

The Mirror's Gonna Steal Your Soul

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1 Ideas Can Not Be Free

The Free Software and free culture movements are today's loudest opponents of the wide introduction and implementation of patents and copyright, the main tools of intellectual property regimes. At the heart of their arguments lie the values of sharing and creativity. Yet, obsessed as it is with novelty, innovation and the possibility of bursting creativity, theory coming from and around these movements has remained largely free from an engagement with the history of technology and its role in the development of current civilization. Whatever historical reflection does take place is usually limited to the consideration of US history, and works through a re-examination of American documents, events, organizations and processes. Rare exceptions are partial inclusions of French and British histories and cultures, which are read selectively so as to compliment the dominant US discourses that theorize Free Software/culture movements. In British academia, the same has been said about international relations studies¹, where "most of the rest of humanity is rated according to its degree of importance to 'western interests'" (Pilger, 2002, pg.160). No wonder then, that when economy is mentioned within and around Free Software theory, discussion hardly ever moves beyond free markets; and trade and any kind of production are assumed to be beneficial. The logic of growth through creation is unquestioned and its value inflated. As with history, such narrow theorizing falls apart under a global view of economics, as we know from ecological studies: U.S. levels of consumption are unsustainable for the rest of population of the planet, and economic growth (Rivero, 2001, pg.87), as currently defined, is neither possible or desirable globally without a complete reconceptualisation².

¹If one can judge according to Goldsmiths College in London, political science is no different. I left it for sociology after only a year of studying, due to the unbearable bias of lecturers and textbooks used in the curriculum towards capitalist and Western interests. Most annoying and surprising - I guess my starting positions were naive - was the teaching of neo-conservative ideology under the guise of liberal political science (Prug, 2005a)

²"When growth increases poverty, when real production becomes a negative economy, and speculators are defined as "wealth creators", something has gone wrong with the concepts and categories of wealth and wealth creation. Pushing the real production by nature and people into a negative economy implies that production of real goods and

Taking the global and historic view, what kinds of problems start to emerge with the Free Software and free culture movements?

The United States and Western Europe are currently in a dominant position due to the wealth which allows them to impose economic conditions over the production and trade of less powerful countries, enabling them to access those countries' resources on unequal terms (Shiva, 2005). "Free trade" has never been free in any sense. An essential element of 19th century imperialism was the imposition of trade in terms beneficial for the conquerors. Britain pioneered the forceful opening of trade with China, India, Korea and Japan (Wikipedia, 2005b), while USA and France followed (Wikipedia, 2005a). It left conquerors rich and the other side poor and devastated³.

When the liberalisation of trade barriers is enforced through international financial institutions today, some reasons for it are apparent: in the past, imperialism was huge economic success for imperialists. But current developments constitute a new imperialist round by different means. Gigantic profits accrue to mostly Western corporations via forced⁴ privatizations⁵ of state services and infrastructure. Possibly most important of all, and un-

services is declining, creating deeper poverty for the millions who are not part of the dot.com route to instant wealth creation ... globalization destroys local economies and destruction itself is counted as growth. " (Shiva, 2000)

³Mike Davis shows that it wasn't just economy, but climate change too that was result of imperialism. See his "Late Victorian Holocausts: El Nino Famines and the Making of the Whirl World" for an account.

⁴Gramsci's realization about the *formation of hegemony* (Gramsci, 1971, pg.12) - that when hegemony is thwarted by lack of consensus and overabundance of regulation, corruption is ready to fill the gap - can be seen in the processes of privatization (Monbiot, 2000).

⁵Profits from privatizations come in many distinct, but complementary, ways: a) infrastructure services companies (water, energy, telcos) monopolistic, or monopolistic by other means (price fixing), position; b) managing health, pension, and other life insurance funds, previously managed by the state, or non-existent (life-insurance); c) reduced workforce cost, due to reduction of workers power (dismantling of unions, de-regulation of employment laws, internationalized competition); d) banking: private bank owners often gain direct access to governments whose sovereignty is greatly reduced without state owned banks; e) siphoning of cash through sale of outdated technologies and unnecessary services directly to newly acquired local companies.

known in public debate on trade “countries’ wealth is inversely proportional to their integration in world trade.” (Berthelot, December 2005): the more foreign trade there is in countries’ gross domestic product (GDP), the poorer the country will end up. In other words, for some countries, acceptance of international trade regimes proposing more foreign trade will make them poorer. When recently speaking at a round of trade talks, the Chief Executive of Hong Kong (formerly called the Governor) said that choosing free trade as the policy in 1860s, by the government of that time, was more of matter of convenience⁶. By doing so, like the Free Software and its offspring free culture, he falsifies the history.

If one is to look for an account of intellectual property that is striving for consistency with global history, it is in the works of Vandana Shiva and Alternative Law Forum. In contrast, Free Software, even in one of its most radical theoretical versions - “In overthrowing the system of private property in ideas, we bring into existence a truly just society, in which the free development of each is the condition for the free development of all.” (Moglen, 2003) falls short of acknowledging or referencing the conditions of material existence. It is not difficult to imagine the world where people speak and share ideas freely – in the liberal sense – but where global income disparities and exploitation continue unabated⁷.

In other words, even if the intellectual property movement loses its battle to impose strict control through patents and copyright, it doesn’t mean that world will be any more egalitarian than it is today. The case made by Vandana Shiva is much more useful in this respect. At its heart lies the question of bare material existence endangered by the radical end of the regime of in-

⁶“The policy choice of free trade, I suspect, was more a matter of convenience than intellectual reflection or ideological conviction. Even if they had wanted to, the people governing Hong Kong in the 1860s, thousands of miles from London and in those harsh circumstances and conditions, would unlikely have found the resources to manage and regulate trade.” (Tsang, 2. December 2005).

⁷Can not the scenario also be that initiatives like open business – “OpenBusiness is a platform to share and develop innovative Open Business ideas- entrepreneurial ideas which are built around openness, free services and free access” (<http://www.openbusiness.cc/>). – become the model on which future capitalism will thrive?

tellectual property: the introduction of patents on the food that people have depended on for centuries. The direct intervention of Western-controlled capital into the mechanisms for basic survival (Indian farmers versus bio patents) is quite a difference from the intervention of Western companies into the amount of intellectual enrichment, education, freedom to modify, and fun available in books, movies, music, and software (Western citizens versus proprietary software and entertainment corporations).

The collapse of Eastern European socialisms seems to have removed the last incentive for Western states to maintain the Cold War-era improved social contracts. Phenomena like the privatization of pension funds, health services, education, the roll-back of laws protecting workers and business strategies of outsourcing, are all part of general deterioration of quality of life in the West. Although material existence itself cannot be risked widely, lest it endanger consumption power, insecurity, fear and stress continue to escalate. However, it is difficult to be optimistic on the question of whether such changes will render what is common between Indian farmers and Western citizens visible and enable a discourse of solidarity between the two. Aside from their common fight against patents, the difference in fundamentals between the free software movement and the movement for biodiversity conservation and farmers' rights is as large as the difference in impact of patents and copyright on their material existence. Regulation of the realm of ideas – to which both software and knowledge about seeds belong – is in India a matter of life and death⁸ It has become a matter of life and death through the rapid progress of applied computing and genetics, and how these have been deployed in the Western political imposition of economic rules and regulations. An imposed economic system is also the result of specific regime of knowledge production. Access to this knowledge production is closely

⁸Many of Shiva's texts have references to epidemic of suicides in India due to destruction of farmers life: "Because of cheap food and fibre being dumped by developed nations and lessened trade protections enacted by the government, farm prices in India are tumbling, which means that the country's peasants are losing \$26 billion U.S. each year. Unable to survive under these new economic conditions, many peasants are now poverty-stricken and thousands commit suicide each year." (Shiva, 2005).

controlled through mechanisms such as on-line databases of academic papers maintained by corporate publishers and through largely unaccountable systems of decision-making in business and political realms.

It severely limits, if doesn't make impossible, our ability to understand the possible consequences of the movements that are active under the name of Free Software/culture to speak of the free circulation of ideas without mentioning the cost of production of those ideas, historic processes through which those costs have been met, and the relations that were established through those processes (domination, exploitation, trade, cooperation, standardization). The goal of this text is to scratch the surface of the following propositions:

- regulation of the realm of ideas can not be understood correctly through simple opposition of open/closed, nor proprietary/copyleft – a more refined analysis is necessary
- claims that processes of closing down of knowledge, technology and culture (copyrights and patents) are opposed to processes of opening of those (Free Software/culture/Creative Commons licencing) are wild guesses facilitated by a lack of theoretical investigation and critique. In fact, we can reasonably suspect that these two processes compliment one another
- operating within the capitalist/liberal theoretical framework (as it largely is at the moment), Free Software/culture could be in a better position to accelerate capitalist exploitation than copyright and patents have so far proved to be
- current theories within and around Free Software/culture make the above proposition more plausible. If Free Software/culture is to contribute towards a genuinely egalitarian world, detailed examination and rewriting of its current theoretical positions is needed (theory informs

practice, if the theory contributes to aims different than what is thought to be the case, so will the practice)

- trade does not have to be beneficial. Trade liberalisation pursued under current terms can be understood as another wave of imperialism that will benefit only capitalists, Western states and their allies

2 Intellectual Property and History of Domination

The military and economic domination of the world has historically been closely linked with the creation, ownership and application of knowledge, science and technology. Technology was at the heart of both the creation and destruction of all historically successful human societies. In 18th century China, special granaries and the planned distribution of millet and rice was the key to avoiding mass starvation in times of famine or natural disaster. It was the best technology known at the time and “no contemporary European society guaranteed subsistence as a human right to its peasantry (ming-sheng is the Chinese term)” (Davis, 2001, Pg.281).

At the same time in Europe, starvation was killing millions. Uncontrollable disasters were reintroduced into China in 19th century, when the superior military technology of Britain, France and America opened China to the unpredictable impact of “free trade”⁹. Over the last few decades, Western societies have been transformed through rapid advances in computing, electronic communication and genetics, contributing to their continued dominance on the world stage¹⁰. Thus, the protection of those sources of

⁹“... the Whig view of history deletes a great deal of very bloody business. The looms of India and China were defeated not so much by market competition as they were forcibly dismantled by war, invasion, opium and a Lancashire-imposed system of one-way tariffs ... it is indisputable that from about 1780 or 1800 onward, every serious attempt by a non-Western society to move over into a fast lane of development or to regulate its terms of trade was met by a military as well as an economic response from London or a competing imperial capital” (Japan is exception)(Davis, 2001, pg.295). See Tables in Appendix.

¹⁰The Frankfurt School’s point about the total administration of the society that is

economic advantage has become one of the most important battles in the world today. Copyright (artistic works and software) and patent (invention, potentially including software) are two core mechanisms used in protection of intellectual property. Patents were first used in Italy in the 15th and England in the 16th century. Queen Elizabeth I used her grants and patent laws to ensure that the creators of the best technology chose England as their place of work: “To attract the superior continental technology from Italy, Germany etc. she assured them full protection of their produce – the grant of a patent monopoly appeared to be the most effective way to lure the foreigners.” (Devaiah, 2004). In this light, the commonly held view that the first enclosure of the commons was that of land (Marx, 1990, ch.27) is wrong. It was the realm of ideas instead.

Scientific and engineering communities in the West are used to producing their work through mutual sharing. The desire to protect that, as well as a reaction to the extension of copyright software in the 1980s, prompted the Free Software movement. The explicit goals of the Free Software movement were the creation of technology (software) that can be shared and reused without restrictions of copyright (Williams, 2002). Since then, the movement has flourished into a unique historical event, attracting hundreds of thousands participants worldwide. Its results have been many core innovations, many of which are the building blocks of the Internet today (Himanen, 2001, Appendix) Over sixty five percent of all websites in the world utilise software produced with Free Software tools¹¹.

The products of a movement seen as a rebel against corporate greed and control in its early days today sit in the core products of many of the world’s largest computing corporations (IBM¹², Hewlett Packard, Oracle). Par-

in front of us - “the greater the conquest of nature, the weaker man’s power over his own social and private existence, the greater the conquest and knowledge of man’s own nature, in psychology and sociology, the easier the human being becomes the object of total administration and management” (Marcuse, 2001, pg.87) – is a vast subject that remains to be positively theorized. The question to pose is the Leninist one: *Knowledge – yes, but for whom? to do what?*

¹¹Regular statistics on this are at <http://news.netcraft.com/>.

¹²IBM was again the biggest recipient of patents (2941) for the year 2005,

allel with those technological developments, electronic storage has evolved into the primary medium for cultural production: texts, music, movies. Today people are exchanging cultural products over networks in their millions, while the media publishing industries take an increasingly aggressive litigious stance towards them. A new movement for free culture – usually perceived as complementary to the Free Software movement – arose in response to these tactics, emphasising the desirability of free sharing in cultural production. However, within these overlapping free software and culture movements, a historical overview of the uneven and exploitative development of world societies is almost non-existent.

The best known critiques of extensive use of intellectual property in culture are of very limited use for explaining of process within the world economy, since they stem from a capitalist liberal standpoint. Lawrence Lessig, one of founders of Creative Commons project, is one such critic. Even the glimpses of critique that take global and historic position – mentions of the imposition of an international system of copyright as a pre-requisite of participation in the international market(Lessig, 2004, pg.63) – are already deeply embedded in the liberal ideology of markets:

“In a free society, with a free market, supported by free enterprise and free trade, the government’s role is not to support one way of doing business against others. Its role is not to pick winners and protect them against loss. If the government did this generally, then we would never have any progress.”(Lessig, 2004, pg.127).

This and similar positions generally maintain that copyright should be protected within the law, but that the law itself should be modified to accommodate sharing. Intellectual property as such is accepted without questioning the origins and creation of wealth that enables the contemporary production

<http://www.uspto.gov/>. Yet it plans to release 500 of these under free software licences. In other words, its business strategy is that partial opening is more beneficial for the business than a completely closed model of intellectual property. We can look at that as a big win for the Free Software community, or/and as an example of how open model is not necessarily opposed to the closed one.

of science and culture in the West, or indeed its role within wealth distribution in the West. At the same time when the world is being bombarded with “opening of the markets” and other trade liberalisation slogans, the realm of ideas is being foreclosed, and their reproduction and distribution is being placed under strict regimes of control, all under the common name of intellectual property. Such development is consistent with the paradox¹³ of the conflict between values and acts that lies at the heart of the liberal economy: “the introduction of free markets, far from doing away with the need for control, regulation, and intervention, enormously increased their range” (Polanyi, 2001, pg.147). The corporate patenting of existing crops, rightly identified as biopiracy, is consistent with the history of domination under liberalism. As Foucault demonstrated¹⁴, liberalism, regardless of its stated core goal of minimal state governance, is *interested in the management of bio-power and not in opposing it* (Dean, 1999, pg.101). If liberalism did follow its own core belief of minimal government, it would oppose increase of governance that happens through patents of seeds essential for survival of large sections of population (case in India with basmati rice and other basic food grown for centuries being patented by corporations). Instead, as Dean argues, liberalism is interested in managing indirect governance that occurs through regulated growth of basic foods – which constitutes a vast reduction of sovereignty for the people who depend on those foods. In this way liberal governments are achieving the seemingly impossible: by consigning governance to the business processes of international corporations, there’s more governance, while the image of a minimal state is preserved; capitalists get new markets and the liberal state gets more support. In the words of a Croatian proverb: “Vuk sit i ovce na broju!” (The wolf is fed and all the sheep are accounted for!).

¹³Its roots can be seen in England at the beginning of 19th century in ‘Six Laws’ (introduced in 1819), Poor Laws (introduced in 1932 and 1934) and general rise in regulations and bureaucracy.

¹⁴“the finality of government resides in things it manages and in pursuit of the perfection and intensification of the processes it directs, and the instruments of government, instead of being laws, now come to be a range of multiform tactics.” (Foucault, 2001, pg.211).

Beyond the known insight that “social allocation of resources and labour does not, on the whole, take place by means of political direction, communal deliberation, hereditary duty, custom, or religious obligation, but rather through the mechanisms of commodity exchange” (Wood, 1995, pg.29), we can see from the case of biopiracy that non-authoritarian methods – those not explicitly ordered and executed by the state – deployed to achieve this kind of governance are immensely political. For without political and legal state intervention, it would not be possible to create and enforce global trade agreements that negatively affect local agriculture and industry in non-Western states. However, complete hegemony (support for international treaties and national laws) isn’t any more necessary pre-condition for introduction of this mode of imperialism and indirect governance. Could we not say that liberal parliamentary capitalism – seen as the only possible politics today – itself does not require much popular consent by the masses any more. A large number of hegemony-building intellectuals is freed from fending off communism/socialism and is now focused on perfecting an invisible symbiosis between liberal politics and capitalist economy, an essential appearance to keep up for Western states.

Free Software/culture is held by many who take part in it to be a form of political activism. At the same time, political activists are embracing it widely on all ends of political spectrum. However, regardless of political positions and assumptions of those who participate in Free Software/culture, or those who support and embrace it, Free Software/culture plays its own role in that invisible symbiosis on which both capitalism and the liberal state thrive today. Primary reason for it is the theory that develops within and around it. Reading texts on intellectual property through history will allow us to: think free software/culture separate from capitalist/liberal discourse; identify what might not be separable; and, finally, to begin to theorize and practice free software/culture in ways truthful to the their core desires¹⁵.

¹⁵A process of identification of core desires ought to proceed after the first step of separation has been completed. Two assumptions I’m making here - to voluntarily create

3 Brotherhood of Ideologies OR Lessig's Creative History

Lawrence Lessig has a liberal story to tell. It features ideas such as the usefulness of free speech(Lessig, 2004, pg.156), free market¹⁶ and democracy, but these are deployed as a blanket cover for problematics and points left unquestioned - as if those principles will guarantee positive outcomes, or as if they did so in the past. History is almost entirely kept out, with the exception of elements that directly affirm the line of argumentation - like the tables of how copyright has changed since 18th century(Lessig, 2004, pg.171). The economy is considered only within the idea of cost/profit, to the extent that the arguments for/against copyrights, law(Lessig, 2004, pg.201) and technology(Lessig, 2004, pg.193) are being justified through a cost/benefit analysis as well. The American cultural tradition, according to Lessig, is that of free culture. In the narrow context of mere existence of copyright, culture has been more free in the past (as he shows), but what about the ability to participate in that culture, whether it be to enjoy it or produce it? Who could believe that financial inequalities between the richest and poorest that have vastly increased over the last few decades in America are unknown to Lessig? Or that the number of hours that families have to work to sustain living standards and educate their children has been exploding? More to the point of his exclusion of economic conditions from his entire argument about culture is a historic exclusion: was the tradition of the culture he is talking about that of widely known excluded groups – African Americans, Native Americans, white abolitionists, working class, criminals and other dispossessed¹⁷ –

in cooperation and to share are among core desires on which free software/culture thrives; only genuinely egalitarian and emancipatory political projects can remain truthful to these - should be examined in detail and challenged.

¹⁶Lessig tells us that free market will, in the line with laws that Adam Smith taught us, through “lessons that America has been teaching the world for generations - that free markets free people.”, result in prosperity for African and Asian countries(Lessig, May 2004).

¹⁷“ A French abolitionist (Victor Schoelcher) visits the USA in the same time as Tocqueville. But Schoelcher speaks not of the American democracy but of a country which is the worst tyranny: not only the blacks, the whites abolitionists too suffer a ferocious

or was it rather culture of white people only who themselves were separated, and still are, on the basis of the available capital, and even more so time. Not only does Lessig shares Hannah Arendt's "disturbing blind spot for USA history and its systematic racism, violence, and exclusion of large number of citizens from political life" (Prug, 2005b), but the crucial category of time is equally missing from his entire analysis.

The category of time has to be understood here in two ways: historic time, and "free time". Lack of reference to historic time enables Lessig to talk about American tradition of free culture, while inclusion of the same illuminates events and processes missing from his account. With the addition of historic time, Lessig's tradition suddenly becomes tradition of culture that includes slaves, Native Americans, immigrants with no other asset but their labour to sell, and poor Americans in general. It is important to remember that as recently as the 1960s in some states in America interracial marriages were forbidden, the lynching of black people and white activists supporting them was still happening, and literacy tests were used as effective means of preventing most black people from voting, until they were banned in 1965 - all of that prescribed by the letter of law (Yes, Lessig's is a lawyer). At one point, "it became a crime even to provide a slave with paper and pen." (Losurdo, May 2005). Such is the tradition of free culture that Lessig celebrates and longs for. But that is not all. Inclusion of free time, time on which middle classes have thrived in booming periods of capitalism, is equally revealing and matters for establishing who benefits from the "freedoms" enshrined by Creative Commons. As the availability of time free from labour-selling and life administration decreases, so does the ability to participate in culture. In other words, freedom of culture is proportional to one's free time, and free time is proportional with one's wealth. UNICEF's centre for child poverty has a regular report on the situation in rich countries through which "the concept of relative child poverty is merely measuring inequality" (UNICEF,

oppression; the whites abolitionists are considered and treated as traitors to the white race; they are blacks themselves." (Losurdo, May 2005)

June 2000, pg.7). The USA has been consistently sitting at the top of that report, next to UK, with inequality rising since 1970(UNICEF, May 2005). Hence, the only moment of weakness towards the realities of American life Lessig allows himself is one he manages to get wrong: “Is the radical shift away from our tradition of free culture an instance of America correcting a mistake from its past, as we did after a bloody war with slavery, and as we are slowly doing with inequality?”(Lessig, 2004, pg.12). Within capitalism that produces this increasing inequality, and declining availability of free time, it is category of “freedom” – be it Lessig’s tradition of free culture, free society, free markets, free trade, or free speech – that plays a central role. In Lessig’s case, *for category of “freedom” to be constituted and operational (functional), exclusion of categories of time has been the enabling factor.*

Finally, we return to the beginning, to the preface, where the political dimension is dismissed in a stroke by defining the subject “we”, the subjects of the book’s analyses and prescriptions, as a subject unaligned with either Left or Right(Lessig, 2004, Preface). We are assured that “This is the United States” and due to the principle of free speech and criticism that prevails there, it will all work out just fine in the end: “criticism is likely, in turn, to improve the systems or people or ideas criticized.”(Lessig, 2004, pg.156). So, if we give everyone in the world regular access to a computer on the Internet, and a blog, the world is likely to, via free speech and criticism, improve itself? Speechless. While we’re waiting for a critical assessment of the role of free speech in the Free Software/culture movements and theories, we fear that kind of free speech Lessig is talking about could turn out to be as free as his tradition of free culture did, once exposed to categories of time.

4 Piracy: Blood Crystallized as Diamonds

To start with, the United States had a markedly different attitude to copyright while it was a developing country. Up to the late 19th century, copyright was seen to “be disadvantageous, that it would suck money out and wouldn’t

do much good.” (Stallman, 2001). One of the historically documented methods that the United States used to develop its foreign trade was the use of military force to persuade other countries to sign treaties that condoned what they considered to be piracy (Wikipedia, 2005a). Today, as a champion of capitalism, it habitually implements, both domestically and abroad, a system characterised by intellectual property orthodoxy. This is experienced as expropriation by workers in firms: “What they create is immediately appropriated by their employers, who claim the fruit of their intellect through the law of patent, copyright, trade secret and other forms of ‘intellectual property.’ ” (Moglen, 2003). IP orthodoxy outdoes itself – by patenting seeds that have been used for hundreds of years as an essential part of diets locally and worldwide, thus falsifying the purpose of patents (there’s no innovation) – and then commands legal respect from international financial institutions for these techniques.

But ‘piracy’ is a loaded term. American consumption of resources and attendant production of waste vastly exceeds, by tens of times on average, the rest of the world. Is this not a piracy of the finite resources of the Earth’s ecosystem, and one that spurns any attempts at regulation by international bodies¹⁸? Its hypocritical approach towards international organizations, like the UN, is consistent with the strategy that was set after WWII, and is worth extensive quotation:

“...the national prejudices, the irrational hatreds and jealousies’ would be forced to recede behind the protecting curtain of accepted legal restraint, and that the problems of our foreign policy could thus be reduced to the familiar terms of parliamentary procedure and majority decision. The outward form established for international dealings would then cover and conceal the inner content. And instead of being compelled to make the sordid and involved political choices inherent in traditional diplomacy, we

¹⁸This isn’t a very useful line of critique, since, like with the UN, USA is likely to sign agreements on climate change and learn to use them to get on with their business covertly.

could make decisions on the lofty but simple plane of moral principle and under the protecting cover of majority decision.” (Kennan, 1948).

Thus, Lessig is completely off the mark when he writes that USA used to be a nation of pirates¹⁹. In many aspects, it still is. For the world’s most powerful, piracy was, and still is, another tool of domination. Advanced military technology enabled, and still does enable, imperialists to extract wealth from those less technologically able without consent, as we currently see in Iraq. Today, technology that penetrated and connected homes of many (in which military technology and influence played and continues to play a role) enables people to obtain cultural products, a form of wealth, without consent too. By pirating, peoples of the world are being truthful to the lessons of the history: technology can jump over the politico-economic bridges built to negotiate wealth distribution and reconfigure the relations and processes through which that gets done – all in the favour of technologically more advanced. Like Chinese in the Opium Wars of 19th century, if they can’t defend themselves, corporations in the control of culture will have to negotiate.

5 A Glance at the MPAA Propaganda

In a speech on June 14th 2005, Glickman, the CEO and President of the Motion Picture Association of America, regaled his audience with his support for free market capitalism, dislike of communism and tributes to the former President Reagan (Glickman, 2005). The MPAA wins awards for its community projects supporting the education of children²⁰, feeding the starving²¹,

¹⁹“We may have been born a pirate nation, but we will not allow any other nation to have a similar childhood.” (Lessig, 2004, pg.63)

²⁰“Kids are subject to everything from being exposed to pornography or tempted by piracy” (Motion Picture Association, 2005b)

²¹“As Agriculture Secretary, I worked with many fine people who were committed to exporting not only critically needed food, but also American know-how to help feed starving people. While now I am involved more in exporting American culture through the magic of the movies than I am involved with agriculture ...” (Motion Picture Association, 2005c)

and its solidarity with low paid workers²². Making sure that priorities are clearly set from an early age, it even goes to the lengths of organising a training program - available for all of the one hundred thousand scouts in Hong Kong - that introduces “the world’s first Scout merit badge program focused on respect for and protection of intellectual property,” (Motion Picture Association, 2005a). Twenty-five trainers were trained in the initial “train the trainers” course on April 9th 2005. Having rightwing free market fundamentalists, charitable Scoutmasters and communist haters as the enemies of the free culture movement could be a large contributing factor to the prevailing sense that the movement itself must be on the some kind of oppositional political terrain. And yet . . .

Really, how far is Lessig/Creative Commons from Gluckman/MPAA? Put the question of copyright and patents aside — forget the open/closed dichotomy for a moment: how different would the world constructed according to beliefs of these two be? Remember what Lessig said about free speech and what it leads to: has the world really changed since most people in the richest states have had regular access to a computer on the Internet and a blog, if they so desired?

Lessig and Gluckman are both firm supporters of “free trade”, the core hegemonic concept through which the battle for political and economical domination of the capitalism and the West has been forged. Where they differ are the means by which they want capitalism to develop and spread. Although some of the means that Lessig advocates do hold potential for the development of genuine egalitarian societies, it is only by the separation of those potentials from the ideology of capitalism that a possibility for their inclusion in the development of such societies might emerge. For that to happen, further detailed examination and separation is required.

²²“Piracy also hurts the hundreds of thousands of individuals, whose jobs depend on a vital movie industry, including sound and lighting technicians, carpenters, and theatre and video store employees.” (Motion Picture Association, 2005d)

6 Copyright and the Rise of Users-publishers

It has been argued that, since copyright has been created to regulate the right to publish and sell the work, “The shift in focus has gone from regulating publishers of information to regulating users of information.” (Lindenschmidt, Spring/Summer 2004, pg.4). However, what is missed here is the fundamental difference in the cost of reproduction of work and the function of publishing in the past and today. The primary function of publishing is to reproduce the work and manage its further distribution²³. With books, the primary carrier of intellectual work in use at the time when copyright was created, the user was unable to create copies at low cost. Even if copies were produced, offering those newly produced copies for distribution was even more costly. On the other hand, with electronic media, the user can both reproduce the work and offer it for further distribution at extremely low cost. In short, the primary function that publishers used to perform can now be done by the end users at such low cost that many users decide to do so. Thus, saying that the user is being regulated misses what is actually happening: large numbers of users have taken the opportunity to perform the function of publishers at incredibly low cost and became users-publishers. In doing this, they are perceived as an economic threat by the publishing industry. What old publishers used to sell, user-publishers distribute for no charge. In this new state of distribution, the core function missing from practices of user-publishing is charging for the work and distributing capital – the role that classical publishers historically fulfilled. Classical publishers have agreements with producers of work, user-publishers do not. Once this is changed, and model for agreement between producers and user-publishers that can satisfy both sides is found, classical publishing could lose its purpose (their public relations and marketing roles could remain, as a leverage of branding built before the prevalence of users-publishers). As there is no widely accepted agreement at the moment, classical publishers can use their position to de-

²³Proponents of capitalism will probably argue that it is profit that is primary function of publishing.

pict users-publishers as pirates. Creative Commons licences could be a way for such agreements to start being forged, but the method of payment yet remains to be resolved on a wide scale.

7 In a Metapolitical Way: Freeing the Free Software

As a pointer for further investigation, it is in the work of Alan Badiou where we find the structure and concepts that encounter the most difficult and decisive challenges in the unbundling of Free Software/culture and capitalism/liberalism. Crucially, unbundling can proceed as a project of new construction of the *the domination of non-domination* – what Badiou refers as the Marxist hypothesis that posits this premise as the task of egalitarian politics (Toscano, 2004, pg.141). In other words, although the best known historic model of the domination of non-domination is the dictatorship of proletariat, this way might be surpassed. An opening for thinking of anarchist models that are at the core of free software (voluntary association and cooperation between self-managed co-workers) is visible in Badiou’s ethics, which is “essentially incommensurable with the whole Kantian register of legality, duty, obligation, and conformity” (Hallward, 2001, pg.21). His fundamental belief in the possibility for radical change “for the people and the situations they inhabit to be dramatically transformed by what happens to them” (Hallward, 2004, pg.2); his insistence both on departure from fixed modes of representation and class antagonism as the key binding principle (Toscano, 2004, pg.143); his vision of possibilities for social restructuring according to the egalitarian maxims which the State, in its current liberal economic form, pre-empts (Badiou, 2005, pg.141-152) are all reasons for us to believe that if a genuinely emancipatory politics compatible with anarchist modes of free software is to be thought today, Alain Badiou, his colleagues and critics stand on the path to follow. Politics, Badiou teaches us, is not what we’re used to thinking: liberal-democracy, parliament, political parties.

Instead, what is presented from each situation is never the complete state of every situation, there are always more parts than elements. This is the question of power, and power of the State is always superior to that of situation: “Empirically it means that whenever there is a genuinely political event, the State reveals itself” (Badiou, 2005, pg.145). Politics both reveals State’s repressive dimension, but more important, and essential process in the case of free software/culture, reveals a measure for mostly invisible excess. By doing so, it puts the State in the distance. In the time without politics, people are resigned, because the State is not at distance and measure of its power is errant. “People are held hostage of this errancy”. Measuring excess, interrupting errancy, measuring the statist power, is what politics is. Metapolitics is philosophy through which we can discern what politics is, and thus what is political. Through metapolitics, “the task of philosophy to expose a politics to assessment” (Badiou, 2005, pg.149) can be fulfilled, and free software/culture can be freed from the claws of the matrix of inequality which exhibits control over it today. Lessig’s theory is indeed political. It is liberal, capitalist, non-egalitarian, and based on modes of domination whose main ideology is based on concepts of freedom deprived of categories of time. Is not the following: “Non-egalitarian consciousness is a mute consciousness, the captive of an errancy, of a power which it can not measure” (Badiou, 2005, pg.149) and “the political event interrupts the subjective errancy of the power of the State. It configures the state of the situation. It gives it a figure; it configures its power; it measures it.” (Badiou, 2005, pg.149) an invitation to think openness and transparency (on which the production of free software prides itself and through which it thrives) in a political way? This is how a sense of ‘freedom’ of Free Software could be obtained in the only way possible we know of today, in a metapolitical way.

The constructive direction of core propositions of this text is that the path of reconciliation of marxism and anarchism (Karatani, 2005, pg.165-185) is important, and that tools available in marxist theory are as precious for the egalitarian society that those two can bring about, as the organizational methodologies of anarchism and Free Software are for the workable imple-

mentation of such society. But in order to show the possibility and necessity of such path of reconciliation on the political left, it is critical assessment of the theory and practice of Free Software that is needed first. In other words, these propositions are a call for marxism and anarchist theorists and practitioners to inform each other.

8 The Diamond Sea

time takes its crazy toll
and how does your mirror grow
you better watch yourself when you jump into it
'cause the mirror's gonna steal your soul

...

look into his eyes and you will see
that men are not alone on the diamond sea
sail into the heart of the lonely storm
and tell her that you'll love her eternally

...

look into his eyes and you shall see
why everything is quiet and nothing's free
I wonder how he's gonna make her smile
when love is running wild on the diamond sea

(Sonic Youth, 1995)

As Slavoj Žižek pointed out on many occasions, the only true act is the act of taking the risk fully, with all possible implications, and not relying on insurance of the Big Other. Free Software has been called a political philosophy (Stallman, May 2001). However, those who see it as such, and who think that their political stance has been reflected in it, should consider that longer that they postpone critical examination of the theory within and around Free Software, more they are in a risk of disappointment. If this is left undone too long, the mirror for those on the political left might, indeed, steal their soul.

A Tables, World Economy 18th-20th century

Tables are copied from from Mike Davis' book "Late Victorian Holocaust".

A.1 Shares of World GDP

	1700	1820	1890	1952
China	23.1	32.4	13.2	5.2
India	22.6	15.7	11.0	3.8
Europe	23.3	26.6	40.3	29.7

Source: Angus Maddison, Chinese Economic Performance in the Long Run, Paris 1998, p.40.

A.2 Shares of World Manufacturing Output, 1750-1900 (percent)

	1750	1800	1830	1860	1880	1900
Europe	23.1	28.0	34.1	53.6	62.0	63.0
UK	1.9	4.3	9.5	19.9	22.9	18.5
Tropics	76.8	71.2	63.3	39.2	23.3	13.4
China	32.8	33.3	29.8	19.7	12.5	6.2
India	24.5	19.7	17.6	8.6	2.8	1.7

Source: Derived from B.R.Tomlinson, "Economics: The Periphery", in Andrew Porter (ed.), The Oxford History of the British Empire: The Nineteenth Century, Oxford 1990, p. 69 (Table 3.8).

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