

An orphan on the common
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Colin James, 20 October 2011

As I understand the notion of "the commons", it refers to something that is not owned by individuals but available to a community, ranging from a kainga to the whole of humanity. It may be privatised, either by conferring title of ownership or a licence for exploitation or by actions which degrade it and thus reduce its value for others in the community or for future generations. Or it may be regulated communally such that all benefit from it in an orderly, even if not necessarily even and equitable, way.

The global commons has been variously described as including some or all of the air, seabed, oceans, freshwater, subsoil, forests, natural and mineral resources, ecosystems, the Antarctic and outer space. Recent commentary has added climate change and the internet. I propose another category.

A nation state can regulate the commons within its borders and, to the extent it can enforce its rules, within its exclusive economic zone (EEZ). Thus in New Zealand freshwater is regulated by regional councils, air quality is supposed to meet national standards, large areas of native forest are in conservation areas and a quota system limits the fish catch in the EEZ. But as we have seen over the past few weeks, the government has scant capacity to limit damage to the environment as a result of incompetent navigation of a ship registered in Liberia to evade international maritime rules. That illustrates that while in theory the New Zealand Parliament has plenipotentiary power to control the commons, there are limits to that power, including the need for international trade and the need to get on with, and so make concessions to, other nation-states' governments.

Increasing economic and other interaction between nation-states has spawned a growing range of international institutions to regulate that interaction or to promote cooperation. A web of treaties underlies those institutions and many of those treaties circumscribe Parliament's alleged "sovereign" power. There are multitudinous conventions. The World Trade Organisation applies, adjudicates on and polices rules on trade among its members, who are the great majority of nations. The International Civil Aviation Organisation regulates international air traffic and the International Maritime Organisation is its (paler) parallel for shipping.

Then there is the United Nations. It can authorise the use of force to intervene in or against a nation-state in certain circumstances -- and sometimes does, as in Libya, which was arguably the first application of the "responsibility to protect" doctrine adopted in 2001. I read that doctrine as premised on a common claim of all humans to life and a degree of dignity, which, since it is a claim shared by all humans, is a sort of "global commons". The premise of the responsibility to protect doctrine is that there is a global duty to intervene to protect a nation's people if the government is unwilling or unable to protect it. There is, I think, a parallel of sorts with notions of a global duty to protect ecosystems necessary to human life, a duty that transcends nation-state sovereignty.

A more prosaic example is New Zealand's contribution to many peacemaking and peacekeeping operations. This doesn't directly defend the realm. It is predicated on an assumed common right to peaceable living and a common duty to uphold that right.

A more recently emerged commons is the internet. There is a loose parallel with the high seas where ships are free to travel -- and, where pirates and illegal fishers and boats carrying illegal would-be claimants to refugee status in Australia are also free to travel. The internet, or worldwide web, is, as Andrew Denmark has pointed out,¹ a "completely man-made" commons, "highly anarchic and full of bad actors like hackers, state-sponsored and freelance alike".

I note two threats. One is to nation-states' core financial, administrative and military systems from terrorist or hostile state attacks. Australian defence authorities last year reported 200 attacks a month.² An Australian bank talks privately of 60,000 attacks a year, though many of those are trivial. The other threat is to personal privacy and integrity from the amassing, analysis, manipulation and use, for commercial gain or criminal activity, of information passing through or on the web: this googlisation of the world leaves us smaller and smaller places to hide.³ Moreover, the technologies and techniques on the web are evolving very fast. To a 12-year-old Facebook is for old people.

Both threats pose large and pressing questions of regulation. The huge advantage of keeping the web as a global commons is obvious but so, increasingly, are the potential dangers. My guess is that over the next 10 years nation-states will realise they cannot individually protect themselves and that there will be attempts at international cooperation.

The good news is that in the case of merchandise trade the WTO and its predecessor General Agreement on Tariffs and Trade were able to develop a rules-based system that works. The dismaying news is that the current WTO round, which attempts to extend the trade regulatory brief into currently unregulated areas has stalled, with little hope of a restart. Given that impasse, it is unsurprising that the cumbersome, lumbering climate change negotiations under the United Nations Framework Convention on Climate Change (UNFCCC) show little sign of getting serious about a comprehensive agreement, which is necessary if global warming is to be contained to 3 degrees (assuming the International Panel of Climate Change scientists' scenarios are reliable).

Climate change is a classic global commons issue. Everyone stands to gain from an agreement which slows or stops global warming. But each actor stands to lose by acting alone because in that case there will be an upfront cost but the actor will still face the ultimate costs of climate change. The actors are nation-states, sovereign and inviolable as determined in the Treaty of Westphalia. Only by surrendering some power to a higher authority which can enforce a monitoring, reporting and verifying regime and apply penalties can nation-states be sure they will not be financially disadvantaged without gains.

There is a wider issue: the tension between nation-states with developed economies, which got rich at a time when there were no constraints on greenhouse gas emissions and which have done the damage so far, and those with little-developed or developing economies, which

¹ Denmark, Andrew M, "Managing the Global Commons", *The Washington Quarterly*, Center for Strategic and International Studies, July 2010, pp165-182

² "Hackers make a mockery of government security", *The Australian*, 3 January 2011. See also "McAfee reveals huge series of cyberattacks", *Financial Times*, 3 August 2011, detailing "the infiltration of the networks of 72 organisations, including the United Nations, governments and companies around the world" in the early part of 2011.

³ Soar, Daniel, "It knows", *London Review of Books*, Vol 33, No 19, 6 October 2011

want the same right to enrich themselves and which, most of them, have so far contributed little to the cumulative emissions total, though those with rapidly developing economies are now major emitters. There are issues of compensation and transfer of technology (that is, wealth) and also, for the poorest countries, help with adaptation. And don't forget that the oil states insist that if oil is to be phased out they should be compensated (as if they haven't done pretty well since 1973).

In other words, money counts in climate. And money itself can be seen as a sort of man-made commons, because it is the indispensable lubricant of commerce, as much at the micro level between individuals as at the macro level of international trade and it flows easily across national boundaries. I think it is seen that way by those protesting right now across the United States and Europe against money-traders -- banks, hedge funds, brokers -- for appropriating and misusing for private gain a resource all need for a living that is more than subsistence. Nation-states are trying to develop individual and plurilateral regimes to regulate money better but they are doing it against a backdrop of banking and finance systems that are multinational and in some cases global and, regulators believe, cannot be allowed to fail.

The global financial crisis shares a common characteristic with climate change and resource exploitation: that short-term actions by some may have long-term costs for all. Apply that to subprime mortgages and the subsequent credit crunch, high unemployment in the United States and sovereign debt crisis in Europe. Apply it to climate change: inaction now to avoid costs now risks much higher costs of action later, whether mitigation or adaptation. Apply it to the current global consumption of resources at a faster rate than they are being replenished: we are, as John Terborgh puts it in the 13 October issue of *New York Review of Books*, "consuming the resource capital from which we should be harvesting only the interest ... evident in the sluicing of millions of tons of topsoil into the oceans, the drawing down of underground aquifers, the salinisation and desertification of erstwhile croplands, the depletion of fisheries stocks, the overharvesting of forests and on and on".⁴

The financial system and climate change are two elements in globalisation. Globalisation has made another global commons: talent and labour.

The Westphalian nation-state segregated peoples. Over the past three or four decades people have globalised.

First, there is a global elite. There has been one for many centuries, of the very rich and very high-born. Today's global elite includes the rich but also the very talented, in the arts, fashion, sport, IT and science and the managers in global corporations and non-governmental organisations -- and you might add a global negotiating elite.

Second there is transient labour. Some 300 million live outside the nation-state borders they were born having gone, mostly in search of incomes but some as refugees.

Third, and most interesting, is the globalisation of wages. Call centre wages in the United States are the same as in India. An auto worker taken on now in the United States' shrunken car industry is likely to be paid around \$US14 an hour, around two-fifths of the going rate for

⁴ Terborgh, John, *Can Our Species Escape Destruction?* (New York Review of Books, Vol 58, No 15, 13 October 2011), p29, a review of Tim Flannery, *Here on Earth: A Natural History of the Planet* (Atlantic Monthly, Washington DC, 2011).

previously hired workers. We are likely to see more of this over the next few decades because the alternative is the continued hollowing out in developed economies of manufacturing, which in the past paid workers good money, and its replacement with activities that pay less, often much less, many of which activities are more suited to women than men or at least tend to be filled by women rather than men. Those manufacturing jobs have been transplanted to places where wages are lower. The labour has been transferred, though the people have not.

That is, labour, along with talent, has become a global common resource, much like money, flowing across nation-state boundaries and to some extent pulling people across those boundaries in search of access to labour. Logically, like air and water, labour should be accessible to everyone, That is, everyone should have the opportunity to work, so that a living income can be earned and with that human dignity. But instead of rules that assure that access, there is anarchy. In the twentieth century national governments regulated this anarchy within their nation-state boundaries in national economies. But in this century, as labour has gone global, the logical response is a global regulatory system, just as it is for money and air, water and resources.

That logic points towards a post-Westphalian world. So does the rise of large cities. More than half of all people live in large cities, which drive global GDP and have economies (and to some extent populations) that are distinct and to some extent independent of the rest of the nations they are in. London and New York were early examples; now there are many. That points toward a different way of organising decision-making.

We may be about to see an experiment in just that. Sovereign nation-state leaders in the Eurozone are trying to find and administer short-term medicine for the Eurozone debt disease. More important, they are also trying to devise longer-term therapy to stop a repeat. The short-term medicine involves a transfer of wealth from Germany and other strong economies to the weak economies and the banks, much as would happen in a national jurisdiction. The longer-term therapy involves some alignment of fiscal policies across the euro area which must involve some institution that might be called a European Treasury which implies a new constitutional form that supersedes the Westphalian sovereign nation-state. The writings of Nico Krisch⁵ are instructive on this point. Europe may be a pointer.

But there is life in the Westphalian state yet, even if it losing feathers, hair, fingernails and much dignity. Population, water, resources and climate pressures might over the next quarter-century take us down a dark route of devastating wars, famines, pandemics and climate catastrophes which will make the twentieth century look peaceable by comparison and cut huge swathes through the global population. If so, that is likely to drive people inward, not outward, and harden, at least temporarily, the Westphalian state.

More immediately financial and fiscal pressures, coupled with the huge global economic imbalances and rapid transfer of relative economic and political power, may well push national populations and their governments toward economic nationalism. The Tea Party and the Occupy Wall Street movement reflect bewilderment and anger in what Americans call the "middle class" at the globalisation of labour and money. The Senate has passed a bill enabling restrictions on Chinese imports in retaliation against what Senators saw as China's manipulation of its exchange rate to gain an unfair trading advantage. The Senators were

⁵ For example, Nico Krisch, "Europe's Constitutional Monstrosity", *Oxford Journal of Legal Studies*, Vol 25, No 2 (2005), pp321-334

undeterred by calculations that, given the globalised structure of much manufacturing, any gains will probably be outweighed the fall in United States' firms' profits and, consequently, in investment and so job creation. There are many other examples in many other nation-states.

In this sort of world order the big guys run the show. The big guys over the next quarter-century look set to be China, the United States, India, Europe and maybe the Association of South-east Asian Nations (ASEAN), if it does a Europe with its 600 million population.

In that world New Zealand is a tiny orphan. We have been in effect since the fall of Singapore though the illusion of empire persisted another 20 years and Uncle Sam adopted us. But we never quite felt at home with Uncle Sam and from the mid-60s to the mid-80s went through another separation. We were by 1990 alone in the world, with only big sister Australia nearby and she didn't much like having to baby-sit the squalling sibling when she was getting on fine with Uncle Sam. We could now look around for a friend to move in with. We got adopted by China, not a bad friend to have except that Chinese think very differently from ex-British and Polynesians and we still haven't figured it might be in our interest to understand our new friend by reading up on its history, culture and heritage and learning its main language. The same, by the way, goes for India, despite the illusory linkages of cricket and empire, and for Indonesia. But to get too close to one of the big five might set us at odds with the other four -- and we might choose the wrong one. So it might be better to try to keep onside with them all and if from time to time we have to make choices and acquire the transcendental skill necessary to get each of those choices right.⁶ We could just move in with Australia but Australia is small, too, and for now is in any case locked into one of the five, the United States.

In due course, however, I think the various pressures, but particularly the issues posed by the need to manage the global commons well or go through mayhem, will take us to some as yet indefinable different world order, one not made up of sovereign states but reflecting global commonalities.

The point is: we are gradually finding we live on a large common. We have our little habitations but our livelihoods are on the common. This tiny country is an orphan on that common.

What does that mean for foreign policy? That foreign and domestic policy are less distinct, perhaps not at all distinct: foreign is domestic and domestic is foreign. I see tiny signs that the Treasury and the Ministry of Foreign Affairs and Trade are beginning to recognise that. Now for the political parties.

⁶ Vangelis Vitalis notes in an unpublished paper the successful trajectory through the Peloponnesian wars of the tiny Plataea.