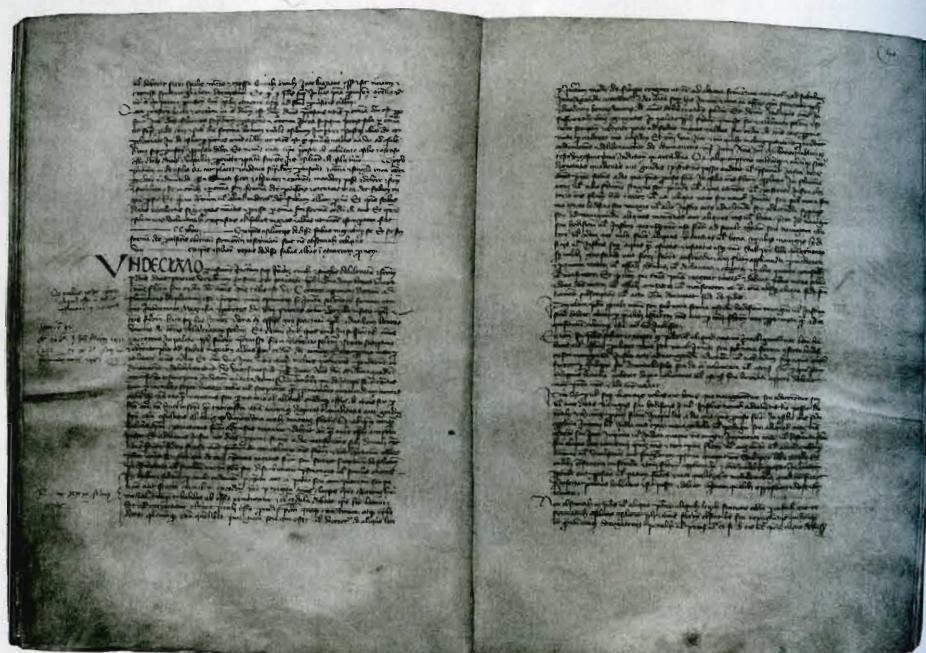


Filippo Brunelleschi  
Il Badalone (1421)



The Florence city-state authorities deliberate on 19 June 1421 and grant Brunelleschi the sole privilege for his invention Il Badalone, an amphibious scaffolding crane able to load and unload very heavy material and transport it on a river, thereby ascertaining the value of his 'original genius'. This document arguably formulates the invention of intellectual property, and the new-found possibility for seriality and repetition.

"The Magnificent and Powerful Lords, Lords Magistrate, and Standard Bearer of Justice: Considering that the admirable Filippo Brunelleschi ... has invented some machine or kind of ship, by means of which he thinks he can easily, at any time, bring in any merchandise and load on the river Arno and on any other river or water, for less money than usual, and with several other benefits to merchants and others ... and that he refuses to make such machine available to the public, in order that the fruit of his genius and skill may not be reaped by another without

his will and consent ... [but would] if he enjoyed some prerogative concerning this ... and desiring that this matter ... shall be brought to light to be of profit to both said Filippo and our whole country ... they deliberated on 19 June 1421; That no person alive, wherever born and of whatever status, dignity, quality, and grade, shall dare or presume, within three years ... to commit any of the following acts on ... any ... river, stagnant water, swamp, or water running or existing in the territory of Florence: to have, hold, or use in any manner ... a machine or ship or other instrument designed to ... transport on water any ... goods, except such ship or machine or instrument as they may have used until now for similar operations ... and further that any such new or newly shaped machine, et cetera shall be burned; ... provided however that the foregoing shall not be held to cover, and shall not apply to, any newly invented or newly shaped machine, etc. designed to ship, transport or travel on water, which may be made by Filippo Brunelleschi or with his will and consent."

## Support for Culture

Jaime Stapleton

This text comes from a lecture delivered at The Department of Fine Art, University of Central England, Margaret Street, Birmingham, May 2007.<sup>1</sup>

In January 2009, I received a transcript for editing. In the intervening years, the economic crisis had radically reshaped the world described in the lecture. The footnotes are a commentary reflecting the world as it is in March 2009.

It is interesting to look back to Margaret Street—I was an art student here between 1984 and 1987.<sup>2</sup> Much has happened since.<sup>3</sup> When I graduated twenty years ago, it was obvious that the world was changing. The early effects of globalisation were being felt, but we didn't call it globalisation. In the winter of 1984, miners collected strike support money in New Street Shopping Centre. One world was breaking up and another emerging. It was a period of transition. Two decades on, and globalisation has had a profound effect on the way we think about democracy, economy, and the law. It has also deeply affected the way we think about culture, and, significantly for today's lecture, the way we support culture.<sup>4</sup>

The abstract for this lecture sets up two things. The first is that the old world, which existed when I came to Birmingham in 1984, has largely evaporated. Back then it was safe to assume that we lived in something called a nation state—a well-defined political, legal, and economic unit that provided the main context against which artistic activity occurred.<sup>5</sup> The legitimacy of state institutions was predicated on certain socially and culturally locatable ideas about political economy, democracy, and law. According to this view then, economic relations were regarded as a subset of socio-cultural organisation. Cultural perspectives and complex social structures emerged in relation to particular geographies, and economic organisation was an expression of that complex.<sup>6</sup> But, that world-view was beginning to break up when I was a student.

In the era we call globalisation, a different conception is ascendant. We no longer quite believe in the concept of the state in the way we did. Super-national corporations and cross-national political and legal institutions increasingly facilitate new forms of economic organisation, which move across national borders. They are paralleled by civil society and activist groups, which, while attempting to balance out

<sup>1</sup> A shorter version of the lecture was given at the ICA in January 2007 as part of the panel discussion *Should Art be Democratic?*

<sup>2</sup> The verbatim transcript begins with a personal trip down memory lane. It is enough to say, that the current infrastructures and assumptions of the contemporary art world barely existed in 1984. The personal exegesis served to foreground the discussion of globalisation.

<sup>3</sup> The shift is not as great as that which occurred between August 2007 and March 2009.

<sup>4</sup> There is a recurrent 'we' in the transcript. 'We' is, of course, verbal shorthand for the hegemonic

paradigm or power/knowledge nexus that gains ascendancy at one moment or another.

<sup>5</sup> Beyond the confines of the state, we talked of 'internationalism'—a very different concept from globalisation.

<sup>6</sup> A small lie saves a lot of explanation. That is a very schematic account of the perspective of the institutional economist, anthropologist, and sociologist. One has to be wary of seeing this as a linear nesting of determining concepts ... but that's another lecture.



those market institutions, also have a role in dissolving the borders of the state. To some, these globalised entities now have greater legitimacy than the institutions of the nation state. To others, they are set to supersede the state.<sup>7</sup> In the old world then, the economy was legitimately controlled and regulated by the state. In the globalised world, it is held that such control is either impossible or undesirable.<sup>8</sup> Under the old system, we thought of the economy as a part of society, a part of culture, but now we tend to think of society and culture as a subject of the global market. Twenty years ago, Margaret Thatcher provocatively suggested that “there is no such thing as society”, meaning that social and cultural experiences are just ghosts in the machine of the market. That provocation is now the common sense of an entire globalised generation.<sup>9</sup>

That great shift has affected the way culture is thought of and how the state—or what remains of it—seeks to support culture. That old world had a concept of ‘public goods’. In our time, the production of such goods are threatened, because the concept as we knew it requires state intervention in the marketplace. Under globalisation, that is deemed undesirable.<sup>10</sup> Intervention assumes that the market is a subject of the state, while globalisation assumes that the state is a subject of the market. In place of intervention, it is argued, we are moving inexorably towards a fluid, borderless world, organised around the principles of private property and contract law.<sup>11</sup> The political process that is supposed to deliver this new world is called neo-liberalism. In order for social relationships to be mediated through property and

7 The proposition that NGOs, civil society groups, and activists are simply ‘white hats’ dialectically opposed to the ‘black hats’ of the multinational corporations, state power, and international legal structures is naïve. The latter groups are not immune to working with the interests of particular corporations and/or national entities. Similarly, the legal/regulatory structures often impede the interests of powerful nations and multinational corporations.

8 Those sentences just jump out, don’t they?! The world that gave context to this lecture has crumbled. The state was reborn in autumn 2008 with unprecedented market interventions and forced nationalisations. To the noise of crunching gears and furious back peddling, Antony Giddens announced: “The state is back” and that “the period of Thatcherite deregulation is over”, curiously ignoring his role as intellectual architect of the Third Way. More soberly, Joseph Stiglitz suggests globalisation is effectively over—for now. The UK banking system is bankrupt and majority-owned by the taxpayer. Kenneth Rogoff has raised the possibility of government debt default—state bankruptcy. What started as the U.S. sub-prime crisis became a financial crisis and is now a world economic crisis. More recently, we have seen serious mainstream discussion about whether the crisis heralds the end of capitalism. We have moved swiftly from bank bailouts, to cash handouts to

business, massive economic stimulation packages, and quantitative easing—effectively printing money. Whether they work or not, the measures represent state power, decision-making, market intervention, and regulatory control that, when this lecture was given, governments around the world routinely denied they were capable of. We now know better. For better or worse, actual political debate and real choices have returned.

9 Or was—? Whether that worldview is defunct remains to be seen. But it is certainly noticeable that society—for better or worse—is biting back hard.

10 Well, we’ve rediscovered government and intervention, but not necessarily public goods. I used rather a lot of rhetorical hyperbole in this lecture, a regrettable hangover from too much French theory. Though it is rather overstated in the lecture, the political tide had been running against the public goods concept for a decade. That’s not quite the same as it being totally abandoned. Public goods—a legal/economic concept—should not be confused with ‘the public good’, a political/ethical concept related to the public interest. They can be connected, but are not co-extensive.

11 In this kooky never-never-land, nobody ever bothered explaining how property and contract were to be conceptualised, rendered, and enforced. Both property and contract depend on local socio-cultural and political/economic traditions and institutions.

contract, alternative ways of conceiving human bonds must be dissolved. The journey thus entails dismantling the organisational role of the state, and, on a more intimate level, destroying social trust and dismantling cultural differences.

So, as we move in that direction, what happens in terms of support for culture? To answer that, we first need some background on the ideology and practice of globalisation. The political neo-liberalism that drives economic globalisation is a re-enactment of an older idea: the market society. To explore that connection, we will take a history lesson from the economic historian Karl Polanyi. Secondly, we need to talk about a set of policies that arose in relation to neo-liberalism, and which, to some extent, run counter to it. Here we will look at knowledge economics and its associated ideas about creativity.

Let’s go through the first bit of that background. Globalisation has happened before. We think of it as happening in the last twenty years or so, but it was first tried at the end of the nineteenth century. Polanyi analysed that earlier, failed, and now largely forgotten, attempt to build the market society. In *The Great Transformation*, he made three observations about that first attempt to bring about a market society—that is, a form of human organisation in which all values are thought to emerge from the market mechanism, and in which all problems are solved through that mechanism.

First, in order to bring about this supposedly rational utopia, markets must, necessarily, destroy and supplant more complex forms of human relationship. Historically, economies were expressions of particular kinds society and culture. Markets sometimes had a role in economies, but they were merely accessories to systems of resource distribution that were buried deep inside local rules and customs. The concept of a market society emerged in the eighteenth and nineteenth centuries, as a construct of British and Austrian economists. Here, an abstract concept of ‘the market’ comes to supplant all other forms of human organisation and identification. In order to enact this politico-economic paradigm, the space between humans must be rid of its cultural and social specificity. Localised customs and ways of being must be progressively replaced with exchange values—values that express the technical-financial interactions of a theoretical market. In order to get people to view themselves as exchangeable commodities, alternative visions of the self and community must be destroyed. Whether those alternatives are ethical, philosophical, cultural, religious, or political, they threaten the progress towards the ‘market society’. Thus, the attempts to enact the market society necessarily collapse historical and geographic differences, and localised social and culture complexities, into a single, unified market mechanism.<sup>12</sup> Today, we call this process globalisation.

Polanyi’s second observation was that markets don’t develop naturally. They are social constructions. Those on the political and economic right, claim markets develop organically, and that the market society is an inevitable historical consequence

12 In the free market, globalisation paradigm, the term ‘economy’ is deployed as if it were entirely co-extensive with the market. In fact, they refer to different entities—as we are again discovering. The routine elision is an ideological trope.



of nature. But Polanyi demonstrated the ways in which actual markets are consciously created by political and legal initiatives. The market society, therefore, is an ideological construction, not a natural and inevitable development. To be clear: actual markets are rooted in social and cultural norms; those norms are not co-extensive with market, and don't emerge from market exchanges. But, in building the market society, all human behaviours must be made subject to the norms of market transactions.

Polanyi's third observation was that the pressure to convert complex systems of human organisation into the simplistic precepts of a market society leads to social collapse and the rise of authoritarian government. Alternative, and sometimes very unpleasant, forms of social organisation bite back against the rule of the market. In his own time, Polanyi saw the rise of aggressive nationalism and the dictatorships of Stalin, Mussolini, Hitler, and Franco, which ultimately led to war.<sup>13</sup>

Polanyi's first two observations — that the market society necessarily destroys pre-existing socio-cultural systems and that this process has to be consciously constructed — is true of our era of neo-liberalism and globalisation. We must hope that the third — that the destruction of socio-cultural institutions and trust results in extreme forms of social expression — does not also come true for us.<sup>14</sup>

Let's look at the second background: the knowledge economy. What is it and how does it relate to the first background? The knowledge economy is a counter-effect of the attempt to build the market society. It has roots in economic theory, but the concept is mainly a construction of journalists, politicians, and think tanks, attempting to defend the economies of developed nations against the free market policies that elsewhere they encourage.<sup>15</sup>

The historical backdrop runs like this: the globalisation/neo-liberal era began in the early 1970s with currency and oil crises in the world's most developed nations. They marked the end of a certain way of thinking about capital movements and exchange rates. Since 1945, national regulations had made it difficult to move capital from one country to another. Currency rates were also fixed. The crisis ended

fixed exchange rates, and led to a raft of market deregulation. Capital started to flow around the world, looking for new places to invest. This 'hot money' gravitated to countries where labour was less organised and cheaper, and where state regulation was minimal. This had many advantages for developed countries — not least of which were the increased returns on capital for investors — but also serious disadvantages. European, North American, and Japanese economies lost millions of manufacturing jobs.<sup>16</sup> Such states could not compete with low costs in the developing world. As 'they' could beat 'us' on price, 'we' had to think of new ways of defending our economies against competition. It was widely assumed that 'we' should focus on 'our' educational advantages and technological innovation. In the 1980s and 1990s this assumption received backing from endogenous growth theory, leading to a political focus on the production of entities that fall under intellectual property (IP) protection: copyrights, patents, and trademarks. IP laws give limited protection to what is sometimes called 'mental labour'.<sup>17</sup> Thus, it was suggested, if we couldn't compete on price, we would compete with our minds; we would innovate.<sup>18</sup>

So, the knowledge economy was conceived by economically developed states as a defence against the negative impacts of the global free market that, in other respects, they greatly benefited from. In the UK, the focus on IP and innovation led to the development of the 'creative industries' concept, which attempted to directly align cultural activity with copyright law. Consequently, copyright statistics became a measure of cultural health. So, in the UK, copyright industries account for about 7 percent of Gross Domestic Product. Pretty healthy. As a result, policy makers now view art and cultural practices through the prism of 'creativity' — the nebulous entity they believe functions for copyright.<sup>19</sup> Creativity has, therefore, become strategically important to the economy, and that has changed the way the state — or what remains of it — thinks about supporting culture. We have moved away from justifying state

<sup>13</sup> Polanyi's book was a complex counter blast to Friedrich von Hayek's *Road to Serfdom*. To Hayek, fascist National Socialists in Germany and communists in the Soviet Union were emanations of aberrant state power and the state was the problem, and the market was the only institution powerful enough to tackle it. Hayek's market fundamentalism, valorisation of the individual, and hostility to all forms of central planning, provides the ideological underpinning for neo-liberals and libertarians.

<sup>14</sup> In the wake of the Crash of 2008 there are growing signs of nationalism. At the time of the lecture, I felt the need to highlight the creeping acceptance of a virulently anti-democratic narrative of globalisation, which was presented as a natural and inevitable phenomenon. It has inherent dangers, as Polanyi pointed out. If Nicholas Bourriaud's *Altermodern* is anything to go by, the narrative is still ascendant in art world discourse.

<sup>15</sup> The intellectual core lies in endogenous growth theory. In particular, how technology is priced in regression models according to application of patents. From this, political pundits surmised, in the absence of evidence, that stronger intellectual property laws would magically deliver greater growth. In the Blair years, all branches of policy were directed toward this aim. In 1998, Labour replaced the Department of Heritage with the Department of Culture, Media and Sport — a nomenclature reflecting the primacy of copyright. Copyright protects investment in cultural products. Media businesses are predicated on buying, distributing and selling such rights. By the late 1990s, national sporting events had become increasingly dependant on copyright revenue, with the BBC priced out of coverage by commercial broadcasters.

<sup>16</sup> This standard account of the origin of globalisation underplays the role of post-colonial economics, cold war politics and the agitation of market-fundamentalist think tanks. A good part of the crisis stemmed from the break up of colonial economic relationships. The response to the oil crisis was steeped in cold war political strategy. And, in parallel, the propagation of market ideology as a bulwark against communism had been underway since the 1940s. The political right saw the crises as an opportunity to enact free market and monetarist ideologies that had been off limits to the post-war Keynesian political consensus.

<sup>17</sup> The policy turn had remarkably little to do economic evidence, but was more a re-enactment of the longstanding social division between white-collar and blue-collar labour. As I've argued elsewhere, that division has deep roots in European culture — it was built on a distinction between the liberal and mechanical or servile arts going back to the Middle Ages. In turn, that division was reflected in the mind/body dualism of Christian

neo-Platonism. Throughout its history, the mental/physical labour division has marked a class border. New Labour cheerleaders, such as Charles Leadbeater, simply redeployed the ancient class divide of European society as a global economic divide, with northern economies playing the brains and developing countries playing the servile body.

<sup>18</sup> This price/innovation competition division was first described by Joseph Schumpeter in the 1940s. Knowledge economics simply mapped it onto the mind/body dualism of European culture. Thus, mind/liberal arts/white-collar became the innovation competition (brains) of developed economies and body/mechanical/blue-collar became the price competition (body) of developing economies. (The mind arrogantly and erroneously assumed that the body would not develop a mind of its own.)

<sup>19</sup> A very contentious proposition.



support using ill-defined notions to do with aesthetics, inherent values, making us better people, et cetera — notions we always struggled to articulate, but could never agree on — and towards narrowly defined instrumental values. ‘Culture?’ ‘7 percent of GDP!’ In the old world, we talked about the arts, and now the creative industries. We used to talk about culture — denoting a whole set of complex ideas — and now we talk about the ‘cultural industries’, a concept defined in terms of urban regeneration / gentrification, tourist numbers, and input and output data.

This shift in justification secured greater government spending on what we used to call the arts, but it also redirected the focus of policy. As a result, the everyday language of cultural discourse has shifted to reflect the new justifications. Many cultural institutions have abandoned the complex language and mental frameworks of cultural discourse and adopted quasi-economic language and precepts. Similarly, practitioners now reflect on themselves using the language of business schools. We need to keep in mind here that the move towards a market society is enacted by persuading us that cultural and social identities are illusions — that, in truth, we are simple economic units. To change people, to get them to think of themselves as commodities, you have to take apart institutions that have an existence aside from, or beyond, the narrow confines of market logic. Social and cultural institutions are repositories for different modes of being and thinking. So, if you want to get citizens to think of themselves as consumers, you have to challenge the institution of democracy and their existence as citizens. Voters must be encouraged to think about their life as a narrow series of choices made in the marketplace, rather than a series of complex ethical and political judgements.<sup>20</sup> The same is true for institutions. Their otherness must be undermined; they must be translated.<sup>21</sup> What refuses to be translated will be destroyed.<sup>22</sup> Their language must change. Cultural frameworks must be replaced with market frameworks.

The success of this translation is evident in the way both political left and right now talk about production and consumption as if those terms were entirely co-extensive with authorship and readership.<sup>23</sup> They aren’t. That’s why we have different words for them. They mean different things. A producer is not necessarily an author. A consumer is not necessarily a reader. It is very strange to describe a letter to my mother in terms of economic outputs — production. It is plain wrong to describe her reading of the letter as an act of consumption. One can only elide the difference between these concepts if one believes that *meaning*, in a mediated communication between one person and another, is entirely coextensive with an *economic transaction*

20 As I’ve argued elsewhere, this *kulturkampf* against democracy has been enacted through public and social choice theory, systems analysis, and Arrow’s impossibility theorem. But the rigid determinism of post-modern subject theory has also played a significant role in discrediting the possibility of political agency.

21 In 2006, there were a series of major reforms at the Arts Council, the Museums and Libraries Association, the BBC, and NESTA.

22 Fruity language, but at the time the systematic dismantling of those institutions seemed to be going unnoticed.

23 Two months earlier I’d had an argument with representatives of DEMOS about exactly this problem.

between, say, a producer of televisions and the purchaser of a TV set. That elision is absurd. To be invited to make that elision is an ideological proposition.

Take another example. We increasingly elide the differences between *values* and *value*. Values — is it beautiful? (the aesthetic discourse) or is it interesting? (the conceptualist discourse) — are conflated with value (cost). We attempt to represent complex values using econometrics. We don’t even bother using qualitative approaches to economics, but cut straight to the quantitative. ‘Culture?’ ‘7 percent of GDP!’ Almost every policy document I came across in my time at the Arts Council made one or another of these elisions.<sup>24</sup> That process has been greatly exacerbated by a corresponding dwindling in the power of criticism. Partly, that is due to the malaise of post-modern critical theory — and I have to put my hands up, I spent nearly ten years teaching the canon — that has led to a politically disempowering radicalisation of doubt. Intellectual relativism has left the political and cultural agenda wide open to those on the political right who regard doubt as a character defect. They have been left free to push their agenda. This combination of factors has deeply affected the way support for culture is conducted. To see how, let’s look back.

Twenty-five years ago, governments deployed this very useful concept in relation to the support for culture — public goods. It was applied in situations of market failure, where markets under-produce goods that are valued socially or culturally. The concept was predicated on the possibility of a dangerous disjuncture between what society or culture deemed desirable, important, or necessary, and what the market mechanism deemed desirable, necessary, or profitable to produce. Thus, it took for granted the idea that systems of thinking and being existed outside of the market. The state was not the market and it had a right to intervene in the market to protect and promote human desires, expectations, or needs that were not satisfied by the market.

To remedy market failures in culture, the state used two methods: direct interventions and indirect interventions. Indirect intervention was achieved using copyright. Copyright works by providing a limited protection for private investment, and in this way regulates competition. It holds off competitors for a period, allowing the creator to recoup their investment costs along with a profit. Where that doesn’t work, the state intervenes directly with subsidy. In UK, direct intervention has traditionally been provided at arms length through the Arts Council.<sup>25</sup>

These interventions beg an interesting question. There *are* markets for culture, so why do this? Why is (or was) intervention thought necessary? Put another way, how do markets fail? Failed markets are often called monopolies. Intervention was intended to break up two kinds of monopoly — over price and innovation. Monopolies develop in two ways. Governments create them. And unregulated markets create them. Problems created by policy can be remedied by policy. But, problems created

24 I was an Arts and Industry Officer at the National Office of the Arts Council.

25 The direct / indirect formulation is a post-hoc rationalisation of copyright and state support, developed in the 1940s. Both forms have complex histories stretching back at least five hundred years.



by the market cannot be remedied by the market; they have to be remedied by policy. At least that *was* the accepted argument.<sup>26</sup> It was long recognised that markets left unregulated resulted in monopoly. Efficient companies grow best. As they get bigger, they develop economies of scale. Their costs do down, and they make more profit. They then destroy or buy up their competitors. Finally, they set monopoly prices — ‘you can only get the commodity from me, so I set the price’. The other monopoly is over innovation. Under similar conditions, one company comes to dominate an entire technology, impeding the development of alternatives. In this case, returns on adoption kick in. If the Microsoft operating system captures 80 percent of the market, consumers will buy that system because everyone else uses it. If you are an applications innovator, your new product will have to work with that system, and, because it does, consumers will be more likely to buy MS, and so on and so on.<sup>27</sup>

There are two remedies for these market failures. The state can legislate to break up monopolies. Or, it can support alternatives using direct or indirect market intervention. In culture, we used to use the concept of public goods when considering these interventions. While both direct and indirect systems are public goods interventions, indirect interventions are said to have two specific characteristics that mark them out: they are non-rival and non-excludable. We can think of these terms in relation to the way we use *ideas* or *breath air*. It is impractical to *exclude* other people from using the same idea as us, or from breathing the same air. Once an idea is common knowledge, it is hard to control, and you can’t parcel up the air into individual bits. Also, when we use ideas and air, we aren’t *rivals*. My breathing doesn’t impede yours, and my lecture on public goods doesn’t stop someone else from doing one somewhere else at the same moment.

Now, that works fine for air. Air just exists. Some ideas just exist, too, so that’s fine. But, what about *new* ideas? The ideas in this lecture are public goods. I don’t own them, and nor do you. But, it takes a lot of time and effort to put this stuff together. Some of the ideas are my work and new, and some other people’s — there’s a lot of labour involved. So, *your* ability to access these public goods depends on *me*, and many others, doing some work. But, how is that labour supported?

Well, you could say, ‘hey, ideas are free’, and that’s fine with me. You could say they are a ‘gift’ — that’s nice, too. I’m pretty generous, and sometimes we make a big, free effort for others. But we also have to eat and pay rent. Somewhere the labour that produces the public goods you get for free has to be supported. The market won’t support it. Left to the market, I wouldn’t be here. You’d have to pay me. You’d have to decide that you could make a profit from what I tell you, and that what you paid me was less than what you were going to make from selling the ideas on. But,

<sup>26</sup> How quaint that sounds. In 2009, it is again the accepted argument, but after the orgy of the free market, the state finds itself not simply re-regulating markets, but supporting them with cash.

<sup>27</sup> The great problem is that copyright is a *pharmakon*. It is a cure for monopoly insofar as it facilitates investment in competing creations or

products. But, the cure is a poison — a regulation-created monopoly — so, Microsoft gets its returns on adoption because its market dominance is protected by copyright on its source code. Traditionally, the length of copyright protection was kept short precisely to avoid that kind of outcome.

being a smart arse, I wouldn’t have come. If you could make that profit, I’d be better off selling directly to who ever you were planning to sell to. We can’t leave it to the ‘gift economy’ either. The already wealthy can work without an income, but that simply makes social class a defining precondition for the creation of public goods, and that’s not democratic. No, the labour that brings about new public goods has to be supported in another way. I’m here because there is a belief, though it may be a residual one, that education and knowledge are public goods and require direct state intervention, that is, subsidy.<sup>28</sup>

The public goods discourse indicates that, in some profound ways, markets are inadequate. There *is* a private market for knowledge, culture, and science, but it alone cannot provide the diversity of public goods we need at a price we can afford. That is why the state intervenes. But, intervention is under sustained attack, as I said in my introduction. On principle, neo-liberals recoil. And, at a pragmatic level, the private sector doesn’t like subsidy. The BBC is a classic, direct public goods intervention. It produces programming that can’t be created for profit. It feeds a public demand for diversity, in the same way as the Arts Council. That works against putative private monopolists, such as Rupert Murdoch’s News Corporation. Murdoch-controlled companies are obviously not in favour of state subsidies to support an institution that directly competes with them for viewers. Why would they? The subsidy supports quality that is not achievable, i.e. profitable, in market terms. That creates quality and innovative competition that private sector companies have to compete with in order to win audiences. That keeps overall standards high. Viewers get more choice, more innovation, and lower access costs. In the pre-neo-liberal era, that idea was regarded as a benefit to everyone. In our current neo-liberal political economy, there is unrelenting pressure to deregulate, to move away from intervention, for the state to step back and leave it to the market.<sup>29</sup>

Let’s turn to indirect intervention, where there is a parallel pressure. The copyright debate, which I’ve been involved with since the mid-1990s, has changed political direction markedly in the last few years. When I started, the debate was mostly about ethics. But the ground has shifted. Today, it doesn’t matter whether you are pro- or anti-copyright. The arguments that dominate *both sides* of the debate are determinedly ranged against public goods interventions. Let me explain.

Copyright is a state intervention. A copyright is part public good, and part private good. The ideas in this lecture are a public good — non-excludable and non-rivalous — open access and freely reproducible. But the specific form of words I used when writing the lecture — the words on this sheet of paper — are subject to a private property right. That right is limited in time and other people have some

<sup>28</sup> Travel costs and honorarium were provided by Arts Council England via the artists. Indirect intervention also applies, as a second (equally small) honorarium, was paid for the right to publish the lecture.

<sup>29</sup> That position is toast! Leaving it to the market has proved catastrophic. The pervading

language of openness and freedom from regulation has bankrupted us. The IMF thinks the world economy will shrink this year for the first time in sixty years. It was known where this would lead, but we did it anyway.



rights of access over it—what are called exemptions. Lawyers call this division the ideas/expression dichotomy. In copyright, ideas are not property. The property right attaches to the specific form in which those ideas are expressed. Thus, a copyrighted item is a public good wrapped in a temporary private good. The private bit is intended to protect my labour and financial input, giving me an incentive to put together some words that have practical utility or aesthetic value—values that go beyond simple economic considerations.

That is pretty reasonable, I think. But, in practice, the law has become dysfunctional. For centuries, the purpose of copyright was to order relations between one business and another. But, with the arrival of photocopying machines and cassette tapes, those who own copyrights—not necessarily those who create them—have attempted to expand the law. Copyright terms have become very long and the law is increasingly applied in ways that actually breach the ideas/expression dichotomy. But far more importantly, there has been a cynical attempt to reframe the purpose of copyright. In addition to regulating business-to-business relations, copyright now attempts to regulate business-to-citizen relationships. The envelope of the law has been expanded to encompass what individuals do when photocopying, home taping, video-taping, and in the digital era, file sharing. Personally, I think we may come to think of that as a mistake, but let's not get into that.<sup>30</sup>

As I suggested, the ground on which this very legitimate, very real, debate is conducted, has shifted dramatically. The ethical debate, led largely by the left, has been translated into a debate dominated by politically neo-liberal, and socially libertarian, arguments. The old argument focused on the way copyright creates limited private monopolies. To socialists—that largely forgotten tribe who believed in a more equal redistribution of wealth—copyright created large, and very unequal, accumulations of capital. That wasn't *just*—period.<sup>31</sup>

The arguments that currently dominate are very different. The Free Culture view suggests that copyright is an unnecessary intervention in an open marketplace of ideas.<sup>32</sup> It is a clumsy state regulation that impedes the right of individuals to make

30 In Antoine de Saint Exupéry's *The Little Prince* there is a wise king who only passes laws he thinks will be obeyed—a parable of good democracy. For any law to be effective, it must be believed by a majority to be just. Those brought up with the Internet do not appear to believe business-to-citizen copyright is just. Enforcement of business-to-consumer copyright online is like trying to nail jelly to the ceiling.

31 The leftist remedies were pragmatic and complex: shorten copyright terms and limit scope; deploy anti-trust and competition laws to break monopolies; reform limited liability and close tax loopholes, et cetera. That 'more regulation' approach is diametrically opposed to the current right-wing 'no regulation' approach.

32 This view has developed from the writing of Lawrence Lessig, but in practice Free Culture activists, as Lessig suggests, are rather more extreme in their position than he is. (A confession: In 2004/2005 I was the Research Coordinator for the Royal Society of Arts' Adelphi Charter on Creativity, Innovation and Intellectual Property. Lessig was a member of the commission, along with representatives of Electronic Frontiers Foundation and many anti-IP or IP reform groups. As an officer at Arts Council England, I was also involved in projects with Creative Commons UK.) While I agree with many of Lessig's and EFF's technical observations on the current state of copyright, I do not share the implicit libertarian political assumptions that accompany them, nor the simplistic cultural analysis.

and distribute copies and creatively remix and share versions of materials under copyright—and, markets would be more efficient without copyright. In the digital age, the creation of content does not need to be incentivised by a quasi-property right—the things we used to call public goods will just happen anyway. Content gets made somehow and is distributed online as part of a gift culture. Governments always get it wrong. It is better (as all neo-liberals and libertarians believe) to leave order to the market. "Free Culture", as Lawrence Lessig suggests, "is free, as in free market". So, this anti-copyright position regards the state's attempt to intervene to support public goods as wrong in principle. Markets are just fine. The state must withdraw.<sup>33</sup>

The opposing, vehemently pro-copyright, argument is put forward by copyright owners, and seems increasingly accepted by government officials overseeing the development of the knowledge economy. Copyright is a property right—and *nothing more*. On this equally neo-liberal reading, the only useful job of the residual state is to guarantee property rights in a global market. If copyright is property, then the public goods aspects of a copyright item constitute an unwarranted state intervention over private property. The length of term must therefore be expanded—moving towards the perpetual rights that exist for other forms of property. User rights of access—the exemptions—must be gradually removed until there is nothing left *but* property. The state must not interfere with property. Markets must be free. The state must withdraw.

33 Lessig's economics are free market, not socialist, as he frequently points out. It is puzzling why many paint his arguments as left wing. It may come down to the word sharing, which feels left-ish. Sharing is an admirable human trait, but an odd political principle. Sharing is voluntary. It has nothing to do with the redistribution of wealth pictured by the democratic left through taxation, and by the Marxist left through violent revolution. Left-anarchism makes space for sharing, after the dismantling of the state and the market—not the Lessig/EFF/Free and Open Source Software movement's argument. The real home of sharing as political principle lies in philanthropic capitalism. In business, sharing is the strategy of corporations deploying open source business models—share the software, but charge for support—and Internet service providers—share content, but charge for access—and search engines—share content, but sell advertising. Sharing in this sense isn't a critique of capitalism, but simply the business model of particular corporations. The frequent designation of this group of arguments as inherently left wing is, therefore, an enduring curiosity. The incantation to share confines the redistribution of wealth to voluntary actions based on individual choice—hardly a left-wing proposition. An alternative Free Culturalist proposition is that file sharing entails redistributing property owned by someone else—a 'revolutionary piracy'. That,

too, is an odd argument as it is invariably used in conjunction with the assertion that, in the digital age, the 'marginal cost of a copy approaches zero'. That would indicate the wealth redistributed by 'revolutionary piracy' is close to worthless. It is also a strikingly limited revolution, confining redistribution to one class of 'property' only, and safely containing the revolution online, leaving global material inequalities of wealth untouched. Even within the confines of its digital borders, the revolution simply destroys asset values in one place (copyright industries) while creating them in another (Internet service providers, search engines, and hardware manufacturers). Not so much democratic socialism, revolutionary communism, or leftist anarchism; more a right-wing, libertarian business model. It is also worth noting that, despite claims by some, anti-copyright doesn't have much of a history under communism. While leftists don't like unequal accumulations of capital, that did not mean they rejected copyright on principle. The Soviet Union did not abolish property, as often suggested, but rather developed a number of different types of property, including private property. In 1925, the USSR revamped the Tsarist copyright laws of 1911, and did so again in 1961. The USSR joined the Universal Copyright Convention in 1973, and reformed copyright again under Perestroika in 1991. The assertion that anti-copyright is firmly rooted in communism doesn't wash.



Does anyone notice a similarity in these arguments? The framework of the debate means that it doesn't matter politically whether you are pro- or anti-copyright. Both arguments condemn the idea of indirect state intervention to support public goods. To anti-copyright activists, the law is wrong because state intervention is *always* wrong.<sup>34</sup> To copyright-extremists, the public goods aspects are an intervention imposed by the state that impedes the fundamental right to property—and that's wrong!<sup>35</sup> These days, it doesn't matter whether you are pro- or anti-copyright. What matters is that the argument you deploy is a neo-liberal, free market argument. Both arguments then come from the political right. Yet, curiously, the anti-copyright argument is nearly always presented as left wing.

To conclude ... and this is going to be difficult ... the current rightwing framework of the debate on copyright (indirect state intervention) can easily be turned to the debate about state subsidy: direct state intervention to support for culture. If you accept that framework, pro- or anti-, you must logically accept that the Arts Council should also be abolished. The framework comes down to whether it is acceptable for states to intervene in the market. Both sides say 'no!' Both posit the state as the problem. The enemy. Democracies, in particular, seem determined to intervene, to regulate, and to tax, and tend towards welfarism, the kind of closures that distort free markets. Accepting the premise of the current critique of copyright, or indeed the defence of copyright, means accepting the principle that it is also unwise for the state to intervene in healthcare, to alleviate poverty at home and abroad, to provide pensions and other forms of social security. Accepting the framework means accepting the idea that it is better to leave it to the market, and that the market is best left to look after itself.<sup>36</sup> We must remember that the market society permits *no alternatives*. There is no outside to its 'freedom'. It is predicated on an all-encompassing ideology of openness—paradoxically, the possibility of an outside to its version of freedom represents a closure that cannot be permitted. The market society is a totalitarian, not a democratic, system.

Twenty years ago when I left Margaret Street, only those on the far, far right of the Thatcher government would have accepted arguments that today are proffered as

34 Since the lecture, the bit torrent tracker Pirate Bay finally came to trial in Sweden, accompanied by a blaze of publicity. Co-defendant Peter Sundé put the popular anti-copyright case brilliantly on the second day: "It's not defending the technology, it's more like defending the idea of the technology and that's probably the most important thing in this case—the political aspect of letting the technology be free and not controlled by an entity which doesn't like technology." (Report by Jemima Kiss, *The Guardian*, 17 February 2009.) The political idea here is that the state, democratic or otherwise, has no right to intervene. A government may not like GM technology, handguns, or nuclear power, but just because it doesn't like those technologies,

it shouldn't have the right to control them. The political aspect here is right-wing libertarianism.

35 The attempt to make copyright more like other forms of property—the creep towards perpetual rights—also continues. Since the lecture, the EU has been considering an extension of copyright term for sound recording from fifty to ninety-five years.

36 In the wake of the Autumn 2008 crisis, the framework for the copyright debate looks absurd. Yes, the scope and term of copyright is still causing severe problems and requires reform. But the political framework of the debate is about far, far more than copyright, and is predicated on now discredited assumptions.

left-wing critique. The miners collecting pennies on New Street Station in 1984 were in conflict with what was then regarded as an extreme right-wing ideology: the idea that there was nothing beyond the natural, primary law of the market. If the market for coal disappears, so do miners. 'You can't buck the market'. There is no 'right to work'; no 'right' to community; 'no such thing as society'. Intervention is wrong, because markets are the only reality. In our screwy world, the rejection of intervention is now presented as freedom ... as a critique of capitalism ... as left wing. It isn't. It is simply the rejection of the possibility of democratic change. It is a replacement of democracy with the market, and only the market. In my view, we have to be much more careful in the language and the arguments we use when we debate culture, the state, government, law, democracy, and the market. Legitimate debate about support for culture can easily be hijacked and it is too easy to give assent to ideological propositions, that, in the cold light of day, we find ourselves to be in disagreement with.<sup>37</sup>

37 Post-crash, the claim that markets can effectively replace democratic government and complex systems of social and cultural order has as much credibility as Soviet-era central planning—it is a failed experiment that belongs to history. If we have (re)learned anything, it is that markets left unregulated cannot even deliver their own survival, let alone order society.