

# Commercial enclosure

## Whatever happened to open access?

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**T**he language of openness is powerful and persuasive. Applied to the practices of government, it purports to be about transparency and holding politicians to account. Applied to public services, it purports to be about the evaluation of performance to facilitate decision-making by their users. Applied to publicly funded research in universities, it purports to be about providing access to research that otherwise exists behind the paywalls of high-subscription-cost journals. Applied to university teaching, it purports to make high-quality education available outside the limited access of elite institutions that produce it.

What is there to contest? Indeed, the benefits of open access have been set out in detail in the 2007 OECD Report, *Giving Knowledge for Free: The Emergence of Open Educational Resources*.<sup>1</sup> But it is clear that open access also occurs in a context of enclosure. Today, it is the private interests associated with the latter that are beginning to predominate over the public interests expressed in the OECD report and in other accounts of its positive democratic possibilities. Enclosure involves a private property model where knowledge produced under patent, or subject to commercial exploitation, is to be exempt from the requirement of being open, regardless of the public benefit. This is most evident in the way in which the European Medicines Agency is currently being lobbied by big pharmaceuticals companies, to prevent the requirement to disclose the results of clinical trials. In this commentary, I will draw similarities across policies concerned with ‘big data’, open access for academic publications, and ‘massive open online courses’ (MOOCs) to suggest that commercial enclosure is emerging as a significant objective of public policy.

### What works

The matter at issue is not just the differential treatment afforded commercial interests against those involved in the public sector, but the way in which open access in the latter is made to *serve* commercialization, in each of the areas of supposed public benefit identified above. These developments are taking place at increasing pace as part of government initiatives to free up restrictions to the knowledge economy and facilitate global competitiveness. Of course, according to the tenets of neoliberal public policy, the extension of markets is in the public interest and the liberal constitution – as John Tomasi indicates, approvingly, in *Free Market Fairness* (2012) – is properly considered as a constitution of private property. This establishes enclosure as a necessary and fundamental part of the dynamic of open access.

According to the recent White Paper on open data,<sup>2</sup> marketization is to be applied to mechanisms to ensure good governance. In other words, open access to public data is promoted at the same time as public data is privatized. On the one hand, the gathering of data by government will be reduced as a consequence of cuts, including significant cuts to

the data gathering by the Office of National Statistics (ONS). On the other hand, there is the possibility that ONS itself will be privatized and that the Census will be replaced by linked administrative data (raising significant issues of privacy). This has been prefigured by other actions by the Cabinet Office, including the ‘mutualization’ of the Behavioural Change Unit. The term ‘mutualization’ is something of a misnomer since investment is to be by government, private equity and employee shareholding. Clearly, ‘mutualization’ will create a proprietorial interest in its outputs, including any new techniques of analysis.

In fact, open data encourages the commercialization of ‘big data’ in a manner analogous to that outlined in pharmaceutical research by Philip Mirowski.<sup>3</sup> The facilitation of private patents drawn on federally funded research that followed the 1980 Bayh–Dole Act in the USA gave rise not to an increase in fundamental innovation but to a short-term orientation to the financialization of techniques of analysis and metric devices used in research, increasing research costs at the same time as it drew funding towards short-term gains in knowledge transfer. In a similar way, the orientation to transparency in social data is taking the form of producing core sets of ‘quality metrics’. However, these ‘metrics’ are likely to be subject to proprietorial claims, such that while their underlying data is open, access to the *means* of analysis, and thus of the public scrutiny of claims, will be commercially mediated.

In this context, it is important to recognize that Research Councils UK (RCUK) assigns all income from patents arising from its funded research to individuals and their employers. For its part, the Economic and Social Research Council (ESRC) is co-funding ‘What Works Centres’ in line with this logic. While RCUK seemingly mandates open access to research publications, the outputs of What Works Centres will be under intellectual property rights (IPR) where forms of data analysis and training courses based upon the research can be commercialized by the Centres and their academic collaborators.<sup>4</sup> Indeed, this is intrinsic to the argument for open access in research publications set out by the Finch Report, where one of the key drivers is that of reducing the costs of access to small and medium enterprises.<sup>5</sup> One consequence is to reinforce the bringing of the knowledge underlying publications under patent.

It is for this reason – not for access on behalf of the wider public – that the licence that RCUK mandates for publications (and the Higher Education Funding Council for England may follow for those submitted to the forthcoming Research Excellence Framework) is Creative Commons, Attribution licence (CC-BY), allowing commercial reuse with attribution, rather than with permission. An alternative would be a ‘non-commercial share-alike’ licence (CC-BY-NC-SA) that would require negotiation of commercial use for publications and retain intellectual property rights in the format of publication. Why might this be the case? And what is its significance for arts, humanities and social sciences? Enter ‘for-profit’ higher education and the unbundling of the university via MOOCs.

## **Unbundling**

The story of the Browne Review, which reported in autumn 2010, and the subsequent 2011 White Paper *Students at the Heart of the System* is a familiar one. Direct public funding of arts, humanities and social science undergraduate degrees was removed, to be replaced by student fees backed by a publicly supported system of loans. In part, this reflected a familiar neoliberal agenda, where an inclusive public interest in higher education is denied. The argument is that education should be seen as a private investment in human capital to be paid for by the graduate beneficiary. However, the removal of direct public funding for subjects other than the STEM disciplines (Science, Technology, Engineering and Mathematics) was also designed to create a level playing field for the access of for-profit providers to students (and the associated system of loan support for fees). The fully marketized system recommended by Browne depended in



part on there being no cap on fees charged with pressure created for fees to spread and for-profits to enter by providing low-cost education. While the spread of fees has not occurred, the government remains committed to low-cost education by for-profit providers.

However, the playing field is not so much levelled as tilted in favour of for-profits. They can enter relieved of university functions other than those of teaching at the lowest cost. For example, open access requirements for publications and data provide curriculum material, without the fixed costs of libraries and the requirement to contribute to the curriculum, since their own research resources, as commercial products, would be behind a paywall. The logic for this is provided by Sir Michael Barber, formerly a member of the Browne Review, who had previously been head of McKinsey's Global Education Practice and has recently taken up a post as chief education adviser at Pearson. A recent report, written together with Katelyn Donnelly and Saad Rizvi and published under the auspices of the Institute for Public Policy Research (IPPR), sets out the 'disruption' and 'unbundling' of the functions of universities as a consequence of the globalization of higher education and new technologies for the delivery of content.<sup>6</sup> The report argues for the revolutionary role of MOOCs (and other online curriculum resources) in delivering content that can be unbundled from tutorial support and assessment, all of which can be provided separately – for example, by for-profit providers. At the same time, open access and MOOCs are described as meeting the social objectives of providing access to education for poor people or remote populations in countries with less developed educational infrastructure. In practice, though, the 'unbundling' of activities is advocated in order better to subject them to marketization and to make publicly provided services available to for-profit providers.

One aspect of the unbundling of university activities that Sir Michael and his colleagues recommend, alongside the separation of lecture content from tutorial support, and curriculum from those who teach it, is the separation of teaching and research. The last they suggest should be concentrated in a few elite universities, which might provide a public service by supplying their curriculum in the form of MOOCs, albeit as a potential source of profit, too. This is evident in the prospectus of FutureLearn, the newly created provider of MOOCs within British higher education. It is a for-profit subsidiary of the Open University, seeking private venture capital to develop a platform for British universities, so long as they meet the requirement of being in the top thirty in three out of four ranking systems.

In part, the proposals are offered as cost-reducing measures – teaching-only universities will be cheaper. But Sir Michael and his colleagues also claim that much research now takes place outside universities in private companies and think-tanks. However, it is precisely this research that is subject to enclosure. The arguments are thus directed towards shifting a currently mixed political economy of research and development towards one in which private interests predominate. In the emerging new philosophy of

MOOCs, the status of the elite universities providing them is maintained, together with the high fees that they can charge for a non-MOOC education, primarily because what they are selling is their brand. In this way, higher education as a positional good in a highly inequalitarian neoliberal knowledge economy is reinforced, in contrast to previous education policies that sought to mitigate such 'positional' effects. For universities that fall between the elite and for-profit providers, the future is bleak. Indeed, the threat to public universities from MOOCs in the USA is evident in the rating agency Moody's recent downgrading of the entire US higher education sector.

In the incomplete market for higher education in the UK that has emerged after the White Paper much has been made of the fact that applications for undergraduate degrees seem to be unaffected by the rise in student fees. At least part of the explanation for this is high youth unemployment. In fact, the true impact of fees is evident in the collapse by 40 per cent in applications for part-time study. Significantly, a recent report by the Commission on the Future for Higher Education, also for IPPR, has argued that there should be funding to provide £5,000 fee support for part-time students, but that they should not have access to loans for living costs.<sup>7</sup> This is a proposal that seems designed to facilitate the expansion of for-profit higher education, especially within the further education sector. Unsurprisingly, Pearson waits in the wings, as a dominant player in further education through its curriculum and assessment arm, Pearson Edexcel.

What I have described are tendencies within the emerging ecosystem of open resources and open access. There are countervailing tendencies to the enclosure of the commons, but they must be fought for. What is dispiriting is that the UK used to have a public university providing mass open online-equivalent courses, namely the Open University, which cooperated with the BBC in the provision of course material that could be recorded and viewed or listened to independently of broadcast time. It also offered tutorial support through its regional centres, which are now being reduced. It is not new technology that is disrupting this model, but public policy. Equally, it is not new technology that is disrupting a system of education that had the aspiration to provide for all young people, rather than create a stratified education system for a highly stratified society. Once again, it is public policy.

This public policy goes under the rubric of transparency and openness, but what it seeks is to open all activities to the market and reduce public accountability of its operation. The market is declared to embody the public interest, but as Britain has become one of the most unequal societies in the world in the name of a neoliberal knowledge economy, it can hardly be claimed as an inclusive public interest.

## Notes

1. OECD, *Giving Knowledge for Free: The Emergence of Open Educational Resources*, 2007. [www.oecd.org/edu/ceeri/38654317.pdf](http://www.oecd.org/edu/ceeri/38654317.pdf).
2. White Paper, *Open Data: Unleashing the Potential*, 28 June 2012, [www.gov.uk/government/publications/open-data-white-paper-unleashing-the-potential](http://www.gov.uk/government/publications/open-data-white-paper-unleashing-the-potential).
3. Philip Mirowski, *Science Mart: Privatizing American Science*, Harvard University Press, Cambridge MA, 2012.
4. ESRC, 'What Works Centre for Crime Reduction: Call Specification', 2013. [www.esrc.ac.uk/\\_images/What\\_Works\\_Crime\\_Reduction\\_Specification\\_final\\_per\\_cent20version\\_tcm8-26019.pdf](http://www.esrc.ac.uk/_images/What_Works_Crime_Reduction_Specification_final_per_cent20version_tcm8-26019.pdf).
5. *Accessibility, Sustainability, Excellence: How to Expand Access to Research Publications: Report of the Working Group on Expanding Access to Published Research Findings*, Chair, Dame Janet Finch, June 2012, [www.researchinfonet.org/publish/finch](http://www.researchinfonet.org/publish/finch).
6. Sir Michael Barber, Katelyn Donnelly and Saad Rizvi, *An Avalanche is Coming: Higher Education and the Revolution Ahead*, IPPR, March 2013, [www.ippr.org/publication/55/10432/an-avalanche-is-coming-higher-education-and-the-revolution-ahead](http://www.ippr.org/publication/55/10432/an-avalanche-is-coming-higher-education-and-the-revolution-ahead).
7. Commission on the Future of Higher Education, *A Critical Path: Securing the Future of Higher Education in England*, IPPR, 10 June 2013, [www.ippr.org/publication/55/10847/a-critical-path-securing-the-future-of-higher-education-in-england](http://www.ippr.org/publication/55/10847/a-critical-path-securing-the-future-of-higher-education-in-england).