

Towards a vocabulary of commons Anita Cheria and Edwin

The importance of vocabulary

There is a world of difference between the commons and common property. There is an intimate linkage between language used to describe the commons and the perception and use of commons—how ‘the commons’ have been translated from practice to restrictive usage. The words used to describe often become the gateway to perception. Language is a good indicator of how we think, and how we define the physical, and psychosocial universe around us. Language not only expresses what we think, but to a large degree shapes our perceptions, self-perception and in constructing how we think. Languages are knowledge systems, not merely a collection of words. The individual addressed by an honorific is more likely to feel respected than one addressed by a demeaning one. Used continuously, these descriptors are internalised.

Languages of peoples in tropical lands seldom have words for snow, but the Eskimo have more than a dozen words for it. Similarly, warlike peoples, feudal societies have no words for democracy and consensual decision making or polity. Eminent domain and terra nullius are carryovers from a feudal era. Though language influences how we think, it is not deterministic. There is a popular misconception that language determines thought, and we cannot go beyond the limits of language. The fallacious view is largely based on the work of Benjamin Lee Whorf. Peoples do go beyond the limitations of language in countless ways—by creating new words, using old words creatively and by importing words from other languages. A person from a tropical land, with a mother tongue that does not have a word for snow can know what snow is. However, language does direct what we must think of when we use it and the richness of our perceptions.¹

A quirk of language is that it is egocentric, privileging the powerful and demonising the weak. Since most of the language we use today has come from the city, the city privileges itself. So those who lived in the cities are called ‘citizens’ and the serfs from the village were called ‘villein’ becoming the modern ‘villain’. Being egocentric, languages are anthropocentric, and often racist, sexist and ageist. This results in them privileging human beings over animals, male over female and age over youth. It is insulting for a human to be compared to an animal, a man to a woman and so on. Directions are given as ‘left’, ‘front’ and ‘back’. There are ‘primitive’ languages such as indigenous Australian *Kuuk Thaayorre*, that are geocentric and use the cardinal directions.²

Languages force us to think in ways depending on the information that must be conveyed and therefore what must be specified.³ It is the linguistic equivalent of the management concept ‘what gets measured gets done’. While ‘you’ can be used indiscriminately in English, many languages would need to have specific forms for male and female and a ‘respectful’ and non-respectful (also endearing) form. The use of age and sex encoded languages would instantaneously result in the recognition of the sex and age of the person. Though ‘hen’ and ‘chick’ refer to the same species, they embed age forcing the user to factor age into thought when formulating the idea into language and in selection of vocabulary. Similarly, both ‘girl’ and ‘woman’ embed age and sex, while ‘lady’ embeds social status in addition to age and sex, and ‘Queen’ also embeds a formal governance position. The same would hold good for boy, man, lord and King. If a language of a society embeds space with life, with animals, plants and the inanimate, then ‘development’ in the language of that society would not cut through the migration paths of animals or fence their waterholes. Unfortunately, the dominant paradigm privileges industry and capital.

The powerful privilege their language over others. The Romans, who considered themselves civilised, made the people they conquered as slaves (Latin *verna*, native slave), and called the language of their slaves as *vernaculus* from which we get ‘vernacular’. Their ‘scientific’ knowledge was Latin. Though presently understood as ‘local’ or ‘native’, vernacular literally means language of the slave. The present privileging of languages is not so blatant, but still has gradation in terms of ‘national’ and ‘official’ language, and ‘dialects’—leading to the saying ‘language is a dialect with an army’. The privileged claim the right to name the other. Once the right to name is established, it rapidly scales up to the right to regulate and to own. The woman takes the name of the male—either as father or husband. The colonial peoples

¹ Boroditsky Lera *How does our language shape the way we think?* In *What's Next? Dispatches on the Future of Science*, Edited By Max Brockman.

² Boroditsky Lera *How does our language shape the way we think?* In *What's Next? Dispatches on the Future of Science*, Edited By Max Brockman.

³ *Languages differ essentially in what they must convey and not in what they may convey.* Jakobson, Roman ‘On linguistic aspects of translation.’ In Lawrence Venuti, (Ed) *The Translation Studies Reader*. London: Routledge 2000. pp. 116.

always named the colonised and when the colonised got independence, there were a spate of renaming of countries from Zimbabwe to Myanmar to Sri Lanka. This is deliberate distortion and a continuum of terra nullius, an extreme form of egocentric language. It also operates in more subtle ways. When words from languages of equals are used, they are used with the same pronunciation. Words of languages of weaker people's are not so respected. The British have no problem pronouncing 'rendezvous' or Karl Marx but would change Catumaram to Catamaran and Sultaan to Sul-ten. This is different from the process where Alexander becomes Sikander, Abraham becomes Ibrahim and Solomon becomes Suleiman, but similar to Constantinople becoming Istanbul.

The reduction of thought to ideas, ideas to concepts to language and then to words, speech and writing results in transmission loss at every stage. When translated into law which determines action, it results in linguistic deficiencies restricting action—a serious lacunae which impedes progress on protection, use and benefits of the commons. The vocabulary of the law is the vocabulary of property. The introduction of property introduces 'trespasser' and the related term 'criminal'. Where there is no property, there cannot be trespass.

The dominant paradigm

The industrial revolution gave rise to capitalism and democracy. The jurisprudence that developed at the time gave rise to its own vocabulary with industrial relations as the normative. The vocabulary of individual private property and individual rights developed co-terminus with science, industrialisation, capitalism and democracy. In a rather frank statement of its objectives, industry tells us that 'development' is to 'exploit' natural resources. Efficiency is to do it in the fastest time possible. The language of commons is to protect natural resources. Efficiency is to minimise the use footprint. Greenfield is very different from green field—spaces make a lot of difference in language too!

The present vocabulary developed as a vocabulary of private property since commons was the norm and implicit. Property was a subset of the commons. The King owned all else. (It is from the 'royal' or 'regal' estates that we have the term 'real estate'.) At the time 'wastes' meant any uninhabited land, and what are private fields today were called 'closes'. There needed to be terms to distinguish property from the commons, since property was a subset of the commons. Unfortunately, the language of property has become so dominant that there is a role reversal, and in extreme cases there is even denial of commons due to absence of explicit definition or description. Land that did not produce tax was termed wasteland. This wasteland is then alienated to the private industry—i.e. made into property—so that it can be taxed and made productive. However, production for the manor is very different from production for the community. The latter is for consumption and the former for export. Earlier, 'waste' was where humans did not live which, though an anthropocentric definition, did not consider it empty and certainly not a vacuum.

The dominant usage in modern languages is steeped in property. It is property—whether industrial or capital—that is taken as the normative. In law, defence of property is normative. The word 'development' in modern usage implicitly refers to industrial development. In more traditional languages, development always means human development—of the individual and the community. In English however, human development must be specified. Similar usage is seen in such terms as 'growth', 'profit', 'structural adjustment' and 'reforms'. While the Reformation was to de-institutionalise the church and make it more people centric, the present day 'reforms' are to make polity and society itself more market centric and therefore would more accurately be termed deform and deformation.

The industrial framework

The industrial framework requires precision, and precise borders. The natural world has few boundaries that follow the lines on the map. Boundaries are fluid, flow and merge into one another. It is when we seek to make them into the mechanical 'on-off' so beloved of the industrial society that gives rise to conflict. There needs to be space without boundaries for peace, both for the physical and non-physical commons. The language of the present is the language determined by industrial society—one of precision and private property. It lacks the nuances that cushion the journey of life.

It requires minimum tolerance, high fidelity, total quality management (TQM) and zero defects. So we bring in these terms into human life. Instead of technology supporting life, life adjusts to support technology. Terms used to describe technology determine how life should be lived. Work is done in shifts to support the machines. From being masters of the tools we become slaves to machines. (Ivan Illich uses the term 'Conviviality'.) 'Precision' in machines becomes imposed precision in natural phenomenon and the descriptive rules become deterministic law and therefore flawed. The distinction between rule and law is erased leading to avoidable confusion.

The consequence of the industrial framework is the necessity of industrial intervention as a prerequisite for a life pattern to be recognised, value to be assigned and to disregard the active commons. Language is so influenced by the industrial paradigm that nature is considered empty until mechanical procedures are applied to it. Value comes only from such addition, and soon value is mistaken for price. Since the tools are to measure industrial production, all else is termed empty. Where there is no industrial intervention, it was considered terra nullius. It extended even to considering ‘the natives’ minds as empty and bereft of culture—terra nullius of the mindscape—if there was no industrial production. As Eric Fromm put it in ‘To Be or To Have,’

Industrial society has contempt for nature—as well as for all things that are not machine made and for all people who are not machine makers.

Instead the commons were considered ‘passive’ and the knowledge regarding them ‘unscientific’ because it is not encoded in the idiom accepted by science. This ‘recognition of life’ and the active role of the commons in production and sustenance of life is important since without it the resource base is considered terra nullius and can be occupied by the dominant at will.

The nomadic communities use the same plot of land at regular intervals. These intervals could range from a year to a decade or more. They have a well-developed sense of territorial rights and occupy the same area, only not continuously. Sometimes the period of return is a decade or so, though old timers know the periodicity, and the locations. They do not mind if others use the land when they are not around, but assert their right to it at specific periods. This, if one is unbiased, is the original ‘timeshare.’

However, the dominant invaded this territory declaring it to be terra nullius and established their sole dominion over it, debarring access to the nomads and declaring them encroachers and trespassers in the bargain—when in reality it is the dominant who are the squatters and illegal occupiers of the space. The picture changes the moment there is industrial intervention. Then it is called ‘timeshare’ and is protected by property laws. The law and popular consciousness still refuse to accept that the nomads discovered and practice timeshare.

It shows, at a deeper level, how the slow strangulation process has worked to totally marginalise the community. With a little bit of imagination, one can picture the initial negotiations between the immigrant and the gypsy, with the immigrant promising to use the land only when the nomads were not there, and then progressively asserting their rights over the land. In the cities, where land is at a premium, they are no better than illegal squatters.

Branding non-polluting communities as uncivilised and barbaric is one consequence of the industrial framework. In its equally debilitating pre-industrial avatar, it led to the word for ‘the other’ and ‘the enemy’ being one. All instruments of power are used to ensure banishment from the commons.

The vocabulary of appropriation

The legal concept of terra nullius is reproduced in popular perception. There is no more ‘space’ for commons and the remotest places are vulnerable precisely due to their remoteness—first for adventure tourism, then eco-tourism and then exploit. The absence of industrial action on nature causes the perception of a property vacuum, and therefore the perception that all ‘unfenced’ commons are just waiting to be invaded and taken over. Nature abhors a vacuum. The portrayal of the commons as empty is one of the most insidious threats to its survival. Ideas of the ‘fullness of the commons’ are dismissed as romanticism. Even cooperatives without formalisation are thought to be, and treated as, non-existent. The dominant culture cannot perceive, and what is not perceived is considered absent.

Peoples’ homelands, their commons, are not taken over at one go. To make the life of the people unviable the state resorts to a process of slow strangulation, a process of whittling away their rights and resources. The method used has four distinct stages.

The first stage is ‘*we are all one.*’ This seemingly inclusive phrase is to exclude people from resources. The common idea is ‘we are one’ nation or religion, language or one family. Wealth of the marginalised is declared the property of the larger society.

In the second stage, there is a call to ‘*let us define your rights.*’ The dominant define the rights of others. These rights are limiting. Now that the legitimacy to define and change rights has been gained, there is a steady whittling away of the rights of the dominated.

In stage three, it is made clear that *all residual rights are vested with the dominant—in most cases the state—as also the right to modify these rights.* This is the most insidious. All residual rights should vest with the people, rather than the other way around.

Stage four slowly creeps in, almost without the community knowing what and how it happened. The rules are quietly changed, ‘rationalised’ till such time that all *rights become ‘gifts.’* The justifications are

many, but the core issue remains the same: the dominant have abrogated to themselves the power to suspend all rights of the dominated.

The larger society by commission and omission ensures that 'its' wealth, which it jealously guards as its own, remains off discussion. Global agreements, all drafted by the west, routinely talk of all biodiversity as 'global' heritage, while tightening controls in safeguarding their own property such as 'industrial' and 'intellectual' property. Within countries, since the cities are privileged over villages, water is stolen from the countryside and electricity exported to the cities from tribal areas, denying the local populations, using these tactics.

The marginalisation is sequential. First they lose their sovereign powers. Then they become advisors, lose the right to use the resources, become labour, illegal settlers, and finally slum dwellers. The slow strangulation process is operative not in land or land-related issues alone. It covers every part of the life and livelihood spectrum including the abstract 'superstructure' such as religion and culture. Exploiting peoples first take over relatively unfilled spaces of the ones they want to subsume, and then claim sovereign powers over the entire community. From being equals, they are slowly pushed towards being disturbances, as the World Bank and the Government of India say in their ecodevelopment project, to waste absorbers and finally to being waste. Being natives, they do not qualify for informed consent.

From description to determinism

The casual visitor to some villages in the Nicobar Islands is in for a shock. The community there would quiz them first about why they want to come there, and tightly control the photography and the reports that are written about them. They have an instinctive understanding that the reporter may first describe them. But in the process of 'formalisation' anything that is not put in writing is considered absent. For instance, though they do use the land—a prime stretch of coast in economic terms—that usage is implicit. Since it is not written down in most chronicles written about the fisherfolk, in the process of formalisation they are considered to be encroachers of the coast. The 'descriptive' writing becomes 'deterministic'. When the state claims their property, what is not written down is space filled by the state. It is only for the rest that compensation can be negotiated. This is a classic case where a 'rule' which is supposed to describe a natural phenomenon becomes a 'law'.

The power of language in determining response is captured by the saying 'call a dog mad and then kill it'. The entire advertising industry and the propaganda machinery of the state utilise this to the hilt. These professionals are called 'spin doctors' and they put a 'positive spin' to the benefit of their client. Torture becomes 'enhanced interrogation techniques' and killing civilians becomes 'collateral damage'. Indigenous people become 'encroachers' in forests, their homeland for millennia before the present countries even came into existence, their rights become privileges, concessions and are then extinguished. They (the poor) tell lies, cheat and slander but we (the powerful) are economical with the truth, disingenuous and misspeak.

The words used to describe become words used to determine. The usage 'my terrorist is your freedom fighter' finds its expression in the wiki wars of terminology: what should be used, Palestine or Israel? It would determine the political persuasion of the user and the solutions that would be proposed. Similarly, using the language of property is a giveaway on the user's position regarding commons.

This determinism becomes even more pronounced when translated into the written form of the language and then to law. Then what is written becomes the legal limit. The conflict between the law and those who break it is often the conflict between the deterministic nature of the written word and the descriptive intent. Most 'laws' are descriptions of best practice rather than deterministic. Fortunately, languages by themselves are not deterministic, though they do have a certain bias in that direction. Human beings can go beyond the limits of a particular language and draw on ideas embedded in other languages. Just as language has been used to bind, it can just as usefully be employed to liberate⁴ the commons and return it to the commoners and the community. Sometimes it is done by importing the words from another language, sometimes by coining new words.

Appropriation of vocabulary

The appropriation of vocabulary is done by three methods: stuffing, stripping and slipping. Sometimes these are conscious, and just as equally these are unconscious acts arising out of the normative value base itself. Either way, the result is the same and oftentimes equally injurious to the vulnerable commoner. Most times a combination of these methods are used.

⁴ This is the basis for Neuro-linguistic programming (NLP).

Stuff

Stuffing is when an existing word is appropriated by distortion. The classic case is that of ‘Kamaiya’ and the Tharu of Nepal. They had a system of community labour among themselves where each used to help the whole community without pay. The non-Tharu immigrants to Tharuwan made use of this voluntary community labour to get the Tharu to do virtually anything for them, making the Tharu into bonded labour in less than a century. Ironically, the Tharu who were entrapped in this system of bonded labour were called ‘Kamaiya’.⁵

Strip

Stripping occurs when a word is stripped of everything but its most basic meaning. In most traditional languages, a ‘river’ would mean the flowing water, the river bed, the banks with the mangroves and the aquatic life. However, the term is slowly stripped to mean only the water. It is fragmented, commoditised and contracted out for exploitation. The riverbed is destroyed by sand-mining. The fish are contracted out to fisheries. The water is allotted for pollution to different industries. The banks are taken over by the ‘hospitality’ industry. The tourists on riverboats violate the privacy of the community invading their private spaces at private moments. There is talk of equitable use of resources by the community (who use the water and resources for life and livelihood) and the tourists (who use it as a commodity for leisure)—equating the residents and the invaders. The community is destroyed with the fragmentation and pushed out of their commons.

A dangerous part of this is seen in the slow stripping of the concept of ‘home’. For an indigenous person, the ‘home’ would mean the forest. It would include the house, the courtyard, the kitchen garden, some fields and orchards and slowly merge into the forest. The indigenous and tribal people would spend most of their time outdoors. What the state does when it wants to takeover the forest and evict them is to define the home as the house and then ‘rehabilitate’ them in match box like concrete structures saying that it is ‘home’. The entire ‘settlement’—monetary compensation, or equivalent—would be based on this standard, stripping away everything else but the ‘market price’ of the built structure. The human rights approach and standards become the minimum requirement for this reason.

Slip

Slips are of two kinds: by referral and by function. In a referral slip, the frame of reference itself slips. The earlier example of turning a ‘home’ into ‘house’ is a referral slip. Similarly, English and American are different languages, though they share the same script and many words. Words similar in spelling and pronunciation have different and sometimes opposite meanings in English and American as, for instance, sanction, first floor and football. American, the ‘default’ language in word processors has facilitated an unconscious shift to American spellings.

Another example is the change from commons to common property. Though the commons has always been outside the property framework, when ‘commons’ becomes ‘common property’ it brings the commons firmly within the property framework, enabling the government to enforce the concept of ‘terra nullius’ and ‘eminent domain’—disposable to the favourites by the government in power. The slip is then rapid: from commons to common property to public property, government property, public private partnership (PPP), and finally private property. PPP itself has different levels: Build Own Transfer (BOT), Build Own Operate Transfer (BOOT) and joint ventures.

The state would like to blur the distinction between them, and use these terms interchangeably since that suits their purpose. Their distinct histories, and therefore the legal distinction, must always be kept in mind, because the key difference is in their treatment of ‘property’. ‘Commons’ is outside the property framework, while ‘public property’ is within the property framework—lands within private property. In legal terms, commons would be *res communes*, property that is public due to its very nature, while public property would be *res publicae* belonging and open to the public by virtue of law. This alertness is required due to the central role played by the state in alienating the commons from the commoner. The state would see this creeping acquisition as a right of the state. Naturally.

Slip by use is seen in the slow transition from being human centric to mechanised vehicle centric in the progression: path—street—road—highway—expressway. In a path humans are supreme. There is no mechanised transport. Human powered transport such as cycles and carts are rare. In a street too, humans are supreme. Mechanised transport is rare and of the smaller variety. In roads, the primary users—the human beings—are relegated to the sidewalks, and are decidedly second class. This marginalisation turns

⁵ Anita Cheria and Edwin, Liberation is not enough—the Kamaiya movement in Nepal, ActionAid Nepal, 2005

to exclusion in highways and expressways, where 'slow moving transport' is excluded and actively discouraged. They are often fenced off.

So what are 'the commons'?

Commons are the gifts of nature, managed and shared by a community, which the community is willing and able to defend. They are resources not commodities, possessed not property, managed not owned. Ivan Illich of 'De-Schooling Society' fame frames it differently in 'Silence is a commons'. He prefers 'environment as commons' to 'environment as a productive resource' because 'by definition, resources call for defence by police. Once they are defended, their recovery as commons becomes increasingly difficult'.⁶ In the mapping and subsequent fencing of natural resources, the powerful took over the best part and enclosed it for their exclusive use. The rest shared the commons and were the commoners who formed the community. The powerful (the rich) have always had their 'private' resource base. It is only the powerless (the 'poor')⁷ who were excluded from property, who use spaces 'in common' to ensure the minimum critical mass of space for viability to ensure their own survival. Commons are an attempt to have a viable resource base by collective usage where the laws of property (the 'formal legal system') breakdown.

The commons belong to the people who do not have 'private spaces' whether for livelihood or leisure. Thus just as the Scots belong to Scotland and the Welsh to Wales, the commoners belong to the commons much like the geographical indicators of indigenous people. In short, they are indigenous to the commons. The commoners are equally protective of the commons as any other indigenous people. They do so with the instinctive knowledge that the health of the commons is intrinsically linked to the health of the community and the health of every commoner. As the indigenous people put it: the forest is densest where the customary law is strongest. This is such a tight correlation that one cannot exist without the other. Commons play a strategic role in maintaining ecological health, reducing poverty, and improving collective action. Those who want to destroy a community, destroy their commons and those who want to destroy the commons, destroy their community. One is virtually a prerequisite for the other. As long as there exists a community willing and able to defend its commons, that commons will survive.

Commons does not mean open, unrestricted access. The term 'commons' seems to imply that all have unrestricted access at all times, the reality is that the 'commons' were—and are—rigorously defined in access, benefits and control. Significant sections of society are kept out on the basis of caste, gender or age. Increasingly 'commons' are used by the dominant to claim the right to what are essentially the 'commons of the poor' for resource extraction and waste disposal. This after they have destroyed their 'property'. It is no coincidence that biodiversity is richest in 'underdeveloped' areas, and that 'developed' areas are monoculture deserts.

'Commons' does not mean that there is no private space at all. On the contrary, private time and spaces are rigorously defined and regulated, only that these are temporary and are very clearly a subset of the commons. They do not pollute or otherwise interfere with the viability or health of the commons but enhance it. In villages, most of the space is commons, leading to many believing that private spaces do not exist. But when the door is closed, then it is rare for someone to violate privacy. This is especially for married couples. Requests to call them would be met with a very final 'the door is closed'.

None of the commons are standalones, leading to the formulation 'commons need commons'. The pastures need the land, air and water to survive. Privatising any would lead to the destruction of the other commons. The idea that 'commons need commons' covers not only the natural commons (also called the physical or environmental commons) such as land, air and water, but also the built commons. The built commons are two—the hardcoms and the softcoms.

The 'hard' commons, 'hardcoms', are the physical livelihood systems such as infrastructure built with public resources. Examples of these built commons would be the crèches, schools, roads, government buildings such as villages offices, post offices, public toilets and primary health centres. The hardcoms have a knowledge superstructure. Knowledge spans culture, religion, tradition and law on the one hand, and information, information technology (digital commons) and science on the other. These are the 'soft' part of the built commons, or the 'softcoms'. This superstructure is the 'software' or the 'softcoms' that govern its use. The softcoms determine inclusion, exclusion, access, benefit and control.

⁶ The CoEvolution Quarterly, Winter 1983, http://ournature.org/~novembre/illich/1983_silence_commons.html (accessed September 2010)

⁷ Poverty is a factor of power, not production. For an analysis of the intimate links between poverty and power see M K Bhat, et al *Life Goes On...* 1999, and Anita Cheira et al *A Human Rights Approach to Development* 2004.

The traditional commons

The traditional commons were the spaces of the powerless. Intimately entwined with their life, these spaces abounded with life, culture and tradition. A sacred grove was not empty, but a place where their ancestral spirits still walked, had medicinal plants, and was inextricably intertwined with their knowledge, their identity and their very being. Each bit of the 'empty' space had a special resonance, each being sentient with the spirits of the trees, plants and the in-animate.

These are culturally appropriate knowledge reproduction systems that ensured sustainable use of the commons across generations based on stewardship. This embedding of cultural knowledge into territory—including heavenly bodies—provides a rich tapestry on which their life is played out. Dismissing these as 'shamanism' is to miss the richness of the knowledge embedded in a different idiom. The distinction between 'work' 'life' 'leisure' 'time' and 'space' is removed in a seamlessly intertwined flow. It is this unity that is implicit in their articulation, but needs to be made explicit with industrialisation and enclosure. In this unity, 'holidays' 'exploit' and 'trespass' are foreign concepts. The traditional commons existed outside the formal legal system. They had a range of activities that fell outside the 'formal' economic system—either in terms of the monetary and monetised system or the GDP based system. They certainly did not need unhealthy populations for a healthy balance sheet.

The case of the coastal commons is particularly striking since at no time was there ever a sea 'patta' or title deed. Even during colonial times, the right of the traditional fisherfolk to unrestricted fishing was not hindered, though the British themselves were a seafaring nation and their empire was built on naval strength, and the key instrument of power projection was the navy. Now the state claims everything under the seabed, just like it claims everything under the ground and in the air. The fishermen were able to fish wherever they wanted—there were no boundaries in the sea. The recent effort of the government is to give permission to the traditional fisher folk to fish only up to 12 miles from the coast. Where the government finds valuables under the sea, the fisher folk are prohibited from going there. Again, corporate interests get priority over traditional livelihood rights. The 'salt satyagraha'⁸ of Gandhi was precisely to liberate the coastal commons when the British tried to enclose them. The present Somali 'pirates' have been created precisely because of the dumping of nuclear and medical waste off their coasts destroyed their livelihood.

The demonising of the pirates and all those who resist the dominant state is relevant today, since the 'African Pirates' are being hunted by virtually every navy worth its name. The pirates tried to do on sea what many tried to do on land and built on the idea of 'utopia'. They had an instinctive understanding of space, and the conflict that restricted space causes, having firsthand experience of enclosure. The image of the pirate as a savage criminal was created by the British in the 'golden age' of piracy 1650 to 1730. Ordinary people did not believe the myth, and rescued many from the gallows.⁹ Kidnapped from their homes and forced into virtual slavery on the royal ships, beaten by the captain and then cheated of their wages, the pirates rebelled against the entire system. They mutinied and deposed their captains. But once they took control over the ship, they did not replace one captain with another. Nor did they let the same organisational structure continue. They did not like the oppressive structures on the land—the stratification and hierarchy—so they created an egalitarian community on the sea. They elected the captain. Everyone had to work, including the captain. The rewards of the work were shared by all. Pirates wanted to move out from oppressive structures and create more egalitarian social orders.¹⁰ Decisions were collective. Their bounty was shared equitably. In short, they showed a new system to the world. Perhaps the most daring was to take in escaped African slaves and live with them as equals—demonstrating at one go a non-racist, non-authoritarian world where equality, fraternity and liberty was practiced.

The last word on piracy must go to Augustine of Hippo. A famous pirate was captured and brought to Alexander the Great who asked him: 'Why do you infest the seas with so much audacity and freedom?'. The pirate answered: 'For the same reason you infest the earth; but because I do it with a little ship, I'm called pirate; because you do it with a big fleet you're called emperor'.¹¹

Of course, Alexander is 'the Great' because he invaded the east from the west. Ghengis Khan and the 'savage Mongol hordes' did so from east to west.

⁸ The salt satyagraha (civil disobedience movement) was started by M K Gandhi against the 1882 Salt Tax Act to take the campaign for Poorna Swaraj (total independence) from the British to the masses. The Act not only imposed a tax on salt but gave the colonial government monopoly over it. The Salt Satyagraha, began with the march from Sabarmathi Ashram in Ahmedabad on March 12, 1930 to the coastal village Dandi on April 6, 1930. Satyagraha literally means the force of truth. Satya=Truth; Agraha=Force.

⁹ Villains of All Nations, Atlantic Pirates in the Golden Age, Marcus Rediker, Beacon Press, 2004.

¹⁰ Villains of all Nations: Atlantic Pirates in the Golden Age, Marcus Rediker, Beacon Press, 2004.

¹¹ De Civitate Dei contra Paganos (The City of God against the Pagans), Augustine of Hippo.

Urban commons

In nation building, there is a lot of literal construction of physical infrastructure. This infrastructure is also part of the ‘new’ or ‘built’ commons. The assumption is that in a democratic state, everyone would be able to use these without discrimination. The reality is that large parts of society are prevented from using these by design, location, law or custom.

The urban commons have a longer history of being formalised, since the state was always more present in urban areas. Here the urban commons would more appropriately be ‘public spaces’ due to their formal nature. Urban commons have a much bigger role for ‘built physical commons’ such as infrastructure in addition to the traditional commons such as air and water. However, even the latter are formalised in terms of governance and maintenance since space is at a premium and the fast pace of life necessitates dedicated personnel for the maintenance and upkeep of these lakes and water bodies, parks and gardens in addition to streets and sidewalks, public transit, schools, hospitals and civic amenities due to the specialisation and fragmentation of urban life.

The urban commons are increasingly being fenced off and entry itself being restricted. Even institutions created specifically to ensure environmental sustainability have failed in their primary responsibility of even straightforward actions such as preventing the cutting of trees. Laws are broken with impunity with the active connivance of those tasked with protecting and enforcing them. Parks, even neighbourhood parks, have entrance restrictions whether by time (entrance and use is permitted only at certain times of the day, presumably to prevent ‘unlawful activities’ but in reality for moral policing and corporate control) and by fees—effectively making them private haunts of the middle and upper classes who in any case have their private clubs and recreation spots. The poor who sorely need these spaces are kept out or have their access restricted.

The notion of roads being for the public—a ‘commons’—has also taken a beating in recent years. Footpaths are an essential part of roads, since that is the part of the road that is used by the vendors, pedestrians and those who use public transport. This space is being severely restricted, and sometimes even absent, in cities—both in city centres and in residential neighbourhoods. Instead the roads are being broadened to make space for private vehicles. Land acquisition, environmental degradation, legal obfuscation all attain sanctity on this altar of ‘development’. Though most people travel by public transport, very little space is earmarked for bus lanes, bus stops/bus bays, passenger shelters at bus stops or footpaths. Cycle tracks are not only absent, use of ‘slow moving’ transportation is prohibited on most flyovers and arterial roads, apart from footpaths being absent. This invasion of the street and conquest of the footpath is to have wider roads so that high-rises can be built with larger Floor Space Index (FSI).¹² The vendors have to be removed so that the malls can survive.

The language has also undergone significant change from the urban commons (‘public’) to that of urban enclosure. From gardens we have gone to parks (off limits to animals including pets), with manicured lawns (off limits to humans too), from markets to malls and plazas, from streets to flyovers and playgrounds to stadiums. New usage such as ‘gated communities’ have also invaded the vocabulary marking the success of enclosure movements and the disconnect of the elite from economic production, cultural vibrancy and democracy of the city.

Knowledge commons

Just as the physical commons needs commons the knowledge commons too need its support from other knowledge commons such as culture, religion, tradition, law, science and technology. A fundamental and critical challenge of the knowledge commons is that only some knowledge is acknowledged as knowledge itself, the modern day version of ‘my superstition is scripture but your scriptures are myths’. This enables those of the ‘true knowledge’ to define what is the commons and what is private, who owns what and what is legitimate. The keepers of ‘true knowledge’ can then determine access, control, privilege and exclusion from the commons. The definition of commons and its legal defence rests on the knowledge base—and the knowledge base rests on the language employed. The construction of knowledge and the architecture of language is therefore fundamental to the defence of the commons.

Religion and culture are ways of organising knowledge. They are for enclosing the commons, and used as such by the powerful. Though claiming to be ‘universal’—and therefore the ‘commons’ of at least

¹² Floor Space Index (FSI) is the ratio of the total floor area of buildings on a certain location to the size of the land of that location, or the limit imposed on such a ratio. As a formula: Floor Area Ratio = (Total covered area on all floors of all buildings on a certain plot)/(Area of the plot). Thus, an FSI of 2.0 would indicate that the total floor area of a building is two times the gross area of the plot on which it is constructed, as would be found in a multiple-story building.

humanity—major religions of the world still are exclusivist not only towards others (calling them pagan, infidel, kafir, Asura, Daeva) but also to those within its fold. The duality enables forced inclusion for resource grab and exclusion for benefits. The privileged Ahura of Iran becomes the vile Asura in Sanskrit. Contrariwise, the privileged Deva of Sanskrit becomes the reviled Daeva in Iran.

Though knowledge was shared within the community, the ‘community’ was narrowly defined. It often meant only the male of a sub-sect of a sub-clan. Priesthood is a virtual male monopoly, with different levels of initiation over long periods of trial being a prerequisite for greater access. Knowledge was privatised and jealously guarded by making them ‘sacred’ and only for the ‘chosen’. In extreme cases, even the knowledge of the ‘sacred language’ from Sanskrit to Latin was prohibited. Religion—supposed to be ‘universal’—had even more gatekeepers. The defining of entire communities as untouchable, unseeable, unhearable and finally excluding them from the commons altogether is a singular contribution of the caste system in South Asia and areas with South Asian Diaspora. Racism contributed the same in different parts of the world.

One of the terms most laced with irony is ‘pirate’—used for the buccaneers of the sea and those at the information technology vanguard. The present software freedom fighters are termed likewise by the present establishment who create the present intellectual property rights (IPR) regimes try to fence knowledge and the present pirates are combating it. Translated into the digital commons, they are against any kind of enclosure of knowledge—hardware or software. The Free and Open Source Software (FOSS) movement is an explicitly political movement to ensure digital commons. It has found resonance in the Swedish Pirate Party, which now has two members in the European Parliament. The Pirate Party even has a ‘darknet’—an Internet service that lets anybody send and receive files and information over the Internet using an untraceable address where they cannot be personally identified—provided by the Swedish company Relakks (www.relakks.com). This ensures online privacy. The pirate party has three issues on its agenda: shared culture, free knowledge, and protected privacy. Their emphasis on privacy is because the new technology makes duplication very easy. So the only way to enforce copyright (and government control) is to monitor all private communications over the Internet. This goes against the basic tenets of an open society that guarantees the right to private communication.

Digital commons is often taken for granted, since the internet was created by the academic community as commons and not as a commercial or business enterprise. So it can be said that freedom and sharing are hardwired into its genes. Unfortunately, this is a highly contested area, where there are many attempts to ‘fence off’ certain parts. While mathematical algorithms, like life forms, were not allowed to be patented in a queer twist of logic, software programmes which are algorithms are allowed to be fenced off. Ivan Illich goes even further when he warns¹³ *of the need to counter the encroachment of new, electronic devices and systems upon commons that are more subtle and more intimate to our being than either grassland or roads - commons that are at least as valuable as silence. We could easily be made increasingly dependent on machines for speaking and for thinking, as we are already dependent on machines for moving.*

In the use of digital technology, software plays an important part. Here the terrain is highly contested between the proponents of open standards and free and open software on the one hand and the proponents of closed and proprietary standards on the other. Since data is stored and needs to be accessed for a long time, it has to be in a standard that enables access for a long time. It cannot be dependant on the whims and vicissitudes of a company. For instance, if a person’s data is stored from birth to death, it will have to be accessible for about 100 years. Few companies have that kind of longevity. So unless the standards are open, the data may not be accessible if the company goes bankrupt or closes down. Security and privacy concerns are another reason for adopting FOSS. There will be a lot more said about net neutrality and data portability in the coming days. The limited availability of ‘spectrum’ for the mobile phones, leading to an auctioning of the spectrum and the case of the electrical spectrum are other areas of increasing stress.

The ‘mass’ nature of the technology and business models, has opened up a lot of space. While a security and privacy threat, paradoxically, this very same medium offers privacy and a level playing field to some of the most excluded sections. Sexual minorities excluded from the physical commons have found a haven in the virtual anonymity of cyberspace, though it must be noted that law enforcement and moral police turn the anonymity to their advantage by using fake IDs to flush out identities.

The very anti-thesis of the restrictive IPR regimes is the copyleft movement that has come up with the term ‘creative commons’ with its own standards and licensing. Over the long term, commons is the way to go. In the short term, capital needs the creativity of FOSS, leading to the paradox of multi-billion dollar

¹³ Ivan Illich ‘Silence is a commons’. *The CoEvolution Quarterly*, Winter 1983, http://ournature.org/~novembre/illich/1983_silence_commons.html (accessed September 2010).

companies financing the Free Software Foundation, implicitly acknowledging that they need the creativity of ‘crowd computing’ and that non-monetary incentives are superior creativity enablers. Wikipedia, built totally with free contributions, is way and above all other encyclopaedia both in terms of absolute volume and the breath of knowledge and matches them in accuracy despite being ‘open’.¹⁴ It is also the most up-to-date of them all, being online and being constantly updated.

As the world moves to being a knowledge society, knowledge is a disproportionately high factor of the ‘value added’, the adage ‘knowledge is power’ becomes even more important. At its more basic level, the use of jargon and slang are methods of fencing off the uninitiated. Gate keeping—and preventing gate-crashers—has entire armies of lawyers defending intellectual property, just as the priestly class defended their privileges, including prohibiting transfer of knowledge. Agreements under the World Trade Organisation (WTO), Trade Related Intellectual Property Rights (TRIPS) ensure that the knowledge of the industrial societies is kept private while opening up the traditional knowledge as global commons.

Governance and sustainability

As people dependent on land are considered uncivilised, many a time their rights and livelihood needs are considered non issues which can be easily compromised. A majority of industrial or environmental projects target the already impoverished Adivasi, Dalit and fisher communities for displacement. Almost all the struggles are around the right to access and benefit from what we now call the ‘commons’. The right to land, water and air never needed to be contested. While the kings fought over territory, the right of the people to use the land and the water was never in dispute. There was some restriction—most of them after the advent of colonialism—on the use of the forests. This has expanded to eminent domain over all the natural resources of their entire territory of the nation. The general feeling of eminent domain is pervasive right across the ideological spectrum. While the people claim their right, the state wants to cling on to the concept of eminent domain, and claim all the natural resources as a property of the state. Not only does the state claim ownership of the natural resources, but they use brute power to takeaway the rights of the people—who have used this commons for as long as memory goes—and handover these commons to the corporate sector. The state thus becomes an enabler and representative of anti-people corporate interests. This is legitimised by various means, from the legal (the state power, including the coercive machinery) to the mass media (propaganda and soft power).

Sustainability of the commons rests on an equitable sharing of costs and benefits—meaning inclusive governance is a prerequisite. However, most often it is forcible inclusion, for resource extraction and waste absorption. It is best seen in the forcible commoning of the labour of the Dalits and their forced waste absorption role, and in the commoning of the land, forests and water of the indigenous peoples. This forcible inclusion for exclusion is so ingrained and normative, that even ostensibly inclusive structures in exclusive societies cannot include ‘the other’—for instance ‘all party meetings’ in patriarchies seldom include women or Dalits and never sexual minorities or children or disabled. They are all dominant caste men—yet they claim mandate and legitimacy to represent and decide for all ages, castes and genders. The normative meme map is so internalised that those within these structures seldom comprehend the exclusion or inequity. It is only exposure to another framework that brings it to the fore.

The dominance of the idea that private property is integral to production and efficiency assumes that without property, production will stop or at the very least be ‘inefficient’. But efficiency can be defined in many ways that are community centric. When measured in such parameters, then the concept of efficiency suddenly changes: Which is more efficient—a system that has more people in prisons than in farms with a quarter of the population unemployed and has private property or a system that has no one in prisons, has no unemployment but has low levels of mechanisation, has a low GDP and little private property? When other indicators such as the Human Development Index, Multidimensional Poverty Index, Index of Sustainable Economic Welfare (includes both pollution and income distribution), Genuine Progress Indicator, the Happy Planet Index and a Gross National Happiness measure are used then the picture of development and human well being drastically changes. When the environmental footprint is added to the picture, many assumptions are debunked.

A vocabulary of ‘commoning’

The subsidiarity principle that a larger and greater body should not exercise functions which can be carried out efficiently by one smaller and lesser is vital for the very survival of the commons and the

¹⁴ Jim Giles, ‘Internet encyclopaedias go head to head’, *Nature*, vol. 438 no. 531 (15 December 2005) www.nature.com/news/2005/051212/full/438900a.html, Note 4 Chapter 1 quoted by Tapscott D and Williams A D in *Wikinomics*.

community. The larger body should support the latter and help to coordinate its activity with the activities of the whole community. The central authority should perform only those tasks which cannot be performed effectively at a more immediate or local level. The norm is for the residuary rights to vest with the highest level of governance. This is a fundamental flaw.

If the governance of commons is to support the commons, then residuary rights have to vest with the lowest level. It is only the rights that are explicitly ceded that can be exercised at other levels. As we have seen, the description of usage is seldom complete. Therefore vesting residuary powers gives unfair advantage since those at the grassroots are seldom wordsmiths and rarely conversant in the legal domain which remains the preserve of those from the dominant, broader levels of governance. This would turn the concept of eminent domain on its head, and being the long road to restore the commons to the community.

The state appropriates the commons, displaces the people, destroys their livelihoods and then magnanimously returns a few crumbs as charity cloaked in the language of rights, entitlements and security—the ‘right’ to education, employment scheme and food ‘security’. Rather than this dependency creating charity, restoration of the commons to the community, strengthening their sustainability and enhancing their carrying capacity is the true measure of rights and security. But the state, being an institution of property cannot do so, limited as it is by its inherent characteristics and design as an instrument for the protection and promotion of property.

It is for communities to retake the commons, and then refashion them to egalitarian ends. Retaking the commons needs a vocabulary of commons—in speech, in policy and in law. The vocabulary of the commons cannot be a vocabulary of property. Even to define the commons as common property is to fall into the trap of property relations. Just as a gender just society needs gender inclusive and gender just vocabulary (human, spokesman, spokesperson, spokeswoman), defending the commons needs a vocabulary of commons.