

THE ABOLITION OF INTELLECTUAL PROPERTY
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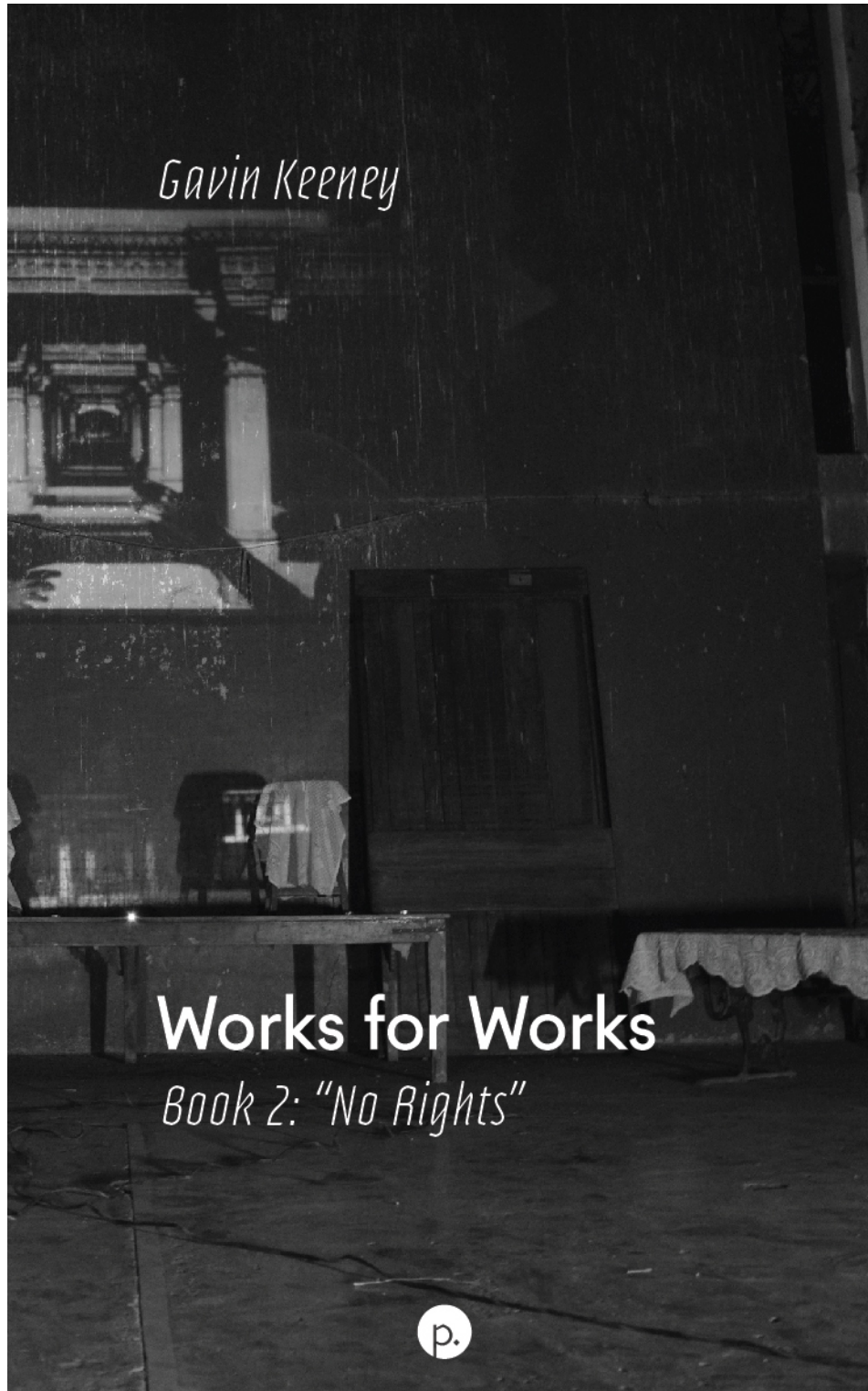


Image – Book Two of *Works for Works*. Punctum Books, 2024.

PRÉCIS

The following argument for the elective abolition of Intellectual Property Rights (IPR) comes out of the OOI-MTA+++ Works for Works project (2019-). The premise is that IPR law is a form of slavery to Capital, for authors and for artists. The ontological reduction of IPR is part and parcel of the “Proof of Concept” phase for an eponymous PhD dissertation project, dating to September 2021, entitled Works for Works: “No Rights”. OOI-MTA+++ is an international collective of artist-scholars founded in India in early 2017 and specializing in iterative, aleatory, and avant-garde forms of transmedia, wherein the editioning of works according to the dictates of works-based agency (works in/for themselves) is privileged above and beyond any and all authorial privileges. The primary subtending chord or keel for all OOI-MTA+++ projects is to honor the irreducible beauty of Prior Art, and, as such, to bracket “ownership” and favor a “No Rights” status for works.

AN ONTOLOGICAL REDUCTION OF IPR

Works for Works: “No Rights” (W4W2) is a structuralist- and Franciscan-inspired study of the non-necessity of Intellectual Property Rights (IPR) law and, as such, an evocation of/for an elective form of literary-artistic scholarship – past, present, and yet-to-come – that privileges works-based agency and, effectively and affectively, negates historically determined authorial privileges and rights en route to a “No Rights” status for such works. The primary goal of the analytic is to justify the elective abolition of copyright and IPR law, by artists and authors (and artist-scholars), toward the production and distribution of works within a custom ecosystem that is decidedly anti-capitalist, anti-proprietary, anti-careerist, and highly iterative, aleatory, and experimental. The hypothesis is that the anti-capitalist, anti-proprietary, and anti-careerist measures taken are merely steps toward an *ad hoc ecosystem* (never to be fully systematized), with no relation to Capital, which fully honors the presence of Prior Art (e.g., “the given” of Post-phenomenology) in its various determinate and/or indeterminate ontological states – viz., whether de-subjectivized, re-subjectivized, and/or post-rationalized as autonomous or pre-existing conditions of/for works. The travails of Open Access (OA) and Creative Commons (CC) licensing are surveyed, *en passant*, for signs that they are, after all, highly mutable, post-contemporary stepping stones toward the abolition of IPR law for works of literary-artistic scholarship, insofar as such works represent a class of works that resist assimilation to the capitalist *commercium* of the art-academic industrial complex, as constituted in the early twentieth century, through their own inherent, ontologically determinate and/or indeterminate largess.

The study concerns a critically important, *enlightened “nihilist”* remainder in the Arts and Letters that has led to disputation regarding what has been termed “authorial presence” since, at the least, the Enlightenment (cf., Diderot, Kant, Fichte). The nihilist remainder – a type of zero degree (cf., Barthes et al.) – is presented as the nexus (crossing) between *this*-worldly and *other*-worldly claims of/for works. This historical and idealist privileging of authorial identity has been generally de-stabilized or *continuously sublimated* (repressed) versus dialectically sublimated (cf., Novalis, Bachelard) through the various regimes of IPR law that subsume the rights authors have received since the establishment of copyright in fifteenth-century Venice at the time of the arrival of the printed book. The repressions, as ideologically constituted, also become, in many instances, collective neuroses and/or nightmares for authors and artists. The instability of “authorial presence” is, upon closer examination, related to definitions of an “artistic exception” (cf., Diderot, Le Chapelier et al.), which has suffered, arguably, the same fate as authorial privileges under Capital. An examination of the French book trade in pre-Revolution France (as centered in Paris) suggests that the exception was actually a purely temporal measure masquerading as a universal right, and that its fate was determined more or less by publishers rather than by authors, and never by law as law (law *qua* law).

What does this enlightened nihilist remainder represent in an analytical deconstruction (cf., Althusser, Derrida, Agamben) of IPR law? In many respects it is the signature dissonant component of an immanentist paradox (cf., Lyotard, Bauman et al.) – i.e., an ever-present sensibility by authors that something is passing away (has exhausted itself), but cannot be seen or fully experienced, while something else is arriving (or attempting to arrive), which also cannot be seen or fully experienced, as it is, so to speak, “over the horizon.” This, in turn, represents the spectralized nature of much of capitalist appropriation of knowledge (immaterial labor) and the constant construction and re-configuration of the agenda of authorized cultural production, whether under repressive regimes or as tolerated and policed by so-called liberal, socio-political regimes.

What emerges, upon closer examination, is that Capital is, after all, and *inter alia*, a debauched religion (cf., Weber et al.) – and that, *qua religion*, it has as many aporia as any religion, with its justifications as de facto religion shifting across forms of capitalist production and new forms of techno-determinist systems created for the expropriation and/or appropriation of knowledge per se (material or immaterial, ontic or de-ontic). To properly assess such a debauched commons, understood as a crisis- or disaster-driven paradigm (cf., Agamben, Cacciari, Klein et al.), for and on behalf of Capital, it then becomes necessary to de-theologize Capital and re-theologize the Arts and Letters, in the latter case en route to an acknowledgement of the liberatory ethos and a-religious and a-political telos the arts have long sustained as subtending chord or radical remainder in cultural production. Via an engagement with ideational Franciscanism (cf., Agamben et al.), and through an evocation of the renunciation of rights and property as practiced by the early Franciscans, certain tenets toward *re*-theologizing the arts and the valorization of scholarship as artistic praxis, which may only exist when freed of censorial and authorized gestures as permitted by Power, arrive semi-miraculously through works-based agency and the presentiment and/or presence of the event of the emergent life-work. This ontological reduction is also performative in the sense that it is always already present and/or at play in such works.

Extracting from Franciscanism a set of principles denoted “(itinerancy, poverty, works),” it is then possible to re-map and/or re-patriate these proto-existentialist *lived rites* onto forms of literary-artistic scholarship that contain traces of, or prepare provisional strategies for, the abolition of the slavery that IPR law entails for subjects and for works. The key moment in all such instances – historical, a-historical, and anti-historical (i.e., retrospectively deduced, categorically beyond definition, and purposively purposeless or radical) – is the *elective or incidental* transfer of moral rights from authors to works – a move that is, contrary to international conventions associated with IPR law, technically forbidden. How this occurs, by choice or by accident, is, arguably, determined by works versus by authors, and never – or very rarely – by law as law. This “event” of the work of artistic and literary scholarship (cf., Badiou et al.) is privileged as a result, and the author is eclipsed and/or erased only in the sense that the works take precedent over arbitrarily conceived categories for commodification and capitalization. Privileges are erased for other privileges – viz., for works and for life-works, versus for authors and “rights holders” (i.e., capitalist entities operating as gatekeepers to markets).

Within this unraveling of 500-600 years of historical and often retrospectively conceived justification for the theft of works as property (cf., Proudhon, Shaw), various traces of the enlightened nihilist agenda may be detected through temporal engagement with other rites versus rights per se (cf., Dostoevsky, Tolstoy et al.). These “other rites” are often labeled “avant-garde” by historians, well after the fact, and generally well after such moments have been neutralized or re-capitalized by Power and by the art-academic establishment.

A spectralized knowledge and/or creative commons (both, notably, late-neoliberal capitalist terms for General Intellect) is always present within the capitalist *commercium* of present-day cultural production. It suggests possible stations, agonistic and otherwise, en route to “No Rights” – i.e., figurative “stations of the cross,” which, again, signal an unavoidable “Christic” moment of/in the zero degree engaged. This may take the form of highly temporal scriptoria for the collectivist ethos to properly register, and less temporary, but probably semi-obscure collecting societies for the preservation, protection, and dissemination of works produced under an aleatory and utopian “No Rights” status.

It is through Kierkegaard, Bloch, and Camus (plus Weil and Benjamin) that we can observe the required semi-tragic rigor of defending the right of insurrection against capitalist subsumption, at least during their lifetimes, and even though their life-works have been fully assimilated and problematized in service to that fully negative nothingness (virtual ineffectiveness) preferred for such works by Power. This modality of serial compromise and the de-naturing of works, generally orchestrated by academics on behalf of Power, or by the curatorial class on behalf of Art, has long neutralized radical agendas, and, given that many of these figures (Kierkegaard and Camus, in particular) fought to hold their ground against heavy-handed “revolutionary” gestures of their day (i.e., Kierkegaard contra Hegel and Camus contra Sartre), it is of particularly powerful note that “No Rights” never becomes a default “extra-legal license” for works – or fully definable within the contours of IPR law as yet another radical-chic exception and/or fashion statement. *The status of /a-legal/ then becomes the chief mark of the zero degree observed through works and life-works. Its lexical status (in/for itself) also denotes its interminable tautological state, plus its a-theological/theological merit – i.e., the necessity of inhabiting a type of Lucretian intermundia (space between worlds).*

The elemental datum thus engaged through an analysis of the history of IPR and its attendant games of power by Power is the de facto register for the re-registration of an apparitional “pre-modern” ontological (onto-theological) status for works that is also futural and utopian. Its eschatology is its *ethos as telos* (cf., Kierkegaard, Marx, Bloch) – i.e., a time-sense that is consistent with Benjaminian and revolutionary “now-time.” If it also appears apocalyptic, that is the problem of Capital and its self-serving agenda to block anything resembling an anti-capitalist future. This datum, as “illuminated tableaux,” across works and across a-historical production of life-works (cf., Dvořák, Focillon, Malraux et al.), produces a type of “seal” for works – something detectable in the works of “Franciscan artists” who also lived the rites of passage noted in the paintings or in the texts left behind as records. Whether Dante or El Greco, Benjamin or Weil, these life-works have all been subject to manipulation and canonization across 500-600 years of mischief, at a very high level, and distortion, at a very low level. Why this has occurred has more to do with complicity by scholars (e.g., historians and sociologists) with Power than anything the artist or author intended through works. The taint of rights has produced the affect of “saint” – while in almost all cases we are dealing with “failed saints.”

TOPOLOGICAL GLOSSARY

Analytical deconstruction – A somewhat-rationalist dissection of the terms of engagement for anything stuck within so-called cultural production and perceived as outdated and/or anathema. Often a socio-political and/or ideological reading of present or past, situational and/or historical biases.

Art-academic industrial complex – The neoliberalized version of the art world and the academic world, as singular machine, with an emphasis on the commodification of works and authors and artists – i.e., the gamed, for-profit production of celebrity and privilege.

Artist-scholars – A hybrid clan of artisans working against the de facto anti-intellectualism and abject careerism of the neoliberalized knowledge commons. Generally fated to insignificance and, in some cases, abject poverty. Formerly known as the *avant-garde*.

Artistic exception – A term deriving from Early Modernist attempts to establish categories of genius and to canonize artists and authors toward valorization of subjects versus works, setting the stage for the commodification of the modernist canon.

Authorial privileges – A set of de facto rights dating to “whenever,” but seriously privileged with the arrival of early forms of copyright in the Venetian Renaissance. Generally reducible to “authorial identity” or “authorial presence” and closely related to moral rights of authors.

Capital – Not money per se, “Capital” is, per Marx, use value (rent) multiplied one-thousand-fold across regimes of exploitation and expropriation since the Late Medieval period but decidedly enhanced in the late twentieth century with the arrival of vectoral finance capitalism.

“Christic” moment – The Absolute Exception to arbitrary Power and, today, to the fatal caprice (*hubris*) of Capital.

Debauched religion – Any otherwise well-meaning insurrection turned to privileging a cohort or Kafka-esque Power Itself versus the founding principles of the insurrection – e.g., Christianity, Communism, Socialism, Modernism, Liberalism, etc.

Failed saints – Innumerable artists, scholars, ne’er do wells, miscreants, and otherwise dispossessed and damned souls. The true saints.

General Intellect – The Marxist term for the Republic of Letters, per Diderot, but with an important anti-capitalist *ethos* attached.

Ideational Franciscanism – Early Franciscanism and its categorical rejection of the ownership of anything whatsoever. Denoted the “Highest Poverty” by Giorgio Agamben.

Immanentist paradox – The great existentialist blind spot endured by all, as time passes, and when what is at hand is obscured by what is passing. To be found in Nietzschean-Lacanian exegesis as The Thing (or The Thing from Outer Space). Reality Itself. Both a function of repression and sublimation.

Moral rights – A set of rights (legal and a-legal) established in the Enlightenment, but only incorporated into international law as of the early 1900s, and then generally ignored by governments and industry due to the fact that they are inassimilable to the capitalist agenda and a threat to industry.

Nihilist remainder – A curious affectation given to the Left since Time Immemorial – e.g., the Montanists and other heretic sects of the early Christian era. Particularly relevant to the Russian nineteenth century, but resurrected in the twentieth century by scholars as diverse as Benjamin, Camus, Cacciari, and Agamben. Arguably an end run on anarchism, and the actual throwing of bombs, and inclusive of a decidedly curious ethical and moral remainder that eschews violence. Possibly a case of the embarrassment of riches associated with being an aristocrat (of the Spirit or otherwise).

Ontological reduction – A return to ground in the philosophical tradition that also often engenders a renunciation of former principles in search of new (higher) ground. Most likely an outcome of a former ethical agenda having been corrupted and/or a former crypto-religious agenda and/or regime having been exposed.

Onto-theological – A very curious linguistic construction connoting what is almost antithetical to progressive politics and progressive aesthetics, even as it often swerves into contested grounds concerning the unholy admixture of politics and religion. Dangerous territory and only for the more courageous souls in the Arts and Letters, insofar as it often ends up traversing negative theology, a-theology, and political theology, plus the unavoidable figures of “Heidegger” and “Schmitt.”

Post-contemporary – A type of last-ditch attempt to categorize early twentieth-century cultural production after the exhaustion of the teleologically inflected buzz terms generated across the twentieth century by art historians to define modern art. Similar in spirit to post-modernism, except that “contemporary” has no history per se. Connotes many other terms, inclusive of meta-modernism, etc., all the while meaning next to nothing. Often replaced by Super-contemporary, which means that the artist cannot be dead.

Prior Art – All that is embedded in Art and all that underwrites existence per se. Most likely the dagger through the dark heart of Capital, if ever truly acknowledged, just before Capital is finally pushed off the cliff, to never be seen or heard from again. The foundation stone for all utopias.

Proof of Concept – A ridiculous term associated with product development and somehow redolent with the bombast of the culture industry, plus “innovation,” “disruption,” etc.

Transmedia – Something no one knows the meaning of even though it is the Elephant in the Room of post-contemporary art. Weirdly reminiscent of Dada, Surrealism, and Situationism, although the post-contemporary, art-academic industrial complex has no way to claim anything resembling Dada, Surrealism, and Situationism, since it would be the equivalent of drinking poison for the post-contemporary, art-academic industrial complex. Roughly equivalent to “unmarketable, useless, and unfathomable wares.”

Works-based agency – The event of the work of art. Period.

Zero degree – A return to ground. Erasure of all definitions to date of anything purporting to know “what’s what.”

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