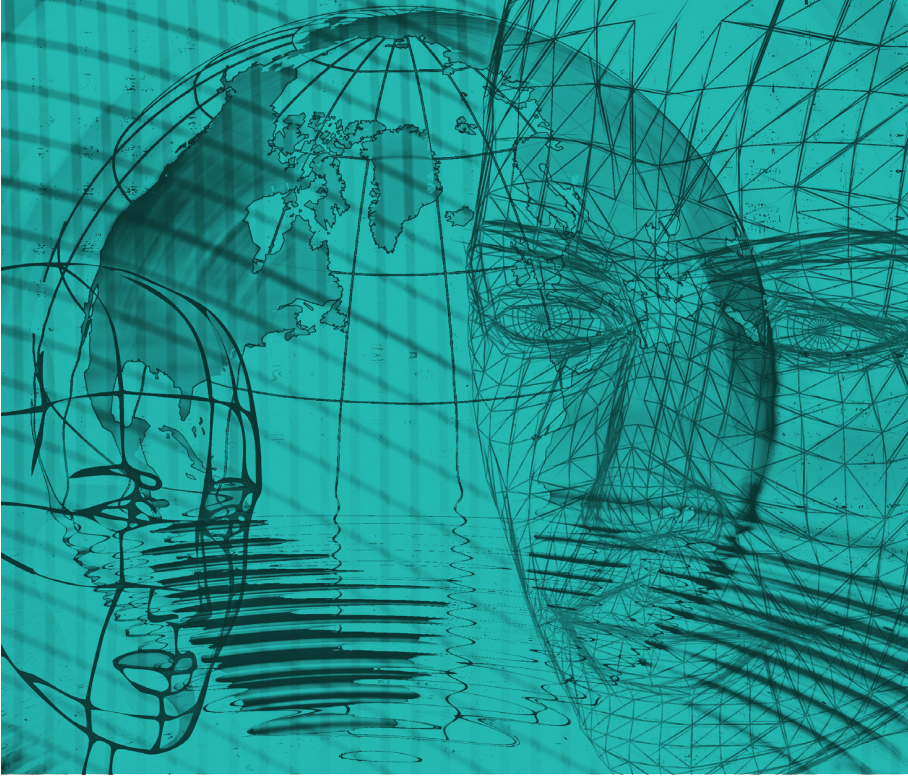

ANDREAS VON GUNTEN

INTELLECTUAL PROPERTY IS COMMON PROPERTY

Arguments for the abolition of private intellectual property rights

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buch & netz

Zürich

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FOREWORD

Defenders of intellectual property rights argue that these rights are justified because creators and inventors deserve compensation for their labour, because their ideas and expressions are their personal property and because the total amount of creative work and innovation increases when inventors and creators have a prospect of generating high income through the exploitation of their monopoly rights. This view is not only widely accepted by the general public, but also enforced through a very effective international legal framework. And it is endorsed by most academic researchers and commentators in this field.

In this essay, I will show that the classical arguments for the justification of private intellectual property rights can be contested, and that there are many good reasons to abolish intellectual property rights completely in favour of

an intellectual commons where every person is allowed to use every cultural expression and invention in whatever way he wishes.

I will first give a short overview of the classical arguments for the justification of intellectual property as they are usually stated. We will then discuss the question of whether the creator or inventor deserves his de jure monopoly, by using John Christman's categories of income and control rights to analyse property rights. The aim here is to show that it does not make sense to create control rights for abstract objects, as they are not scarce, and that there is no logical connection between the surplus which may be generated through income rights and the labour which has been put into a cultural artefact or an invention, and therefore it is not justified to grant monopoly rights on the basis of Lockean natural rights arguments for self-ownership and the just appropriation of worldly resources.

As it is possible to reject Christman's property rights categories, I will then go on to show on the basis of Richard Dawkins' postulation of the 'meme' and Ludwik Fleck's theory of the 'thought collective' that creative processes should be interpreted as interpersonal or collective processes, and therefore it is not jus-

tified to grant intellectual property rights to individuals on the basis of the idea that the individual who has put labour into the creative work or the invention should be the one to whom the contents of the work belong exclusively.

As it is still possible to postulate the utilitarian argument that intellectual property rights are just because they increase the amount of creative works and inventions, I will argue in the last chapter that, from a libertarian as well as from an egalitarian point of view, the justification of intellectual monopoly rights on utilitarian grounds cannot be maintained. Therefore it is time to abolish the current global intellectual property law regime in favour of an intellectual commons for the good of all human beings and societies.

Switzerland, Mai 2015

INTRODUCTION

Since the development of capitalist societies in the early modern period, the question of whether the works of inventors and artists need to be protected by law has been disputed.[1] As we know today, the proponents of such protection have won this dispute for now and there is a rigorous, globally connected legal framework in place which protects copyrights, patents, trademarks and trade secrets under the common term of 'intellectual property' in almost every part of the world. The common justification for the worldwide legal framework of intellectual property rights is based on two premises. First, that there exists an individual creator of a creative work and that the creative process which brings up the creator's work is primarily based on individual

1. For a history of intellectual property rights see Deazley, Kretschmer & Bently (2010); Drahos (1996), May (2006), or Höffner (2010a, 2010b)

labour, and therefore the result of this process is to be exclusively attributed to the creator; and second, that without such an exclusive right to exploit and control their works, creators would create less because there would be less monetary incentive to do so, which is bad for society.

In my thesis I will argue that these premises are false because creative processes have to be understood as collective processes, and that even if we believe that private property as such is essential for personal freedom, there is no foundation for the exclusive appropriation of the results of human creativity by individuals. In fact, I will argue that we should abandon the focus on the individual creator altogether and come to a concept whereby not only ideas, but expressions and all the results of creative cultural processes are seen as common goods, accessible by everyone without restrictions. I will argue not only that the concept of an individual creator can be contested, but also that there are few grounds for utilitarian arguments in favour of intellectual property rights even if we still believe in the individual creator.

My work here is about intellectual property rights in a wide sense, but focuses mostly on one of its branches: 'copyright' – even though

I do refer to patents as well, where it seems appropriate to do so. I will not write about trademark rights in this work, as I do not consider them as being rights that primarily grant exclusive exploitation of creative works, but rather as rights which make sure a product or an organisation is clearly identifiable. This said, it should be possible to categorise trademark rights under competition law rather than under intellectual rights, but I will not discuss this special issue in this paper any further. So, in this essay, the term 'intellectual property' means mainly copyright and patents. It is true that intellectual property rights do not share the same attributes in every case. But they have one important similarity. They are about property rights over abstract objects,[2] which makes them in some aspects fundamentally different from general property rights whose subjects are physical objects. I will not give an overview of the history of the development of intellectual property rights, as there are plenty of such overviews available,[3] but I would like to point out here that the current intellectual property

2. For a detailed examination of the difference between abstract and physical objects concerning property rights see Drahos (1996:6ff).
3. See Boldrin (2008), Boyle (2008), Deazley (2010), Dommann (2014), Drahos (1996), Höffner (2010), May (2006), Moser (2013),

rights regime is the result of a historical and political process which is driven mostly by the economic interests of a minority of for-profit organisations in Western societies. The most recent step in the global enforcement of private intellectual property rights, the implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) from the GATT Uruguay round of 1994, is an especially good example of the way in which powerful monetary interests have shaped the global legal framework and with it the public perception of intellectual property. Therefore one should have in mind, when reading this text, that the current established way of looking at intellectual property in our time is not the only possible way, and it need not to be considered the best way just because of the fact that it has become so widely accepted.

I will start in Chapter One with a short overview of the three most important classical justifications for intellectual property rights. They are used in combination by most proponents of the current global intellectual property rights legal framework. All three justifications are challenged in this essay. The natural law and the personality-based justifications are

focused around the individual creator, and will be discussed in Chapters Two and Three. They essentially assert that, because human beings ought to be free creatures, they also should have exclusive and absolute rights to their own expressions. And as individuals own themselves, it is also said – controversially though – by self-ownership supporters, they deserve the fruits of their labour. As human beings have a moral right to develop their personality they must have an exclusive right to their creative output, which is part of their individual existence. I will question these assertions and will discuss how the creative process can be perceived as an interpersonal or collective process rather than something which should be mainly attributed to individuals. I will do this on the basis of Richard Dawkins' concept of the meme and with reference to Ludwik Fleck's idea of the thought collective in scientific communities. I am not, as it may appear, questioning individual freedom. The abolition of private intellectual property rights would create more opportunities for more people to live their lives according to their needs and wishes. In other words, it would probably lead to more freedom and more justice. In Chapter Four we will discuss the utilitarian justifications. I will argue that from a libertarian, as well as from an egal-

itarian point of view, the abolition of intellectual property rights would not worsen the economic situation either for society as a whole or for the worst-off. We will see how on utilitarian considerations, as well as to maintain maximum personal freedom, it makes more sense for a society to fully abandon the concept of intellectual property and allow everyone to use and benefit from all expressions, cultural artefacts and inventions equally without restrictions. An important effect of such a system would be that economic rewards would be given for innovation and not just for copying.

1. THE CLASSICAL JUSTIFICATIONS FOR INTELLECTUAL PROPERTY RIGHTS

The debate about the justification of intellectual property rights is as long-standing as these rights have been implemented under the jurisdictions of Western societies. Over time, three classical justifications have been developed, which are often used in combination to argue in favour of intellectual property rights. One characteristic of these rights is that they grant monopoly rights for the economic exploitation of a creative work or an invention for a certain time period. But interestingly, it seems to be clear, even for the strongest proponent of such monopoly rights, that some restrictions to the execution of intellectual property rights have to be set. In this part I will give a short overview of these classical justifications and their widely

accepted restrictions in modern societies. We have to examine these justifications partly to set the focus of this work and partly to illustrate the challenges each justification faces even in its pure form, not to mention in the combinations in which they are often used.

JUSTIFICATION BY NATURAL LAW

The most common and most important justification starts with Locke's natural law justification for appropriation of worldly resources. Locke starts with his important claim for self-ownership, from which he concludes that a person not only owns himself, but also the results of his work, as long as he leaves enough and as good for others (Locke 2005 [1690]: Chapter V). The concept of self-ownership and the just appropriation of natural resources is challenged by many egalitarian philosophers (e.g. Cohen 1995) and in libertarian philosophy it is disputed whether self-ownership can be conceived of as compatible with the idea that natural resources should be distributed in some egalitarian way (Vallentyne 2000). I will not question the self-ownership thesis itself in this work, but will show that even if we rely on it, we cannot derive any intellectual property rights from it. Locke asserts that the inter-

mingling of the self-owner's labour with natural resources makes the result of this work his property. And even if this 'mixing' metaphor has generated a lot of critics, it has remained one of the most-used arguments for the justification of the appropriation of natural resources and the results of creative processes.[1] The natural law argument for intellectual property then states that a creative work is the result of the author's labour, therefore he is the only owner and the one who deserves to benefit from it exclusively.

If we want to challenge the natural law justification while holding the self-ownership thesis to be true, we could try to show that the Lockean proviso, which requires the appropriator to take only as much as leaves enough for others, can be used to challenge intellectual property rights because with monopoly rights, there is nothing left for others. I will not do so in this essay.[2] I will rather question in Chapter Three the assumption that creative works or inventions are primarily the results of the creator's or inventor's labour and that therefore, the results should be attributed to him alone. But before this I will show, with the help of

1. See for example Moore (2012)
2. For a discussion of this issue see Moore (2012)

John Christman's distinction between income rights and control rights, that there is no logical connection between the amount of labour one has put into a piece of work and the potential surplus he may generate in the market. In other words, one can hold that human agents are still full self-owners even if there are no intellectual property rights granted to them, as these monopoly rights are neither bound to their self-ownership nor to their labour, but simply provide them a privilege to reap a surplus from a market. Self-ownership is not affected if a society does not grant intellectual property rights to its members. Self-owners still fully own themselves even without intellectual property rights, as one cannot say that one is forced to do something against his will without these rights. He can decide whether or not to work on a piece of art or on an invention freely, and he can further use his and others' work freely to do whatever he wants. He can create new physical objects for example, for which he will be granted all property rights as with any other object. He can create services based on his and all other creative works or inventions he knows about. We will come back to this aspect in Chapters Two and Four.

UTILITARIAN JUSTIFICATION

Another important justification is the utilitarian or consequentialist argument for intellectual property rights. It asserts that even if the natural law argument can be challenged, it is still the case that without the monetary incentives which come with the monopoly rights from intellectual property, rational agents would not produce creative works in the same amount as with these advantages. The more creative works are produced, the better for any society. Therefore if monopoly rights can increase the amount of creative works, they are justified. The U.S. Constitution, which includes a special clause for copyright and patent law legitimation, is a good example of how deeply embedded this view actually is, as it empowers the United States Congress 'To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.'[3] This utilitarian justification is also sometimes used in public discussions of intellectual property rights to construct a moral entitlement (Waldron, 1992:851). For economic reasons we have to give rewards in the form of monopoly rights to authors and

3. U.S. Constitution Art I, §8, Cl. 8

inventors, as the utilitarian argument says. But rewards are usually considered to be given to those who have deserved them; therefore authors and inventors deserve their monopoly rights. This argument is confusing indeed, as it connects an economic with a moral statement, but it is very common in public political debates about intellectual property rights.

The premise in the utilitarian arguments, that creative or scientific works need exclusive exploitation rights to bring them into existence, is in fact an empirical assertion and there is much evidence that it is false. Open source software and many other open knowledge movements, the fashion business, and the rich heritage of traditional culture all over the world are just three examples where mankind has generated a huge creative output without the promise of exclusive exploitation rights. But, as proponents of intellectual property rights would say, it is not a question of whether creative work would happen without these rights, but that less creative output would be the result. We will discuss these considerations in Chapter Four of this paper when we talk about the just society with intellectual commons.

JUSTIFICATION BY PERSONALITY RIGHTS

In continental Europe, copyright law contains more than just economic aspects such as the exclusive right to the exploitation of the work.[4] In France these additional rights are called 'le droit d'auteur' and in Germany they talk about 'Urheberpersönlichkeitsrechte.' The author in France and the person in Germany are the focus of these rights, not just the 'copy' of the work. These rights, which are called 'moral rights' in international copyright law, aim to protect the personal rather than simply the economic interests of an author. They include the right of attribution, the right of integrity, the right of disclosure and the right of withdrawal. These rights are said to be justified because creative works are 'almost universally understood to be an extension of the author's personhood' (Rigamonti 2006:355-356), hence the name personality rights justification.[5]

The personality rights justification derives mainly from the works of Kant and Hegel,[6] but

4. See also Drahos (1996:88)
5. The term personality rights is also used by Moore (2011)
6. Although the usual interpretation of Hegel's account is disputed by Schroeder (2006) it remains an important basis for

for the sake of simplicity I will focus on Kant in this work. For Kant, copyright for books has no primary connection to the work but to the author's person, because what is written are the thoughts owned by the author, and they cannot be taken by someone else:

> *"This right of the author is, however, not a right to the object, that is, to the copy (for its owner is certainly entitled to, say, burn it in front of the author); rather, it is an innate right, invested in his own person, entitling him to prevent anyone else from presenting him as speaking to the public without his consent – a consent which cannot be taken for granted by any means, since he has already conceded it to someone [to his publisher]." (Kant 2014 [1785])*

For Kant the words and thoughts of a person are a fundamental part of his personality and therefore it seems obvious to him that they are owned exclusively by the author. In his essay 'Answering the Question: What is Enlightenment?' we can see that his concern about the authorship of written words is not the ownership of the copy but the fact that writing is using one's reason in public: *"By the public use*

the personality rights justification until today. For an account of an Hegelian justification of intellectual property rights see Priya (2008).

of one's reason I understand the use which a person makes of it as a scholar before the reading public" (Kant 1963 [1784]). This helps us to understand why he has a different view on other works of art, like paintings and sculptures, where everyone, according to Kant, is allowed to make copies and bring them into the market. Because these kinds of works are not the creator's 'Rede' (opera),

> *"A work of art, on the other hand, since it is an object, may be copied and re-casted from a copy of it, and the copies thus made of it may be publicly circulated without requiring the consent of the author of the original or of those whom the latter used as the executors of his ideas." (Kant 2014 [1785])*

So Kant's argument against the nonconsensual reprinting of books cannot be seen as a general argument for personality rights for creators of all kinds. His concern is that thinking is what constitutes a person and speaking is the articulation of one's own thoughts, and writing is nothing other than speaking to the reading public. To paint or compose a piece of music is not making public use of one's reason. It is the reasoning citizen he has in mind, not the artist. Kant does not argue for intellectual property as such, but for the right of the author

to protect his speech, his name and his person. Kant's account has been very influential in the creation of so-called 'moral rights' in copyright law and it is used to assert that a piece of work is also to be understood as an integral part of the creator's personality. But as we will discover in Chapter Three, a creative work is more accurately the result of a collective process rather than the effort of a single individual, and therefore it cannot be claimed as an extension of the personhood of a supposed individual creator.

JUSTIFICATIONS FOR INTELLECTUAL PROPERTY RIGHTS RESTRICTIONS

When we read the arguments for intellectual property rights above, it seems rather strange that we also have restrictions such as "fair use" for these rights in most legal frameworks for intellectual property rights. As we have seen, it looks like all these arguments favour an absoluteness of such monopoly rights. The creator has deserved them, and they are good for the prosperity of all. So why, then, have we implemented restrictions in these intellectual property rights? The reason for these restrictions is that if they did not exist, the creative process would come to an end, which is also a clue that its collective aspects are important.

If intellectual property rights were interpreted as absolute rights, it is hard to imagine how innovation would happen. Imitation and copying are the basis for cultural evolution and tradition (Blackmore 1999:23ff). If the first person who created a roof had thereby obtained never ending exclusive rights to his construction, we might still be living in caves. If human beings were not allowed to tell each other stories about Zeus, Odysseus and other mythological heroes, like we are nowadays not allowed to tell stories about Luke Skywalker, Superman, Harry Potter and all the other heroes of our time, we would miss a huge part of our cultural heritage. Yes, we are still allowed to sit together around a fire and tell a story about Spider-Man, but this is not how storytelling as a cultural habit works today. In the digital age we tell stories with online videos, with blog posts or other social media activities. They are private in the sense that they are generally seen by just a few persons from the social network of the storyteller. But they are at the same time publicly available for potentially millions of viewers, which is why the rights holders think such ways of storytelling must not be allowed without monetary compensation.

All countries with intellectual property laws have included restrictions to the intellectual property rights, such as that after a period of time, a piece of creative work will become part of the public domain, that a patent only lasts for a certain number of years, or that academic libraries are allowed to make copies for their staff and students, and so on. The justification for these restrictions is based on utilitarian or consequentialist grounds. As there is a public interest in the dissemination of ideas and in innovation and creativity, private intellectual property rights need to be constrained. The fact that we need these restrictions gives a hint, that there could be something wrong with the absoluteness with which the classical justifications for intellectual property rights are usually defended. I will not further discuss the justification for these restrictions here; as I argue for the abolition of intellectual property rights, such restrictions would also be obsolete.

I have given a short overview in this first chapter of how intellectual property rights are usually justified, and where in this essay these justifications are challenged. We will start in the next chapter with the natural law justification,

by analysing intellectual property with the help of John Christman's distinction between control rights and income rights.

2. CONTROL RIGHTS AND INCOME RIGHTS, OR DOES THE CREATOR DESERVE HIS DE JURE MONOPOLY?

In his 1991 paper 'Self-Ownership, Equality, and the Structure of Property Rights', John Christman argues that to analyse property rights, it is necessary to split these rights into two distinct categories of rights (1991:28ff). In one category are what he calls control rights, and in the other the bundle of income rights.[1] Control rights includes the "rights to use, possess, manage property, and the right to the capital (rights to transmit, alienate, or

1. Michael Otsuka makes a similar distinction (Otsuka, 1998:69-70), but his income rights are not of the same kind as Christman's. Otsuka's income includes the income from the capital whereas Christman's income contains only the surplus which may be realised from a transaction.

destroy)," whereas income rights concern the right to the income from the asset (Christman, 1991:29). I will show in this chapter first that the income in Christman's sense which can be generated from a transaction has nothing to do with the labour which someone has put into a product, and therefore monopoly rights to generate a higher income from a market cannot be justified by the natural law argument; and second that control rights do not make sense for abstract objects because they are not scarce.

Christman brings up the control/income rights distinction as an answer to the intriguing self-ownership argument, which claims that every person owns herself, and therefore also owns – with the meaning of having all the property rights over – the results of her own body, skills and labour (Christman, 1991:28). The conceptual distinction between these two groups of rights lies in the nature of the environmental differences which are necessary for a person to be able to execute these rights. In simple words, to execute control rights, the existence of someone else is not needed, but I cannot execute my income rights without at least one other person who is involved in the transaction. We could also say there is no income from property without society. It is important to

understand the character of income in Christman's argument. He does not count the consumption of capital among income rights; rather it is part of the control rights. Income is the surplus of a transaction, which can only be realised because markets exist and because they are in reality never perfect. In a perfect market, the realised prices would not be higher than the production costs, and there would therefore be no income in Christman's sense, only asset liquidation. For example, if I plant an apple-tree on my own property with my own labour and then eat the apples from my tree, I do not realise income rights but rights from the capital of my tree. Only if I am going to sell some of my apples in the market do I realise a surplus, with the difference between my investment, or costs, and what I get, being counted as "income" in Christman's sense. The main reason for Christman making this distinction is to support the left-libertarian view that redistribution of income can be compatible with self-ownership concepts.[2] I am not discussing whether it is just to redistribute income here, but I will use Christman's model to show that the income which may be realised from intellectual property rights has no logical

2. Michael Otsuka (1998) and others aim for the same goal. For an overview see Steiner (2000).

connection to the labour which has been put into a creative work or an invention. This is important because labour is a basic component of the natural law justification, as we have seen in Chapter One. Another relevant aspect of Christman's proposition is that he does not discuss whether private property as such can be justified, but says that we have to look at the concept of private property in a more complex way than is usually done:

> *"Instead of asking whether private property per se can be justified, we should ask whether, on one hand, control rights can be justified (and what scope they should have and what objects they should cover) and, on the other, whether and what sort of income rights can be defended"* (Christman, 1991:37)

There are no property rights as such; there are control rights and income rights as we have seen above.[3] In most cases, the principal protagonists in both current and historical political debates about intellectual property in general, and copyright laws in particular, claim total control and total income rights for the creator.[4] In fact, the whole body of interna-

3. There are also other concepts of property which are not discussed in this essay, for more information see for example Breakey (2012)

tional copyright law is based on this assumption.[5] There are a few limitations and exceptions in copyright law, such as fair use in the United States, but even these are based on the assumption that the creator shall in principle have full control and income rights on his intellectual property. The intellectual property rights restrictions are seen as a necessary evil.

INCOME RIGHTS

Let us first examine the income rights claim from intellectual property owners, especially from the proponents[6] of the current international copyright law legal framework. Later in this section we will analyse control rights. As we have seen in the section about the classical arguments for intellectual property rights

4. In German the word "Urheber" includes not only authors of texts, but every type of creator of any cultural expression, like music composers, painters, photographers, and so on. I will use the English words "creator" and "author" both as translations for "Urheber"
5. See for example the *Berne Convention for the Protection of Literary and Artistic Works* or the *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)*
6. With 'proponents of intellectual property rights' in this essay I mean the group of organisations and individuals who are arguing in favour of a restrictive international legal framework for the protection of intellectual property rights. See also Drahos (1996) (2002).

above, it is posited as being almost common sense that the creator of any cultural piece of work deserves monopoly rights over the exploitation of his work. This means that the author shall have full income rights from his 'intellectual property.' This claim is usually based on the natural law justification with reference to John Locke as outlined in Chapter One, and therefore it is bound mainly to the idea that the creator has put labour into his work for which he deserves to be the exclusive beneficiary. What Christman shows is that an 'income' from the surplus can only be realised if there exists a market infrastructure. This means that the possibility of an income has less to do with the creator's work than the proponents of intellectual property rights usually claim. If there is no market, or at the very least one other person who is willing to be part of a transaction, there is no income to be realised. The actual real-world market situation works like this: most of the surplus that can be realised on a market transaction is allocated to the seller of the good.[7] But without the social infrastructure which makes it possible to find

7. In most jurisdictions there is in fact a value tax which redistributes a small amount of the surplus, but still most income from the transaction is allocated to only one side of the social infrastructure.

a buyer for the transaction to take place, no income could be generated. It would seem absurd to most of us to demand that the surplus shall go to the buyer; we accept that it is fully transferred to the seller. In both situations, the income is concentrated on only one side, even if it is indisputable that both sides are equally necessary to make it happen. Again it is important to keep in mind that we are only talking about the surplus here, not about the capital.

Let us assume a creator has put an effort *c* into the creation of his work and wants to realise a surplus *S* from it, which means selling it on the market for c+S. We have to make clear that c is the capital value of his artwork, which means the labour he has put into his work is part of his production costs[8], and S the surplus which he may be able to realise in a market. He can consume c exclusively because of the control rights which are – for the sake of the argument here – granted to him. Even if he lived alone on an island, he would be able to create and to consume his piece of art as long as he wishes.

8. The exact monetary value of his labour depends on the scarcity of the good and can only be evaluated through the market though. It is calculated as market price P - S - c', where c' means production costs without labour.

But if he wanted to realise more than the capital value, he would have to make a transaction in an imperfect market, and therefore a market infrastructure is needed to make this transaction possible. From this moment on he is not solely responsible for the realisation of this surplus S and therefore cannot claim that he deserves S because of the labour he needed to create his work. We could also say that the amount of the surplus S he may realise in the market is not logically connected to the labour he has put into his product. Only the market mechanism can create a price above his production costs. But how much above his production costs that price is, has no connection at all to the amount of labour that he has put into the work. Even if this price is the result of the consent of free market participants it is still true that the only reason the seller can realise his surplus S is because the market is not perfect, and not because he has deserved it according to his labour. The surplus which can be realised depends only on the mere chance that a particular market situation exists. The labour is included in the capital, which is not governed by income rights, but by control rights. I agree that there may be other reasons, like the fact that he takes the risk to bring the product to the market, which can act as justifica-

tions for his profit, but these reasons do not justify monopolies as we will see shortly. And we have to keep in mind that bringing a product into existence is not the same as bringing it to the market. I can buy apples instead of planting a tree, which means I did not put my labour into the apples, but still be able to bring them to the market. The natural law justification of intellectual property rights claims that the creator has deserved the granted monopoly not because he brings the product to the market, but because he brings it into existence by his own labour.

Assume that a baker operates in a market which has only one bakery and 100 customers for bread, and that the production cost including his labour for one loaf is 1 unit. Further assume that the 100 customers are able to spend 3 units per day for one loaf. As long as there is only this one baker in the market he would be able to sell the bread for 3 units and make a profit of 2 units per loaf. He does not realise this profit because he deserves it according to the labour he put into the 100 loaves of bread, but only because the imperfect market situation allows him to do so. As soon as other bakers enter the market, the profit will fall until the 'deserved' price, which is equal to

production costs, is realised. We can easily see here that not only for intellectual property but for all kinds of products, a surplus does not depend on the labour or other production costs but only on the particular market situation.

There are several possible objections to the view that the seller does not deserve the surplus from market transactions. First, one could say that it is equally true for creative work that no surplus could be generated if the author did not create it. Second, even if we accept the fact that without a market there would be no surplus, it is not evident how that surplus should be distributed. We could postulate that the creator should still have a bigger share. Third, if the surplus ought to be distributed in some other way, it is not even clear who should be included in this distribution: only the parties of the particular transaction, all participants in the market, or all members of the society which provides the marketplace? It is right that there would be no surplus if the author did not create his work. One could even say that if there is nothing to sell there is no marketplace at all. Obviously, markets and goods are both equally necessary for it to be possible to generate a surplus.

I have two replies against these objections. First, my statement is not that the seller does not deserve any potential surplus at all. My point is that one cannot say that a seller deserves his surplus simply because of the labour he has put into a product. Let us remind ourselves that full self-ownership means that one has full property rights over his body, skills, talents and the results of his labour.[9] This concept of self-ownership is what natural law justification relies on. It is based on the assumption that it is not ideas that are owned by the creator, but expressions, which need labour to bring them to the world. Opponents of my view could say then that sellers deserve their surplus because they take the risk or burden of bringing a product to market. I do not object to this point. But this does not serve as a justification of monopoly rights, because monopolies do not create markets. They hinder competition, and having competition is considered to be a main feature of a free market. A person who enters a market does deserve his profit for being a market participant as long as he is not hindering competition. If there are, in an imagined world without intellectual property rights, thousands of shops on the Internet selling products or services based on the

9. See Vallentyne (2014), Christman (1991), Otsuka (1998)

newest Harry Potter novel, each of them may create a surplus on their particular markets. The ones who are just trying to sell a copy of the text will probably gain no profit at all as the cost for distribution is near zero nowadays and competition will most probably lead to zero profit. But those who are able to create additional value can use the text and create new market situations where they can gain their profits. The author could create a website for example, where subscribed members can get new chapters earlier than anyone else, or could buy special editions of physical objects she has created based on her story. Or she could provide live sessions online, where the fans of the novel can discuss questions about the contents of the actual and future stories with her. Of course, others could do so as well, but it is likely that the author would get more attention than just another random seller. Still, competition will exist not only over copies of the text, but also over its content. It is possible that other authors would also write new stories based on some or all of the characters and locations from the Harry Potter series, and we can easily imagine that some of these authors or stories would be even more successful than the ones from the 'original' author. But all this

innovation only happens when a competitive market situation is created. Intellectual property rights don't assist this, they hinder it.

Second, when I question the justification for intellectual property rights, I am not arguing for the redistribution of a potential surplus. The abolition of intellectual property rights does not mean that profits get redistributed. It is not that something is taken away from the creator or innovator in a world without intellectual property. It is only that he would face competition and therefore probably less profit and a higher pressure to innovate constantly. Of course from the point of view of a creator in our actual political situation, it looks like an attempt to redistribute his potential income. But again, as we have seen above and will discuss more deeply later in the text, it is not that he has morally deserved his *de jure* monopoly; it is just a privilege for which an industry sector has successfully fought. This situation is comparable to the time when the old guild systems came under pressure. For guild members, it felt like redistribution, but in fact it was the termination of a distributive system which was unjust[10] in the first place.

It is also said by proponents of the current regime that only with copyright protection is it

possible to bring a book into the book market for example, or a movie into the movie market. However, intellectual property rights do not create markets as we have seen. Rather they create monopolies where the parties are not free to choose, as there is only one seller of a particular creative work or an industrial invention. If I need one specific paper from a particular scientist to cite in my work, I cannot choose to buy another one. I am not 'free to choose'[11] because books are not apples. Intellectual property rights create *de jure* monopoly markets for the respective works. While it is true that there is also some competition between different cultural works or inventions it is also undeniable that there would be much more competition if monopoly rights were not granted, which is one of the main reasons why creators and inventors insist on these rights.

10. Robert Nozick could also argue, that guild systems are just if they have developed through a cascade of consensual transactions (Nozick, 1974). But they did not develop that way. They were protected through political power.
11. 'Free to choose' is the title of a book and a TV series from the free-market-economy proponent Milton Friedman. Its content is based on a lecture series which was intended to be part of the TV series but was later published under the title "Milton Friedman Speaks".

Intellectual property rights proponents could argue that without these rights creators and inventors would also not be able to realise the capital value from their works, as the competition would be so high that the prices would be zero at the end. For example, if the production costs of a book text (not the book copies) were 100,000 units and the production costs for a digital copy were zero and there were no copyright protection, which means everyone could sell the copy without paying a share of the production costs of the first text, the market price for a copy would be zero as well, and the author of the book would not be able to generate the 100,000-unit capital value from the market, which he has deserved according to the natural law justification. Temporary monopoly rights are needed to give the creator and inventor a chance to generate at least the capital value on the market. It is not about the surplus, they would say.

My first reply to this objection is that it is true that where copying and distribution costs are zero, it is possible that not even the capital costs would be recovered from selling copies. But selling copies is just one possibility to let people pay for creative works or industrial products. In a world where copy and distribu-

tion costs are zero it may just not be possible anymore to make a profit from selling copies, like it was not possible at the time when the technical inventions to create copies had not arisen. Before the invention of sound recording, for example, it was just not possible to make a profit with recorded music, and now it appears that this situation is returning. As technical inventions evolve market possibilities change. Just as it is no longer possible to make a living as a movie theater musician who plays along with silent movies, it may not be possible anymore to make a living from selling CD's. But this did not mean then and does not mean today that one cannot make a living anymore from playing music. It is just that one has to innovate and find new ways to generate value for potential buyers, as the value for copies of cultural artefacts for music lovers has vanished the same way as the value for play-along musicians for movie theatres.

The second answer is that there is no evidence that the creator or inventor cannot realise his capital value when he faces competition in every case. He may have the advantage of being the first mover, or he may be able to create additional value which cannot be copied. We can see this for example in the fashion design

industry where no intellectual property rights exist and famous designers can sell their clothing articles for high prices and generate a high income even if at the same time fashion companies copy their work and sell the copies for a much lower price to the masses in their outlets.[12]

The third answer is that economic theory shows that in most cases it makes sense not to grant monopoly rights to ensure that the capital value can be generated. There is always the risk that no market will exist because no one is looking for the particular product, or that not even the capital value can be realised because there is an oversupply of a particular product. If we grant monopoly rights to the creator or inventor then why not as well to the baker and

12. As I mentioned in the introduction, I do not consider trademarks as objects from the intellectual property category, even if they are usually listed there in the literature. My arguments for the abolition of intellectual property concern patents and copyrights. Trademarks are for identification purposes. Using a name from someone else is not using an idea but primarily cheating about identity. If I am creating a bag which looks similar to one from Gucci for example, I am copying this cultural expression, which should be allowed from my point of view. But to put the Gucci logo on it is to pretend it is something which it is not, in other words lying. This should not be justified but can be handled through fair trade or competition law.

the butcher? *De jure* monopolies hinder innovation because monopoly holders usually follow a rent-seeking strategy. This is one reason why we have abandoned feudal and guild systems in favour of free market systems.

CONTROL RIGHTS

Let us now have a closer look at control rights for intellectual property. Christman does not justify control rights in his paper; he just mentions that the execution of these rights is not dependent on the consent of other persons. It is possible that they can be defended, and for the sake of our argument we assume here that they are justified. One important aspect, though, is that everything that is said about private property and control rights makes perfect sense for physical goods, as they are so-called rival goods, which means control rights can only be executed exclusively by one person at a time. In fact the assertion of such rights only makes sense because of this characteristic of rivalry of such goods. If physical goods were not scarce goods we would not need to think about ownership and property. This may seem like a triviality, but it is a very important point when we analyse the character of intellectual property.

A text in a book or a painting on a canvas are only rival-goods in the sense that the physical manifestation of the expression cannot be consumed more than once at any given time. The expression itself is non-rival. It can be consumed by many people at the same time as long as sufficient copies of the expression exist. The proponents of the current copyright system argue that the justification of intellectual property shares the same moral grounds as the justification of physical property.[13] But only the physical medium has a rivalry character comparable to the physical goods by which control rights may be justified. As soon as the copying of the expression, which is what copyright law protects, does not need a physical medium anymore, which means that it can be done at zero or near zero cost, it loses its rivalry character. In other words, copying is not stealing, as the proponents of intellectual property rights try to convince us. A printed book for example can only be read by one person at a time.[14] If someone takes the book away from its owner,

13. In an anti-piracy campaign from 2004 the Motion Picture Association claimed for example:"you wouldn't steal a car, you wouldn't steal a movie, downloading pirated films is stealing".
14. Of course it is possible for two or even more people to read the same copy of a book together, but this is not the purpose of the book and it would not be a convenient experience.

he can now read it and the original owner cannot. What we have here are the typical characteristics of a rival-good where the postulation of control rights may make some sense. But this changes completely as soon as a digital representation of the expression is available. In this case this would be an E-Book file or a website with the same text on it. If I possess an E-Book or have access to text on the World Wide Web, I am not limited in my enjoyment of the expression when someone else makes a copy and reads the text as well. As soon as the expression is no longer bound to a physical medium, and its manifestation is realised in a digital representation, the marginal costs for the second and subsequent copies are nearly zero and therefore it loses its rivalry character and its scarcity.

Against this argument it is said that if the non-rivalry character of a creative work allows its use without the consent of the creator as long as it does not hinder someone else using it at the same time, it could also be said that a physical good can be used by anybody for free as long as no one else needs to use it.

> *"... that principle as clearly requires that a hammer should be free to different persons at different times, and that a road, or canal*

> *should be free to as many persons at once, as can use it without collision, as it does that an idea should be free to as many persons at once as choose to use it" (Spooner 1855, cited in Palmer 1990:824)*

Spooner's argument may seem convincing at first glance, but the non-rivalry character of digital objects does not derive from the fact that they can be used by more than one person at the same time, but from the fact that they will not be consumed when used. Every time someone uses a hammer or any other physical object it wears down a little bit. This is not the case with digital representations. There is no consumption of content or cultural artefacts in the way that causes them to be diminished by being used. What is consumed is the physical medium. A printed book gets dog-eared and its cover becomes worn; not so the E-Book.

It is argued then, by proponents of the current copyright system, that when someone buys a book or a painting he does not buy the content but only the medium and the license to consume the content, which means the creator of the expression continues to be the owner of his work. The ownership which is protected by the copyright law is that of the expression, not the medium. This is also in line with the so-called

first sale doctrine from the copyright legal framework, which means that the buyer of a medium like a book or a CD can execute all the private property rights on that medium as with any other physical product, the control rights and the income rights, but he has no property rights on the creative work itself. So we should not analyse the justification of intellectual property rights based on the physical medium, but only on the expression itself. I absolutely agree with this claim and because it is the expression, in other words the abstract object, which is the subject matter of intellectual property law, it is not very useful to refer to concepts from the physical world. If control rights are justified for physical goods like a hammer, because controlling or using them can only be exclusive, it does not follow that they are justified for abstract objects as well. It rather looks like there is little ground for its justification as no exclusivity is needed to enjoy the benefits which are granted by control rights.

There is one open question remaining. This concerns the rights to the capital of the asset, which are part of the control rights. As I have mentioned above, the abstract good does not diminish from its consumption; in fact it

cannot be consumed in such a way, like an apple or a hammer can be consumed. As long as it gets copied, it continues to exist, and as we are living in a world where, through digital representation, copying is done at zero or near zero costs, it will probably get copied. But what intellectual property law creates is not primarily the possibility of gaining an income from the capital of my book, but from its consumption. This is comparable to gaining an income from the fruits of my apple tree. As we have seen above, I can use the apples from my tree not because of income rights, but because of control rights. So why should I not be able to use the "fruits" of my intellectual works in, for example, the form of licence fees? We have to make again a clear distinction between rights to the capital, which are part of the control rights, and rights for profit, which are in fact income rights. The fruits from my apple tree are mine in the sense that I am the one who has the right to use, to possess and to control them. I can also eat them, give them away, sell them or let them decay. But the right to the surplus, if I am going to sell them on a market, is not part of the granted control rights; these are the concerns of the income rights and these are, in the case of intellectual property, contested as we have seen above and will see fur-

ther below. So it is important not to mix up these different aspects of property rights. The fruits of my apple trees are finite and they are part of the capital; the 'fruits' of my creative work are infinite as there is no consumption in the way that something diminishes with its use. There is no comparable concept like trees with fruits for cultural artefacts and inventions. Or in other words, there are no apples growing from creative works. This does not hinder the creator, by the way, in generating an income from creative works, as I have mentioned in the income rights section with the fashion industry example. In fact it does not hinder anyone: as they do not get used up, they can be exploited by everyone without limitations. We will discuss the implications of this aspect in detail in Chapter Four.

Where have now reached? We have seen in this section that the surplus which can be generated in a market is not related to the labour someone has put into his work. As intellectual property justification is often based on a natural law argument which refers to Locke's labour-mixing metaphor and the concept of self-ownership, it is important to point out that it cannot be argued that the creator has deserved the surplus from his *de jure* monop-

oly rights because of his labour. A seller in a market may deserve his profit, however, but this desert is not what is considered to be the grounds for the natural law justification of intellectual property rights. We have further seen that one cannot justify these rights from the control rights bundle as these rights do not make much sense for abstract objects which do not diminish through use. They are non-rival, as the economist says. I do expect that one could still argue that although the creator does not deserve his monopoly rights solely because he has put his labour into his work and the natural law justification does not hold, he may nevertheless deserve it because he is the creator or the inventor, the person who has realised himself and the cultural expression or the invention through his creativity. We will tackle this challenge in the next chapter, which concerns personality-based justifications of intellectual property rights.

3. THE MYTH OF THE INDIVIDUAL CREATOR

The personality rights justifications of intellectual property are, as we have seen in Chapter One, based on the main premise that the creator is the legitimate owner of the results of his creative work, because his personality is realised through his creative work. Supporters of the self-ownership thesis who believe that I might be right with my argument in Chapter Two, that the creative agent does not deserve the surplus from market transactions because of the labour he has put into his work, but that full self-ownership also implies that ideas are owned by the self-owner, would insist that ideas and expressions emerge from individual's brains and therefore are owned by these individuals exclusively. But this individual creator concept includes two hidden premises. First, it requires that the creator is the sole source of this work in such a

way that the result of his creative work can be attributed to him alone;[1] and second that in fact he himself as an active and responsible agent is the creator of the work. We will now examine these two hidden premises in more detail.

THE CREATOR AS A MEME COPY MACHINE

We usually think of every cultural expression as a result of one or more person's labour. But it is more than just 'labour' that we attribute as the input factor for the result of a creative process. It is a kind of extraordinary creativity, which not every person is fortunate enough to have. For some it is even the divinity which talks to us, through the creator. Our perception of the artist is often that of a genius. But is the creator then really a creator in the sense of being a creative agent, or is he just a means to represent and reproduce what the 'Zeitgeist', God or his unconsciousness creates? Is the inventor really an inventor or is he just an explorer of what is already there? In other

1. There are also situations where a work is attributed to more than one person, like multiple authors for a text, or the composer and the lyricist for a song. But for the sake of simplicity I always talk about one creator.

words, is creativity something where we act as active agents, or is it something which just happens unconsciously inside our neural system?

In the closing chapter of his 1976 book, *The Selfish Gene*, Richard Dawkins introduces his postulate of the meme (Dawkins 2006).[2] In 1991 Daniel Dennett used this concept as an important building block for his account of how human consciousness can be understood from a materialist perspective (Dennett 1993). The term "meme" is an abbreviation of the ancient Greek word "mimeme" which stands for 'imitator'. A meme is a cultural expression, or a behaviour which reproduces itself while jumping from brain to brain. This happens through human imitation. Imitation is the building block of human culture and tradition. The brain is the copy machine for the memes. Cultural evolution occurs, like biological evolution, as soon as there is information which shows variation, selection and heredity. Memes get copied by imitation. During this copy process they are sometimes changed only slightly, and sometimes they are recombined

2. Memes as they are used in this paper and by the proponents of a meme theory are not be confused with the same name for Internet phenomena which are shared widely through social networks. For a comprehensive account of meme theory see Blackmore (1999).

with other memes, which leads to variation. Some memes are more successful in getting copied than others, which gives us selection. For example the idea of nations and states was more successful than the idea of a society without authorities; the idea of a person-like God was more successful than the pantheistic or animistic world views, or the story of two lovers who are not allowed to come together and eventually commit suicide is told in different variations and settings over centuries, and so on.

The concept of the meme is important for our analysis of intellectual property because it gives us a framework to explain cultural evolution as an interpersonal process from which we cannot postulate one individual as the exclusive creator of a creative work. Ideas cannot realise themselves without brains, but brains are not the creators of ideas, they are just the hosts for the replication process. Even if an individual person recombines different memes, which is more common than the simple copying from one meme, it is still a copying process, which we cannot really operate ourselves actively. It just happens with us, inside our brains. As I am writing this text, I am not really in charge in the sense that I decide which

memes I am taking and combining with others. I do of course have the experience of 'thinking myself,' but this is not what actually happens inside my brain according to Daniel Dennett (1991).[3] Everything I write here is the result of a continuous meme copying and recombination process. One association leads to another. The river of consciousness is full of surprises which I cannot claim myself as an active agent to be responsible for, in the sense that I can insist on an exclusive property right for what comes out of my brain.[4] Artists also often talk about having the sense of not being in charge while creating their artwork. They emphasise that they don't know how it comes about that they are creative. They usually are not aware of what is going on in their consciousness while creating a piece of art, or at least are not able to explain it. It is common that they talk about inspiration on which they depend and that one has to wait until it arrives. Sometimes it does not arrive at all. The idea of the need to be inspired by outside forces to be able to be creative can be traced back to the Muses of

3. Dennett's materialistic account of how consciousness should be understood is contested, but I assert that a theory for an interpersonal process of creativity could also be developed on the basis of idealism.
4. This does not mean that I do not have free will, as we will see later.

Greek mythology. The romantic concept of art, which emphasises that the genius has the benefit to let the divine express itself through the artist, also leads to the idea that the genius himself is not in charge here, but something else is. Human beings and their memes are living in a symbiotic system. Cultural expressions seem to be continuously replicated inside brains, and from brain to brain, so to speak. Each copy is slightly different from its original and is at the same time another original for the next replication procedure. This is important because it shows that all expressions are equal in the sense that they are all copies and originals at the same time. We should not imagine memes as singular representations of expressions or ideas in our brain though. They are rather complex compositions of many different aspects and attributes of them in different places and at different times as Daniel Dennett explains in his multiple drafts model (Dennett 1991:111ff).

THE CREATIVE PROCESS AS A COLLECTIVE PROCESS

Because ideas jump from brain to brain in the form of memes the creative process has to be seen as a collective process. Every piece of art, every patent, every musical pattern, every

behaviour is always the end- and starting point of a continuous collective process of human creativity and innovation. Ideas are represented through expressions. These can be words, images, music melodies, behaviours and so on. There are no ideas without representation, which means that we cannot communicate or experience ideas without them being expressed somehow. The idea-expression relationship is far more complex and controversial than we can discuss in this paper, but for our purpose (to point to the mechanism of cultural evolution through copying) it should be sufficient to understand its general aspects.

Every expression of a human being is the result of the recombination of what has been expressed by someone else and of the meme copying process inside his neural system. We have evidence for the collective aspects of creativity from Ludwik Fleck's philosophy of science. According to Fleck it is not correct to assume that human beings think individually. We should accept the fact that 'cognition is a collective process' (Sady 2012).

> '*A truly isolated investigator is impossible… An isolated investigator without bias and tradition, without forces of mental society acting*

> *upon him, and without the effect of the evolution of that society, would be blind and thoughtless. Thinking is a collective activity… Its product is a certain picture, which is visible only to anybody who takes part in this social activity, or a thought which is also clear to the members of the collective only. What we do think and how we do see depends on the thought-collective to which we belong.' (Fleck 1935b, cited in Sady 2012)*

Fleck is stressing here that without mental content from other members of the thought-collective we belong to, we would not be able to give meaning to our thinking. We could also say that Fleck describes some of the cultural effects of the meme-replication-process. This becomes even more apparent when we look at how Wojciech Sady describes the definition of Fleck's thought collective:

> '*A thought collective is defined by Fleck as a community of persons mutually exchanging ideas or maintaining intellectual interaction (Fleck 1935a, II.4). Members of that collective not only adopt certain ways of perceiving and thinking, but they also continually transform it—and this transformation does occur not so much "in their heads" as in their interpersonal space.*' (Sady 2012)

The continuous transformation of ideas in 'their interpersonal space' is what we could also call cultural evolution. And even if Fleck has provided his account in the special context of the question of how scientific research works, we can easily adapt it to the creative process as such. Not only in science but in every aspect of creativity, cultural evolution is at work. Let us imagine in a short thought experiment a human being born on an island, where his parents have died right after his birth. Somehow he has managed to survive and he is living now as an adult alone on this island. It is rather unlikely that he has started to paint images in his leisure time, but for the sake of the argument, let us assume he did. But what seems to be rather implausible is that he paints images in the style of cubism without any social interaction or cultural heritage. Cubism is a typical example of a phenomenon of cultural evolution and at the same time an example of how our society tends to attribute cultural innovations to individuals even if there is much evidence that it is more an emergence of the "Zeitgeist" than a creative event by a single genius. Pablo Picasso and Georges Braque are usually said to be the inventors of cubism, while at the same time it is considered as a fact in art history that there were different pre-

decessors and influences which prepared the ground to let the new movement arise. We can consider the members of the cubist movement as a thought collective in Ludwik Fleck's sense and adapt his findings to the process of art production. Even if we consider Pablo Picasso to be one of the most important artists of cubism it does not seem very probable that he would have created the same type of paintings had he lived in the eighteenth century or had he been raised by a worker family in Manchester around 1850. And it also does not seem very likely that cubism would not have evolved if Pablo Picasso had never lived at all.

Nevertheless, it cannot be denied that it was Picasso who painted *Les Demoiselles d'Avignon* and not some thought collective. There is at least a substantial individual part in the creative works of artists of any kind. There is no artwork without the decision of the artist to start working on it. If he decided to plant trees instead of creating a piece of art, there would be no painting, song or text we could enjoy and analyse. This is definitely true, but the question is, is this enough to consider him as the only source of the result and to provide him therefore with the rights to exclusively exploit the benefits from it? It is undeniable

that there lies labour in every cultural artefact, and this labour can usually be attributed to the creators. It was Pablo Picasso who moved the paint brushes to create his *Les Demoiselles d'Avignon* and not Paul Cézanne. But the fact that this picture looks how it looks cannot be attributed to Picasso alone.

Let us assume the meme model and the thought collective are adequate conceptual descriptions for how human expressions and ideas evolve interpersonally. It still can be said that what we call being creative is what is new or original, and that this is exactly what the individual aspect of creativity represents. The problem here lies in the question: what is to be considered as new or original? As we have seen in the case of cubism, even when we can assign a new category to an artistic style, it has not evolved out of nothing. The borders of such categories are always blurred and arbitrary, and they fade away as soon as we try to find them. And even what we consider as radically new and original in the history of our culture, like cubism, or as another example the theory of relativity formulated by Albert Einstein, can be traced back to former works by other individuals which were necessary foundations for Picasso or Einstein to make their

discoveries. There is never anything radically or totally new in human culture. Every cultural expression evolves slowly from its predecessors. Evolutionary steps are very small: so small that they usually are not detected. It is the last straw that breaks the camel's back. The famous big theories, the so-called new inventions in art or the great discoveries in science are always results of long-lasting interpersonal creative and evolutionary processes. It looks as though it is mere luck that the memes are combined in a particular way inside a neural system from a specific individual and not through someone else's. Of course, the artist or the scientist has often contributed a lot of personal education and work to bring themselves into the position to be able to make this very last important step for a new discovery or a new kind of cultural work. But it remains a small step compared to the whole process which was needed before he could take this step. Albert Einstein knew this as well. He said at a meeting of the National Academy of Science in 1921:

> *When a man after long years of searching chances on a thought which discloses something of the beauty of this mysterious universe, he should not therefore be personally celebrated. He is already sufficiently paid by his experience of seeking and finding. In science,*

> *moreover, the work of the individual is so bound up with that of his scientific predecessors and contemporaries that it appears almost as an impersonal product of his generation. (Einstein 1921:579)*

The creator or author is far from being passive in this process. As we have seen above, it was Picasso who painted his paintings and it was Einstein who wrote his papers. So there is definitely an important individual part in every cultural work. But when we take the collective aspect of the creative process we have sketched so far into consideration, it looks like it just does not seem to be justified to attribute the originality to the individual by whom it was expressed. The person who creates a work should not be seen as its author or creator but more as its source. This kind of attribution gives respect to the individual part without stressing it too far. There are many practical reasons to attribute the work to a source. It helps others to refer to it, it may help to understand it better, it may even help to give some other kind of reward (e.g. money) to its source. But just because we are the source of a piece of work, we cannot thereby claim that we are the single author or creator and therefore the owner of it. Such a treatment of the work is also in line with Kant's account of the person-

ality rights of an author. While attributing the source of an expression, we esteem the individual part one has on the creation of a cultural expression without making him the sole creator and exclusive owner.

Both the postulation of a meme theory and the concept of the thought collective may lead to several objections. The most important is that the concept of free will may not be compatible with these views. Meme theory as proposed by Daniel Dennett has to be considered as a materialistic theory of the mind. Materialistic theories of the mind and the concept of the thought collective can be called deterministic in their character. It is disputed whether free will is compatible with determinism or not, and we cannot discuss this question in this paper. And it is true that if we hold the view that free will exists and that it is not compatible with determinism we have to reject meme theory and maybe Fleck's thought collective as well. But we could still accept that creativity and innovation are more to be perceived as interpersonal than individual processes; we just have to find another theory which is not in conflict with free will. Anyone who insists on the view that ideas and expressions are naturally owned by the individual from whom they occur, must

also provide a plausible theory as to how minds produce ideas independently from their social environment. I do not assert that such a theory does not exist, but I have not come across one yet. But if we accept that we are merely a source rather than a creator of cultural expressions, and if the only thing which we can take into account for intellectual property rights is the labour we have contributed and not the creativity itself, there seems to be little ground for any personality-based account of intellectual property rights. The only hope for the justification of the personal property of cultural expressions and inventions lies now in the utilitarian arguments, which are the ones we are going to examine in the following chapter.

4. A JUST SOCIETY WITH INTELLECTUAL COMMONS

There are two main opposing conceptions of how a just society ought to look. One strand stresses the aspect of individual freedom whereas the other focuses on equal distribution of natural resources. There have been attempts to reconcile these views, for example by John Rawls (1999). I will show in this last chapter that the concept of intellectual commons can be endorsed from both sides.

As we have seen in the previous chapters, there are good reasons to claim that neither natural rights nor personality rights arguments provide enough justification for intellectual property rights of the sort implemented today through a repressive global legal framework. So there is only the utilitarian argument left —

which says that granting intellectual property rights serves the just society as such, as outlined in Chapter One. I assert that for all types of just society it is desirable that human communication, cultural productivity and scientific progress serve the development of society in a sustainable way. Sustainability here means that the just society can be developed in line with its values while maintaining its resources for the following generations. There is disagreement of course about values, and about how resources can be maintained in such a way. There is also a lot of disagreement about whether a political structure is needed, how such a structure should be constructed, and how much interference with individual freedom would be acceptable to create wealth equality amongst its members. And values are of course not static but are always in slight modification. My aim is not to try to solve these fundamental problems but to show that a society where intellectual property is common property has a better chance to prosper, independently of the question whether its basic values are more libertarian or more egalitarian. The premise is that the more cultural artefacts and the more scientific ideas are developed and produced, and the more freely human communication can happen, the more sustainable a

society grows. This is the classical liberal argument for freedom of speech.[1] Supporters of intellectual property rights argue that because these temporary monopoly rights are granted, more cultural artefacts are produced (Moore 2011). There would be less medical research without patents and fewer new books, songs or movies without copyright, because exclusive income rights are a necessary incentive for individuals to be creative. This is an empirical argument and there are many observations which show us that there is not much evidence for its truth.

THE MISSING EVIDENCE FOR THE INCENTIVE ARGUMENT

First of all, there exists a huge body of cultural and scientific artefacts which have not been created to gain monetary incentives but just because of personal intrinsic motivation. There are millions of musicians, writers, painters, photographers out there, who create wonderful pieces of artwork every day. But they are not doing it because intellectual property rights are granting them exclusive income rights on their works. Personal interest, fun, social integration

1. The most famous version of this statement is given by John Stuart Mill in his essay 'On Liberty' (2011 [1859]).

and gratification, and many other reasons are the drivers for their creativity. In fact, there are many signs from the findings of psychology and neuroscience that to be creative is a hard-wired part of the human condition. A look back in history shows us that a huge body of knowledge and cultural artefacts was produced long before intellectual property rights were established globally and that the intellectual property regime does not seem to be the driver for innovation, as its proponents from the media, pharmaceutical and software industries often claim.[2] Most of the radical works of the Enlightenment were published – except in England – without copyright protection. A comparative economic study of the development of the market for printed books in England (with copyright protection) compared with Germany (without copyright protection) has revealed that all indicators which are relevant to the justification of copyright show a negative impact. The average price of books was lower, there were more books produced and more people read books in Germany compared to England between 1710 and 1850

2. For an overview of how corporate interests have influenced the development of the actual global legal framework of intellectual property rights see for example Drahos (2002) and Drahos (1996)

(Höffner 2010:386-388). An analysis of exhibition data from the period of the industrial revolution showed that patent rights were not the driving factor of the scientific and technical development. Instead:

> *"Historical evidence suggests that in countries with patent laws, the majority of innovations occur outside of the patent system. Countries without patent laws have produced as many innovations as countries with patent laws during some time periods, and their innovations have been of comparable quality. Even in countries with relatively modern patent laws, such as the mid-nineteenth-century United States, most inventors avoided patents and relied on alternative mechanisms when these were feasible." (Moser 2013:40)*

Another more recent example is open source software and the open knowledge movement. Thousands of programmers have created the world's most-used software stack for servers in the Internet without the exploitation of monopoly rights. The Linux operating system, the Apache web server and many other programs have been created not because of intellectual property rights, but because some human beings found it important to do so. Hundreds of thousands of voluntary editors have created Wikipedia, the most comprehen-

sive encyclopedic work in human history with more than 30 million articles in 207 languages[3]. There are millions of photographs and illustrations which are published under the creative-commons licences, which allow the copying and reuse of the material without asking for permission. Most scientific writings are not copyright protected because the researchers asked for it or wanted to make a profit, but because the publishers want to exploit public resources. More and more researchers are beginning to publish their work through open access publications which often use the creative-commons licenses as their legal framework. Public research funding organisations have also begun to demand open access publications and no one, not even the publishing houses, would assert that there is a risk that scientists would stop researching if their works were freely available.[4]

3. As of august 2014
4. The situation today is still that almost all academic research publications are copyright protected although the costs for the research and most often also for the publication are funded by public money. Academic institutions, libraries and private researchers have to pay a high price to the publishing houses to get access to the newest research material. This way the public pays twice, first to create the research results and second to access them, all in the name of copyright protection justified by utilitarian arguments.

One strong objection against my argument, that innovation and creativity occur also when there is no intellectual property protection, is that it could still be the case that there is more innovation and creative output with private intellectual property than without. Even though it is hard to prove, as we cannot test two social situations which differ only in their intellectual property regimes, there is evidence from historical comparative economic studies that this would not be the case. As we have already seen above, there were more books produced and sold in Germany without copyright than in England with copyright protection between 1750 and 1850. In an analysis of different historical studies about the economic implications of patents Michele Boldrin and David K. Levine came to this conclusion:

> "To sum up, careful statistical analyses of the nineteenth century's available data, carried out by distinguished economic historians, uniformly shows two things. Patents neither increase the rate of innovation nor are the best instrument to maximize inventor's revenue." (Boldrin: 2008:216)

As I wrote above, I do not assert that such findings can clearly disprove that there is more

innovation and creative output with intellectual property, but they definitely give us important evidence to dispute the thesis.

LIBERTARIAN JUSTIFICATION FOR INTELLECTUAL COMMONS

A just society, from a libertarian point of view, gives individuals equal rights to maintain and develop a life according to their own desires.[5] If the distribution of resources has developed from free and consensual transactions, it is just[6]. In a world where intellectual property is individual property, only a few have access to the income rights of the ideas and cultural expressions which are appropriated by a 'creator.' And these few are not entitled to this benefit because they gain it through monopoly rights granted by the state. In a world in which intellectual property is common property, all ideas and cultural expressions are available to everyone. As we have discussed at several places in this essay, I am not questioning the self-ownership thesis. In fact this thesis is compatible with my argument for common intellectual property. I have shown in Chapter Two

5. For an overview of Libertarianism see for example Vallentyne (2014).
6. This is the right-libertarian view, left-libertarians dispute this. Sell also Steiner (2000).

that we can question the natural law justification for intellectual property rights while still accepting the self-ownership claim that one owns one's body, talents and labour. And in Chapter Three we saw that we may need to revise our perception that an individual has a moral right to claim ideas as his property even if we do not question his self-ownership as such.

One could argue though that for libertarians private property rights are essential rights for a just society, and therefore the idea of not allowing private intellectual property can never be endorsed by them. Besides the fact that there are also left-libertarian concepts which question the idea of full private property rights,[7] we should keep in mind that intellectual property rights create rights over abstract objects and their justifications can be contested. To question intellectual property rights does not mean to question private property as such. Therefore it is not the case that a society without an intellectual property rights framework necessarily interferes with the personal freedom of its people. It is rather the other way around. Intellectual property rights are making it possible to privately appropriate abstract

7. See also Vallentyne (2014) and Steiner (2000).

objects which otherwise would be in the commons. They create an artificial scarcity which otherwise would not exist. In a world without private intellectual property, every person would be able to innovate freely and to be creative without the interference of others. This is not the case today. I am not allowed to put a video, showing me playing a satirical cover version of Michael Jacksons 'Billie Jean,' on my website. I am not allowed to write a 'Gone with the Wind' version from another perspective. I am not allowed to create an online shop using a 'one-click' check-out process, as this is patented by an online retailer in the U.S.[8] These are just a few examples, and it is true that I might be allowed to do all this, if I asked for permission, but we can easily see that such a system reduces my freedom to innovate. In a world without private intellectual property, no one is discriminated against. It is true that in such a society someone other than the creator or inventor can also take part of the income which can be generated from a particular invention or work of art. But as long as no one is prevented from doing the same, there is no problem with that from a libertarian point of view.[9] It is also probable that in such a society we would not see the same accumulation

8. US Patent No. US5960411 (A) for Amazon.com Inc.

of capital from inventions and cultural artefacts because of the lack of monopoly rights. Instead of having just a few big pharmaceutical companies we probably would see thousands of small ones, as the ideas for new health products would be copied all over the world in a short period of time. In other words, intellectual commons would massively increase the speed of the dissemination of ideas, far more than in the actual private property system. It is said that less medical research would take place without the incentives from monopoly rights, especially because it is so expensive to invent a new medical therapy and bring it into the market. Besides the fact that there are also other possible ways to pay the pharmaceutical industry for its effort,[10] it is important to consider the possibility that the ways in which the funding of the research works, or how the processes to approve a new medical therapy are implemented, can be changed to adapt to a world without intellectual property, if needed. In particular, digitalisation and global connectivity over the Internet reduce the need for hierarchical organisations to run ambitious

9. Some left-libertarians might not agree with that, but we will look at the questions concerning egalitarian redistribution claims in the next chapter.
10. see Pogge (2008)

projects. I recall again the open source software movement, which creates the same type of complex products in collaborative networks as big companies do in hierarchical environments.

In a just free-market economy as it is endorsed in the libertarian literature, no one is prevented from participating in the market either as a buyer or as a supplier.[11] There is also no hindrance to gathering the information needed to make rational decisions. Such a market is highly competitive. One important aspect of intellectual property rights is that they grant monopoly rights through the state. Such types of *de jure* monopolies should not be confused with temporary *de facto* monopolies which arise because of innovation and competitive advantage. In a free market economy *de facto* monopolies cannot stand for long if they are trying to generate profits above production costs. And even if they could, as long as they are evolved through a series of consensual market transactions, they are not unjust (Nozick, 1974). *De jure* monopolies are unjust because they limit the rights of other potential sellers to enter the market and they are inefficient because they hinder competition. Egal-

11. see Nozick (1974) for example, or Vallentyne (2014)

itarians and left-libertarians would disagree here and claim that unequal distribution of worldly resources is unjust even if it is the result of consensual transactions.[12] If *de jure* monopoly rights help to create less inequality, they may be justified according to them. We will discuss the question of whether intellectual property rights can be justified from an egalitarian point of view in the next section.

That intellectual property rights are not to be considered as monopoly rights is another objection which can be stated. As long as there are substitutes availiable in a market, one cannot talk about a monopoly. Intellectual property is property like any other property in the physical world. So the fact that Gillette does not let you use its patents for their razor is in the same category as the fact that they do not let you use their fabrication lines. This is not a question of monopoly but a question of property rights. The same can be said about copyright. The book or the movie markets are very competitive. There are hundreds of thousands of new books published each year. One cannot say that consumers have no choice, and if an author does not let you use their work for a remix or a translation, it is the same as

12. See Rawls (1999), Vallentyne (2014)

when he does not let you live in his writing house in Ireland. The argument that intellectual property rights are not about monopolies but about property, as convincing as it sounds, is begging the question. The type of property to which intellectual property rights are applied are cultural expressions of any sort, which are abstract objects. These objects as we have seen are by nature not scarce, and they do not lose any of their attributes when they are used by many people, unlike physical objects. An abstract object has in fact none of the attributes that can be ascribed to physical objects. Only after the application of intellectual property rights, through the granting of monopoly privilege, does an abstract object achieve some of the property attributes that are available for physical objects. Monopolies are not attributes of properties but of markets. Intellectual property rights grant the rights holders the exclusive rights to exploit the profits which can be created in the market for this cultural expression. It is true that property rights for physical products do usually also include the same type of monopoly rights for such a product, but as this product is a single instance, one cannot talk about a market for that single instance of this product. When I am the owner of an apple, it is true, I have as a side effect of my property

rights also a *de jure* monopoly right for this particular apple. But there is no market for this particular apple, only for apples in general. I can sell my apple only once and then I have to pass it over to the buyer. No one would say that a monopoly right has been granted for the exploitation of their apple to this seller. The situation is different in the market for cultural artefacts. In the case of books, for example, we often talk about the market for books, which includes all book titles which can be bought. But from the author's, and also most often from the reader's perspective, there is rather the market for a particular book title. A member of the vegan community may want to buy a particular vegan cookbook and it does not help him much that there are also a lot of meat cookbooks on the market. An author of a fictional story is mostly interested in how many of his books have been sold and not much in how the overall book market has developed. There is no doubt that every individual cultural artifact has, unlike every individual apple, its own market. And intellectual property rights are granted monopoly rights to exploit that particular market exclusively.

It is important to clarify here that even without the *de jure* monopoly rights, a creator is not

hindered from gaining profits from his cultural expression or invention; he just has to face more competition. It is even possible that he creates a temporary *de facto* monopoly just because of some other advantages he may have over his competitors. An author, for example, or a musician may create a market not for a particular song or a particular book, but for all expressions coming exclusively from him. Even if there are hundreds of bands which cover AC/DC songs, the particular band AC/DC still play their concerts for very high-price tickets in big concert venues all over the world. Only if there are no *de jure* monopoly rights in the form of intellectual property rights is a real market with many sellers and buyers possible. In such a market, all suppliers have the same chance to differentiate the product or the services around it and find their customers. Such a situation would most probably lead to more innovation than the current system,[13] and more innovation is what the utilitarian justification for intellectual property rights claims as its reason.

13. This is an empirical statement like the statement from the proponents of the current system that intellectual property rights leads to more innovation. We have discussed already in this chapter that there is evidence that this claim may not be true and that even more innovation and creative works are produced without intellectual property.

We have not discussed whether a free market is a just market. That is not part of this work. What I have shown here is that there is not much room for proponents of a free market economy to justify intellectual property as they are granting *de jure* monopolies to its rights holders. Now we are going to analyse whether there is such a justification for the supporters of governmental redistribution of the profits gained in free markets on egalitarian grounds.

EGALITARIAN JUSTIFICATION FOR INTELLECTUAL COMMONS

A just society from an egalitarian point of view gives individuals, in addition to equal rights to maintain and develop a life according to their own desires, equal access to worldly resources, such that the rules for distributing the resources equally amongst its members can overrule the personal freedom of the individual[14]. As we have seen above, intellectual property rights are monopoly rights which grant a temporary privilege to exclusively exploit income rights from abstract objects which are

14. Some egalitarians would say, that positive freedom is increased through equal distribution even if negative freedom may be limited. See also Carter (2003)

created collectively. Nevertheless there are several possible arguments to justify these rights on egalitarian grounds.

First, it could be argued that these privileges are not arbitrary. They are granted to individuals who deserve them, because they are the creators or inventors. It is not individuals with the most money who get the monopoly rights from the state, but those who are willing to bring their ideas into existence in form of expressions. If a privilege for creators serves the goal of getting a more equal distribution of wealth, it can be justified. A second point is that social justice from the egalitarian point of view needs state-enforced redistribution of goods, and therefore the state needs an intellectual property rights framework to redistribute the profits which can be raised from abstract objects. And a third argument would be that intellectual property rights are rights which help the individual creator against exploitation by powerful corporations or other organisations.

While discussing these arguments, we should be aware that we tend to apply distribution problems from physical objects to abstract objects. And in the world of physical objects and a private property rights-based society, we do in fact face the problems which come with

unequal appropriation of worldly resources. An individual who has more talent may be able to appropriate resources faster than others, so that in the end there is nothing left. Today, there is not one square foot of land on our planet which is not 'owned' by someone. Whether the owner is an individual or a collective of some sort, there is always someone who claims ownership. Land and every other worldly resource are finite[15] and therefore there is always a struggle about the question of to whom they belong.

But in the case of abstract objects, the situation is totally different. The use of abstract objects like cultural expressions, ideas, inventions and so on is not limited simply because someone else is using them, as we have discussed already. If I build my house on a piece of land, and someone wants to do the same on the same piece of land, he has to send me packing. He then has the land and I don't. If I invent a wheel and use it for my convenience, I can share this invention without reducing its value for me. In fact any invention and any expression can be shared by anyone without dimin-

15. There are worldly resources which can be considered as renewable, like plants, but they depend on land, which is finite.

ishing its utility for others. The value for me also does not reduce if someone who has more capital at his disposal than I do is able to produce wheels to sell them on a market. I can still use my own wheel, which I have created. There is even a chance that the producer of the wheels innovates on it and makes it better, and as he cannot claim intellectual property rights either, I am able to use his ideas to upgrade my wheel as well. If there is a demand for wheels, chances are high that I will still be able to find my market for my handmade wheels, even if a lot of other 'wheel makers' are producing them at lower costs. Buyers do not value only monetary aspects; a lot more is often taken into account for a buying decision.

In a world with private intellectual property rights the rights holder can exploit the income exclusively; in a world with intellectual commons everyone has the chance to do so. From an egalitarian point of view this fact raises the problem that the more talented and/or the more powerful may be able to exploit the profits from the cultural expressions of any kind much more effectively than the less talented, whether this is the creator or someone else. This is partly true, but it is true in any world, whether there exists a legal framework for

intellectual monopoly rights or not. We can see this very well in the actual situation in our world. Most of the income from intellectual property rights is concentrated around a few big players in every market. The main difference is that the powers are more stable in a world with intellectual property and more dynamic in a world without. In a world without intellectual property rights, monopolies could still occur but they would be *de facto* monopolies, and these types of monopolies will not last long. The abolition of intellectual property rights would lead to a more fragmented and decentralised economic situation as no one can be prevented from copying inventions and cultural expressions. Profits will be near zero for those who just copy and will be higher for those who innovate on the copy.

Intellectual property rights are not an effective instrument for redistribution of income or wealth. From an egalitarian point of view the problem of inequality persists, and as intellectual property rights are monopoly rights they create even more inequality on one part between the "winners" and the "losers" inside the system, but also between rights holders and users. If we consider the situation that without intellectual property rights, the use of

any expression or invention is open to everyone, we can easily see that in such a world a much more diverse market would evolve. As there are no monopoly rights, probably many more individuals and smaller groups would use the cultural expressions which are free to use, and remix them with their own ideas to create new products and services to make a living. With the system of intellectual property rights which we have in place now, the exploitation of the inventor or the creator through big corporations is the reality. Only for a few 'superstars' might the situation be the other way around. There are two main reasons for this. First, it is expensive to get and even more expensive to enforce intellectual property rights; and second, the big money lies in the portfolio of rights and not in the single expression. Even if there are blockbusters which generate a multiple of the income from the average 'product' for the rights holders, it is usually the backlist, the sum of thousands of single products, which is the important source of a permanent revenue stream for the big rights holders. But isn't it the case that the creator gets at least his share from the revenue stream and without intellectual property rights these companies could take everything for themselves without even thinking of letting the creator or

inventor participate? This is true, but for most creators the share is so small that it does not contribute to enhancing their economic situation. In many cases they would be in a better situation to generate income with their creations if they had not exclusively sold the licences for the exploitation of his work to a single company.

From an egalitarian perspective, the most important question is: how can wealth be distributed equally amongst the people? The intellectual property rights regime obviously does not contribute much to solving this problem; it rather looks like it does the opposite. I do not argue here that the absence of individual intellectual property solves the general distribution problem, but it leads to a situation where many more people can benefit from cultural expressions, scientific research and inventions than now, and therefore less redistribution is needed.

THE CREATIVE WORK AS A COMMON GOOD

One objection against the abolition of private intellectual property raises the question of how the creative worker or inventor can make his living, when there are no property rights to

protect his work from exploitation by others. It is often added that the creator or the inventor should have his fair wage for his labour like every other craftsman does. These are two different points and should be handled separately. First, as I have mentioned already, the creator is not hindered at all in generating an income from cultural artefacts or inventions. In fact the lack of intellectual property rights makes it impossible to hinder him from making something valuable for other people out of all cultural expressions, not only his. This gives him much more opportunity to generate an income. It is true that some business models would not work anymore, for example the pay-per-use model, which is widely implemented but massively under pressure since the dissemination of digital technology and the Internet. But others can arise and can be realised, models which are based on personal services and engagement. But, and this is important also for the second point from above, there can be no right to get an income from any business model, product or service someone wants to conduct or sell. There is no moral right for the artist to claim that he has done some work and therefore he wants to get paid for it. Imagine a small village with three bakeries in place, where these three bakers can all make a good

living from selling their bread to the inhabitants of this village. Now, a new baker arrives in town and opens a fourth bakery but the economy of the village does not provide enough consumers to pay four instead of three bakers. The inhabitants continue to buy their bread from the three traditional producers. The new baker does not sell one loaf. Of course no one would say that as he has put a lot of labour into it he shall get his fair wage for his work. It is just that he has no market for his bread in this village. He has either to go and find a place where he can sell his bread or find something else which is lacking at this place.

CONCLUSION

Intellectual property rights are monopoly rights that grant their holders the temporary privilege for the exclusive exploitation of the income rights from cultural expressions and inventions. There must be good reasons for a society to grant such privileges to some of its individuals, and therefore the proponents of these rights have provided three widely accepted justifications to defend the interwoven global intellectual property rights regime we have in place today.

To argue for the abolition of intellectual property rights we have to challenge all three justifications. Therefore we have discussed whether a creator or inventor can be considered as the owner of an expression or an innovation because he is the individual who created or invented something. We have seen that two components are usually mentioned as justifica-

tions for such individual ownership. First, the natural law based justification which, based on self-ownership and Lockean appropriation theories, states that the creator is the owner of his creation because he has put his own labour into his work. In analysing the property concept with John Christman's distinction between control and income rights, we have seen that the amount of labour one puts into a product is not connected to the surplus one may generate on a market. This does not mean that a seller on a market has not merited his profit, but one cannot say that he deserves it because of his labour. And we have also discussed that control rights do not make much sense for abstract objects, as they are not scarce and do not diminish or lose value when they are used.

Second, the justification by personality rights, which is on one hand based on the concept from Immanuel Kant that expressions are extensions of one's personality, and on the other hand that ideas are owned by the self-owner like his talents, skills or body parts are owned by him. With the help of Richard Dawkins' concept of the meme and Daniel Dennett's multiple drafts model, we have seen that it may be possible that we as individuals

are not active agents in the creative process but rather hosts for the replication of memes, which create, through variation, selection and heredity, the building blocks for the cultural evolution we can witness when we observe the development of cultural expressions. Ludwik Fleck's concept of the thought collective was another theoretical framework for a discussion of the interpersonal aspects of creative processes. All in all, we have seen that it is far from evident that an individual can be considered as the owner of the ideas and expressions which emerge from his brain and therefore the natural law and personality-based justifications are contested.

Utilitarians would assert that, even if we accept that the creative process is a collective process it is still useful to grant these monopoly rights to creators and inventors, as with these incentives more innovation would happen than without, which is better for all and better for the worst off. I have replied to this important argument, and we have seen that different comparative economic studies have revealed that there is probably more innovation in societies without intellectual property law compared to societies with such laws in place.

We have also seen that for free market proponents monopoly rights are hardly to be justified, as they are based on state interference, and that even egalitarians could subscribe to the abolition of intellectual property rights, as they do not contribute to more equality.

There are many good reasons to question the justifications for intellectual property rights and therefore it is time to start the political discussion about the abolition of these rights to create a world in which intellectual property is common property.

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