

Books

Jim Cullen, Review of Lewis Hyde's "Common as Air: Revolution, Art and Ownership" (Farrar, Straus, and Giroux, 2010)

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[Jim Cullen, who teaches at the Ethical Culture Fieldston School in New York, is a book review editor at HNN. He is the author of *The American Dream: A Short History of an Idea that Shaped a Nation* (Oxford, 2003) among other books, and has embarked on a project with the working title of "Sensing History: Hollywood Actors as Historians." He blogs at [American History Now.](#)]

Back in the Reagan era, a group of historians ranging from J.G.A. Pocock to Sean Wilentz ransacked U.S. history in a quest to find some model of American society that could furnish an alternative to the free-market industrial capitalism that had so evidently triumphed over its domestic and international rivals. The varied explorations of this counter-tradition went under a general rubric of civic republicanism, usefully surveyed in a 1992 article on the career of the concept by Daniel Rodgers in the *Journal of American History*. Other historians, notably John Patrick Diggins in his book *The Lost Soul of American Politics* (1984), regarded the attempt to locate an alternative to liberalism -- in the laissez faire sense of the term -- as quixotic at best, and the overall historiographic project went into eclipse, though scholars in related fields, like Michael Sandel and Robert Putnam, have continued to trace, and argue, for the reality and necessity of a strong civic tradition in American life.

Lewis Hyde is not an academic historian, and a rearticulation of the civic republican synthesis is not his primary agenda in *Common as Air*. But in the process of arguing for the expansion and production of a public domain in the realm of intellectual property -- a point of view associated most prominently with law professor Lawrence Lessig -- Hyde offers a stalwart defense of the public domain strongly grounded in history, particularly that of the Founding Fathers. In so doing, he offers a fresh set of reasons for thinking about the reality, viability, and necessity for a civic republican vision of national life.

Hyde has two core strategies for making his case. The first is to make a distinction between property that is material and finite, and intellectual property that is infinitely reproducible with no reduction in content. Hyde quotes Thomas Jefferson's famous formulation that "he who lites his taper at mine, receives light without darkening mine." He draws on examples from Jefferson's own work as an inventor, John Adams's work as a pamphleteer, and the remarkable career of Benjamin Franklin to show that all these people created works with the unmistakable (and often explicit) intention of collective use without financial remuneration. As Hyde notes, these people were familiar with the idea that creators of content needed some recognition for their work as a matter of incentive and support. But he also notes they were resolutely consistent in their belief that a monopoly over such content should always be temporary, typified by the 14 years of copyright stipulated in the U.S. Constitution. As a string of figures from James Madison to William Rehnquist have repeatedly affirmed, copyright protection is not something whose primary purpose is the permanent protection of private property, but rather a means to the more important end of encouraging the production of knowledge that will contribute to the common good. And yet, as Hyde notes, copyright protection has increasingly been seen a form of patrimonial inheritance, typified by the Sonny Bono Act, which in some cases extends it close to a century beyond the death of its creator and the rapacious behavior of Martin Luther King Jr.'s son Dexter in extracting royalty payments King's likeness and speeches (though using King to sell telephone service is OK if the corporation pays up). This is not exactly a novel argument, but it's one made with real cogency and novelty in a series of illustrations that extend forward to the musical career of Bob Dylan to the mapping of the human genome.

The other pillar of Hyde's argument, which he makes in tandem with this one, is to point out that material property has *never* been *entirely* private. Beginning with the reciprocal obligations embedded in feudalism and moving through the enclosure acts in Britain, the development of allodial notions of property and the decline of entail as legal means of preserving estates in North America, he notes the very notion of private property itself has rested on the existence of a commons and notions of responsibility that range from voting to public service. Indeed, private property is worthless without a public infrastructure, whether in roads or regulations to keep it viable. Ironically, many of those who seek patents or copyrights on things that range from songs to genes are very often appropriate big chunks of the public domain in the process of "inventing" things that are very often more accurately described as discoveries. Indeed, it is a measure of how rapacious private interests have become that Hyde should even have to make this case, which he does with notable clarity and grace.

Hyde's preoccupation with creativity and the way it transcends economic considerations can be traced back to his now classic 1983 book *The Gift*, an extended literary meditation with an anthropological overlay. His output of in the last quarter-century (five books) is small, but beautifully wrought and quietly influential. A former MacArthur fellow who teaches creative writing at Kenyon who is also affiliated with Harvard's Berkman Center for the Internet and Society, Hyde is an essayist in the Thoreau tradition. In his simple, plainspoken wisdom, he is a great American, which is to say he is an excellent democrat. His mere existence is a living demonstration of the civic republican tradition in American life, which we forget or dismiss at our peril. Unless we remember that a society is more than a market, we will soon not only find ourselves at the mercy of large corporations, but even greater powers who have fewer compunctions about deploying, if not seizing, property in the service of interests that are more than merely economic.

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