

References

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Intellectual Property

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Marx has never, to the best of my knowledge, dealt directly with intellectual property, which is the relations and dynamics of ownership established through copyright, patent and trademark law. Rather, he focused on science, in particular on what we would call today "research and development" (R&D), which is those elements of techno-scientific innovation most directly related to the production process. He understood science as a social phenomenon organized under capitalism as wage labor, like most other activities in the production process. This, to some degree, reflects the historical circumstances of the mid 19th century. The distinction between basic and applied science was not yet fully developed, and the copyright industries were economically relatively insignificant and trademarks barely established.

Still, within a broadly Marxist viewpoint, three main perspectives can be mobilized to help understand the current role that intellectual property plays, both in the expansion of capitalism as well as in challenges to it: *accumulation by dispossession*, *alienated labor*, and *general intellect*.

The notion of "accumulation by dispossession" was recently introduced by David Harvey as a way to re-conceptualize Marx's treatment of "original" or "primitive

accumulation”, the process by which resources came under the control of capital for the first time. As Marx pointed out, this was often a violent process, because most of the time the resources in question were embedded in preexisting social relationships that had to be broken-up by capital in order to accumulate them. The waves of enclosures that transformed the countryside in Great Britain during the 18th and early 19th century is an often-cited example of this. Land, previously organized by villagers as commons, was converted into private property, often for grazing sheep to produce wool for the textile industries. In this process, villagers were expelled from the land and forced into the city, entering the capitalist economy as proletarians. Similarly, the destruction of existing social relationships as a precondition for accumulation was a major incitation of colonialism. For Marx this was a one-time process, setting the stage for capitalist expansion. Harvey, on the other hand, stresses that this is an ongoing process and a core element of capitalism in all of its periods, including the present one. One of the means by which this process is carried out today is the establishment of new IP rights. As Harvey notes,

wholly new mechanisms of accumulation by dispossession have ... opened up. The emphasis upon intellectual property rights in the WTO negotiations (the so-called TRIPS agreement) points to ways in which the patenting and licensing of genetic materials, seed plasmas, and all manner of other products, can now be used against whole populations whose environmental management practices have played a crucial role in the development of those materials. Biopiracy is rampant and the pillaging of the world’s stockpile of genetic resources is well under way. (Harvey 2004)

IP, then, plays an important role in the expansion of capitalism by converting concrete and embodied knowledge – often produced and cultivated by communities without any notion of individual ownership – into privately-held assets. This is, again, a violent process, and IP can be understood as enacting “epistemic violence”, that is, providing categories for conceptualizing the world that devalue other epistemic orders and their respective definition of cultures, people and ways of being. For example, by recognizing exclusively individual ownership and denying all rights based on communal production and care. Major struggles by local farmers and

indigenous communities have erupted all over the world. Since 2003 in Peru, NGOs and the government have been fighting against “biopiracy” by US and Japanese companies that were granted patents for medicinal properties of the Maca root, known for centuries to the local population. In 2012 additional patents were sought by Chinese companies, forcing new, complex and costly legal battles upon the Peruvian government. Despite a few cases, in which patents were withdrawn (such as an infamous US patent on “Basmati rice lines and grains”), such an accumulation by dispossession through IP law is generally successful strategy for expanding capitalism.

The second notion relevant to contemporary practices of IP is “alienated labor”. For Marx, alienation, most generally, is the result of the separation of the product from the producer, highlighting a major difference between artisanal and industrial work. In the first case, the artisan sells the product of his/her labor, whereas the industrial worker sells his/her labor-power and has no claims on the products of his/her labor. The notion of alienation might seem ill-fitting in respect to intellectual property and in particular to copyright. In liberal theory, copyright is understood as a way of establishing a strong relationship between producer (author) and product (work). In the continental European (*droit d’auteur*) tradition, this link is supposed to be unbreakable as certain claims, such as the right to be named as author and to have the integrity of the work respected, are inalienable. The more utilitarian Anglo-Saxon copyright, on the other hand, contains the notion of “works for hire” on which the original author loses all rights to the work by selling his labor power.

In practice, however, such legalistic differences are mostly negligible. In most cases, producers of copyrighted works produce them under contractual frameworks which transfer all rights to their employers. Or, they find themselves in such an uneven relationship with the copyright industries that their contractual freedom is mostly formal, and their capacity to negotiate favorable terms eventually is limited to that of any person who needs to sell his or her labor power to survive.

In contrast to “dispossession” and “alienation”, notions which are well-developed and relatively straightforward, the concept of the “general intellect” is much more fragmentary. It became widely discussed only recently, most importantly by post-workerist theories of cognitive capitalism (Virno 2001). Marx used it only once, in *Grundrisse* (Notebook VII), where he briefly sketches the importance of distributed knowledge which he sees embodied in the “social individual” (that is, the person as a set of capacities which are produced socially, for example, through education), in machinery and in advanced forms of social organization. At some point, when the capital and knowledge embedded in machinery, and in the processes of their use, passes a certain threshold, simple wage labor, measured by the hour, is no longer adequate to measure the value produced. The separation of production and reproduction, typical for the industrial organization of labor, breaks down and the workers’ full social and intellectual capacity come into play.

In this transformation, it is neither the direct human labour he himself performs, nor the time during which he works, but rather the appropriation of his own general productive power, his understanding of nature and his mastery over it by virtue of his presence as a social body – it is, in a word, the development of the social individual which appears as the great foundation-stone of production and of wealth.

This, however, produces a contradiction, as Marx noted immediately.

On the one side, then, [capital] calls to life all the powers of science and of nature, as of social combination and of social intercourse, in order to make the creation of wealth independent (relatively) of the labour time employed on it. On the other side, it wants to use labour time as the measuring rod for the giant social forces thereby created, and to confine them within the limits required to maintain the already created value as value.

The sources of value creation are no longer limited to the time and place of work but extend across all aspects of social life. The means of confining these social forces is intellectual property law. It allows the attribution of products of a

collective social process to a single person and transforms them into commodities that can be produced or acquired by capital. The hours invested in the production process are no longer the basis for the value of the product. The assignment of value becomes more fluid, allowing the high-skilled labor under cognitive capitalism more freedom, whereas exploitation intensifies for low-skilled labor. However, intellectual property can confine, yet it cannot resolve the contradiction.

Building on an understanding that productive forces, at least partially, now depend on distributed cooperation, mass intellectuality, and social life in its entirety, a diverse set of social movements are working towards resolving this contradiction in favor of post-capitalist forms of production, a peer-to-peer economy based around the sharing of free knowledge, tools and social forms of cooperation. (Bauwens et al. 2017). The resurgences of the holistic notion of the commons, re-articulated in respect to knowledge resources and urban space, points to the ambition of these movements and the depth of their challenge by overcoming certain forms of private property and social organization built on top of it. (Vercellone et al. 2015). However, capitalist actors, too, not only try to confine but resolve the contradiction between collective sources of creativity and the private form of intellectual property necessary for its appropriation. They drop the distinction between production and reproduction. They do so by providing infrastructures that are enabling collective dynamics through “sharing” and “collaboration” across all domains of social life. These infrastructures, however, are optimized to extract data from unpaid social (re)production and to extract surplus by manipulating these dynamics (through advertising and platform design) in their favor. In effect, this doesn’t solve but merely displaces the contradiction from the area of intellectual property, to that of control over data.