wider range of commons movements. The battle seems to stand between international commercial interests looking for new resources to commodify and different social movements trying to create commons safe from the mechanisms of capitalism. In the sections that follow, we focus on one such commons movement: the political pirate movement. This movement, we argue, makes visible processes of enclosure by challenging certain property rights through its ideology as well as its acts.. Such acts may potentially destabilise the very concept of property at the basis of neoliberalism and create new spaces of commons.

4. Property rights, piracy and disruption

The basis of all this enclosure is, as conservative commentators such as Helen Hughes (2004) remind us, that property without rights is economically useless. In this way, private property rights are framed within Foucault’s triangle of power and presented as eternal and universal. Property rights, as we are repeatedly reminded from John Locke (1690/2000) to Garret Hardin (1968), and more recently Gollin (2008), is the source that drives innovation, promotes efficiency and protects scarce resources. Property rights, the argument follows, must be clearly defined to allow an individual to protect their economic output, and freely trade and profit from the energy of one’s work.

Property rights, however, are neither easily defined nor universal. As Boydell et al (2009) have argued, when describing the complex nature of property rights as a constellation because they are always connected to an intricate web of both obligations and rights. The example drawn on is the (exciting) moment of purchasing your first car: though you may purchase the car that you have always dreamed about and it is ‘your’ property, you cannot do with this private property as you will. In this example, you must ensure the car is registered (in the Australian case this requires three different steps including compulsory third party insurance), is road worthy, and you must follow a myriad of road rules and regulations including wearing a seatbelt and following the speed limit or suffer the consequences. Again, in the context in which we are currently working, you must inform the relevant authorities if you move to a different residential address.

² For a detailed discussion of the enclosure of the ‘cultural’ commons of hope, trust, safety and intellect, see Arvanitakis (2007; 2009).

This is but a fraction of the intricate web of rights and responsibilities that Arnold (2002) describes and follows the ‘ownership’ of private property. In this way, even something as clear-cut as owning a car is enveloped in a constellation of rights and obligations associated with property rights. Further, these rights can be both formal and informal in nature: the legal requirements are also accompanied by social expectations that, in Australia, include waving and acknowledging someone if they make way for you.

As such, property rights are socially and culturally contextualised. They are not some universal truth—despite the denial of the Devil. This is highlighted in everything from the Open Source Software movement (Lessig 2008) to the cultural and spiritual association to “land” by Indigenous peoples across Australia, the United States, the Pacific and Scandinavia (Arvanitakis and Boydell 2012; Coq 2014). Property rights, as such, are continuously contested because of this tension: the myth of the universal truth comes into direct conflict with our lived reality and the way that they are constantly grounded within the socio-cultural context in which they operate.

This was further highlighted by the Global Financial Crisis, which created a crisis in private property rights that was raised into the public consciousness. This occurred as the private property ownership that had brought material wealth to small sections of the population had public links: quite simply, the financial crisis was the creation of private investment gone bad but had to be bailed out by public infrastructure (Varoufakis 2011). This was interlinked with the collapse of the financial sector where the clear delineation of who owns what—the very basis of capitalism—disintegrated as governments and the public were forced to bare the risks and the costs for the financial sector’s private speculations—speculations that had wielded untold profits from publicly owned and funded resources (Johnstone et al 2010).

The financial crisis then, became deeply linked and centred on contestations over the definitions of property and commodity—who gains and who bares the costs. The concept of property rights was shown to be neither eternal nor universal: the Devil, after all, did exist and its failure brought misery to the lives of hundreds of millions as the global financial system sat on the brink of collapse.

It is from this position of contestation that we can also interpret acts of “piracy”. Piracy is a disruption highlighting the many myths associated with property including the fiction that you can create clear, universal and uncontested property rights. Acts of piracy, be they the illegal copying of textbooks in India (Liang 2009) or the emergence of the Pirate Bay in Sweden, highlight the fragility of the global property rights regime.

If patents on genes and living organisms extend the boundaries of property, then the proliferation of file sharing questions the distinctions of property from the opposite perspective. When media corporations and copyright organisations argue that piracy is an act of theft that deprives the author of her or his lawful property, enclosure is seen to deprive the broader community of wealth commonly owned (Bollier 2002). And what we found in our research is that many pirates see file sharing as a free exchange of information and ideas that should not be enclosed. From their perspective, file sharing is an act of communication, and the information shared is a part of the intellectual commons. The file sharing debate is thus a direct conflict over the distinctions of property as it revolves around whether the resources at stake are part of the cultural commons or a market of commodities.

This conflict was fundamental for the politicisation of piracy that caught speed in 2006 as a response to the prosecution and trial against the globally (in)famous file sharing site The Pirate Bay. Among other things, this trial contributed strongly to the mobilisation of political “Pirate Parties”, first in Sweden and then in many other parts of the world (Burkart 2014; Fredriksson 2014; Fredriksson 2015).

And it is from this perspective that we must understand why Pirate Parties and their associated activists rally to protect mechanisms that promote communication such as a free Internet. The value of communication constitutes a cornerstone for the Pirate Parties as they believe that digital technology can enable a new, more open, participatory and democratic public sphere. This public sphere is seen to be threatened by two forces that attempt to control the Internet. The first is the effort of the market to commodify communication as intellectual property. A member of the New York Pirate Party exemplifies how copyright can interfere

with the freedom of communication when he talks about how ideas and ideologies may spread between different protests movement, from the Euro-American open source movement, to the Arab spring and back to Occupy Wall Street and its spinoffs:

[...] these ideas spread in unpredictable manners and showed up in unpredictable ways which is why we are advocating a lack of intellectual property, because it's a barrier to ideas spreading and changing and mutating and morphing. And when you allow them to do that, wonderful things happen. (L. Brunner and Z. Adams Green, interview, April 2, 2012)

The second threat to this new public sphere is the increasing censorship and mass-surveillance that underpins the unending war on terrorism, where states violate the freedom and integrity of the digital public sphere in the name of protecting people and societies from a vague and undefined terrorist threat (Andrejevic 2007). Reflecting on the dictatorial history of his own country of birth, Germany, Markus Kesler describes how his work with the Oklahoma Pirate Party was largely motivated by a fear of authoritarianism that grows as the authorities turn to terrorism as the new pretext to increase their control of the citizens (M. Kesler, interview, March 10, 2012). In an e-mail conversation, Andrew Norton of the United States Pirate Party discusses how the threat of terrorism is used to instil a sense of fear that legitimises stricter surveillance:

It's the major method used to restrict any sort of rights over the last ten years. And it's something that covers EVERYONE. Also, it's not a "War on Terror" [...] It is, instead, a War *OF* Terror, quick literally using psychological methods and tricks to manipulate people into giving up rights for non-existent threats. (Norton, Private correspondence, February 3, 2012)

The Pirate Party's ambition to protect free speech and the access to free culture and information against restrictions imposed by the market and the state makes it an institutional political manifestation of the opposition against the enclosure of the intellect – that is, the privatisation and commodification of public discourse. For Andrew Norton, with a background both in European and American Pirate Parties, this is fundamental in the protection of the democratic values that are seen to be at the very core aspirations of contemporary western culture:

In Europe there is still the 'hope of democracy'. In the US, it's only a few idealists that cling to the notion that there is a form of democracy and bother to 'waste our time' getting involved with US politics outside the rigid confines of the 'establishment'. (Interview with Andrew Norton, March 14, 2012)

Many pirates, both in the USA and Europe, blame this democratic deficit on the influence of money on politics. Norton for instance goes on to conclude that:

If there was one thing that's been made clear in the US, it's that political power = money. For a 'Major Party' [...] you're looking at 1-2 million for a house seat, and 15+ for a senate. Trying to get a 'minor party' candidate will require a LOT more' (Norton, Private correspondence, February 3, 2012)

As Lawrence Lessig points out in his 2011 book, *Republic Lost: How Money Corrupts Congress—and a Plan to Stop it*, this makes politicians heavily dependent on corporate sponsors. In a sense, this is an enclosure of the democratic political system—or what Taussing described in 2002 as the colonializing of politics (Taussing 2002). The democratic infrastructure, though far from perfect, is part of the commonwealth inherited from previous generations—and the threat of its enclosure is laid bare by Pirate Parties.

This makes the Pirate Party appear more or less as a utopian movement. When Orion Steele from the Californian Pirate Party is asked if he sees the Pirate Party as a utopian par-

ty he immediately confirms: "Is the pirate Party utopian. Yes! And that is awesome and no political party should NOT be utopian". This is not unique to the Pirate Party, but it may be significant for third parties:

There is something unique about all third parties in America. That sense of fatalism because of the two party system and the way that our campaign finance and the way that our campaign laws are set up. If you're willing to jump into a third party, there's gotta be some kind of utopianism in there. (Interview with Orion Steel, 5 January 2013)

5. New spaces of piracy

At the same time the modes of enclosure are always changing, as new kinds of resources are being commodified and exploited. Some scholars are pointing to the emergence of big data and cloud storage as an expression of an "enclosure 3.0" (Lametti 2012) or a "digital enclosure" (Andrejevic 2007). Although the terms may differ, the concerns raised focus on a new phase in the commodification of information where the dominant business strategy is on the extraction and exploitation of user data.

According to Peter Jakobsson (2012), this is part of a new 'openness industry' represented by companies like Google, that is antagonistic towards the copyright industry as intellectual property limits the circulation of free content that is essential to their business model. This is in line with Hardt and Negri's dialectical understanding of the relationship between the commons and the market where the market relies on expanding commons to commodify.

Likewise, the openness industry thrives on the exploitation of resources that are not enclosed as intellectual property (Jakobsson 2012; Jakobsson and Stiernstedt 2012). The price that the consumers pay for this abundance of seemingly free culture and information is excessive data mining where private user data becomes a commodity. This creates a new information economy where we can, as Ned Rossiter and Soenke Zehle put it, argue that "Privacy is Theft":

Anonymity registers the possibilities for both individual and collective refusal to turn our communicative relations into generators expected to power the data driven enterprises of an experience economy. The result, in effect, is a withdrawal of 'free labour' from the institutional settings of a digital economy, its clouds and communication platforms. (2014, 346)

So, the seemingly abundant access to information that the openness industry offers is an illusion of transparency that hides the devil in the cloud. By giving everything freely to the consumer it hides the basic act of exploitation where the users are made to work for free for those who control the means of exchange in the information society. Returning to Foucault, the cloud is simply a privatization of digitally enhanced biopower where collective human behaviour is aggregated into statistics and demographic data appropriated by state bureaucracies, or in this case commercial actors, to predict and manipulate the masses (Foucault 1990).

Though we are discussing a contemporary technology, the historical roots are much deeper and can be linked to the relationship between primitive accumulation and the commons (Glassman 2006). Here the information commons is a new challenge to the 'separation' of worker from their labour and therefore become a target of enclosure. It is here that we can see piracy as a way of reclaiming the commons and in so doing, reclaiming the relationship between one's relationship to their labour.

It is here that acts of piracy may not be just reactive but proactive in establishing new commons. As Balász Bodó (2014) highlights in his research on file sharing, (pirate) communities often promote 'voluntary' property rights regimes. In his detailed case study, Bodó demonstrates the diversity of closed and often very specialised file-sharing piracy networks that exist beyond mainstream platforms and concludes that alternative networks can impose their own rules of exchange which can be more efficient than any formal and universal system of property rights.

Importantly, the rules of exchange are negotiated within the specific context. This returns us back to the arguments proposed by Ostrom (1990; 2010). For Ostrom, what is required are governance structures and institutional commons that are contextual. Such arrangements encourage adaptation to changing circumstances, as well as building in systems that allow communities to address previous errors and new developments.

Ostrom argues that under such circumstances, access to resources is not necessarily free, as common-pool resources are not public goods. But as Bodó finds, any costs should not exclude appropriate use. Communities monitor access to the resource and can actually make a decision to make accessibility more difficult

This is not to argue that Ostrom's proposals is a panacea for solving all challenges. In fact, rather than offering a simple solution, Ostrom herself acknowledges the limitations of a one-size fits all approach such as the imposing of full private property rights (Ostrom 2010, 182). It is here that we can turn to Bodó's concluding argument: that piracy can construct its own efficient property regimes. Unfortunately, such regimes can both establish new commons or create their own artificial systems of scarcity.

6. Conclusion

In concluding, it is important for us to emphasise that we do not necessarily see piracy as a revolutionary moment, though it has been described as such by some pirate party activists and scholars (Özdemirci 2014); nor is piracy merely mundane and everyday, though such a description has been used by others (see Da Rimini and Marshall 2014; Andersson 2014). Piracy, as an act or an ideology, may not present a solution to all processes of enclosure, but it has an ability to articulate enclosure as a practical and political problem by showing how it interferes with people's everyday life and how it can be ideologically challenged (Fredriksson 2012, 2014, 2015). Piracy can, as we have argued, also establish alternative exchange mechanisms.

Regardless of exactly where an act of piracy falls along this spectrum—be it revolutionary or mundane—it highlights the myth of clearly defined property rights as well their contextual nature. As a revolutionary act to confront property rights that ruptures the neoliberal ideology, piracy presents us with alternative property rights regimes including the re-establishment of the commons. As a mundane act of the everyday consumer, it confirms that the universal truth claims of property rights are continuously questioned.

We see this in the straights of Somalia as the property rights of the shipping lanes are not respected nor can they properly be protected; in every piece of music that exists or movie made, book published, the potential for piracy emerges and, as such, highlights the precarious nature of the universal property rights regime.

Just how the concept of piracy can be expanded to challenge a wider range of property rights is highlighted by researchers such as Ravi Sundaram (2010) who explores the way piracy is intertwined with unauthorized use of urban space in third world cities. Sundaram, along with Lawrence Liang (2005), identify the prevalence of pirated products in the ungovernable slums and shantytowns of Delhi. Their research explores parallels between the distribution of pirated software, films and books and the various practices that provide illegal access to public spaces such as squatting and the creation of new commons. The universal myth, like the Devil, is again exposed.

This process represents a complex interplay, however, as neoliberalism uses the breakthroughs generated by piracy and the creation of new commons as a way to further enclose and commodify an expanding range of resources. Hardt and Negri (2004) have discussed the ambiguous and intimate relation between capitalism and the commons, where capitalism is inherently reliant on the commons to produce new commodifiable resources to ensure the constant growth of the market. This creates an irony: acts of piracy break down the very property rights that are meant to promote innovation, but are often at the same time highly creative and then become the subject of enclosure. And it is here we find both the potential and the threat to the new commons movement (Arvanitakis 2007).

This 'exposure' of the fragility of property rights regimes is also repeatedly being highlighted by acts of piracy. Piracy, in this way, emphasises both the contextualised nature of property rights regimes, as well as the possibilities of alternative systems of rights. As an alternative to legal services like Spotify and open torrent trackers like The Pirate Bay, infested with data mining or pornography, many consumers turn to various specialised file-sharing communities that are often very exclusive in their selection of members. As noted, Balász Bodó (2014) has highlighted that such file-sharing (pirate) communities often promote 'voluntary' property rights regimes. Here we see the diversity of closed and often very specialised file-sharing piracy networks that exist beyond mainstream platforms and concludes that alternative networks can impose their own rules of exchange which can be much more efficient than any formal and universal system of property rights. Piracy can thus, in some cases, construct and impose its own property regimes and artificial systems of scarcity.

In the final scene of *The Usual Suspects*, the Devil (so to speak) is exposed. We understand that the context in which "he" has been operating is one of deception, hiding in plain sight of those that are looking for him. Property rights are much the same: despite claims of universal truth, the recent global financial crisis has highlighted that they are fragile as many governments had to confront the consequences that followed from turning private enterprises into public risks decades earlier. Piracy highlights the very same fragility, but from the opposite perspective: it threatens to turn private property into public resources.

Piracy, as such, is not free from norms and gatekeepers, nor is it always free of charge. But what the work of Bodó, Liang and Sundaram emphasise, is that piracy produces contextualised understanding of property rights. The politicisation of piracy that organisations like the Pirate Party represent further highlight the potentials of piracy to destabilise a neoliberal understanding of property as a cornerstone of creativity. And as such, piracy has the potential to rupture Foucault's triangle of power and in so doing so, expose the true nature of the Devil.

References

- Agamben, G. 2005. *State of Exception*. Chicago: University of Chicago Press.
- Anderson, L. 2000. *Genetic Engineering, Food and our Environment*. Melbourne: Scribe Publications.
- Andersson Swartz, Jonas. 2014. *Online File Sharing: Innovations in Media Consumption*. New York: Routledge.
- Andrejevic, M. 2007. *iSpy: Surveillance and Power in the Interactive Era*. Lawrence: University Press of Kansas.
- Arnold, C. A. 2002. The Reconstitution of Property: Property as a Web of Interests. *Harvard Environmental Law Review* 26 (2): 281-364.
- Arvanitakis, James. 2007. *The Cultural Commons of Hope: The Attempt to Commodify the Final Frontier of the Human Experience*. Berlin: Verlag.
- Arvanitakis, James. 2009. Staging Maralinga and desiring community (Or why there is no such thing as a 'natural' community). *Community Development Journal* 44 (4): 448-459.
- Arvanitakis, James and Spike Boydell. 2012. Five Questions on the Republic. *Altitude: An e-journal of emerging humanities work* 10 (1): 1-22.
- Barnes, P., J. Rowe and D. Bollier. 2003. The State of the Commons: 2003/2004. Friends of the Commons. Accessed 19 May 2014 <http://www.friendsofthecommons.org/stateofcommons0304.pdf>
- Benkler, Yochai. 2006. *The Wealth of Nations: How Social Production Transforms Markets and Freedom*. New Haven: Yale University Press.
- Blomley, N. 2008. Enclosure, Common Right and the Property of the Poor. *Social and Legal Studies*, 17(3): 311-331.
- Bollier, David. 2006. The Growth of the Commons Paradigm. In *Understanding Knowledge as a Commons*, edited by Charlotte Hess and Elinor Ostrom. Cambridge: MIT Press: 27-40.
- Bollier, David. 2002. *Silent theft: the private plunder of our common wealth*. New York: Routledge.
- Boydell, S., J. Sheehan and J. Prior. 2009. Carbon property rights in context. *Cambridge Journal of Environmental Practice* 11 (2):105-114.
- Bodó, Balasz. 2014: Set the fox to watch the geese: Voluntary IP regimes in piratical file-sharing communities. In *Piracy: Leakages from Modernity*, edited by Martin Fredriksson and James Arvanitakis, 177–194. Sacramento: Litwin Books.

- Burkart, P. 2014. *Pirate Politics: The New Information Policy Contests*. Cambridge, Mass.: MIT Press.
- Boyle, James. 1997. *Shamans, Software, and Spleens: Law and the Construction of the Information Society*. Cambridge and London: Harvard University Press.
- Boyle, James 2003. The Second Enclosure Movement and the Construction of the Public Domain. *Law and Contemporary Problems* 66 (33): 33–74.
- Boyle, James 2008. *The Public Domain: Enclosing the Commons of the Mind*. New Haven: Yale University Press.
- Coombes, Rosemary. 1998. *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law*. Durham: Duke University Press.
- Coq, Coppélie. 2014. Kampen om Gállok. *Kulturella perspektiv* 23 (1): 5–12.
- Da Rimii, Francesca and Onahan Marshall. 2014. Piracy is Normal, Piracy is Boring: Systemic disruption as Everyday Life. In *Piracy: Leakages from Modernity*, edited by Martin Fredriksson and James Arvanitakis. Sacramento: Litwin Books: 323–344.
- Drahos, Peter. 1997. Thinking Strategically about Intellectual Property Rights. *Telecommunication Policy* 21 (3): 201–211.
- Drahos, Peter, with John Braithwaite 2002. *Information Feudalism: Who Owns the Knowledge Economy?* New Press, New York.
- Dawson, Matthew 2013. *Late Modernity, Individualization And Socialism: An Associational Critique of Neoliberalism*, Social Sciences Collection, Palgrave MacMillan, Hampshire, UK
- Fredriksson, Martin. 2014. Copyright Culture and Pirate Politics. *Cultural Studies* 28: 1022–1047.
- Fredriksson, Martin. 2012. Piracy, Globalisation and the Colonisation of the Commons. *Global Media Journal: Australian Edition* 6 (1). Retrieved from: http://www.hca.uws.edu.au/gmjau/archive/v6_2012_1/martin_fredriksson_RA.html
- Fredriksson, Martin. 2015. The Pirate Party and the Politics of Communication. *International Journal of Communication* 9: 909-924.
- Fredriksson, Martin and James Arvanitakis. 2014. *Piracy: Leakages from Modernity*, Sacramento: Litwin Books.
- Frischmann, Brett M., Michael J. Madison and Katherine J. Strandburg (eds). 2014. *Governing Knowledge Commons*. Oxford UK: Oxford University Press.
- Foucault, Michel. 1990. *The History of Sexuality, Vol 1. The Will to Knowledge*. Harmondsworth: Penguin.
- Foucault, Michel. 2003. *Society Must Be Defended*. New York: Picador.
- Fukuyama, Francis. 1992. *The End of History and the Last Man*. London: Penguin.
- Giddens, Anthony. 1991. *The Consequences of Modernity*. Cornwall, UK: Polity Press.
- Giroux, Henry A 2003. The Terror of Neoliberalism: Rethinking the Significance of Cultural Politics, *College Literature* 32.1. http://muse.jhu.edu/journals/college_literature/v032/32.1giroux.pdf.
- Gillespie, Tarleton. 2007. *Wired Shut: Copyright and the Shape of Digital Culture*. Cambridge, MA: MIT Press.
- Gollin, Michael. 2008. *Driving Innovation: Intellectual Property Strategies for a Dynamic World*. Cambridge UK: Cambridge University Press.
- Glassman, Jim. 2006. Primitive accumulation, accumulation by dispossession, accumulation by 'extra-economic' means. *Progress in Human Geography*, October 2006 vol. 30 no. 5, 608–625.
- Hage, Ghassan. 2003. *Against Paranoid Nationalism: Searching for Hope in a Shrinking Society*. Sydney: Pluto Press.
- Hardt, M. and A. Negri. 2004. *Multitude*. New York: Penguin Press.
- Halbert, Debora J. 2005. *Resisting Intellectual Property Law*. New York: Routledge.
- Hardin, Garret. 1968. The Tragedy of the Commons. *Science* 162: 1243–1248.
- Hemmungs Wirtén, Eva. 2004. *No Trespassing: Authorship, Intellectual Property Rights, and the Boundaries of Globalization*. Toronto: University of Toronto Press.
- Hess, Charlotte and Elinor Ostrom (eds). 2006. *Understanding Knowledge as a Commons*. Cambridge USA: MIT Press.
- Hughes, H. 2004. Radical reforms needed to make Pacific viable. *The Courier-Mail*, 7 December 2004:15.
- Jakobsson, P. 2012. *Öppenhetsindustrin*, Örebro: Örebro universitet. Retrieved from <http://oru.diva-portal.org/smash/get/diva2:482726/FULLTEXT02.pdf>.
- Jakobsson, P., and F. Stiernstedt. 2012. Reinforcing Property by Strengthening the Commons: A New Media Policy Program? *TripleC* 10 (1), 49–55.

- Johnston, Judy, Alexander Kouzmin, Kym Thorne and Stephen Kelly Johnson 2010. Crisis opportunism: Bailouts and E-SCADs in the GFC. *Risk Management* 12: 208–234.
- Lametti, D. 2012. The Cloud: Boundless Digital Potential or Enclosure 3.0? *Virginia Journal of Law and Technology*. 17(3): 190–243.
- Lessig, Lawrence. 1999. *Code and Other Laws of Cyberspace* New York: Basic Books.
- Lessig, Lawrence. 2001. *The Future of Ideas: The Fate of the Commons in a Connected World*. New York: Random House.
- Lessig, Lawrence. 2008. *Remix: Making Art and Commerce Thrive in the Hybrid Economy*. New York: Penguin Press.
- Lessig, Lawrence. 2011. *Republic, Lost: How Money Corrupts Congress - And a Plan to Stop It*. New York: Twelve
- Lessig, Lawrence. 2004. *Free Culture: The Nature and Future of Creativity*. New York: Penguin.
- Lewandowska, M. and L. Ptak. 2013. *Undoing Property?* Berlin: Sternberg Press.
- Liang, L. 2005. Porous Legalities and Avenues of Participation. *Sarai Reader* 5: 6–17.
- Liang, L. 2009. Piracy, Creativity and Infrastructure: Rethinking Access to Culture. *Alternative Law Forum*. Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1436229.
- Linebaugh, 2014. *Stop, Thief!: The Commons, Enclosures, and Resistance*. London: Spectre/PM
- Lovholts, M. 2012. *Emergent Writing Methodologies in Feminist Studies*. New York: Routledge.
- Locke, John (1690/2000). *Two Treatises on Government*. Hamilton: McMaster University.
- Lingis, A. 2002. Murmurs of life. In *Hope*, edited by M. Zournazi, 22–41. Sydney: Pluto Press.
- McLeod, Kembrew. 2001. *Owning Culture: Authorship, Ownership and Intellectual Property*, New York: Peter Lang.
- McTaggart D., C. Findley and M. Parkin. 1999. *Economics* (3rd edn). Melbourne: Addison Wesley Longman.
- Mies, M. 1991. Women's Research or Feminist Research? In *Beyond Methodology: Feminist Scholarship as Lived Research*, edited by M. Fonow and J. Cook, 60–94. Bloomington, Indiana: Indiana University Press.
- Milberg, William. 2001. De-Centering the Market Metaphor in International Economics. In *Postmodernism, Economics and Knowledge*, edited by Cullenberg, S., Amariglio, J. and Ruccio, D.F., 407–430. . Routledge: London and New York. .
- Mirowski, Phillip. 2001. Refusing the Gift. In *Postmodernism, Economics and Knowledge*, edited by Cullenberg, S., Amariglio, J. and Ruccio, D.F, 431–458. Routledge: London and New York..
- Nandy, A. 1983. *The Intimate Enemy: Loss and Recovery of Self under Colonialism*. Delhi: Oxford University Press.
- Neocleous, M. 2001. Against Security. *Radical Philosophy* 100: 7–15.
- Ostrom, Elinor. 1990. *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge: Cambridge University Press.
- Ostrom, Elinor. 2009. *Understanding Institutional Diversity*. New Jersey: Princeton University Press.
- Ostrom, Elinor. 2010. The Challenge of Common-Pool Resources. *Environment: Science and Policy for Sustainable Development*. 50 (4): 8–21.
- Rossiter, Ned and Soenke Zehle. 2014. An Epilogue—Privacy is Theft: On Anonymous Experiences, Infrastructural Politics and Accidental Encounters. In *Piracy: Leakages from Modernity* edited by Martin Fredriksson and James Arvanitakis, 345-353. Sacramento: Litwin Books..
- Rustomjee, S. 2001. Exploring Social Disintegration. Group Analysis, London: SAGE Publications.
- Reid D. 1995. *Sustainable Development—An Introductory Guide*. London: Earthscan Publications.
- Robinson, Daniel, Danielle drozdowski and Louise Kiddell. 2014. You can't Chane our Acestor withour our Permission. In Martin Fredriksson and James Arvanitakis, *Piracy: Leakages from Modernity*, 56–75. Sacramento: Litwin Books..
- Said, Edward W. 1979. *Orientalism*. London: Penguin.
- Singer, Bryan and Chris MacQuarrie. 1995. *The Usual Suspects*. Los Angeles: Gramercy Pictures
- Shiva, V. 2000. Protect or plunder? Understanding Intellectual Property Rights. London: Zed Books.
- Stanfield, J.H. II. 1998. Ethnic Modelling in Qualitative Research. In *The Landscape of Qualitative Research* edited by N. Denzin and Y. Lincoln, 156–184. Thousand Oaks: Sage.
- Sundaram, R. 2010. *Pirate Modernity: Dehli's Media Urbanism*. London and New York: Routledge.
- Taussig, M. 2002. Carnival of the Senses. In *Hope*, edited by M. Zournazi, 42–63. Sydney: Pluto Press.
- Thompson, E. P. 1963/1991. *The Making of the English Working Class*. London: Penguin.

- Vaidhyathan, Siva. 2004. *The Anarchist in the Library: How the Clash Between Freedom and Control is Hacking the Real World and Crashing the System*. New York: Basic Books.
- Özdemirci, Ekin Gündüz. 2014. BitTorrent: Stealing or Sharing Culture? A Discussion of the Pirate Bay Case and the Documentaries "Steal This I and II". In *Piracy: Leakages from Modernity*, edited by Martin Fredricksson and James Arvanitakis, 158–175. Sacramento: Litwin Books..
- Varoufakis, Yannis. 2011. *The Global Minotaur*. London: Zed Books.
- Westphal, Andrew J. 2002. Capture of the Genetic Market. *New Scientist* 175 (2350): 29.
- Wood, A. 2003. Individual enterprise the key to progress for Aborigines. *The Australian*, 29 April 2003: 13.
- Zournazi, M. 2002. *Hope*. Pluto Press, Annandale.

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