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WORKING PAPER NEW SERIES

A POUND OF FLESH KNOWLEDGE, INTELLECTUAL PROPERTY RIGHTS AND SUPPLY INDIVISIBILITY

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A Pound of Flesh

Knowledge, Intellectual Property Rights and Supply Indivisibility

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Related work

This paper is in progress, part of a broader research project not yet available. However some of the ideas have been developed in the two previous works listed below and freely available:

- Ramello G.B. (2009) "Access to vs. Exclusion from Knowledge: Intellectual Property, Efficiency and Social Justice", in A. GOSSERIE, A. MARCIANO and A. STROWEL (Eds.), *Intellectual Property and Theories of Justice*, Palgrave MacMillan:London & Basingstoke

<http://ideas.repec.org/p/uca/ucapdv/90.html>

- Ramello G.B (2005), "Private appropriability and Knowledge Sharing: Contradiction or Convergence ? The Opposite Tragedy of Creative Commons", in L. TAKEYAMA, W. GORDON and R. TOWSE (Eds.), *Developments in the Economics of Copyright*, Edward Elgar:Cheltenham, UK - Northampton, MA, USA

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=639102

The Merchant of Venice

- Written in July 1596 by W. Shakespeare, inspired by news about the capture of a Spanish vessel by the English fleet
- A masterpiece where W.S. attained literary immortality through his exposition of human nature (ref. Shylock, Antonio, Porzia and Bassanio)
- As widely known the play has raised a debate over whether it should be condemned as anti-Semitic; this controversy has overshadowed many other aspects of the play and of course it is not of interest here
- However, the main point here is the Venice court decision ruling against the enforcement of Shylock legal property rights on a 'pound of flesh' of the Antonio's body

A pound of flesh

- “Tarry a little; there is something else. This bond doth give thee here no jot of blood; the words expressly are "a pound of flesh": Take then thy bond, take thou thy pound of flesh; but, in the cutting it, if thou dost shed One drop of Christian blood, thy lands and goods are, by the laws of Venice, confiscate Unto the state of Venice”

The Normative Value of MV

- Under certain circumstances a **property right cannot be entitled** (o cannot be enforced)
- These circumstances relates to a problem of **indivisibility** of a specific entity, such that the excludability entitled by the property right produces a substantial harm on the whole resource
- That is to say the internalization of externality associated to the property rights has sistematically the outcome to produce a greater externality (no internalization is possible)
- A typical example relates to knowledge

Foundation of Property Rights (1)

- Property rights are devoted to solve the problem of **social cost** by **internalizing externalities**
- The Coasean theory is not at stake here and indeed property rights have been a **powerful device** for promoting trade development, market existence and efficiency through the human history
- However Coase theorem has been recently stretched - far outside Coase's intentions - for viewing property rights as a miraculous, **quasi-universal remedy for market failures**
- A similar robust support came from the libertarian perspective seeing property rights as a **cornerstone for individual liberty**

Foundation of Property Rights (2)

- The policy implications of the above are what has been
- This policy has been systematically applied to domains in which the customary atomization promoted by property rights is not working - such in the case of **indivisibility**, e.g. in case of dynamic entities- where their implementation is likely to produce, rather than solve, externalities and market failures
- If the above happens, of course, Coase theorem does not hold anymore and, an **opposite problem of social cost** arise: externalities and new social costs are generated via property rights

IPRs Rethoric & Knowledge (1)

- Despite the above the standard theory favors the appropriation: IPRs are by default **legal devices** mainly oriented toward efficiency
- Wide array of arguments in order to justify IPRs in name of **efficiency** (*incentive to create, to disclose, incentives to trade, prospect theory, etc.*)
- IPRs align **private incentives** (profit) and **public interest**, by means of the market (Adam Smith reborn)
- Apparently there is **no conflict** between individual and group

IPRs Rethoric & Knowledge (2)

- In the previous setting knowledge as a perfectly divisible commodity, thus neglecting the **public good** nature and the **role of group** in the productive process
- **Standard equation**: a group is intended as a sum of individuals and the sum of what produced by any single equals what produced by the group
- Knowledge is treated as a perfectly divisible entity (knowledge vs apples)
- This approach Introduces what has been defined Universal Intellectual Property that “has acquired the status of a public religion, at the core of which stands the shockingly profound revelation: **Anything that can be monopolized ought to, by whoever lays claim to it first.** From this, economic prosperity will follow, as the high preachers of this new religion do not tire of reminding us”

The dark side of knowledge

The scientific investigation show a number of idiosyncratic features of knowledge, making it different from standard goods

1. Knowledge as an input
2. Creation as a recombinant process
3. Knowledge sharing as productive technology

Observations

- The recombination paradigm supports the thesis that knowledge production presents **increasing returns**, crucial to overcome the diminishing returns of capital
- The same is recognized by focusing on the specific feature of knowledge as a '**creative commons**', which, for idiosyncratic features connected to the semantic and collective nature of knowledge, reverses the law of returns (and the tragedy of the commons): **productivity diminishes with the rationing of the access**
- On the whole, there is a convergence assessing the **role of group** in knowledge production
- The propertization has the effect of increasing costs and impairing the productive technology, essentially by **producing externalities** to the group (ability of producing knowledge)

Evidences

Historical and factual evidences recognized what asserted. Among others, a wide array of episode of collective invention where innovation was promoted by knowledge commons i.e. social spaces where knowledge was freely accessible (collective production function of knowledge)

- The case of **blast furnaces** in Cleveland, UK
- Mechanisation of **paper manufacturing** in Berkshire, New England
- The **Cornish steam engine**
- The dramatic pace of **innovation in Silicon Valley**

Concluding remarks

- Economic theory widely trusts the individual action to the point of endorsing a normative attitude favoring the emergence of a individualistic paradigm
- The previous attitude has been extensively fueled by assigning a blind cheque to property rights
- However, in selected circumstances the sum of parts does not correspond to the whole entity; this is the typical case for indivisibility that perfectly applies to knowledge as a productive technology
- Indeed the proper consideration of the role of group in this domain shows that this line of reasoning can raise an opposite problem of social costs
- Hence, once again the policy prescription that seems to apply is still the Shakespearean one suggesting that property rights should not be enforced (entitled) when they are likely to spoil the whole entity
- Rather the preservation of the commons, possessing specific productive features should be the normative measure.