The ‘Moral Economy’ of Cosmopolitan Commons

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Abstract

Moral economy is an analytic category that refers to a ‘moral’ arrangement of resources and institutions that privilege the ethic of subsistence — a minimalist bottom line — over that of the market economy. It is, in a sense, a proto theory of systems of existence that lie outside the fold of the market economy and its rationalist cost-benefit postulates. This article proposes that enclosure of the biotic commons into enclaves of proprietorial entitlements has been made possible through the reconstruction of the category of moral economy in order to invest such enclosures with an ethic of ‘progress’ and ‘sustainable’ development. Law has projected the enclosure of the biotic commons as a normative strategy in the larger context of the disenfranchisement of local and Indigenous communities under regimes of national and international law. This article explores how the discourses of innovationism and environmentalism reconstitute the idea of what is good for societies globally, toppling the idea that conventionally formed the global ethic for a moral economy.

Key Words

commons; enclosure; local communities; moral economy; innovation; environmentalism

1 Introduction

In 1961, E. P. Thompson in *The Making of the English Working Class* first elaborated on the concept of a moral economy in the context of widespread proletarianization of peasants and consequent bread riots in the English countryside in the late eighteenth century.\(^1\) The context was ‘enclosures’ (an analytic category I discuss shortly) and at stake was a moral economy: an ideal that privileged the ‘subsistence ethic’ of the farmer (availability of food, prices of subsistence commodities, proper administration of taxation and so on) over the market economy ethic of individual

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\(^1\) E.P. Thompson, *The Making of the English Working Class* (Penguin Books, 1961) 66. Explaining the root of the riots Thompson writes, ‘Actions on such a scale... indicate an extraordinary deep-rooted pattern of behaviour and belief... These popular actions were legitimized by the old paternalist moral economy’. Thompson describes these ideas as ‘traditional’ or ‘paternalistic’ which work in opposition to the values and ideas of an unfettered market, or in other words, where the ‘moral economy’ works in contrast to the modern ‘political economy’, the latter associated with liberalism and the ideology of free market.
gain and economic growth.\textsuperscript{2} The notion of moral economy inaugurated an idea that local social arrangements should be so structured that it privileges the subsistence needs of the rural poor. A decade and a half later, the idea found resonance in James C. Scott’s influential book, \textit{The Moral Economy of the Peasant: Rebellion and Subsistence in Southeast Asia}, where he argued that the subsistence ethic is a widely shared set of moral values in traditional rural societies.\textsuperscript{3}

The idea of moral economy contains both descriptive and prescriptive elements. As a descriptive element, it illustrates how peasant societies arrange themselves, how they uphold the subsistence ethic over that of the market, what counter-rationalist precepts inform their choices, how they protest and rebel when subsistence is breached and so on. The prescriptive element refers to the moral economy’s status and value as an instrument for social and political analysis. As a term, moral economy underscored a normative consensus about economies needing to privilege subsistence above other imperatives. Moral economy is, in a sense, a proto theory of systems of existence that are outside the fold of the market economy and its rationalist cost-benefit postulates.\textsuperscript{4} It is a moral arrangement of resources and institutions that, both locally and in larger policy frames, ought not to be breached.

The idea that markets can be moral continues to find many contemporary articulations, albeit with varying conceptions of morality.\textsuperscript{5} For example, Norbert Götz argues that there is no necessary disconnection between markets and morality. His argument is that the conjoining of the two terms – moral and economy – is not confined to a particular historical epoch or to particular economy, and even a market economy can be made to serve moral concerns.\textsuperscript{6} He questions the term’s suitability as an antonym, to the modern market system and argues that it is possible to assign altruistic motives to economic transactions and employ market options in moral ways.


\textsuperscript{3} Ibid. Scott argues against the idea that peasants are economically rational agents who decide about political participation based on a narrowly defined cost-benefit analysis. He suggests that the commonality of existential circumstances of traditional family-based agriculture makes for different, more complex, political psychology incorporating socially shared norms and values.

\textsuperscript{4} The idea of a market economy is one where the market is predicated on what comprises the ‘economy’. If the scale is global, as it is in contemporary times, then the idea of the market economy references the entire network and systems of production, exchange and distribution that happen at a global scale.

\textsuperscript{5} See, for instance, Arthur M. Melzer & Steven J. Kautz (eds.), \textit{Are Markets Moral?} (Penn Press, 2016).

\textsuperscript{6} For instance, see, Norbert Götz, “‘Moral Economy’: Its Conceptual History and Analytical Prospects” (2015) 11:2 \textit{Journal of Global Ethics} 147. At 147, Götz says that ‘it is on principle problematic to confine a term conjointing two concepts as general as ‘moral’ and ‘economy’ to a specific historical and social setting’. Recent approaches that frame moral economy as an emotively defined order of morals are also misleading since they do not address economic issues in the way they are commonly understood. The most promising current approaches appear to be those that consider the moral economy of welfare, humanitarianism, and civil society. The concept of moral economy may help us to clarify alternative ways of ‘utility maximisation’ through the construction of altruistic meaning for economic transactions.
What are these ‘altruistic motives’? What are the ‘moral’ ends? Does the moral economy still hold on to ‘subsistence’ as the last bastion of morality or are there other, newer, larger global concerns that have displaced the confined concerns of local, proximate communities? What morality do modern enclosures and their marketization adhere to or breach?

This essay argues that the frames of a conventional moral economy, which privileged a subsistence ethic above all other economic and social imperatives, are routinely undone to create new ethical frames that legitimate enclosures through new regimes of “cosmopolitan commons” and globalized property. It argues that the ‘moral economy’ rhetoric is invoked in public as well as expert forums such that ideas of ‘common good’, ‘optimal welfare’, and ‘greatest happiness’ get attached to networks of property that seek enclosure of commons. If indeed the terms ‘moral’ and ‘economy’ can be conjoined within the terms and frames of the market economy as Götz argues, the resultant property regimes would have to project the enclosure of the commons as a normative strategy despite the disenfranchisement of local and Indigenous communities. This essay seeks to probe how such strategies have come about, describing first the course of enclosures, then examining respectively the discourses of innovationism and environmentalism and how they are mobilized to legitimate enclosures.

2 The Third Enclosure

Recent years have seen a proliferation of things designated as the ‘commons’ – biotic commons, scientific commons, creative commons, knowledge commons, and so on. This essay concerns itself with the enclosure of the biotic commons, which usually refer to land, grasslands, forests, plant varieties, seeds, microorganisms – in short, the biogenetic domain. Biotic commons, like all commons, reference a community of shared interests and use, collective usufructuary rights, open access and an idea of common good. Prior to any ‘enclosure’ – i.e. bringing it under some regime of formal ownership, private, public or a mix, and cordonning or enclosing the space from common use – a marked feature of the commons was the assumption that it belonged to no one and yet was, in a sense, everyone’s to use. Several works in the fields of anthropology, human

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7 While this article focuses on the enclosure of the biotic commons, almost all enclosures – land, rivers, oceans – will be governed and mandated by similar transmutable imperatives.

8 For the purpose of this article, I use the terms ‘commons’, ‘public goods’ and ‘common pool resources’ interchangeably because their distinctions do not impact my core arguments. Dwelling on the distinctions would be distraction but, for purposes of clarification, I explain the distinction between public goods and common pool resources (greeting to commons of all sorts). A typical example of a public good is air, and a typical example of common-pool resources is fishery. While it is not possible for my use of air (to breathe, for instance) to restrict another’s use, a fish caught by one individual is not available to other users anymore. It rivals another’s use or is rivalrous by nature. A public good has two essential attributes: non-excludability and non-rivalrous consumption. A common-pool resource, however, is usually non-excludable but rivalrous: i.e. though there are no ownership claims that exclude another’s claim to the same fish (the fish caught by A could well have been B’s), A’s use of his fish rivals B’s use of that fish. The possibility of non-rivalrous consumption by multiple consumers is the major feature distinguishing public goods from common-pool resources. This distinction holds good for...
ecology, and policy studies have documented a diverse array of case studies documenting long-term stable arrangements for the use of commons such as land, waterways, irrigation works, forests, fisheries and so on. This is of course not to suggest that these ‘stable’ arrangements are either non-hierarchical, not reproducing relations of power or authority, or uncontaminated by ‘outside’ or market influences. Commons were always complex spaces, managed by small social groups, marked by their own social hierarchies, but nearly always with well-established customary claims to proximate resources. Sharing of resources and use remained a feature that marked the commons, as did the absence of the ‘residential connotations of property’, to borrow from Dick Pels. It is the absence of residential or possessive features that makes the commons common (i.e. open to common access and use).

But just as there has been a proliferation of domains designated as commons, there have also been concomitant attempts to juridify the commons and enclose it in terms of legalized rules of possession, access and use. The use of the idiom of ‘property’ to govern the commons has a long, variously articulated history, but for the purposes of this essay I focus on its most evocative and dramatic enunciation in the ‘tragedy of the commons’ thesis of Garrett Hardin. Hardin’s story centres on a pasture open to all, upon which herds people let their biogenetic resources as well especially in the context of steady, non-sustainable depletion of biogenetic resources. For details on the social dilemmas of the two kinds of goods, see Jose Apalategui & Frank P. Maier-Rigaud, ‘The Role of Rivalry: Public Goods versus Common-Pool Resources’ (2006) 50:5 The Journal of Conflict Resolution 646.


10 David Mosse, in his study of common property regimes that governed tank irrigation systems in South India found that the management of tank irrigation systems were never ‘independent of the wider systems of state bureaucracy (in precolonial, colonial or contemporary times) that legitimized local authority and allocation of productive resources’. David Mosse, ‘Collective Action, Common Property, and Social Capital in South India: An Anthropological Commentary’ in Pranab Bardhan & Isha Ray (eds.), The Contested Commons: Conversations Between Economists and Anthropologists (Oxford University Press, 2008) 85-91; Gunnel Cederlof, in her study of codification of rights and land in the Nilgiris (a mountainous, forested, region in South India), also talks of how legal relationships were forged between the colonizers and colonized and was mediated by textualization and codification. In effect’, she writes, ‘…regularities of social practice became fixed and thereby “reinvented” at the same time as colonial relationships became more rigid’. Gunnel Cederlof, ‘Narratives of Rights: Codifying People and Land in Early Nineteenth-Century Nilgiris’ (2002) 83 Environment and History 319, at 321. In a similar vein, Mitchell’s studies in Egypt also reveal that ‘the principles of property, revenue, or law did not constitute a preformed conceptual structure of rule imposed from the outside, but were worked out through compromise and contingent action in a variety of areas such as altered revenue demands, property disputes, engineered technology, and court decisions – not as the application of policy principle, but as selective, arbitrary, local actions and exceptions which wrought change not by their own logic, but through the rupture and contradiction that they effected in the existing social and political systems’, Timothy Mitchell, Rule of Experts: Egypt, Techno-Politics and Modernity (University of California Press, 2002) 77.

11 Dick Pels, Property and Power in Social Theory: A Study in Intellectual Rivalry (Routledge, 1998) 11. Pels draws attention to the role of property in its residential capacity (i.e. the property ‘resides’ with someone and therefore generates benefit for that person) and its active capacity as a source of power.


cattle graze. Herds people have an incentive to put as many cattle as possible on the commons because they are able to appropriate the entire gain from the cattle that they add, but suffer only a fraction of the loss from overgrazing. The herds people therefore add continually more cattle to the commons, leading to overuse and the ‘destination of ruin’. Garrett Hardin’s narrative of the tragedy of the commons inspired a search for solutions, the most popular of which remains privatization of property. In the absence of (private) property rights, the argument suggests, common use of resources would lead to the ‘tragedy of the commons’ where no individual would have the incentive to preserve its value, given that the cost of not doing so will be spread among their co-owners, compared to the immediate private individual benefit gained from overuse.

This story of enclosures began with overuse and the depletion of the commons; and it ends with the need to allocate property rights in order that scarce resources may be optimally utilized. Using James Boyle’s thesis to elaborate, the first enclosure emerged out of the need to transfer inefficiently managed common lands into the hands of private owners in the seventeenth century. It was the process, as Boyle puts it, ‘of fencing off common land and turning it into private property’. If something is scarce, the best way to ensure that it is put to its most productive and optimal use is to assign it to an owner motivated to find its best use. By doing that, Boyle says, enclosures were expected to escape the ‘tragedy of the commons’.

If enclosing of common pastoral lands and overuse was the impetus for the first enclosure (that was accompanied with erasure also of the distinction between moveable and immoveable property), enclosing the domain of knowledge – the infinite, non-exhaustible, un-scarce pool of ideas – within the bounds of intellectual property rights was, according to Boyle, the ‘second enclosure’. The twentieth century saw the ontological connection between property and things break down with thing-like status being attributed to knowledge, ideas, and other ‘mental’ outputs. The prevalent notion of intellectual property was no longer

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14 Ibid.

15 Interestingly as far back as Aristotle, we find an iteration of this rationale. In Aristotle’s understanding, individual ownership creates a more thorough and stable community of interests and better promotes efficient, economical, and careful use of things than does common ownership. Aristotle, ‘Politics: Book II, Chapter 5’ in Aristotle & Richard McKeon (ed.), The Basic Works of Aristotle (Random House, 1941) 1151.


17 This line of reasoning argues that possession of things by individuals is superior to individual use of common possessions. Harold Demsetz suggests that allocation of property rights, which grants the owner the right to exclude, creates incentives for efficiently utilizing resources. It also internalizes many of the transaction costs and externalities of communal ownership. Allocation of property rights emerges from this line of thinking as a precondition for efficiently functioning markets and optimal use of resources. For detailed explanation, see Harold Demsetz, ‘Toward a Theory of Property Rights’ (1967) 57:2 The American Economic Review 347.

definitionally dependent upon the physical externality, materiality, or scarcity of the object owned.

Taking Boyle’s thesis of second enclosure a step further, I argue elsewhere that the enclosure of the biogenetic commons, with intellectual property rights over biological artefacts, constitutes a special case and requires attention perhaps as a ‘third enclosure’ or as ‘third reification in concept of property’. What is unique about the biogenetic realm is that as a self-propagating, self-replicating realm, it is not marked either by same spatial determinacy or similar efficacy of exclusion.19

What is interesting and often overlooked is that at every stage, for each enclosure, the social function it was meant to serve attested to its necessity and indispensability. Prospects of enclosure were underwritten by the economic morality of societal welfare and utilitarian objectives of ‘maximum good’. Serving private needs and individual good has seldom been a sufficient reason for property rights and enclosures. There has needed to be a demonstrable idea of maximal good that would drive regimes of enclosure, notwithstanding the idea that they also served private interests. What ‘good’ comprised this economic morality may have changed and evolved with times but what remained an operative necessity was a consensus about the professed virtues of enclosures. In a sense, there has always existed a demonstrable need to conjoin the terms ‘moral’ and ‘economy’ beyond the specific historical and economic setting set out by E.P. Thompson for the late eighteenth century.20

The ‘new’ enclosures – the third enclosure – to which this essay draws attention displays the same need for conjoining the moral with a biotechnology-led economy. What ‘moral imperatives’ accompany the subsumption of common property resources like seeds, plant varieties, forest produce, or new epistemic entities like microorganisms, DNA, and genetic sequences under globalized networks of intellectual property and biodiversity governance? What ‘moral community’ constitutes this enclosed space? The state, the environmentalist, the biotechnologist, and all agents of this moral community assume roles animated by the idea of a ‘larger good of humankind’. The biotechnologist, for example, by tapping into the vast resources of traditional knowledge and biotic resources, is able to create new cures, new therapeutics, and new agro products - each of them more efficacious and more advanced, saving us from diseases, nutritional deficiencies, pests, low productivity, hunger, poverty, food insecurity, health vulnerabilities and so on. The environmentalist, in another example, prescribes a framework of conservation and sustainable use to save humankind from the fury of nature, climate change, ecological imbalance, depleting resources, and to

20 As Norbert Götz (2015) also acknowledges, albeit drawing different conclusions about the compatibility of markets and morality.
conserve resources for future generations. Both the innovator and environmentalist become our ‘saviours’.

The compass of morality shifts. If the conventional frame of moral economy was a proto theory of subsistence – of local, proximate communities outside of global market systems - the new moral economy framework is a proto theory of globality. It displaces the subsistence ethic of proximate communities and replaces it with that of a progress ethic of diffuse global communities. The stated purpose of the enclosure of the commons is thus to not only serve the individual, local or proximate interests but to serve the interests of humankind as a whole.

In order for this weighty burden to be shouldered effectively and synchronically, international law provides the meta-frames of governance of commons. National states become compliant partners, mandated to provide a regulatory framework for their optimal governance. And the local community, no longer the ‘moral community’, is to work with and alongside these global and government actors to prevent ‘overuse’ and ‘misuse’ of resources. From producers and stewards of the commons and common pool resources like seeds, their status is equalized with the rest as ‘optimal users’ of the cosmopolitan commons. Post enclosure, the commons begin to serve a global constituency that has a far greater numerical and normative weight than the local and Indigenous communities and their ‘localized’ concerns.

There’s a double displacement of the Thompsonian moral economy thesis here. This displacement no longer considers private interests to be antithetical to the idea of moral economy, and no longer privileges the ‘subsistence ethic’ of local, proximate communities. The ethic of subsistence is replaced with the moral commitment to easing the global burden of disease and environmental degradation. In short, a ‘progress ethic’ that enables humankind to progress from a world of disease, hunger, and environmental instability to a world free of them, defines the new moral economy of the commons.21 The dual narratives of innovationism and environmentalism become the key justifications of ‘progress’.

3 Innovationism

Suddenly there’s a tightness in your chest. You begin to sweat profusely. Something terrible is happening. You’re having a heart attack. Yesterday, your first heart attack could have been your last. But today, luckily, biotechnologists have discovered a natural protein that may even stop a heart attack that’s already started. Biotechnology is mankind at its best. In partnership with nature. And

Monsanto is committed to this science of improving and preserving the quality of our environment. And of our very lives.22

In August 2008, the American Chemistry Council celebrated the third anniversary of a program called essential2life, a ‘360 (degree) communication effort’ to show ‘how connected we all are and how central chemistry is to the health and growth of our nation’.23

These two extracts point to the emergence and circulation of a new corporate language-game, one that tells us that we live in times of innovation. Driven by modern technology, ‘innovationism’ becomes the imperative of our hopes (of better life) and a panacea for our afflictions (against disease, risks, disability), both underlined by the ironies of technological modernities. As Nikolas Rose says, innovationism gives fillip to the idea that ‘techniques, technologies, experts and apparatuses [exist] for care and administration of the life of each and all’.24 It takes on the task of fighting disease, malnutrition, and food shortage in the name of wellness of each of its living subjects. Its supporters are enlisted for no less a cause than the deliverance of mankind. Innovationism feeds the idea of ‘somatic individuality’25 where individuals are brought to serve certain forms of authority in the name of their own self, their own lives or health. Transposing it to an idea of ‘somatic collectivity’, I want to suggest that the lives and health of the population as a whole have come to drive a new moral economy framework, where concerns of health, sustenance and care of humankind become its ethical impetus.26

Innovationism performs an ideological function for modernity, and technology becomes, as Scott suggests, the ‘high-modernist ideology’.27 Thus seen, the practice of science and technology is a ‘faith creating’ exercise that creates rationalizations for its reproductions and continued deployment. Technoscientific innovation replaces faith in providing hope, the embrace of science promises the deliverance that religion provided, and deference to monarchical authority is replaced by principles of experimental reason and consent.28 So central is technoscience to modern life that receptiveness to scientific ideas, as Yaron Ezrahi points out, has come to shape variants of liberal-democratic states.29


27 Ibid., 4.


29 Ibid.
Science and technology projects permeate the culture and politics of modernity, argues Sheila Jasanoff. Modern consciousness perceives science as predominantly objective, rational, useful, and compatible with operations and standards of democratic process. It is this perception that informs juridical frames, institution building and in fact the notion of the moral economy. As societies worry about the slowing rhythms of science and technology projects to master nature, debates rage about how to combat deadly diseases like HIV-AIDS, tuberculosis, and now Covid-19, how to increase pest tolerance, improve yields, nutritional content of grain to meet needs of hunger and malnutrition, how to manage climate change and so on. In a world increasingly driven by market logic, the panacea to these impending catastrophes has emerged in the form of more technology and more markets. Biotechnology, in its ‘second generation’ avatar of genetic modification and engineering, with its manifold applications in medicine, agriculture, energy, pollution control, renewable fuel and so on, promises a whole new logic of development that deploys new technologies of risk management.

Relations between science, publics and the state are mediated by how people know things in common, and how they perceive certain science and technology projects to be reliable, credible, or otherwise. What Jasanoff calls ‘civic epistemology’ is an outcome of process that crucially rests on what and how ideas are circulated, normalized, perceived and accepted. Perception and acceptance though cannot be guaranteed, they are unfixed enough to allow for osmosis of ideas and beliefs. There is an ambivalence that marks modern societies’ relationship with science and technology.

On the one hand we have, as James Scott describes:

a strong, muscle-bound self-confidence about scientific and technical progress, the expansion of production, the growing satisfaction of human needs, the mastery of nature (including human nature), and above all, the rationalist design of social order commensurate with the scientific understanding of natural laws.

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31 In the broadest sense biotechnology applies the principles of technology to biological sciences and applies the principles of living biological materials to technology. What may be now called ‘old’ biotechnology refers to conventional techniques that have been applied through centuries to produce wine, cheese, beers and associated foods using microorganisms, and at a later stage to produce antibiotics and solvents of many types. ‘New’ biotechnology, especially in popular conceptions, has come to denote genetic engineering and genetic modification of plant and other genetic materials.


On the other hand, there is a growing perception and an increasingly amplified awareness of risks of technology – risks of genetic modification of crops, of unintended, undisclosed effects of modern medicine, of climate change, of pollution, of chemicals, herbicides, pesticides, drug resistance and so on. There is a growing breakdown of consensus about the benefits of certain technologies. Jasanoff, in her book *Designs on Nature*, records the cross-cultural, cross-national variances in politics and policy making around biotechnology.\(^\text{35}\) Plausible reasons that account for such variation could be varying perceptions of risk and their political or governmental management.

Ulrich Beck’s ‘Risk Society’ thesis suggests that publics are increasingly concerned with risks that are no longer ‘external’, but continually thrown up ‘internally’ by systems of industrial technology and their governance. In such a situation, ‘science becomes more and more necessary, but at the same time less and less sufficient for the socially binding definition of truth’.\(^\text{36}\) Beck states that our relationship to science has become less trusting. It is increasingly acknowledged that scientific advance is at the centre of contemporary ecological and technological risks, even as we continue to remain dependent on technoscientific innovation. Beck terms this as a new form of ‘reflexive modernisation’ of risk societies, where sciences’ monopoly over rationality is broken.\(^\text{37}\)

How then does the politically and culturally imbricated terrain of law and technology proliferate? How is it that perceptions of risk in societies do not succeed in re-ordering an alternate epistemic domain, one that not only challenges, but also assumes a dominant discursive valence in society? Despite the ‘reflexive critique’ of the risks of technology, and the proliferation of ‘lay experts’,\(^\text{38}\) technology projects continue to proliferate, I argue, for two reasons.

First, technology is not only seen as the genesis of problems, but also becomes the analytical frame through which problems are sought to be addressed and overcome. This reflection continues to be enwrapped in the terms of modern, expert science, its capacity to innovate and deliver solutions through the promise of food sufficiency, and innovative cures. Big science, and its maverick twin, technology, continues to hold sway in popular and institutional imaginary as the most reliant, more portable panacea for hunger, pain and disease and other ills of modernity. Civic epistemologies may display cross-national, cross-cultural variances, particularly in the context of specific technologies, but broadly they endorse the inescapability and indispensability of technological interventions. Cross national or cultural variations and resistance movements at best advocate

\(^{35}\) Jasanoff (2005).


\(^{37}\) Ibid, 29.

\(^{38}\) Ibid, 61.
the incorporation of precautionary principles in order to reduce elements of risk in technology.

A second related reason is that Beck’s hypothesis – that modern societies are in transition from ‘class societies’ to ‘risk societies’ – misjudges the relation between societal risk distribution and social inequality. The ‘social production of risk’ and the ‘perception of risk’ are two different things. Beck’s thesis ignores the possibility of risk perceptions being related to class positions. It is not that the risks and hazards – of environmental degradation, pollution, of genetic modification and so on – manifest differently across populations, classes and societies. It is that the perception of risk itself is graded in relation to both class and the (geographical) location of populations. For the poor, dying of hunger poses a greater threat than risks of genetically-modified foods, for instance. Globally, both within the structures of developed societies as well as in developing societies, people may not be differently exposed to technology-modernization risks. However, the risks may not just be differently perceived, felt (or not felt), but may have differential impacts. Beck’s risk thesis fails to acknowledge, as Engel and Strasser suggest, that due to class-specific distributions of coping resources, global risks can produce differential impacts.

In other words, technology along with its risks seems to strengthen, not abolish, class societies. Technological innovation holds sway over public imaginaries not only because more technology ironically appears to be the only solution to technology-induced risks, but also because these risks do not appear as threatening as the risks of hunger, disease and poverty in the developing world and in poorer enclaves of post-industrial societies. Risk, in this reading become a relative category – relative to class and culture – and therefore does not become a countering force for technology.

The potential role of biotechnology in achieving agricultural and pharmaceutical innovation and reducing the global burden of disease and hunger continues to force the pace of capitalist enterprises in the global north. Calestous Juma points out that patent protected biotechnological innovations provided the surge to large sections of the pharmaceutical and agricultural sectors, overcoming the diminishing marginal productivity and returns of previous technologies. Since their advent in the early 1970s, techniques for gene splicing and recombination have provided the basis for biotechnology’s revolutionary promise to transform economic systems in unprecedented ways. According to a report by Biotechnology

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Industry Organization (‘BIO’), the world’s largest biotechnology trade association, the bioscience industry, is among the most resilient industries even in the face of recessions. The report states that:

A primary reason for the resilience of the bioscience industry is the diverse set of markets it serves. These markets span biomedical drugs; diagnostics and devices; agricultural products from animal health to seeds and crop protection; and bio-based industrial products such as enzymes for industry chemical processes and bio-remediation, bio-fuels, and bio-plastics. In addition, the bioscience industry involves not only high value, export-oriented manufacturing activities, but encompasses specialty commercial research, development and testing industries to advance bioscience product development as well as specialty distribution to bring bioscience products to market.42

The narrative of ‘innovation’ and its ability to control disease, hunger, nutrition and promote wellness and advancement has become one of the most abiding rationales for the bioprospecting and subsequent enclosure of the commons. The rich biogenetic resources in tropical hotspots of the world were to become the new store house for ‘organic’ therapeutics to manage ‘risks’ of poorer societies. 43 Natural products remain a major source of drug discovery, either directly or as ‘blueprints’ or ‘designs’ for novel chemical structures. In a survey by scientists of the US National Cancer Institute, 63% of the 973 small-molecule New Chemical Entities approved as drugs worldwide from 1981 to June 2006 were based on natural products. These included 6% that were natural products, 28% produced via semi-synthesis but derived from natural products, 5% produced via synthesis but whose molecular framework came from a natural product, and 24% that were ‘natural product mimics’ (i.e. synthetic compounds whose designs were based on natural products).44 A related factor for incentives in bioprospecting was also the fact that about 40% of all patents were due to expire by 2006.45

As a sum of the effects they generate, the risks they combat, and the fields they operate in, the (bio) technologies of production speak on behalf of humanity in its entirety and various population groups. Their particular biases of race, class, gender, localities are rendered invisible by the morality of shared risks and common interests. The impulse for global market requires that biotechnologies of production are globally perceived as panacea for the problems that afflict humanity at large. Competing epistemes have to be co-opted, defeated, or simply subjected


to a scale of commensuration that renders them scientifically unfit and therefore inefficacious and not portable globally.

4 Environmentalism as Neo-Protectionism

Having lost the luster that made it one of the world’s premier rainforest Parks [Manu National Park, Peru], and swelling with an ever larger and more assertive indigenous population, the Manu will imperceptibly pass from being a national park to being a reserve for its indigenous inhabitants … In my opinion, the best — perhaps the only — hope lies in the internationalization of nature protection… A first step might be to create internationally financed elite forces within countries, counterparts of the rangers who protect national parks in the United States and are legally authorized to carry arms and make arrests.

A core doctrine of contemporary environmental advocacy, particularly in the United States, has been the ‘public trust doctrine’ (PTD). PTD rests on the principle that certain resources such as forests, air, sea, and water are of such immense and irreplaceable value to humankind as a whole that it would be unjustified to let them be governed through regimes of private ownership and implied exclusions. The sovereign is mandated to not transfer public trust properties to a private party, especially if the grant has potential to interfere with public interest. This was the original understanding and implication of the PTD. In recent times, PTD is invoked increasingly to promote consciousness about environmental overuse and the need for state and global intervention to curtail it and promote development that is sustainable. But state and global actors no longer see public trust as antithetical to private property, often turning to private regimes to counteract local claims in the name of the global good (environmental protection).

In an influential article, Joseph Sax traces the history of the PTD to both Roman and English law and reconstructs how the doctrine functioned in the US to safeguard public interests in natural recourses such as navigable waterways, seashore, highways, and so on. Sax’s scholarship had a catalytic effect among courts and environmental policymakers throughout the United States. Courts in numerous states relied on Sax’s article to embrace the public trust doctrine within their respective jurisdictions. Changes have been made over time to apply this doctrine to protect navigable and non-navigable waters, public lands and parks, and to apply it to both public and private lands and ecological resources. The Supreme Court of California broadened the definition of public trust by including ecological and aesthetic considerations. Over time the PTD – not without its fair

share of detractors – has been increasingly associated with sustainable development and biodiversity protection, and has been deployed as an application of the precautionary principle.

Globally, it led to the integration of a legal concept of ‘public ownership’ that emerged as a limited set of particular rights of the public to engage in certain activities, thus limiting the prerogatives of private ownership. What comprised this ‘public’, how the public used common property resources, and the terms, limits and regulatory framework, was to be set by the state. PTD became one of the legitimating premises of state intervention in the public sphere. The public trust doctrine, in varying formulations, has pervaded constitutional and common law frameworks across the world. Postcolonial countries such as India retain their allegiance to both English common law traditions and American constitutional law provisions. Take for instance Article 39(b) of the Indian Constitution, it states: ‘The State shall, in particular, direct its policy towards securing … that the ownership and control of the material resources of the community are so distributed as best to subserv the common good’.

The ‘public trust’ argument is routinely endorsed by the ‘resurgent protectionists’, a term Lu Holt uses to describe neo-conservationists, environmental lobbies who consider local and Indigenous communities to be incompatible with the goals of environmental conservation. The ‘resurgent protectionists’ support the goals of biodiversity conservation but believe that local communities cannot be trusted with the rather complex task of conserving nature and that they are less desirable allies than commonly assumed. Harmonious, ecologically friendly local communities are regarded as myths. According to the protectionists, the cultural conditions deemed compatible with biodiversity conservation (low densities, limited technology, and subsistence production) would not foster conservationist practices. Once population pressures on resources grow and get exposed to markets and technology, local and Indigenous communities recognize the potential for overexploitation and no longer remain benign to nature. This point is endorsed by Terborgh as well, arguing that the ‘contemporary fauna of South America represents only the remnants of a much

49 For an example of a criticism from the free market side see Richard J. Lazarus, ‘Changing Conceptions of see Property and Sovereignty in Natural Resources Law: Questioning the Public Trust Doctrine’ (1986) 71 Iowa Law Review 631, at 633.


52 R.H. Wilshusen & M.D. Varian, Seeking the Centre Place: Archaeology and Ancient Communities in the Mesa Verde Region (University of Utah Press, 2002) 21.


54 Ibid.
larger fauna that existed prior to the post-Pleistocene mega faunal "overkill" perpetrated by Clovis hunters.\textsuperscript{55} He cites evidence of ‘prehistorical overkill’ by Indigenous peoples of the Americas, Australia, Madagascar, New Zealand, Oceania and elsewhere that ‘should put us on notice that pre-modern indigenous people have not always been exemplary stewards of biotic resources’.\textsuperscript{56} He also argues that as Indigenous communities have increased in numbers and/or have acquired certain technological know-how, the ‘depletion of game resources has been the norm’.\textsuperscript{57}

Extending this argument, Oates argues that there is little robust evidence that ‘traditional’ societies anywhere in the world have been natural conservationists.\textsuperscript{58} On the contrary, he adds that wherever people have had the tools, techniques, and opportunities to exploit natural systems they have done so. This exploitation has typically been for maximum short-term yield without regard for sustainability. Unless the numbers of people have been very low, or harvesting techniques have been inefficient, such exploitation has usually led to marked resource depletion or species extinction.

This line of thinking mostly translates into a suspicion of common property resource regimes, common pool resources and any idea of common management. It places local and Indigenous peoples, as Lu Holt suggests, in a Catch-22 situation ‘whereby the cultural conditions deemed compatible with biodiversity conservation (i.e., low densities, limited technology, and subsistence production) are precisely those under which a common property theoretical framework would not ‘predict conservationist practices to emerge’’.\textsuperscript{59} Local and Indigenous communities come to be seen as ignorant, ineffective and uneducated about global ramifications of local exploitations, and therefore lacking the ability to steward nature as effectively as structures of centralized and/or globalized governance.

This type of environmentalism thus re-enacts Hardin’s ‘tragedy’ thesis, reformulates the suspicions that underlie common use, and promotes technology and private use by way of an exit-option.\textsuperscript{60} While the tragedy results from overuse and underinvestment, the solution to the tragedy lies in assigning ownership rights over resources or land, particularly those that are enabled or facilitated by technology. Hence, technology comes to be viewed as a mode of conservation, and property emerges as an incentive to conserve. A feature – private interests – that was earlier

\textsuperscript{56} Ibid.
\textsuperscript{57} Ibid.
\textsuperscript{59} Lu Holt (2005) 201.
\textsuperscript{60} Hardin (1968).
regarded as antithetical to the idea of public good, comes to posture itself as an ally, someone with whom alliances can be struck to advance global good.

An expected outcome of neoconservationism is that environmentalism comes to be perceived to be a matter of cosmopolitan concern and therefore of international jurisdiction. Terborgh, for example, advocates the ‘internationalization’ of nature protection.\(^\text{61}\) Once conservation is linked to “tragedy of overuse”, and therefore to ‘incentives to conserve’, the expansion of the ‘eminent domain’ and internationalization of nature protection become corollaries of each other. An FAO declaration reflects this need for internationalization: ‘The major plants of the world are not owned by any one people [but] are [rather] quite literally a part of our human heritage from the past’.\(^\text{62}\)

A good example of this brand of protectionism is the Convention of Biological Diversity (CBD), signed by 150 countries at the Rio Earth Summit. CBD Article 3 mandates states to be the sovereign owners of biogenetic commons:

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.\(^\text{63}\)

Unsurprisingly, there has been an expansion of eminent domain in the post CBD era that has internationalized the mandate of state sovereignty over natural resources, allowing state power to enclose commons (and common property resources), putatively for the sake of ‘biodiversity protection’ and ‘sustainable development’, the two contemporary buzzwords of ‘public good’ that have almost become the new global common-sense. If biodiversity, as mandated by the CBD, is a national resource over which the state exercises its sovereign claim, then decisions concerning their exclusion or inclusion are that of the presiding government authority. ‘Benefit sharing’ claims for local communities feeds the assumptions that local people have neither property rights over their biocultural domain nor agency to negotiate the terms of engagement, and that reward or compensation constitutes a just articulation of Indigenous peoples’ claims. The right to ‘possess’ is not the same as mere compensation for a vaguely understood and conceptualized stewardship claim over biocultural resources in the form of benefit sharing. Articulations of community rights over resources are notoriously weak, diffuse, and are often defeated and downsized in the competing terrain of

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\(^{61}\) Terborgh (1999) 199.


\(^{63}\) Article 3, Convention on Biological Diversity.
overlapping jurisdictions. They enact, as I have argued elsewhere, the cunning of rights.⁶⁴

Issues of access, use, ownership are caught between a global domain where individuals, corporations and national governments hold rights to enclose common property to their unique advantage, and a global domain where collective entities such as farmers and Indigenous peoples hold some residual rights such as benefit sharing. These two domains, known as res nullius and res communis respectively, are explained further in the subsequent section. For now, the point of note is that both the terms of national sovereignty over biogenetic resources and the recognition of stewardship of Indigenous communities (by CBD,⁶⁵ its Nagoya Protocol,⁶⁶ FAO, and the International Treaty for Plant and Genetic Resources for Food and Agriculture (ITPGRFA))⁶⁷ do not devolve into determinate powers of exclusion, especially for local and Indigenous communities.

Internationalization of conservation efforts combines with expanding sovereign power to become two of the most important tools in governing and enclosing the commons. There has been, in recent times, a substantial expansion of the eminent domain and state control of natural resources.⁶⁸ In fact, it has prompted environmental and legal theorists such as Richard Lazarus to lament that ‘modern trends in natural resources law increasingly have eroded traditional concepts of private property rights in natural resources and substituted new notions of sovereign power over those resources’.⁶⁹ Of broader, and perhaps more concern for Lazarus is that:

the doctrine threatens to fuel a developing clash in liberal ideology between furthering individual rights of security and dignity, bound up in notions of private property protection, and supporting environmental protection and resource preservation goals, inevitably dependent on intrusive governmental programs designed to achieve longer-term collectivist goals.⁷⁰

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⁶⁴ ‘[T]he cunning and the two-facedness lie in privileging a particular rule of difference, one that institutionalizes the epistemic superiority of the technological innovator. Culture becomes the substitutive object. In one instance it gets incorporated as strong proprietary claims, in the other, it undergoes a discursive delimitation translating into a weak range of entitlements. While the latter claims to ‘speak for the subaltern’ and speak in the name of indigeneity, its primary allegiance remains the interests of the innovators, admitting a built-in dysfunction that does not take into account the future trajectory of rights activity, competition, and conflicts. The cunning thesis points to a shift in the discourse of civility—from a denial of rights to an inclusion’. Chandra (2016) xi.


⁶⁸ See for instance Phillip O. Foss, Politics and Grass: The Administration of Grazing in the Public Domain (Greenwood Press, 1960) that described the takeover of federal grazing councils by local grazing interests and had considerable influence on environmentalists interested in the management of the public lands.


⁷⁰ Ibid.
One of the pernicious implications according to him is that the doctrine threatens to undermine private property rights in natural resources.\(^{71}\) Lazarus’ conclusions reveal a rights’ binary between private and public trust property, the latter expanding at the expense of the former.

But this is not the case, as least not as straightforwardly as this.Ownerships patterns over time have mutated, binaries between private and public ownership reworked, and the rhetoric of conflictual objectives resolved. They have become variegated enough (with different permutations of possession-use-transfer rights) to facilitate partnerships, joint ventures, and cohabitation of various types. The legitimating discourses of ‘public trust’, ‘common good’, conservation, regulated access, and equitable benefit sharing are no longer the mandate of the state only. Global, private, corporate entities position themselves as the neoconservers, endowed with ‘corporate social responsibility’ with a key stake in ‘sustainable development’.

State sovereignty over biogenetic resources, and patent and breeders’ claims over improved varieties or derived pharmacological preparations, have both come to be characterized by similar instrumentalist conceptions of public good. Patent claims over pharmacological derivatives, breeders’ rights over plant varieties, and patent claims over seed varieties are examples of how private property interests and state interests exist alongside each other, often in mutually reciprocal alliances. The state, in this era of global capital, is no longer the only caretaker of public interests. *Public trust comes to be reposed in private capital as well.* Private appropriation becomes a means to make the rich biotic heritage accessible and usable for global publics. For example, intellectual property rights in biotechnological innovations are meant to do exactly this: make remote, inaccessible cures, remedies, locked up in inaccessible archives of traditional knowledge, accessible to humankind in general. PTD, in the case of biological commons, no longer presumptively proscribes exclusive private appropriation; indeed, it makes space for it.\(^{72}\)

PTD revisionism and its cohabitation with private property rights in natural biotic resources reveals a complex picture. Contemporary incorporations of PTD diverge from the old English common law public trust doctrine that enjoined upon the sovereign to *not* transfer public trust properties to a private party. Private parties, in new iterations of public trust/good, are ‘able’ partners of the state. While the state steps in to avert the tragedy of the commons, public-private property claims step in to correct the technological deficit of community-led stewardship models, purportedly averting a global tragedy stemming this time from *underuse* of resources.

\(^{71}\) Ibid, 696.

5 The Juridification of the Commons

In these times of globalization, threats, risks, and their perceptions have also acquired a global character. Global environmental threats, risks of resource depletion, extinction of species, drug resistance, mutating viruses, deadly communicable diseases that know no borders, have served to legitimate a globalized nature of intervention too. The commons have a burden purportedly so extensive and resources so valuable that their juridification expectedly emerges as a corollary. The efficacy of commons must be co-produced by law and its structure of rules, policies, and institutions that consolidate environmental and innovation led claims over them. Unaccompanied by the authority of law, the evolutionary trajectories of conservation and innovation may have been entirely different. Commons therefore emerge as the joint responsibility of scientific, social and legal enterprise.

It is interesting to see that in the field of international law these ‘naturalized spaces’ usually get designated in the juridical coordinates of res nullius and terra nullius.\textsuperscript{73} Doctrines of res and terra nullius are descriptive categories that earlier explained why the biogenetic realm had, till recent times, remained virtually free from claims of ownership and legal title, despite usufruct entitlements of community and despite bio-prospection by plant specialists. But the designation of ‘empty space’ became the first step in bringing nature under the radar of statist territorial thinking.\textsuperscript{74} Paradoxically, the ‘zero sign of res/terra nullius expose[s] the grid of complicitous relations international law organizes under the sign of res nullius perspective’.\textsuperscript{75} Land (terra) and resources (res) that belong to no-one (nullius) got plugged into international networks as spaces that belong to everyone, res communis.

There are several normative rhetorics that came to aid juridification commons – the first being the application of the common heritage of humankind principle to areas that are territorially within the sovereign bounds of the nation state.\textsuperscript{76} Extension of the principle of common patrimony to apply to sovereign territories has been somewhat of a contentious issue. To begin with, even as a

\textsuperscript{73}Res nullius is a term derived from Roman law denoting ownerless property that is usually free to be owned. Terra nullius is used in international law to describe a territory free from sovereignty of any state. After the 1992 Convention on Biological Diversity, terra and res nullius has been replaced by legal frames of res publica and res common, meaning that all privately unowned land and its resource is assumed to be the property of the state. See generally Kathryn Milun, The Political Uncommons: The Cross-Cultural Logic of Global Commons (Routledge, 2011) 51-70.

\textsuperscript{74}Ibid, 53-55.

\textsuperscript{75}Ibid, 54.

\textsuperscript{76}Deep seabed, outer space and Antarctica are some examples of spaces deemed to be part of the global commons. For a critique of the common heritage principle, see Werner Scholtz, ‘Common Heritage: Saving the Environment for Humankind or Exploiting Resources in the Name of Eco-Imperialism?’ (2008) 41:2 The Comparative and International Law Journal of Southern Africa 273.
philosophical idea, it carries within it vestiges of the imperial ‘civilizing mission’. Sovereign states unsurprisingly resist the idea of any external intervention even when it is carried out in the name of the common heritage principle. The common heritage principle and national sovereignty have conflictual jurisdictions even as a starting point. But the thing with nomenclature is that its auditory signals can be altered quite efficiently. A semantic tweaking of the common-heritage principle yielded way to a more porous and malleable principle of common concern of humankind. Balsar suggests that the notion of the common heritage principle was ‘like a chrysalis in gestation in its cocoon’, and that accordingly, the common heritage principle has 'complete[d] its metamorphosis in the shape of "the common concern of humankind" in relation to environmental law'.

‘Common concern’ as an idea devolves from the philosophical idea of the common heritage of humankind principle, and therefore serves as a driving force in the formulation of rules and jurisdictions that relate to the enclosure of the commons. Its merit lies in the fact as a term ‘concern’ is more benign than ‘heritage’. However, in terms of legitimizing access to commons within state jurisdictions, common concern serves equally well. To categorise something as common is to enable global entities – environmentalists, corporations, WTO, NGOs – to become stakeholders. They variously use the language of protectionism, public trust and conservation to look after collective common interests and shape the collective common heritage.

It is important to recall that the term ‘collective’ no longer alludes to interests of the local communities but to the larger collective of humankind, in the process obscuring not only the social history of the place but also the social relations that produced the ‘commons’. The conventional moral economy argument emerged from a privileging of local, proximate, livelihood interests of communities over that of private interests. But once the commons have been endowed with a value that transcends their utility to the local communities, local communities become a part of a larger, global network of rule and decision making in which they are assigned new placements, roles, and subjected to new rules.

The ‘common concern of humankind’ has found its way into two treaties of near universal application, the United Nations Framework Convention on

77 Kemal Baslar, *The Concept of the Common Heritage of Mankind in International Law* (Martinus Nijhoff Publishers, 1998); United Nations Educational, Scientific and Cultural Organization (UNESCO), ‘Convention Concerning the Protection of World Cultural and Natural Heritage’ https://whc.unesco.org/en/conventiontext/ (accessed 14 December 2019). This notion applies to sites within the territories of signatory states. The preamble, for instance, considers ‘that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole’. Roger O’Keefe, ‘World Cultural Heritage: Obligations to the International Community as a Whole?’ (2004) 53 International Comparative Law Quarterly 189.
Climate Change of 1992 (‘UNFCCC’),\textsuperscript{78} and the United Nations Convention on Biological Diversity of 1992 (‘CBD’),\textsuperscript{79} both of which endorse the common-concern principle. Both seek to soften state sovereignty issues by highlighting the commonality of interests. This implies that policy and rule orientation ought to be characterized by interests of humankind in general and concomitantly also national state interests. International environmental and science & technology agendas are to complement and supplement state agendas. The Preamble of the CBD recognizes state sovereignty over biological diversity but even as it does so it reminds the states of the transnational nature of problems faced and the ‘planetary’ challenges:\textsuperscript{80}

Aware that conservation and sustainable use of biological diversity is of critical importance for meeting the food, health and other needs of the growing world population, for which purpose access to and sharing of both genetic resources and technologies are essential …

Acknowledging that the provision of new and additional financial resources and appropriate access to relevant technologies can be expected to make a substantial difference in the world's ability to address the loss of biological diversity …

The language of the CBD is instructive and reflective of the narrative of the moral economy of the cosmopolitan commons that gets structured around common needs but invariably requires the expertise and technology of affluent countries. It affirms new conceptions of public trust that retain the idea of common patrimony but amply gesture towards the limitations of local guardianship, responsibility and community.\textsuperscript{81} From informal regimes of common ownership, the commons are juridified into enclaves of globalized management.

6 Tragedy Revisited

Contemporary invocations of the tragedy of the commons thesis rest on two expected sub-optimal outcomes for the commons – overuse and underinvestment. Averting this tragedy has meant identifying the conditions that allegedly led to overuse and underinvestment – unfettered access and indiscriminate use of the commons by local communities – and then restricting access. The rhetoric of environmental sustainability not only facilitates the extension of state sovereignty over natural resources, but has also led to the formalization of transnational claims through international conventions and treaties.

\textsuperscript{78} The Preamble of the UNFCCC affirms the acknowledgment of the parties to the Convention ‘that change in the Earth’s climate and its adverse affects are a common concern of humankind’.

\textsuperscript{79} The preamble affirms that the conservation of biological diversity is a ‘common concern of humankind’.


\textsuperscript{81} For a response to Joseph Sax and his reinvention of the PTD see Carol Rose, ‘Joseph Sax and the Idea of the Public Trust’ (1998) 25 Ecology Law Quarterly 351.
International conventions, such as the CBD and ITPGRFA for instance, often have unintended consequences of pitching a certain type of environmentalism against local and Indigenous communities, displacing customary habitats and livelihoods. As a productive and a stratifying force, the cognitive hierarchies that such agreements draw between ‘science’ and ‘non-science’, and the differential appropriative capacities that they attach to each, only serves to divide the world further. For a vast segment of the global population – often the most disenfranchised and marginalized – such international laws mean a loss of claims over forests and resources they may have stewarded for aeons. They no longer are the worthiest beneficiary of a ‘moral economy’.

The alignment of a global idea of ‘public good’ with the idea of environmental protection, innovation, technology and property – each espoused to be in a contingent relationship with each other – performs a critical discursive function in the ‘uncommoning of the commons’. Modern conceptions of ‘common good’, ‘net welfare’, ‘greatest good’ – espoused by both innovationism and neoconservationist environmentalism – conceal the particularistic propensities of their rhetoric by black-boxing the idea of ‘utility’ itself. Utilitarian consequentialism, no matter how altruistic and welfarist, becomes untenable when trade-offs take place between diverse moral and cultural universes. Often enough for economists to hear loud and clear, local and Indigenous communities have demonstrated that they do not rationalize in terms of dominant or mainstream welfare expectations. Once we attach normative weights to sociological and cultural utilities, the moral consistency of ‘net welfare’ or ‘overall welfare’ comes under strain, and utilitarian calculations become unhelpful in adjudicating between competing claims as there are no standards for comparing disparate utilities.

Who presides over the comparative utilitarian worth of competing lives and their choices? The mere geospatial weight of ‘globality’ sometimes blinds us to the ‘utilities’ of the small-sounding ‘local’. In India alone 55 percent of its tribal population, a staggering 57 million peoples, reside outside their traditional

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84 Milun (2011).

h Habitats. 86 It is true that this figure combines forced, circumstantial, and aspirational migration. But it is also true that a large number of forest-dwelling tribal communities have been forced out of their customary lands because they are deemed to be incompatible either with the goals of conservation or plans of development. 87

The biotic commons today are laden with an imbricated mix of private, state, customary, national, international, and local claims. But nearly all claims shift the terrain of claim-making from stewardship to ownership. Moral assumptions of environmentalism and innovationism conceal the (dis)placement of local communities within the new network of commons. In this new moral economy of cosmopolitan commons, local and Indigenous communities often find themselves inducted as ‘partners in park or species management’, 88 or as beneficiaries of ‘benefits’ that accrue to them as stewards of the knowledge and resources prospected. 89 Public trust doctrine, intellectual property rules, benefit sharing agreements, and community governance models become mutually reinforcing and overlapping narratives that legitimize the internationalization of commons on the one hand, and its appropriation on the other.

The ethic of cosmopolitanism – ‘common heritage’, ‘common concern’, ‘common risks’, universally ‘optimal’ solutions – displaces the older ethic of ‘local-common’. Aiding and abetting this displacement are the discursive practices of environmentalism and innovationism that do not just alter the architecture of common property and public goods, but concomitantly marginalise and disenfranchise local and Indigenous communities. The moral economy of cosmopolitan commons has not only redrawn the divide between public and private good (and goods), but has also jettisoned the foundational ethic of the moral economy – subsistence. This is not just an evolutionary displacement of one normative bottom line with another. For a global society riddled with malignant inequalities and poverty, replacing the subsistence needs of local and Indigenous communities with ‘global welfare’ makes the affixation of the term ‘moral’ with ‘economy’ truly perverse. This is the real tragedy and must be averted.


89 Chandra (2016) 91-123.