

April 2002

The Majesty of the Commons

A review of David Bollier's *Silent Theft*

By [Jonathan Rowe](#)

Say we wake up one morning and discover we'll be getting a new bill each month--for air. The Bush administration has decided to privatize the air; corporations will now own it and charge for its use.

Lawrence Lindsey, the White House economic advisor, hails the move as a "potent stimulus" and a big boost for the GDP. Alan Greenspan offers assurances that any inflationary effects will be minor. The rest of us, meanwhile, would feel stunned, and violated in a way that would be hard to express. Pay for air? What gives them the right to do that? The air is ours, isn't it? But what exactly would we mean by that?

The question is not fantasy. In recent decades, the market has been penetrating into realms previously thought off-limits. It is claiming every last inch of physical and psychological space, from the outer reaches of the solar system to the most intimate interiors of daily experience. Billboards in the heavens, pharmaceutical manipulation of thoughts and moods---through genetic engineering, corporations even are claiming ownership to the genetic code of life itself. If life, then why not the air that sustains life?

The train is coming. So it's a good time to pause and ask some basic questions, and that's what David Bollier has done in *Silent Theft: The Private Plunder of Our Common Wealth*. The title might sound hyperbolic, but it is apt. The process Bollier describes is everywhere but rarely noticed. The lens through which the nation's opinion establishment views the world--the lens of conventional economics---covers the process with a gauzy and romantic haze. The market is "expanding." That's "growth" and therefore automatically good.

What the market is expanding into, and the consequences of such expansion, barely get a second thought. The process is theft, moreover, because it involves the commandeering of wealth and not just the creation of it. Who owns the genetic materials that pharmaceutical companies are taking and patenting from native cultures? Who owns the atmosphere that polluters use as a dump? Who owns the quiet that cell phones take from us on the subways, or the civic spaces that get

branded with corporate names?

Such things are expropriation by market means. They are takings; and that the keepers of high-level opinion do not see this---that they persist in viewing the concept of "taking" as only what government does, and not what corporations sometime do as well---is part of why a book like *Silent Theft* is necessary.

The book is not just another denunciation of corporate abuse. It is not a call for more and bigger government, nor a tract against growth. To the contrary, it reveals a pattern that should alarm the staunchest capitalist: that continued encroachment of this kind could destroy the sources of our future prosperity and well-being.

Silent Theft raises the kinds of questions that Washington typically represses. Is the continued extension of the market in time and space truly the path to human happiness, always and forever? Is the only alternative what *The Wall Street Journal* editorial page says it is---an all-encompassing Soviet-style state? Perhaps most important, is it really true that what lies outside the market has no real value until corralled within it; that the market improves and adds value to everything it touches?

Most Americans probably would answer "No." Yet the belief is a bedrock economic assumption, the subtext of virtually all economic reporting and commentary "The rhetoric of the market presumes that everything should be . . . bought, sold and owned," Bollier observes. And this, he contends, is wrong. Sometimes it is better to leave things alone, or to encourage their development in ways that are outside both the market and governmental spheres.

To put this another way, the instinctive worry about such things as patenting the gene pool or privatizing the air does not come solely from nostalgia or a weak-kneed fear of change. It comes also from a sense that something is missing from the mainstream mental map, something that such moves violate. There is a realm of reality and value, a process of wealth creation, that the map does not acknowledge, and the destruction of which it actively promotes. That realm is the commons, which is the part of life that is neither market nor state but rather is the shared heritage of us all.

Don't Fence Me In

Bollier is a senior fellow at the Norman Lear Center at the University of Southern California, and until recently was a project director at the New America Foundation. He also is a friend, and I've discussed the themes of *Silent Theft* with him. So discount this if you will, but I think the book broaches issues that very likely are going to drive the next big turn of the political wheel.

There have been a number of books on the concept of the commons in recent years, most on the enclosure of cyberspace and of the domain of human creativity and

innovation. My colleague Peter Barnes has proposed in his book, *Who Owns The Sky?*, a solution to global warming based on the reality that the sky is a commons and therefore belongs to all of us. Bollier provides a larger context. The story begins about 500 years ago, when much of the land in England and Europe still was held in common. Ordinary people had the right to graze their cattle and grow their crops on common lands, even though they did not technically own them. The courts recognized their right to do this. It was a property right, which people took for granted, much as we take for granted the right to breathe the air.

But the English Parliament had other ideas. In a massive project of social engineering, Parliament passed the Enclosure Acts, which stripped the commoners of their property rights and delivered the lands to individual, usually wealthy landowners. (By 1895, about half of one percent of the population of England and Wales owned almost 99 percent of the land.) Thus was born the market on a national scale. Land became a commodity---real estate---and commoners became commodities too, in the form of workers in a "labor market." Something people once thought was theirs suddenly was someone else's.

Parliament could have dealt more justly with the commoners. It could have given them pieces of what was theirs, and prevented the dislocations and wretched conditions that awaited them in the cities. Still, undeniably, the enclosures set loose enormous industrial energies that eventually lifted the material lives of most people. Few today would want to live like 16th-century peasants.

But in recent decades, the process of market enclosure has shifted into a new phase, less brutally wrenching but with ominous implications. The market, once discrete in time and place, has grown to encompass nearly all space, 24/7. People feel hemmed in and under siege. From the commercial invasion of childhood, to the telemarketers who call during the dinner hour, to the congestion, noise, sprawl, and sheer overload that increasingly define our lives, market encroachment into once-sacrosanct areas of life is emerging as the sleeper political issue of the early 21st century.

Bollier, whose previous work was on sprawl, connects the dots between issues that typically are regarded as separate. The concentration of the media and journalistic information is much like the concentration of the seed industry and genetic information. AOL's "Walled Garden" on the Web is much like the shopping malls that have displaced the civic commons of Main Streets. The pollution in the physical atmosphere is much like the commercial clutter that fills our waking moments. There's a pattern here: the destruction of the commons in all its many forms

Bollier puts to rest the myths that have prevented people from taking the commons seriously. The first is that a commons is inherently "tragic"---that without a regime of private ownership a resource falls inevitably into overuse and decay. The tragedy thesis is rote to first-year economics students. It demonstrates the strange power of

economic bromide to numb the capacity to observe ordinary experience. I mean, can anyone argue seriously that Saturday morning television, which is a private-property regime imposed upon a commons, the broadcast spectrum rights that government has ceded to the big media companies, has resulted in a wise productive use of this resource? The hundreds of Superfund sites around the country, the clear-cuts and strip mines, suggest the limits of the ability of private property to prevent overuse and decay.

One could argue equally for a tragedy of the privates. But more to the present point, commons work wonderfully all the time, especially at the local level where they become extensions---and generators---of a social structure. Bollier cites a multitude of examples, such as the parks and community gardens in New York and other cities. The gardens thrive "precisely because they are not governed by the market or the government," he says.

Of course, the tragedy thesis is not entirely wrong. Sometimes what belongs to everybody really does belong to nobody, as the old saying goes. This happens especially with large abstracted commons that exist outside a local social structure, such as ocean fisheries and the earth's atmosphere. But the problem in such cases is not the commons per se. Rather, it is the lack of an effective structure for management and use. As Bollier observes, a Central Park is splendid given such a structure. So, too, are public libraries. They are commons governed by a set of rules. Absent such rules, even private property is prone to abuse, as a trip through the strip mine country in West Virginia, or along many Route Ones, would amply demonstrate.

Free Mickey Mouse

Even hypothetically, the tragedy myth applies only to a particular kind of commons---those involving finite material resources. (Grazing lands are the standard example.) The theory has no relevance at all to commons that are without boundaries or limits, such as language, knowledge, and networks such as the Internet. People don't deplete the language by speaking it; they don't exhaust the Internet by using it. To the contrary, these grow richer when more partake. "The grass grows taller when it's grazed on," one computer programmer observed.

To cope with this awkward fact, interest groups have turned the tragedy argument upside down. In the case of invention, entertainment, and the like, they argue, private property rights are essential not to limit use but rather to bestir creation of the resource itself---not to protect the grass but to make it grow. In practice, this has meant increasing enclosure of the domain of knowledge and invention, through expansion of the copyright and patent laws. It also has meant secret proprietary software code and fencing of the open spaces on the World Wide Web. Usually, the result has been what one writer called the "tragedy of the anti-commons"---discouraging the increase in knowledge by constricting its flow.

Intellectual property is Bollier's forte, and these are the strongest sections of *Silent Theft*. He tells, for example, of the Bayh-Dole Act of 1980, which permitted private interests to get patents on research that taxpayers pay for. The law was supposed to provide an "incentive" for useful new discovery. But the lure of patent riches has skewed research agendas. Researchers don't want to talk to one another for fear of revealing proprietary secrets. A quagmire of competing patent claims is starting to impede development rather than encourage it; one new strain of virus-resistant rice can't be sold because of necessary approvals from as many as 34 different patent holders. The system is gagging on its own self-seeking. Meanwhile, the culture of the university that has spawned so much innovation and discovery is drying up.

In copyright, meanwhile, the situation has become ridiculous. Congress has extended the term of copyright continuously over the last 50 years, often just as Disney's Mickey Mouse was about to enter the public domain. The most recent of these extensions was in 1998; for corporations it's now 70 years. Disney and others argue that this extension is necessary incentive for artistic creation. Yet if we really were serious about bestirring creativity, wouldn't we let Mickey Mouse enter the public domain so that Time Warner and Disney would have to create something new?

Bollier's point is not that copyright is bad. Rather, like the market generally, it's a useful thing that becomes bad when pushed too far. The purpose of the government-bestowed monopoly called copyright is to enrich the public domain---the cultural commons. That's what Jefferson said and what the Constitution still says. The deal was this: grant authors a monopoly for a limited time, and then set the work free so it can feed the work of others. It's a form of intellectual ecology; the seed dies to live. By contrast, the continual expansions of copyright have had an opposite effect. They starve the soil for the sake of a few big plants.

And for what? The cultural commons has flourished for eons without the "incentive" of a property regime. Folklore, fairy tales, language, and song---these all evolved without the help of copyright or patent lawyers. If the incentive school were right, there would be today no musical scales, no medieval cathedrals or Gregorian chant, no *Odyssey* or Chinese cooking. Willie Mays never would have developed his basket catch, Bill Walsh the West Coast offense. Why bother to innovate, if others could copy you and not pay a cent in royalties?

Creation and innovation are social and cultural activities as well as individual ones. They spring often from sources that the conventional economic model simply does not grasp. This is so even in realms of technology that today are hyperventilating with greed. Neither Albert Sabin nor Jonas Salk got patents for their pioneering work on polio vaccines, Bollier observes. He quotes Charles Ferguson, a high-tech entrepreneur: "Virtually all of the critical technologies in the Internet and Web revolutions were developed between 1967 and 1993 by government research agencies and/or in universities."

It's still the case today that some of the most valuable technological innovation is occurring outside the market. Behemoth phone and cable TV companies, with their government-granted monopolies, are flummoxed about how to provide superfast broadband Internet access to the masses at a price people are willing to pay. Underground entrepreneurs, meanwhile, have figured it out. They are delivering cheap, efficient broadband to their friends and neighbors wirelessly, via a small piece of unlicensed spectrum---a perfect illustration of a 21st-century commons in action (see "The Broadband Militia," March 2002). Then, of course, there's Linux, the computer operating system far superior to Windows and that has emerged through a cyber-commons on the Web. Linux evolves the way nature does, through constant correction and adaptation. Hackers all over the world fix problems, make improvements, and share these with other users, all without proprietary interest or pay. Compare that to Microsoft with its Kremlinesque secrecy and top-down control of every innovation---innovations that serve the corporation's strategies for market dominance as much as the users' real needs. This doesn't mean that "intellectual property" and high-tech enterprise are not good ideas. It does mean that the commons is the mother lode, and if the market continues to enclose it, the lode eventually will run dry.

Silent Theft makes clear that the commons is not the subordinate reality that the economics textbooks portray it to be. It is not a kind of economic primal sludge that awaits the vivifying hand of the market to attain reality and life. The commons, rather, is a parallel economy. It does real work and often the most important work. Bollier cites one estimate that the resources of nature---air, water, forests and the rest---are worth more than the GDP of the entire world. That's not even counting the services of the many forms of social commons, from universities and libraries to languages and Main Streets.

Yet the conventional economic mind is practically oblivious to this wealth and productivity. It sees primarily the portion of economic reality that is transacted through money, so the commons doesn't register at all. Worse, this mind counts the destruction of the commons as economic growth and gain. When kids buy video games (or, more accurately, their parents buy them) instead of making up their own games on the playground, the GDP goes up. When pollution fills the air and people need medical treatment, it goes up more.

Silent Theft confirms the brooding sense, shared by many, of a system out of control. The forces behind this omnivorous enclosure are not small. Yet there are signs of resistance, too. Parents are rising up against the commercial invasion of their kids' classrooms. The New Urbanism is advancing ways to reclaim the civic commons of street life and traditional Main Streets. When The Denver Post vowed to continue calling the local football stadium "Mile High Stadium" instead of Invesco Field, it was nailing a declaration to the corporate door. One hopes others will follow.

That people are even thinking along these lines is a good sign. Enclosure is

complete when we no longer are aware of it. The lingering memory of life outside the fences means there's still hope of tearing them down. We can thank David Bollier for giving shape to this memory and making it more real.

Jonathan Rowe is a fellow at the Tomales Bay Institute and a contributing editor of The Washington Monthly.