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Keep on Copyin' in the Free World?

Genealogies of the Postcolonial Pirate Figure

Kavita Philip

'Keep on rockin' in the free world', sang American rock icon Neil Young in 1989.[1] The song's lyrics suggested a link between the rhetoric of the Reagan–Bush years, the gutting of the welfare state, and the ways in which the American dream of unlimited consumption and mobility depends on the expansion of exploitation and deprivation:

> We got a thousand points of light / For the homeless man /
> We got a kinder, gentler / Machine gun hand /
> … Got fuel to burn / Got roads to drive.

The refrain, repeating the now-classic title line, was an ironic doxology, marking the realm of rock music as a space of freedom, even while implicating the Western consumer in a global geopolitics of expropriation. Two decades later, Neil Young yoked music production itself

[1] This chapter's title refers to, and copies from, Neil Young's song title, emulating his historical-ironic register, and continuing his interrogation of the common-sense places in which we locate freedom. The phrases 'thousand points of light' and 'kinder, gentler nation' are from Presidential campaign speeches by George Bush Snr. The song goes on to contrast images of consumption and poverty, campaign rhetoric and military power, the seductions of consumption, and the cultural fantasy of the freedom of the open road. This song from the 1989 album *Freedom* became a rock anthem over the next two decades, articulating an early critique of what activists later came to describe as a sustained historical shift towards neoliberal imperialism. It was listed by *Rolling Stone* magazine as one of the 500 greatest rock songs of all time (Thrashers Wheat 2004). According to some reports, Neil Young's title was inspired by a conversation with a fellow musician, Frank Sampedro, who seems to have used the term 'free world' in a more naive, Eurocentric sense, when he advised Young not to play in the Middle East, but rather to play in the 'free world' ('Rockin' in the Free World' n.d.). Decades later Neil Young continued to think about music and global distribution in unconventional ways when he supported global practices of music piracy.

with a new story of globalization when he declared: 'Piracy is the new radio. That's how music gets around.' The connections between these two moments are, of course, larger than the biography of one musician.

'Keep on rockin' in the free world' belongs in the context of over a century of American activist folk music, from Lead Belly (b. 1888) to Ani DiFranco (b. 1970), calling attention to the ways in which patriotism and profits are dependent on a hidden calculus by which the freedoms of some are won at the expense of the liberties of others. For much of the twentieth century, the realm of culture had stood rhetorically outside the realm of economics and politics, its real or imagined autonomy offering a provisional space from which to mount a critique of US social norms. Musicians, writers, visual and performance artists appeared to live in a public sphere rich with alternative social commentary and creativity, counter-cultural practices, and a set of imaginative resources shared in a global commons. In the twenty-first century, this picture started to dissolve.[2]

From the late twentieth century, as culture itself increasingly became a target for direct capture by capital, the producers of cultural value and knowledge noticed the ways in which their work was being valued differently, and circulating in changed commodity circuits. Cultural

[2] The appearance of cultural autonomy was an illusion, but one with strategic uses and enormous productivity, as evidenced in this outpouring of critical music and literature. The illusion of cultural autonomy was, perhaps, easier to believe in the mid-twentieth century than ever before or since. Later in the century, the illusion was shattered by the more complete penetration of almost every form of cultural production, and private space, by capital. Many leftist political economists have suggested that the culture industry was always related to capital, and that these changes are of degree rather than a shift in the kind of capitalism or culture we are living in. On the other hand, many cultural critics now argue that the shift in the degree of penetration of culture by capital does precipitate a kind of rupture, and a new implosion of the private–public construction. For example, anarchist activist and literary critic Chris Taylor argues: 'Indeed, the very modality by which the state approaches the social has transformed. The state and civil society no longer engage in a virtuous dialogue mediated by a public sphere.' He traces this to the growth of immaterial labour: 'By fostering the growth of immaterial and informatic modes of production, neoliberal policy becomes a tool for the augmentation (not dismantling) of the state' (Taylor 2013). For a critique of immaterial labour, see the work of George Caffentzis, who disagrees with the premise of immateriality, saying: 'I argue that immaterial labor, as defined by its advocates like Hardt and Negri, does not exist' (Caffentzis 2007: 24). For more on historical rupture, continuity and liberalism, see Foucault (2010).

critics described this moment as marking various kinds of watersheds. It was identified as the historical moment when knowledge became a force of production, labour became immaterial, and intangible things became property.[3] World trade conferences and global treaties on customs and tariffs were no longer left to economists and lawyers; cultural theorists pored over TRIPS, WTO and GATT documentation. As 'intellectual property' became the favoured tool for the capture of cultural value by capital, the resistant analysis of property rights, too, exceeded the writ of legal analysis.

In a historical period that seemed to respond to the sedimentation of modern disciplines in the eighteenth century, humanities and social science scholars in the late twentieth century precipitated the emergence of new, multifarious spaces of inquiry.[4] These new knowledge-formations were fundamentally interdisciplinary, marking a shift from the disciplinary thrust of eighteenth-century scholarly institutionalizations. The field-formations around law, economics, politics and culture that had thus far shaped the legibility of some questions about human society (and, as disciplines do, silenced others), began to be seen through their constituent contradictions, rather than as transparent repositories of objective knowledge. Some of the key contradictions in this discourse revolved around the fraught questions of power, race, class and sexuality – issues that had silently shaped every key event in the intellectual, political, institutional

[3] These are generalizations seeking to capture the broad-stroke explanations of a period; however, the complexities of this historical moment are not easily characterized. All of these initial descriptions have been extensively critiqued, and continue to form dividing lines between scholarly camps. If we pay attention to the history of knowledge-as-property, of the globalization of production, and of immaterial labour, we must call this 'watershed' or rupture model into question. Techno-scientific knowledge was a force of production over centuries of trans-oceanic trade, and explicitly so in the Age of Reason, when scientific knowledge undergirded empires. Colonialism globalized production in particular ways. Consider, for example, botanical knowledge and colonial globalization, as explored in Drayton (2000), Philip (2003), Schiebinger and Swan (2005) and Spary (2000).

[4] The philosophical consequences of certain arrangements of disciplinarity might be explored with reference to classic works by Jacques Derrida (see e.g. *Logomachia*, in Rand 1992), Habermas (1987, esp. chapters 1 and 2), and Foucault (2006). These works are not histories of disciplinarity, but they dramatically outline some of the intellectual and political consequences of normative disciplinary formations under the conditions of production of European modernity.

origins of modernity. Fault-lines around these questions had become increasingly visible over two centuries of anti-colonial, anti-racist, working-class and regional or identity-based movements. In this discussion, several figures emerged as standard-bearers for resistant visions of anti-, post- or alternative modernities. The third-world woman, the indigenous person, the global activist and other figures crystallized these emergent critiques of modernity. All these figures showed continuities and resonances with older histories of oppression, but re-emerged in specific ways in the late twentieth century, bridging the gaps between the state, multi-lateral institutions, academia, policy and activism, seeming to crystallize the anxieties and revolutionary promise reformist hope, and romantic nostalgia that no disciplinary formation could contain, and that no single disciplinary critique could articulate. Each of them carried divergent semiotic readings and political tendencies, including revolutionary promise, reformist hope, and romantic nostalgia. The figure of the third-world woman, for example, could index the gaps in social scientific theorizing about unmarked male subjects, spurring theoretical and policy revisions; but it could also devolve into an abstract signifier of pathos, losing the specificity of embodied women's histories. The figure of the indigenous person is fraught, walking the fine line between the political power of solidarities from below, on the one hand, and the romanticist constructions of pre-modern authenticity and the noble savage, on the other. Perhaps the most intriguing and controversial figure to emerge out of the critical political ferment of the late twentieth century has been that of the pirate. Unlike the woman and the indigenous person, the pirate has never been honoured by the United Nations with an 'International Year' of concern and attention. Unlike the 'girl child' or the 'tribal', the pirate figure has not been taken up by states or corporations as an object of charitable intervention. More intransigent and harder to sentimentalize than most resistant archetypes, the pirate figure seems to offer a nuanced and extensible critique of modernity.

By the beginning of the twenty-first century, the pirate figure had moved from margin to centre, looming as a larger-than-life political

threat (to state and capital) and becoming a resistant popular cultural figure (for anti-capitalists and libertarians). In a simultaneous replay of physical maritime piracy and virtual property appropriation that juxtaposed historical memory and future anxieties, pirate figures as diverse as Somali sailors, Swedish hackers and a German political party constituted some of the most compelling public spectacles of the new century's first decade. The pirate figure's malleability also constitutes some of its most perplexing characteristics. On the one hand, the implied continuity between maritime piracy and information piracy rests on a strained metaphor – the theft in the former involving tangible goods and labour, and in the latter being digital and therefore infinitely reproducible. One can see the ways in which this metaphor served the purposes of antipiracy efforts, strategically classifying information copiers with robbers, thieves and anti-State actors. Anti-copyright and pro-commons activists inverted the valuation, radically challenging the legal system itself, its inadequacies and inefficiencies exposed, they argued, by information piracy. And the politics of the pirate accusation were inverted in a different way again, in the charge of biopiracy, in which Western states and corporations were represented as the robbers, taking indigenous knowledge (an intangible good) and biological resources away from developing countries, profiting illegitimately by appropriating the common property of humankind.[5] We see here a glimpse of the myriad ways in which the ethical charge carried by the pirate figure was subject to constant contestation and shape-shifting at the turn of the twentieth century.

The first decade of the twenty-first century was characterized by a contest that occurred on multiple fronts – rhetorical, political, economic and technological – to redraw understandings of property. Many

[5] The 'biopiracy' discourse, popularized by activists like Vandana Shiva, had pre-existed the rise of the information pirate, but seemed to assume a new life as pharmaceutical bio-prospecting and drug patenting developed through the turn of the century. Legal scholars Madhavi Sundar and Anupam Chander make a similar point about maritime, digital and biological piracy (Chander and Sunder 2004). On the Western history of book theft see Adrian Johns (2011); on developing economies and environmental theft see Shiva (1997).

commentators observed that the redrawing of property on such a scale had not happened since eighteenth-century shifts in the enclosure and privatization of rural land, the transformation of agrarian commons to estate property, and the growth of factory labour.[6] The historical continuities and structural similarities we can read in the transformations of the meanings of property, a category at the heart of modern capitalism, are, indeed, startling. But the historical particularities of the twenty-first century, and the way in which property comes to turn on legal and social understandings of 'the digital', drew attentive analyses as well.[7] The choice to emphasize either capital's continuities or digital difference often marks underlying disciplinary and ideological divides: historical materialists tend to dwell on continuity and structure, while anarchists and technological enthusiasts tend to celebrate rupture and the digital age's radical novelty. Rather than adjudicating between the two or advocating a balanced middle ground, I think of the relationship between them as a dynamically modulated articulation of different modes of a knowledge economy.[8]

Rather than writing from the point of view of particular pirate actors, therefore, this chapter is structured around a methodological question. What insights emerge from tracing the historical and political functioning figure of the pirate as a constitutive element in

[6] See the work of James Boyle (2008). See also the limitations of the commons-enclosure metaphor, as articulated in Chander and Sundar (2004).

[7] The opposition between 'digital' and 'analogue', like most dichotomies, gets fuzzier under historical and critical analysis. Understood as delimiting a binary, or as narrating a transition, it does not accurately describe the technological landscape of the twenty-first century, which is more of a complex imbrication of older and newer forms rather than, as is popularly fantasized, a purely digital space. However, the extensive use of the term 'digital' already characterizes much academic and popular writing, and thus stands in, here, for a range of discourses about the technology and culture of computational work and play. I use the term 'digital' as shorthand for the discursive field of contemporary techno-politics, and not as a technical description of its everyday technological practices.

[8] The terms 'articulation' and 'modulation' belong to different – and, some would argue, competing – traditions of post-Marxist philosophy. For articulation theory, see Althusser and Balibar (1971). On modulation, see Deleuze (2004). I deliberately place them together here to think together the synchronic and diachronic, structuralist and post-structuralist elements, whose separation underlies much twentieth-century media theory and philosophy of technology.

the knowledge economy? One benefit of this analytical move to tracing structure (rather than beginning from advocacy on behalf of individual political actors) is that it acknowledges the fuzziness in the ethical charge and metaphoric referent in all current pirate discourses. Just as the figures of third-world woman and indigenous native provoked the growth of large new fields of academic and activist inquiry, the pirate figure has generated diverse kinds of investigations. The emergence of these questions, and the salience of the pirate figure to such a range of political concerns, cannot be understood separately from a historical genealogy of late twentieth-century liberalisms and globalisms.

While not denying the political urgency of many pro-commons discourses in defence of piracy in the global South, this methodological approach seeks modes of analysis that side-step the now-common modes of theorizing pirates, such as the corporate criminalizing of postcolonial piracy by transnational lobbying agencies, the scapegoating of 'Asian piracy' to profile a more enlightened free culture, or the celebration of postcolonial piracy as anti-capitalist resistance (cf. Eckstein and Schwarz in the Introduction to this volume).

Reading pirate narratives from the former margins of empire, in what are now the emerging power centres of the global market, genealogical readings insist on doing more than simply adding these to an understudied topics list in the roster of pirate studies. A Southern regional emphasis was important in a first wave of pirate discourses, in that they brought under-represented case studies to the attention of metropolitan readers and policy-makers. But to some extent, all our metaphors of globalism need revision. Global South and North, Centre and Periphery, First and Third Worlds, Western and Non-Western – these categories are all useful to mark certain historical divisions, but inadequate to the analytical task of understanding the rapidly changing present and shifting futures of information cultures and economies. In the task of rewriting pirate histories and futures, then, we must also rethink the language of global analysis itself.

Genealogies of the pirate figure

Scholarly work on forms of information-sharing among the economically marginalized has now brought postcolonial pirate studies to a global audience.[9] How might we acknowledge the importance of historical continuities in the populist politics of piracy, as well as account for the novelty of digital copying? Avoiding the binary of rupture versus continuity in pirate studies, a genealogical approach beginning from the economic, political, philosophical and academic margins of informational discourses can productively shape our forms of attention to practices that are constitutive of the global knowledge economy.

As many writers from the global South have argued, the 'improper', or criminalized, sharing that happens in industrializing economies has many historical precedents.[10] The copying and distribution of information and culture in all forms, from paper to digital, from music to film, may be seen as a response from the global South to centuries of unequal taking and sharing of resources of all kinds. It could also be seen as a continuation, in the global South, of practices that until recently were common in the North as well. For example, 'improper' sharing practices practised in the developing world in the late twentieth

[9] This follows the pattern that postcolonial studies established from the 1970s through the 1990s. For example, scholarly work about, and from, the margins of empire altered historiographic method in the US academy in the 1980s and 1990s. Historiographical work by the Subaltern Studies collective in India and cultural studies work by postcolonial scholars in the Birmingham school have, starting from the margins, moved to canonical status in the US academy (Chaturvedi 2000; University of Birmingham 1982). Whether this will shape long-term trends in the humanities remains to be seen, especially given the new millennium's neo-conservative efforts to reshape the Humanities and Social Sciences to the needs of industry.

[10] I have elaborated this point in earlier writing. See Philip (2005), where I offered a critical reading of the liberal politics of Lawrence Lessig's move to align proper sharing with techno-geeks in the industrialized North. Asian pirates thus served as the limit case; on its acceptable side lay creative young Western geeks; on the other side, criminal street vendors of illegitimately copied data. However, in the twenty-first-century contexts of European Pirate Parties and the activism of Anonymous, or the challenges to state-controlled information in the leaking activities of Julian Assange and Edward Snowden, it would be difficult to cling to Lessig's early attempts to conceive of the Asian street as a model for anti-corporate, anti-state, 'criminal' copying practices.

century recall forms of appropriation that American book publishers had practised in the nineteenth century, when they took content protected in Britain and reproduced it without permission or fees for American consumers (Johns 2011). There are other historical precedents for the taking of resources from one part of the world for the benefit of another. Today's knowledge economy, not purely a product of computational globalization, dates back at least to eighteenth- and nineteenth-century voyages that collected scientific specimens from the colonies, and documented tropical flora and fauna in an earlier period of colonial global exploration. Natural resources, in the context of the scientific and industrial revolutions, were part of an earlier knowledge economy, which bound together material and conceptual information in networks of shifting privilege and power. Emerging out of these historical centres of imperial and economic knowledge, the leaders of what we now call the knowledge economy have a lot to lose if they fail to regulate information-sharing to their benefit. Economic hegemonies of the future will be shaped to a significant extent by the outcome of the pirate wars of the early twenty-first century.

At the same time, the pirate figure has become a popular children's hero in the United States. It functions within diverse US multicultural subcultures as a raced, gendered subaltern who effects the inversion of hegemonic power relations. The pirate has, of course, commonly spoken for power's Others. In 1995, Jo Stanley's popular history of women pirates located pirates' resistant appeal in their direct challenge to the state, a feature that made them attractive to libertarians as well as to leftists. Pirates, Stanley suggested, foreground 'the existence and reality of [the state's] political power as fiction – a powerful insubstantiality' (Stanley 1995: 219).[11] It may be this implicit critique of the state

[11] Stanley 1995. The rejection of the state as a fiction characterized US women's and minority discourses of the 1980s and 1990s. However, in the new millennium (and markedly after September 2001), most academic analyses of the state began to move away from this discourse, and from the idealist notions of state power that had been popular in cultural studies.

and its management of the global market that links the heroic image of maritime pirates with the more recent anarchist-aura of digital pirates.

The swashbuckling pirate-figure has a pop-cultural history that has inspired numerous modern books, from the scholarly *Many Headed Hydra* (Linebaugh and Rediker 2002) to the populist *Outlaws of the Ocean* (Mueller and Adler 1985). But their popularity and influence go further back. Daniel Defoe, author of *Robinson Crusoe*, was fascinated by all manner of vagabonds and rogues, especially pirates. His 1724 book, *A General History of The Pyrates* (for over 200 years attributed to a fictitious pirate author, Captain Charles Johnson), was based on his personal contacts in the commercial and naval maritime world (Defoe 1972). Defoe scholar Manuel Shonhorn notes that 'all of Defoe's observations and experiences – his family alignments, his business speculations and trading ventures, his political propaganda, colonial visions and periodical journalism – contributed to the preparation of these most authoritative pirate biographies of his day' (Defoe 1972: xxiii). On stage, the Gilbert and Sullivan classic *Pirates of Penzance* premiered in New York in 1879, and remained popular for over a century – in 1981 Joseph Papp produced it on Broadway. On film, the first decade of the twenty-first century was filled with versions of the fantasy-adventure series *Pirates of the Caribbean*; by this time pirates had become such a staple of American popular culture that the film, itself inspired by a theme-park ride, featured self-referential pop-culture jokes and allusions; Johnny Depp played the pirate hero Captain Jack Sparrow with an ironic-populist version of Brechtian alienation.

Pirates have long had a marginal, but persistent, presence in counter-culture narratives of modernity, rising to the foreground at particular moments and fading into the background in others, never quite disappearing. Towards the end of the twentieth century, they once again took centre stage in a number of official and resistant discourses. Unlike the nostalgic (and politically harmless) portraits of tender-hearted pirates in American popular culture, the new millennium brought with it pirates from the dark sides of globalization and digital

culture, threatening the emerging architectures of world trade. Somali fishermen, who lived in the ruins of colonial legacies of uneven development, reportedly displaced from their livelihoods by war and neoliberalism, took to literal piracy, robbing ships in the Indian Ocean. In response, the US government sponsored talks to build links between commercial shipping and naval power of the kind not seen since the days of early modern piracy. Roughly contemporaneous with the re-emergence of maritime piracy was the naming of a new form: digital piracy. It had no relation to robbery on the high seas;[12] rather, it seemed to its practitioners more akin to copying than traditional robbing. At first it seemed limited to a small, specialized group of computer users. Occupying an economic and material sphere far removed from both seventeenth-century sea pirates' and contemporary Somali fishermen's lives, its only similarity to their struggle was in its close fit with the argument about differential modes of power, evoked in the pirate metaphor in Augustine of Hippo's famous epigram about Alexander and the pirate. In both cases, governments engaged battle by deploying the full range of powers of the state against the threat to their control, while pirates fought for their autonomy with fugitive, guerrilla-like tactics.[13]

At the beginning of the twenty-first century a young computer-literate population, with its initial roots in technologically elite institutional contexts in the 1970s, but diversifying and spreading over

[12] Artist and anti-copyright activist Mat Callahan has argued that the moniker was born out of the political effort to apply legal precedents from the Law of the Seas, illegitimately, to a field of cultural production (Callahan, interview with author, July 2013).

[13] The oft-cited pirate justification by St Augustine is drawn from his writing in *The City of God*, in which he refers to a captured pirate who challenges his captor, an emperor, with the words: 'What does thou meanest by seizing the whole earth; but when I do it with a petty ship, I am called a robber, whilst thou who does it with a great fleet art styled emperor' (Augustine 1922, *City of God*, Book IV, Chapter 4). Like contemporary libertarians, Augustine of Hippo here is using the figure of the pirate to challenge a ruling authority, advocating a more egalitarian distribution of power and resources than monarchies and states can achieve. An account of the different tactical styles that characterized twenty-first-century conflict is a larger, related story. The notion of asymmetrical warfare came to be commonly associated with influential analyses of the 'War on Terror' (see Arquilla and Ronfeldt 2001). It is a story worth noting here because of the constant slippage between discourses of piracy and of terrorism in the early twenty-first century.

the next four decades, found itself at the helm of a new technology. To many in these circles, the conditions seemed right for a global 're-boot': knowledge and power could, it seemed, now easily be passed to groups that aspired to change everything about the enunciative conditions and distributive contexts of knowledge itself. Even as digital technology promised unprecedented creative agency to a multitude of globally dispersed social formations, its ownership was being refigured by states and corporations. In the four or five decades since computation started to centrally shape techno-scientific and economic activity, the stakes have shifted from the control of hardware and software to the imbrication of culture itself with the power of the state and capital. State and corporate-led anti-piracy crackdowns grew increasingly successful in reclaiming the new digital spaces for the play of commodified consumerism rather than of free exchange. Pirates of different kinds struggled to stay current.[14] As anarchist literary critic Chris Taylor argues, the growth of signifying practices in spaces formerly understood as 'private' or 'cultural' domains now marks the new ways in which the state and capital enhance their mutual imbrications, and develop their power relations, with/through our networked subjectivities.[15] In

[14] The Pirate Party, according to European op-eds in the wake of Edward Snowden's revelations of National Security monitoring of US and global communications, registered small gains, if any. *Der Spiegel* wrote in early July 2013: 'If ever there was a news event that might provide a boost to a political party focused on issues relating to Internet freedom and digital privacy, it is the recent revelations that the US, the United Kingdom and several other countries have spent years maintaining a close surveillance of the worldwide web. And yet the most recent public opinion polls published in Germany show that support for the Pirate Party remains paltry' (Hawley 2013).

[15] Here Taylor is developing Franco Berardi's idea of semio-capital (Berardi, better known as 'Bifo', is a philosopher of the Italian autonomist movement, and one of the activist founders of a 1970s pirate radio station, *Radio Alice*). Taylor explicates: 'Capital has become semio-capital (Bifo's term), and the semiotization of capital means that producing or capturing value entails the production or capture of information. This production is not localized to individual firms; rather, it takes place across the broad fabric of the social. As you're doing cheeky things on Twitter or Facebook or YouTube, you're also producing value for capitalists' (Taylor 2013). Taylor writes this in the informal, political context of a blog (rather than a peer-reviewed article), contextualizing his analysis as stemming from an anarchist reading of state and capital, and responding in the moment to current events (in this case, the post responded to events in the USA in 2013, following the revelation of the US National Security Administration's collection of data across domains believed by citizens to be private, cultural or familial). In a 2011 interview, 'Bifo' Berardi articulates a resistant political agenda in the age of

a broad sense, piracy as a metaphor may now be understood beyond the literal meanings of copying. Rather, it is a phenomenon that in its largest sense is best understood in dialogue with a range of political meanings of data: from the libertarian discourses associated with networks of criminality, such as those associated with Dread Pirate Roberts, founder of The Silk Road, to the discourses of 'leaked' information and state secrets associated with the global media storm around Julian Assange and Edward Snowden.[16]

Projects of citizen security and state consolidations of emerging forms of property often provoke taxonomies of the pirate. In such taxonomies, students who create music mashups are different from Chinese street hawkers ripping film copies; corporate office-software theft is different from outsourcing, which is different again from geek leakers in private–public partnerships with the state. Taxonomies then provoke analytical searches to delineate precisely where the fuzzy overlaps are among pirate categories, so as to know what kinds of pirates one might guard against, with what kinds of technological precautions. But a genealogical approach to pirates differs from both taxonomies and chronological histories of information theft and appropriation.

The third millennium's pirate is both a medieval throwback and a contemporary figure; s/he is a 'barbarian' at the civilized city's gates, as well as an 'asymmetric threat' to the global future of the rule of law and

semiocapitalism: '[T]he real fight is the fight of software developers, of the people who have been writing the software of the financial system. We call on them, in order for them to do what Wikileaks has done in the field of information. Decommission, rewrite, and change the course of the future' (Oudenampsen 2011).

[16] Ross William Ulbricht was arrested on 1 October 2013 and charged with being the 'Silk Road' drug trafficker Dread Pirate Roberts. Commentators Nate Anderson and Cyrus Farivar (2013) name this moment as marking a resurgence in autonomous/libertarian net-organizing: '[W]ith the Edward Snowden leaks and Silk Road's demise, security and anonymity have become hot topics once again – and they may spur a renewed interest in making the Net less traceable.' Andy Greenberg has extensively covered the founder of The Silk Road (see e.g. Greenberg 2013). Journalist Brendan Kiley (2013) characterizes Dread Pirate Roberts (DPR) as 'Julian Assange with a hypodermic needle'. Kiley (2013) characterizes DPR as not simply a libertarian drug dealer; rather, he inaugurates 'a different way of thinking about citizenship, commerce, and an individual's relationship to the government'.

free markets. This pirate trafficks in both goods and services, engages knowledge and materials, and deploys know-how and networks. Rather than taxonomize, a genealogical approach observes the ways in which this pirate has come to shape the border between legal and criminal attitudes toward property. Materially, discursively and conceptually, the 'pirate function' (as I have referred to it elsewhere) is embedded in the textual and economic practices of transnational knowledge circuits of the late twentieth century.[17]

Power's others

How do we understand the resurgence of the pirate figure, and how might we read pirates within their political contexts, rather than as historical outliers? Pirates have recently occupied a structural position in the digital economy corresponding to the threatening, constitutive outside of digital optimism. The political consequences of the digital revolution are thrown into relief by focusing on the role of this dark outside, and its role in undergirding the standard optimistic claims of global connectivity and economic development popularized by global development agencies and philanthropists.

[17] My understanding of the pirate function grows out of Michel Foucault's analysis of the ways in which the 'author function' was central to early literary modern knowledge production. This discussion builds on my 2005 essay (Philip 2005), which concluded by articulating the outlines of a project to analyse 'the pirate function (analogous to the author function) as a series of interrogations of what makes possible/plausible/enjoyable the act of piracy – Who can be a pirate? Who does not need to be a pirate? How does the act of piracy respond to the repressive function of the law of copyright by which transgressive authorial acts are policed?' Taking up these questions, I suggested, was a first step in articulating a larger genealogical project in transnational technocultures. The framing of the project as a genealogical enterprise rather than as an articulation of standpoint theory or policy-oriented advocacy is indebted not only to Foucault's mode of critical historiography, but also to Derrida, who reads textual moments (largely from the corpus of Western philosophy) in order not to 'capitalize' on their definitions of true knowledge, but to analyse, through, beside and around them, the implicit logics and modes that have given us world-shaping histories and geographies. Derrida makes this comment while explicating a reading of Anatole France's *Garden of Epicurus*: 'It is not our task here to capitalize on this … but to discern through its implicit logic a drawing of the outlines of our problem, of the theoretical and historical conditions under which it emerges' (Derrida 1982: 8).

The pirate as boundary object is a key feature of twenty-first-century political economy. Despite the global nature of the economy, though, both academic and activist analyses of the pirate still seem to cluster in ways that keep the Euro-American separated from the pirate-of-colour.[18] The western and postcolonial pirate, as white and Other, then, haunt each other in ways that seem to recall centre–periphery models of global economies and subjectivities. But this historical figuration, of an unmarked centre, and a racialized outside, in which the rational technological worker is haunted by the notion of the irrational savage, does not entirely predict or encompass the scope of this emergent, tech-savvy, recalcitrant figure who evokes the history and futures of anarchism. Rather than simply internationalizing the figure of the pirate (a move that deploys an additive logic), we might notice the necessity of the outside/alien pirate figure as a border that constitutes the recalcitrant but reformable pirate on the inside of the same border.[19]

The constitutive role of the figure on the other side of a border has

[18] Ethnographic studies by Brian Larkin (2008), Abdoumaliq Simone and M. A. Abouhani (2005), and Ravi Sundaram (2009) have questioned the assumptions of Western social theory by drawing on work in cities of the global South. Because of the nature of fieldwork and case study-based writing conventions, academic analyses tend to focus on national studies. Activist networks and their chroniclers, although they work in radically transnational ways, also take the national as a default frame. Most pirate activists do not theorize the pirate's internationalism as a core political analytic. State security and policy analyses, on the other hand, are centrally concerned with the *transnational* pirate, theorizing the pirate figure's menace as stemming precisely from its crossing of borders, its apparent uncontainability by national boundaries. We find examples of this in a range of state-level responses to the pirate threat – from the Rand-sponsored studies of transnational networks to the SOPA draft Bill's concern about 'foreign infringing sites'. American anxieties over Assange and Snowden's global locations, and the geopolitics of the complex extradition and asylum manoeuvres in each case, offer another set of examples of the shifting nature of transnational mobility and its centrality to the threat embodied in the pirate figure.

[19] See Spivak (2005) on the constitutive nature of this 'outsider'. Gayatri Spivak, in much of her work, is interested in following Derrida past Hegel, or, in other words, reading Derrida's notions of justice and ethics in a way that takes us beyond a rights-based understanding of bourgeois subjectivity. Using Melanie Klein's work on Freud in her paper on Derrida, Spivak comments: 'What is interesting about Melanie Klein is that she does indeed want to touch responsibility-based ethical systems rather than just rights-based ethical systems and therefore she looks at the violent translation that constitutes the subject in responsibility' (Spivak 2005: 109). It is in this sense that Derrida's notion of trace seems to go beyond rights-based systems. The pirate figure has commonly been seen as a challenge to Western bourgeois rights-bearing subjects. But to my knowledge we do not yet have any scholarly examples of Derridean tracings of the pirate figure.

most commonly been analysed in philosophical analyses of desire and recognition. In this sense, the pirate may be seen as the Other of the disciplined consumer of corporate information, psychically figuring both the threat of the outside and the feared/desired subject that shapes the legally bound, repressed bourgeois self. The notion of the regulatory boundary was famously framed for contemporary political analysis by Judith Butler, describing her work as a reframing of the Hegelian questions: 'What is the relation between desire and recognition, and how is it that the constitution of the subject entails a radical and constitutive relation to alterity?' (Butler 1999: xiv). Gayatri Spivak glosses this sense of how the 'outside' both regulates and constitutes the inside, pointing to the constitution of the self/other division, as well as the social regulation of the norm: 'This sense of constitutivity … is closer to the everyday sense of the self–other dialectic. When we place "regulative" over against this, it means something like that which "regulates," as with a definitive norm or an invocation of essence' (Spivak 2005: 106). The autonomy of the bourgeois self has been radically challenged by much of the critical humanities of the late twentieth century. Theorists have called our attention to the ways in which bourgeois subjectivities are the effects of regulation, and shown us ways to track the excluded figures that contribute to historically specific constructions of the norm. The pirate figure offers a way to track the ways in which neoliberal governmentality has reshaped the subjects of technology and of modernity at the turn of the century. The genealogical study of the pirate figure I am advocating would draw from the work that philosophers have done on subjectivity and desire, perhaps bringing the Hegelian question of the subject constituted by alterity in conversation with a Derridean tracing of the constitutive Other, a method which both Butler and Spivak have sketched in other contexts. In addition, however, this genealogical treatment would need to draw from the sphere of social science as well as the historiography of technology. To illustrate why I think of the social and the historical as of equal importance in this task as the philosophical, I suggest below some sources of social science methodology, drawn from Science and

Technology Studies (STS) as well as Geography. A historiography of technology in this context might draw on STS, as well as on Foucault's notion of biopolitics and governmentality, which have already been key to humanist theorizing. For reasons of space, this methodological outline can only sketch an approach to each of these areas. A full explication of all these as resources for the construction of this genealogical method would entail a collaborative exercise towards the construction of a 'next generation' of pirate studies.

To read the pirate as a boundary object and border figure is to invoke a range of analytic registers. Three conceptual frames, borrowed from social and historical disciplinary conversations, are particularly useful to think with: the sociological, the cartographic and the critical-historiographic.

The sociological notion of boundary objects is widely used by scholars in Science and Technology Studies. This approach starts by seeing all concepts and objects as embodying dynamic, shifting significations, being 'weakly structured in common use' rather than set in eternally static essences (Star and Griesemer 1989: 408). Boundary objects shine not primarily as themselves, but as a means of translation. Seeing pirates as boundary objects helps bring into focus the fields stabilizing on either side of the pirate, and thus to see as co-emergent the pirate figure *along with* the fields with which it is always imbricated.

The pirate is a weakly defined figure, and yet in every period during which the figure has been crucial to drawing the line between law and criminality, order and anarchy, it has been redrawn with obsessive clarity by all sides. The pirate figure's definition in cultural history is undermined early (as in the epigram about Alexander and the barbarian pirate, which, invoking power as the relevant structuring field, calls the definitions of both sovereign and pirate into question) and often (as we see in the flux in the representation of pirates over centuries as heroic, criminal, abject or noble). Early modern pirate chroniclers like Daniel Defoe searched for every detail of pirate life, just as more recent feminist pirate historians extolled cross-dressing tough girls as gender-bending role models; and modern digital pirate

hunters as well as their defenders strive constantly to delineate, clarify and analyse pirate practices, natures and functions. The notion of 'boundary objects' gives us a way to track this interpretive flexibility in the pirate figure, which is key to following its otherwise seemingly haphazard history.

It is analytically productive to see the pirate figure as a means of translation, rather than fetishizing a stable notion of the pirate itself. The fetishized pirate, even at its most entertaining, allows an implicit assumption that the pirate has become the new (heroic and/or destructive) subject of history, and paints a picture of associated fields – such as law and criminality, developed and developing worlds – as clear, static domains among which dart these tricksters-sans-papiers. The boundaries between state and civil society, corporate and social media, legal and illegal activities, advanced and backward economies, have been radically called into question by the histories of advanced capitalism and postcolonialism. Figures such as the irreverent copier, the information thief, the data outsourcer or the anarchist code sharer help us understand anxieties about the fields coalescing around them. Tracking boundary objects helps us trace these anxieties, reminding us that the analytic queries most appropriate to our historical moment are about the fuzziness of these fields and their political consequences, rather than about the policing of in-between, anxiety-provoking figures.

The cartographic notion of borders, too, can be productive to think with. Because of the complex mathematical and political histories of cartography, many cartographers work with a nuanced acknowledgement of the fundamental constructedness of mapping conventions. Geographers work with borders and boundaries as political and physical features of the world that must be inscribed onto our representative mappings. In many ways, the postcolonial pirate has emerged as the representative figure of a border, inscribing onto new digital cartographies the legacy of colonial knowledge formations. As new media theorist Terry Harpold pointed out in his study of early maps of the internet, mapmakers' self-referential insights and geographers'

theoretical discourse were often lost in the euphoric age of digital maps. Harpold showed how 1990s' internet maps obscured transnational historical complexities, reified certain kinds of political hegemony and revealed disturbingly neocolonial aspects of popular network discourse (Harpold 1999). In other words, critical histories of borders seemed to drop away in the new discourses of digitality. This helps account for the force with which colonial stereotypes seemed to return, unchallenged, in digital discourses. The metaphors of criminality applied to postcolonial pirates recall the anxieties that colonial administrations expressed about nomadic tribes and the tangled socialities of colonial geographies. Entire tribes in India were declared inherently criminal under the Criminal Tribes Act (1871); at least part of the anxiety can be traced to the late nineteenth-century need for stable sources of labour in the 'tribal' tracts of India's resource-rich hill areas. Anthropology, Religion and Geography formed a nexus of knowledge practices from which the criminal tribal emerged as a subject of law in late nineteenth-century India. Tracing the figure of the tribal has been a productive way to reveal the practices of the colonial state, and its interfaces with the knowledge practices of the time. Analogously, tracking postcolonial pirates as symptoms of geographic and political borders can be analytically productive, as a method to reveal the ways in which nation–state distinctions are being re-sedimented even while popular discourses of culture proclaim the end of borders.

Critical theory allows us to understand a third aspect of the pirate figure as border troubler. Borders and boundaries do more than represent embedded historical geographies; they play a part in constituting the entire range of human experience, from the development of the individual self (though a distinction from an Other), to the experience of national identity (as forged through its difference from outsiders). Humanist theory has elucidated what we might call the subjective life of borders. The fiction of an autonomous self/nation/agency begins with, and is continually reconstituted by, an imagined boundary with an Other. In so far as pirates constitute borders between good and bad citizens as they relate to property, their shifting historical

roles help us track not only the social life of objects and their owned, shared or ambiguously circulating status, but also the corresponding subject positions. The tracking of subject positions corresponding to the proper ownership of objects helps us recognize, for example, the good subject as one who both consolidates not only her products but also her own/proper self as her own property, and respects the proper ownership subjects in her 'community' (another properly constituted entity). Proper citizenship and subjectivity implies participation and exchange in a chain of properly constituted communities, agents and objects. It is the shifting constitution of these subject–object assemblages that is of most interest to the critical theorist, who traces the genealogical flux of histories (of the past, present and future) that pirate figures co-constitute. This shift cannot be described synchronically. A critical theoretical approach that is psychologically and philosophically astute but not historically attentive would miss ways in which the underlying domain of capital and transnational geopolitics changes the terrain on which subject–object assemblages engage in this chain of exchange. Shifts in the nature of capital flows and productivity are widely acknowledged to be part of the technological landscape in which the contemporary pirate figure operates. But we have yet to see nuanced analyses of the pirate and capitalism that can do more than posit the pirate as the twenty-first-century substitute for the heroic proletarian figure resisting nineteenth-century industrial capitalism.

Capitalism has changed since the nineteenth century, and so have the figurations of resistance to it. Michel Foucault has sketched a figure of eighteenth- and nineteenth-century agency that offers a more complicated picture than that of the heroic proletarian.[20] Correspondingly, he

[20] See, for example, the published lectures of Michel Foucault (Foucault 2003, 2007, 2010); that is, *Abnormal* (1974–5), *Society Must Be Defended* (1975–6), *Security, Territory, Population* (1977–8) and *The Birth of Biopolitics* (1978–9). Because Foucault's notion of capillary power and dispersed subjectivities is complicated, being developed in sometimes contradictory ways through his entire body of work, some critics claim that his theorizations leave no room for agency. This characterization, I would argue, stems from fantasmatic assumptions about autonomous, self-acting individuals that would constrain theorists to rather conventional, positivist ideas of self-hood and agency. It may be these kinds of misconceptions that have so far prevented questions

has helped us understand the state as neither a monstrous Leviathan nor a withering-away sovereign, but as a 'correlative of a particular way of governing'.[21] That way of governing is negotiated in each historical moment, with some periods being characterized as 'ruptures'. Like the notion of paradigmatic incommensurability in Thomas Kuhn's work (1962), the notion of rupture in Foucault has often been over-drawn by both supporters and critics. There is both continuity and change in Foucault; and there is much to be gained by reading the present moment both in continuity with a political economy that emerges in the seventeenth and eighteenth centuries, but at the same time one with many deep tears in the fabric of that economy, that perhaps tend toward a technological–social rupture in modes of self-hood and governance.

Foucault traces the emergence of political economy and civil society in the eighteenth century as a contingent outcome of an agonistic process. It represents a historical sedimentation of resistance and accommodation, opportunism and compromise that was roughly contemporaneous with a shift in emphasis from sovereign to regulatory systems of power:

> It is from the second half of the eighteenth century, precisely at the time when the questions of political economy and of the governmentality of

in the historiography of technology from being read productively alongside the work of Foucault (whose doctoral dissertation, it is worth remembering, was supervised by the historian and philosopher of science Georges Canguilhem).

[21] Foucault argues, at the beginning of this volume: 'The state is not a cold monster; it is the correlative of a particular way of governing' (1979: 6) and 'I think that fundamentally it was political economy that made it possible to ensure the self-limitation of governmental reason' (13). Summing up, he notes: 'Homo oeconomicus and civil society are therefore two inseparable elements. Homo oeconomicus is, if you like, the abstract, ideal, purely economic point that inhabits the dense, full, and complex reality of civil society. Or alternatively, civil society is the concrete ensemble within which these ideal points, economic men, must be placed so that they can be appropriately managed. So, homo oeconomicus and civil society belong to the same ensemble of the technology of liberal governmentality' (1979: 296). My larger point about rupture and continuity, and its link to technological discussions about analogue–digital ruptures and continuities, is part of a conversation about technological modernity that has been explored in some New Media Theory and Digital Humanities scholarship.

> economic processes and subjects are being addressed, that the notion of civil society will … be thoroughly reorganized.
>
> (Foucault 1979: 298)

Many people understand this as a precise periodization – as if a switch was flipped in the seventeenth or eighteenth century, ending the right of the sovereign to kill his subjects, and the coercive power of states, while beginning a biopolitical regime of public health, the census and self-surveillance. The historical reality is far more complex. Foucault gives full reign to the exploration of this complexity in his lectures, acknowledging the inherent weakness of any grand claim of rupture, and repeatedly using descriptions of a dynamic, shifting terrain of the juxtaposition and interpenetration of forms of power. The regulatory, biopolitical form does emerge as the dominant one in the modern period, according to him; but this is no linear and permanent victory. The contingent sedimentations of civil society and liberalism are never free from a resurgence of agonism; politics is a constant war, not a stable equilibrium. As several postcolonial critics have noted, the possibility for sovereign power and its ability to kill are never far from the surface in domains defined by race, slavery and colonialism (Mbembe 2003).

Evgeny Morozov has argued that the problem of digital information is too important to be left to experts on technology.[22] Our current period, partly because of its technological reshapings of social, legal

[22] Morozov (2013) writes: 'It's wrong to think that all this digital stuff can just be pigeonholed and delegated to the bright young people who know how to code. This "digital stuff" is of fundamental importance for the future of privacy, autonomy, freedom, and democracy itself.' Much of Morozov's diagnosis is astute, although his conclusions come across to many as nostalgic or simplistic; for example, he argues that we need to stop commodifying information; that is, to cease being hypocritical information consumers. We might argue that the 'commodification' ship has already sailed, and that we need strategies that account for the state of things as they are, not as they may have been had we not commodified information. Whether we click 'like' on facebook, sign up for a 'free' gmail account or enter our phone number in the local organic grocer's database, we are already within the information ecology that lives off the commodification of self and things. It matters little, in the informational logic of this system, whether we 'like' an anti-imperialist or a shoe-commercial site, whether we buy junk food or organic juice. All our daily practices generate data that shape consumption and governance as well as subjectivities and communities.

and economic behaviour, is one in which the contests over civil society – its shape, and the nature of the power it wields – are once again dramatically and obviously in play, more radically than at any time after the eighteenth-century shifts which Foucault identified. Through social media, it seems that global citizen networks have unprecedented power to shape the course of history, as many celebrations of the Arab Spring observed. Through corporate and state deployment of conventional surveillance techniques as well as novel 'big data' analyses, however, it seems to many other, more pessimistic commentators that the powers of surveillance and the efforts to create sovereign, state-regulated communication networks bring the policing powers of the state to unprecedented heights.[23] The swings of global recessions and state economic collapses have brought the spectres of mass unemployment, immiseration, starvation and deprivation back to everyday experience, in demographic patterns that cross conventional borders of developed and underdeveloped. The questions of who will live, and who will die, are posed in ways for which the recent histories of liberalism had not prepared us.[24]

The political economy of this technological moment is shifting; from some perspectives it looks like the renewal of a Bretton-Woods-type pact to forge new geopolitical groupings; at other times it appears that

[23] In 2012, the US White House issued a statement critiquing the development of sovereign internet loops: '[S]ome national governments seek to balkanize the Internet by establishing barriers to the free flow of information under the pretext of protecting cybersecurity, social stability, or local economies. … [T]hese regulatory actions would create a confusing array of "local Internets," establishing different rules for different places' (White House 2012). Ironically, in the following year the US surveillance of its own internet was widely discussed in the wake of the Edward Snowden NSA-leaks, spurring critic Evgeny Morozov, among others, to point out that the age of sovereign, policed media and communication was here, and the dream of a truly open, global internet was dead. Nevertheless, the existence of the 'dark net', and activist efforts to push privacy technologies beyond the state's capacities to police them, indicate that this chapter in the struggle over internet 'freedom' is not yet over, although of course the (never-tenable) fantasy of complete freedom is now weaker than ever.

[24] Foucault has argued that the question of race was one way in which civil society answered the question of who would die (See Foucault 2003: ch. 11, 'Society Must Be Defended'). Achille Mbembe (2003) has posed the question of death and sovereignty in provocative ways, beginning a conversation with which postcolonial piracy studies needs to engage.

we have entered the era of radically decentred, non-state, transnational power. Civil society is in the process of being redefined, as everyone – from National Security coders to teenage skateboarders – shapes and is shaped by the surveillance state. 'Big data' efforts do not have the individuated focus that most associate with the god-like stereotype of Big Brother surveillance narratives. On all sides of the power equations, everyone is still figuring out what the state, corporations and activists can do with data and its networks. In this process, the state, civil society and subjectivity are being reconfigured. This reconfiguration is not a simple rupture between putatively pre-technological humanist and technologically saturated (or post-human) eras. Nor is it a continuous, universal dialectic of state versus people power. The ways in which we define civil society will be part of how we shape developments in governmental technology; we are part of this discussion, and shapers of contemporary governmentality, not simply passive targets of coercive power. 'Instead of turning the distinction between the state and civil society into an historical universal enabling us to examine every concrete system', Foucault reminds us, 'we may try to see in it a form of schematization peculiar to a particular technology of government' (2010: 319).

> Civil society is like madness and sexuality, what I call transactional realities. That is to say, those transactional and transitional figures that we call civil society, madness, and so on, which, although they have not always existed are nonetheless real, are born precisely from the interplay of relations of power and everything which constantly eludes them, at the interface, so to speak, of governors and governed. Civil society, therefore, is an element of transactional reality in the history of governmental technologies, a transactional reality which seems to me to be absolutely correlative to the form of governmental technology we call liberalism.
>
> (Foucault 2010: 319)

As Foucault saw madness and sexuality as transactional interfaces that allow us to see the hinges in seventeenth- and eighteenth-century shifts

to modern forms of governmentality, I suggest that we see piracy as a transactional reality. Rather than investigate specific pirate figures as heroic subjects of the new millennium, we can draw together, out of the rich domain of pirate studies that now exists, a genealogical understanding of how piracy stands at a new set of intersections of knowledge and power: between surveillance and participation, coercion and consent, centralized and distributed systems. In the same ways that social media participants today are shaping, and being subject to, emerging technologies of government, pirate scholars today are part of the deep shifts in civil society. The future directions of pirate studies are embedded in, shaped by and co-constituted with the structures of power-to-come.

Next steps in pirate studies?

The three modes of inquiry outlined above – sociological, cartographic and critical-historiographic – are reminders that pirate scholarship is now at a point where we need to move beyond the *bildungsroman* with the pirate as its hero, and towards an understanding of the pirate figurations within larger historic and social shifts that have been occurring contemporaneously. These modes of inquiry, in other words, remind us that we need to frame new questions, seeking to understand not so much the characteristics and motivations of the pirate-as-a-character, but the stakes and consequences of different mappings of the pirate figure.

The pirate *per se*, congealed or conjured in its present forms, fascinating though s/he is, is less interesting as hero, as archetype or as role model, than as discursive trace and genealogical device. While the mapping of the pirate figure itself as a legal, political actor is an important and fascinating study, the mapping of the *boundaries* between pirates and property-respecting citizens, and among well-intentioned, innocent, righteous or malicious pirates, for example, allows us to map the ongoing constitution of emerging

subject positions, technical-cultural objects and their shifting political-economic habitats. How does the pirate figure come to be rendered a challenging, threatening or archetypal figure of the time, repeatedly and over so many epochs? What transactional realities does it elucidate? Detailed histories of pirates in each period, including the twenty-first century, are available, and we can map the enunciative conditions by which the pirate figure comes to act in the world. In recognizing the constitutive role of the outside, and in combining this critical theoretical insight with the sociological insights into organizational behaviour and the technical devices of transnational data-sharing, the pirate figure comes into focus, but as a transactional nexus rather than an essence. The next steps in pirate studies might proceed, then, not by a deeper understanding of the pirate-figure-in-itself, but by observing the civil societal, political and economic flux which constitutes and is constituted by it.

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