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A Republic of Letters

By ROBERT DARNTON

COMMON AS AIR Revolution, Art, and Ownership

By Lewis Hyde

306 pp. Farrar, Straus &
Giroux. \$26.

Intellectual property has become such a hot topic that it needs to be doused with some history. Strange as it may sound, this is an argument developed convincingly in Lewis Hyde's "Common as Air," an eloquent and erudite plea for protecting our cultural patrimony from appropriation by commercial interests.

The history that Hyde invokes goes back to the Middle Ages, when villagers enjoyed collective rights to common lands, but for the most part it is situated in the era of the founding fathers. Hyde invokes the founders in order to warn us against a new enclosure movement, one that would fence off large sectors of the public domain — in science, the arts, literature, and the entire world of knowledge — in order to exploit monopolies.

He cites plenty of examples from Hollywood, the pharmaceutical industry, agribusiness, and the swarm of lobbyists who transform public knowledge into private preserves by manipulating laws for the protection of intellectual property. Then he draws on Franklin, Adams, Jefferson and Madison for arguments against such privatization.

On the face of it, this way of defending the cultural commons might seem dubious, because the kind of knowledge that led to the Human Genome Project and the Internet was not dreamt of in the philosophies of the founders. To argue against [Jack Valenti](#) and the [Motion Picture Association of America](#) by leaping across two centuries could be wildly anachronistic.

To be sure, the founders built up a stockpile of quotable chunks of wisdom. Jefferson: “The field of knowledge is the common property of mankind.” Franklin: “That as we enjoy great advantages from the inventions of others, we should be glad of an opportunity to serve others by any invention of ours, and this we should do freely and generously.” The United States Constitution, Article I, Section 8, Clause 8, providing for copyrights and patents “to promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” But the devil can quote Jefferson, and lawyers can construe the Constitution in ways that restrict knowledge rather than promote it.

Hyde, the author of “The Gift” (1983), a defense of the noncommercial aspects of art, does not merely cull the works of the founding fathers for quotations. He pitches his argument at a level where historians and political philosophers have contributed most to our understanding of intellectual history. Instead of treating the ideas of the founders as self-contained units of meaning, he explores their interconnections and shows how they shared a common conceptual frame. Not that he pretends to have uncovered anything unknown to the authorities he cites, notably the historian J. G. A. Pocock, whose studies of civic republicanism reveal how early modern philosophers drew on a current of thought about the nature of citizenship that goes back to ancient Greece and Rome. Hyde builds his argument by telling stories, and he tells them well. His book brims with vignettes, which may be familiar but complement one other in ways that produce original insights.

Thus Hyde’s account of Franklin and the lightning rod. He shows that Franklin did not tame lightning in Promethean fashion, all alone, by directing his solitary genius at the heavens. Franklin actually collaborated with three other experimenters in a common laboratory set up in the Pennsylvania State House. He also applied information derived from earlier theorists and experimenters, including William Harvey, [Isaac Newton](#), the inventors of the Leyden jar, and many wits who had noticed the similarity between electric sparks and lightning.

Franklin’s famous kite experiment did indeed express original insight

about the nature of electricity as a single “fluid” with positive and negative charges; but when Franklin reported it in *The Pennsylvania Gazette*, he did not mention that he was the experimenter and did not attach his name to the article. When publishing instructions on how to make a lightning rod in *Poor Richard’s Almanac*, he also refrained from noting that he was the inventor. And he never sought a patent for it, because he had drawn on a common stock of knowledge and felt committed to “produce something for the common benefit.”

The same attitude lay behind Jefferson’s description of knowledge as “common property.” It pervaded the entire Enlightenment, when men discussed experiments and ideas in correspondence networks and a chain of academies that extended from St. Petersburg to Philadelphia. Above all, they communicated their thoughts through print. Letters, learned societies and the printed word came together in the creation of a Republic of Letters, an egalitarian world of knowledge open to everyone — at least in principle, although in practice it was restricted to a literate elite.

The ideal of a Republic of Letters may sound archaic, but it is still alive. Hyde also evokes it with another name, the “cultural commons,” which summons up associations with current projects for sharing knowledge like Creative Commons, the Public Library of Science, [Wikipedia](#) and the Internet Archive. He contrasts it with efforts to close off sectors of knowledge so as to exploit them for private profit, as in the case of companies that attempt to use the understanding of the human genome in order to gain control of DNA segments related to diabetes and breast cancer.

The history of copyright provides the most revealing version of the enclosure movement that is now threatening creativity in all the arts and sciences. Jefferson wondered whether copyright ought to exist at all. In a famous letter to Isaac McPherson, he noted a peculiarity of communication by print: “He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me.”

In the end, Jefferson was persuaded by Madison that a strictly limited

copyright would indeed “promote the progress of science and the useful arts,” as the Constitution was to proclaim. By enjoying a short-term monopoly on the publication of their writings, authors would be encouraged to share their ideas in print. How short should the term be? The copyright act of 1790 set it at 14 years, renewable once. The founders took this limit from British precedents, which went back through a series of court cases to the original copyright act of 1710. Along the way, some experts argued that copyright should be perpetual, because intellectual property was like ownership of land — absolute until alienated by sale. But that view was overridden by the notion that knowledge belonged to everyone and should revert to the public domain, where everyone can make use of it.

Today, however, copyright lasts for the life of the author plus 70 years — or even longer in some cases. The Copyright Term Extension Act of 1998 (known as the Mickey Mouse Protection Act, because the monopoly on Mickey was about to expire) now prevents most 20th-century literature from being available in the public domain. When asked how long he thought copyrights should last, Jack Valenti, the lobbyist for Hollywood, quipped, “Forever, minus a day.” Valenti has won, Jefferson has lost.

What can be done to protect the cultural commons from further enclosure? Hyde praises projects like General Public Licenses, which channel intellectual property into the public domain, and the Distributed Annotation System, which prevents the monopolization of genomic knowledge. But he does not propose a program for action, nor does he dispute the need for limited commercial applications of new knowledge. Instead, he tells stories with a moral. If we reassessed our history, he teaches, we would reassert our citizenship in a Republic of Letters that was crucial to the creation of the American Republic — and that is more important than ever in the age of the Internet.

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