

# **Modernity, Law and the Violence of Piracy, Property and the State**

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## **Preface/context**

The proliferation of books and popular interest in pirates and piracy – both of the seagoing and high school hacker variety – appears a mere fancy and fashion. The practice itself, however, is on the rise: Somali pirates now regularly patrol the Gulf of Aden – soon to be aided by weapons smuggled out of post-Kaddafi Libya; though largely a misnomer, ‘pirates’ of intellectual property continue to be prosecuted for said crimes. Over 2011-12, we witnessed the takedown of [www.library.nu](http://www.library.nu), the prosecution of Pirate Bay’s founders, and criminal proceedings brought against the nearly legitimate operator of Megaupload. In addition, we saw a series of US legislative debacles (“PIPA” 2011; “RWA” 2011; “SOPA” 2011) supposedly targeting piracy and other Intellectual Property crimes. Alongside these policies, maritime laws are being changed to allow for international policing of Somalia’s coast, attempting to extend the crumbling infrastructure of the nation state into the very global, digital realms designed to undermine the capabilities of those states in delivering on the promises of modernity and modernization.

In other words, whether or not we see every instance of piracy as a conscious rebellion against neoliberal capitalism, this order provides context for an important question: Why are we suddenly seeing a rise in both the concern about and practice of piracy? Proponents of neoliberal globalization promised a new route to modernization and economic development: perhaps it is marked with the Jolly Roger?

In the case of media ‘piracy,’ the practices in question have a long, if recent history. Before there were Magnet files, Limewire, Bittorrent, or Napster, there was the dreaded ‘home taping’ of vinyl albums and the scourge of the VCR. US lobbyists for the content industries have been escalating the rhetoric for several decades, demanding legislative efforts to protect their dying business model. Ironically, it is the very technologies facilitating these organisations’ global aspirations that now threaten their newly acquired profit base.

On the other hand, the more public nature of this piracy – which now takes place on open networks and in the rec rooms of suburban teenagers instead of shady stalls in Southern markets – amplifies the moral panic around intellectual property rights (IPR) theft: if all this theft is happening, how many lost sales does this create? If a culture of ‘theft’ is tacitly permitted, what will this mean for the bottom line in the future? After little more than a half-century of carefully inculcating Western youth in the practices of commodified culture, the trends point to a new era where they may be more likely to steal what mainstream culture they desire – and/or remake it into something altogether new.

Below this immaterial level, most of the struggle over IPR regards counterfeit trademarked goods and patent infringements. Anxieties over (and practices of) these forms of IPR infringement and the renewed maritime piracy partially stem from the four decades of deep transformations in the global political economy and the uneven distribution of resources these changes have produced and rely upon. This uneven distribution – and the failure of both modernity and modernization it represents – thereby threatens the legitimacy of the fragile states decimated and then propped up by proponents of neoliberal economic policies: these proponents insist states (and the law) play what James Mittelman calls a “courtesan role:” providing services “to clients, especially wealthy or upper class ones,” functioning as the sole defense against violent anarchy and unabashed theft – or at least any theft that might come from below, possibly interrupting these processes (Mittelman 2000, 25).

Though neoliberalism is just another name for capitalism, it is useful as a term because of its historical provenance. It contrasts the current order of capitalism with that of the mid-century. In political, ideological, and material terms, the post-war order of embedded liberalism was the closest capitalism has come to producing the kind of enlightened modernization that western civilization has long promised. The state became a powerful instrument of post-colonial sovereignty, national economic development, and democratic self-determination. It was by no means perfect. For radical leftists the welfare state sapped the energies of the anti-capitalist movement; for social movements of the global South it represented a disciplinary instrument in need of further popular determination. But most importantly, for global capital the mid-century welfare state represented an institution corrupted from its primary role: the defense of property and the economic power of property owners through whatever means necessary.

The dramatic U-turn of neoliberalism brought about, as David Harvey has termed it, “the restoration of class power” (2006, 7-68). Whatever its inefficiencies and corruptions, the developmental state was legitimized internally by its middling efforts to materialize the promises of modernity in actual modernization (McNally 2010; Peet 2007): as Harvey discusses in much of his recent work, neoliberalism not only reverses the previous priorities of the state, but undermines the gains made by development states in that previous era. Debt and finance, the instruments and beneficiaries of the neoliberal order, are used as levers to privatize public assets.

Harvey calls this process “accumulation by dispossession” (2003, 137-181). For instance, Mexico’s telecommunications infrastructure was privatized then purchased at fire sale prices by Fortune 500 businessmen like Carlos Slim, who is now the richest man in the world (Harvey 2005, 98-104). As Schiller and McChesney (2003) point out, a similar trend continues across the world, with formerly nationalized media industries privatized by and for global owners of capital. Up until now this has primarily happened in the global South; but the economic crisis from 2007 onwards has brought it home to the wealthiest nations. As of early 2012, both Britain’s National Health Service and higher education system began to feel the weight of neoliberal austerity. Similar trends show up in the privatization of American education, health care, and even in what Chalmers Johnson has characterized as a “long established system of state socialism:” the US military (Johnson 2004, 99).

In each case, sovereign debt provides an excuse to reduce the public sector in the interest of privatization. This privatization, in turn, is used as a bludgeon to discipline labor and social movements of various kinds. What this means in practice – particularly for resources that can actually be carried away or stolen at gun point – is that the state is called upon to violently enforce the property rights of owners, often at the expense of the vast majority of the population, facing down protesters and facilitating the easy movement of capital. For the early years of this assault, the pious exhortations of market liberals were largely accepted as dogma. Increasingly, however, the transparent imbalance in the interests served by the neoliberal state creates a contradiction no amount of propaganda can set right. Still, the proponents of this order persist, leading to a generalized crisis of legitimacy around law, the state, violence, and private property.

In what follows I would like to frame piracy – both as a practice and a discursive object – as a particular kind of precipitate of this context. In piracy we can see

this crisis in all its plenitude. I am especially interested in how it highlights neoliberalism as a failed project of modernity, whose failures necessitate informal, illegal, and even violent forms of self-sustenance and determination. Far from romanticizing these, I would like to consider how similar they are to the neoliberal project itself – its violence and narrow, destructive political economic effects – and posit the conclusion that the lesson of piracy is actually that we need to re-found the project of modernity on a broader basis.

### **Violence, modernity, and the state**

In March of 2012, as Bashir al-Assad's army unleashed a fresh wave of attacks on the rebel stronghold of Homs, opposition groups passed along a cache of over 3,000 pages of emails they had secretly collected from the private accounts of the dictator and his wife over the course of the past year (Beaumont 2012; Booth and Mahmood 2012; Booth, Mahmood and Harding 2012). Though the communications revealed little relevant intelligence, one set of facts stood out for western media commentators: In defiance of U.S. sanctions, Assad went out of his way to legally purchase music, games, and movies on Apple's iTunes platform (Max Fisher 2012). While activists were sickened by the revelation that, "He was downloading iTunes songs while his army was shelling us," comedian and *The Daily Show* host Jon Stewart offered a different insight: "This guy massacres his own people with impunity, but makes sure he purchases his music legally?!" (quoted in O'Neil 2012). This satirical observation works because of the multiple layers of truth it contains and contests.

In the spirit of Slavoj Žižek, we can parse the possible interpretations of this joke, delivered to a sincere burst of audience laughter. Though it is in itself insignificant, by peeling the layers of meaning, and offering several interpretations, we can examine the deep cultural arguments taking place at the site it inhabits. The media interest in this story and Stewart's summation of its apparent irony indicate a disturbance in the reified surface of the hegemonic order. A close examination illuminates, I argue, the cultural and political stakes of the debate over piracy – a hegemonic struggle that piracy has almost by definition played a role in both unsettling and constituting.

In the first, most basic, interpretation, the joke is based on the supposed irony of the moral equivocation between the mass slaughter of civilians and the illicit pilfering of corporate intellectual property. Both fall on the 'naughty' end of the

ethical continuum, but the former is seen as objectively worse than the latter. Yet in recent US public policy debates, the scourge of piracy and intellectual property infringement rate more mention than state violence against civilians (though the Arab Spring and Occupy Movement have provided many opportunities to discuss reactionary repression). The joke is both a reflection of this rhetorical prioritization, and a reflection on its rather skewed set of ideals: why are we worried about piracy when, somewhere else, people are being killed in the streets? And, the reverse: isn't it great that we are so far up the path of civilization that we have the luxury to worry about the legalities of leaking war footage rather than concerning ourselves with staying out of it? 'Barbaric' places like Syria still worry themselves with overthrowing autocrats – in contrast, 'our' major public policy challenge during the time was staging an Internet blackout to keep SOPA from passing.

We could also read it far less charitably: absent Stewart's comic inflection, we could read it as a sincere statement of our real ordering of that equivalency. From the perspective of the US national interest, having a strong-armed dictator in the Middle East murdering his (br)own people is far less of a concern than his allowing that country to become a haven for terrorism or piracy. An Arab country's democracy, in US eyes, has long been only as good as its assurance to stay attuned to US/Israeli interests. Syria's Assad, an ophthalmologist trained in Europe, can see this with Western-augmented vision, predictably defending the actions of his police as part of a struggle against 'terrorists.' Faced only with ineffective sanctions, his life is not the least interrupted by this bloody conflict.

The anecdote of his simultaneously legal (from iTunes) and illegal (violating sanctions) Internet purchases therefore makes Assad a profile in the global defense of neoliberalism. When we view the contemporary attempt to increase punishment for piracy as the latest step in a long series of interventions in the broader world for the purposes of imperial economic development, it is clear that the very best rulers are those who would murder their own citizens for the sake of international capital – perhaps flaunting UN mandates on human rights, but never violating the terms of WIPO or the TRIPS agreements to the WTO. While critics like Max Fisher found Assad's purchase to be evidence that the US sanctions were toothless, US Treasury Department officials likely found it heartening (Max Fisher 2012). Only a month before, the Treasury Department had filed an exception to the broad economic sanctions imposed by the UN (Szubin

2012). This exception, the only one of 15 that was focused on an actual economic activity, would allow Syrian businesses to collect IPR fees, file trademarks and patents, and, perhaps more importantly, allow the US government to collect IPR fees from Syrian businesses and government. There are some things, in other words, that must be maintained even in an atmosphere of brutal repression: honoring global Intellectual Property Rights, it seems, was the single economic activity that the Treasury department felt should continue. That the president of Syria was so willing to honor these rights – by going around sanctions in order to buy music legally – shows him to be a team player.

Informing each of these interpretations is the dialectic of modernity versus modernization: the tension between the enlightenment ideals of democracy, freedom, and the just rule of law and the reality of modernization, which often necessitates both a violent, authoritarian destruction of entire ways of life and expensive, committed development of infrastructure on which those enlightenment ideals can finally be obtained. Without the ideals, we would have nothing to work towards; but without a struggle the authoritarian control (or, what often comes next, total failure) of the state could not be crafted into even a shell of its enlightenment promise.

In the first interpretation, which we might call naïve modernism, modernity is the cultural vision as old as the Orientalism that frames any story about the former Levant. In its most charitable version, the people of this (and every Southern) region merely suffer a time lag: the North is so far advanced that we now know the horrors of autocratic brutality well enough to have banished it from our societies. Violence is now limited to a ‘necessary’ level; leaders are governed by democratic processes and the rule of law. It is incidental that these sentiments are oxygenated in the heart of the largest military in history and the home to the largest prison population in the world. Protesting overly restrictive IPR is seen as a minor inconvenience compared to Syria’s bloodshed – but one with which they’ll soon be responsibly concerning themselves, if this Whiggish fantasy of history is any guide. The punchline lies in the fact that Assad is acting like a modern ruler (honoring IPR) but still clearly has some things to work on in that department.

In the second, which we could term Realist Modernization, we see a more brutal truth: that whatever level of enlightenment we’ve managed to reach, it is based upon an economic and political process of modernization that often –



if not always – stood in sharp contrast to the glowing democratic promises of its enthusiasts. The fortunes of Western Europe were built on a bloody siege against nearly all existing civilizations. Remaking the world was, indeed, a great deal of hard, creative work – but it usually required the absolutist hand of some enlightened dictator to bring it into existence. To prepare the idealized omelets of modernity through the modernization of society, absolutists had to break a few eggs. With the proper drift of history, Assad's wife's interest in the *Harry Potter* franchise could be the stuff of *People* magazine profiles – much like Hitler was profiled in home and garden magazines of the 1930s (Phayre 1938; Waldman 2003).

Running parallel to these concerns over modernization, therefore, is a certain understanding of violence. In everyday discussion, it makes sense to contrast the spectacular violence of Assad's regime with his personal observance of mundane laws regarding intellectual property rights – or property rights in general. Yet this ignores the massive infrastructure of everyday violence necessitated to enforce the Anglo American property rights regime. Following Žižek, in his extended meditation on violence, we can see the violence of the Assad regime – and therefore the supposed barbarity of its leader – as “directly visible ‘subjective’ violence, violence performed by a clearly identified agent.” (2008, 1) Žižek contrasts this subjective violence with the ‘objective’ systemic violence that permeates ‘civilized’ societies:

Subjective and objective violence cannot be perceived from the same standpoint: subjective violence is experienced as such against a background of a non-violent zero level. It is seen as a perturbation of the ‘normal,’ peaceful state of things. However, objective violence is precisely the violence inherent in this ‘normal’ state of things. Objective violence is invisible since it sustains the very zero-level standard against which we perceive something as subjectively violent. (2)

Assad's violence appears far more subjective, but all of the invisible objective violence of our society is the outcome of previous impositions of such subjective violence. We are now so thoroughly trained that we fail to recognize objective violence as such, sitting as most believers do outside of the walls of the prison, but on the other side of the wall Jack Nicholson prided himself on doing anything (including the extrajudicial murder of a Marine) to protect in *A Few Good Men* – the wall, ironically, surrounding the Guantanamo Bay Naval Base in Cuba.

At the time of that film, this wall represented one of the few remaining contact zones between the capitalist imperialism of the US and the threat of communism. The latter threat still remains, if only ideologically; since then, the Guantanamo Bay Naval Base has come to stand for a different kind of extrajudicial punishment. However, as with the unconstitutional actions of COINTELPRO, the extrajudicial detention and torture at Guantanamo, illegal wiretapping, and other ‘perturbations,’ spiked an initial furor, then largely faded into the atmosphere of objective, systemic violence (Saito 2002).

This violence is legitimate because it is performed by the state, which, in its most recent iteration, is supposed to have a monopoly on coercion. This monopoly on the instruments of coercion is simultaneously threatened and constituted by extralegal activities like piracy or terrorism.

It makes sense to say these activities threaten the legitimacy of the state: although it is unlikely that the government could truly protect against all such activities, if it appears incapable then its monopoly on violence is questioned in a more widespread fashion. Yet there is the counterintuitive argument that these activities – or the threat of them – help to symbolically secure the legitimacy of the state. Were it not for the state, for its military and police institutions, we would be more threatened by these activities. On the other hand, according to Janice Thompson (1994), much of the actual demand for control of these activities came from other states – and much of that pressure was generated by states being forced to reel in what she calls, “state-authorized non-state practices”: mercenaries, privateers, and pirates previously empowered to do the work of the state. As with the CIA-trained forces of the Taliban, Thomson argues that:

Not only was the state unable to control those it authorized, but the authorized forms gave rise to unauthorized forms. Most importantly, non-state violence was often turned against the state itself. (6)

Yet simply affirming or noting that the modern nation state maintains a monopoly on violence does not explain what that violence is used for, or why it disappears into the zero-level of systemic, objective violence described by Žižek above. If Assad’s brutalization of civilians provides an example of subjective violence, his adherence to US standards of Intellectual Property Rights gives a clue to the objective violence. Here we have grounds for a third interpretation of Stewart’s alignment of state repression and anti-piracy. In this interpretation, the moral equivalency should be read as a darker statement on our own society: that



battling against piracy has a similar social impact – perhaps an invisible or only nascent one – as brutal repression of the public in the protection of entrenched private interests. This is an exaggeration, but one that relies on a healthy dose of unmediated truth.

### **Violence, economic power, and contemporary primitive accumulation**

It is these everyday forms of violence that Marx discusses as primitive accumulation (Marx 1977, 873; Perelman 2000). Primitive accumulation is a two-sided process. On the one side, certain members of society accumulate resources. In Marx's original example, it was the accumulation of ever-larger pieces of land on the part of the aristocratic and bourgeois landholders in England. But the key to its function is not in the accumulation alone. It is that this accumulation – and the state power that facilitates it – is ultimately one of the key levers of control exercised over free labor – labor made free through the privatization of the means of production. Workers freed from the land were forced into a cash economy of rising rents, eventually leading many of them to industrial factories that benefited from their desperate condition by being able to hire them at rock bottom wages.

In the case of the already predominant wage labor most of us face today, primitive accumulation still works on a different level – through the privatization of the materials and institutional frameworks which valorize the highly developed skill sets workers' possess at this very moment, skills that can be sold to employers in exchange for the cash s/he will need to survive. The current flux in the production of digital knowledge is – or could be – only temporary. One of the dilemmas of the contemporary capitalist system is how to capture (and then reward) this value and how to force people to continue producing it for you. IPR appears to help it do both of these things: all the value produced runs back to the owner, and all the materials with which that value CAN be produced are the owner's intellectual property, thus owners force people to answer to them for its use (Boyle 2003, 2008; Coombe 1998; Lessig 2004)

Whether this means a particular owner can actually force people to work for them or that they merely extract rents from others' creative work makes little difference in the end. Either way, they extract some form of surplus value from this extended labor process. The benefit in the latter case is that owners can be flexible about how this surplus value is extracted – without the responsibility of labor

relations implied by the former: that is, they don't have to become 'the boss' and carry all the responsibilities associated with this. Moreover, they can occasionally bankrupt or ruin these producers – just as they would a competitor – with little concern for how those producers will reproduce themselves: there is a veritable army of unemployed culture-industry aspirants producing new content, much of which inadvertently valorizes the old. That is, with the diversified portfolios of the six multinational media conglomerates, their talented legal staff, and their powerful lobbying firms, they are bound to own some profitable culture.

In other words, primitive accumulation and the privatization of productive property establishes a concentration of economic power in society, forcing laborers to work for the owners of this property in some capacity in order to survive. But this only functions in so far as laborers honor the property rights of capital owners – and the state steps in to ensure that they do through potentially violent physical force. When reified into a natural – rather than historical and cultural – phenomenon the inherent violence of this system fades from view. Ellen Mieksins Woods calls this model the “pristine culture of capitalism” (1991). It is characterized by the apparent separation of the political from the economic. By this, she means to say that the economic no longer appears as if it was constructed or operates through some political process, therefore it seems as if it cannot be challenged – or even that it doesn't exist except as a natural force (Wood 1981, 2002).

The separation of the political from the economic is an analytical, rhetorical, and ultimately cultural construction. As in the discourse of neoliberal globalization, it implies that the economy is an apolitical realm: the power of the state operates only in what Isaiah Berlin called a negative capacity, securing natural rights to property and assuring the sanctity of contracts (2002). This characterization of the liberal state exonerates economic power as such, yet insists that democratic authority is only valid in so far as it retains these limits – creating what Chantal Mouffe calls the democratic paradox (2000, 2005). The state, in this ideal, is a neutral party merely enforcing the laws it is asked to by the democratic process. But the democratic process is hindered from ever undermining the capitalist model of property as such. If any social force threatens this model, be it electoral or more demotic, state violence must be used to defend it. The definition and defense against piracy, terrorism, and other words for resistance to this order are constituted as evil in order to legitimate this defense and the abrogation of

previously secured rights it often entails, as highlighted by Harvey's process of "accumulation by dispossession" discussed above.

### **Law, legitimacy, and social crime**

It would be cavalier to claim that all acts of extra-legal coercion (or in the case of mere media piracy, theft) are somehow valiant forms of resistance. However, in the conflicted relationship between the narrative of modernism, the realism of modernization, and the paradox of capitalist democracy, there is plenty of room to see any or all of these acts emerging as forms of what Hay, et. al. refer to as 'social crime' (2011, xvi). This concept emerges from a collective historical study of 18th century England – a period that is notable for enclosure of the commons and creating surplus labor. As Hay, et. al. explain, social crimes are those which, while technically illegal, largely receive support and leniency from their local communities. Smugglers, poachers and other 'criminals' defied unpopular authorities and received moral support from those who saw them defending their customary rights and privileges.

They draw this concept from Hobsbawm who was one of the first great radical historians in the present age. He distinguishes what he calls 'social bandits' by the legitimacy and distinction given to these kinds of bandits as opposed to others (Anton 1972; Hobsbawm 1959, 1972, 1981). The good bandits are good because they defy the unjust order of the law in order to protect what were once customary privileges or emergent practices making use of new technologies.

In other words, they were seen as defending the realm or practices of the primitive commons that allowed for basic existence outside of wage labor and commodity exchange. Their defense was against an authoritarian imposition of private property rights which abrogated customary rights to the forest – rights which allowed for peasants to satisfy their needs through hunting, gathering wood, and foraging for food. Once these rights were removed, poor forest inhabitants had little choice but enter the labor force on terms set by nascent industrialists – or to break the law and poach for food. If SOPA, PIPA and the PATRIOT Act appear draconian, the punishment for these social crimes was far higher. As Hay and others recount, poachers (or even suspected poachers) acted in mortal defiance of the law – the death penalty being the punishment for poaching in the newly regulated lands. Rebelling against this nascent authority, with their attempt to enclose what was so obviously a commons, seemed uniquely understood by the

culture of their time as a valid, if desperate, form of social protest – even if or especially because that authority defined it as a crime.

Increasingly, piracy (along with activities like the production and sale of ‘counterfeit’ goods) appears as a social crime. Or, to put it another way, it is difficult to discern the activities of criminals from those of legitimate business people. Counterfeit Wrangler jeans produced by Bolivian cooperatives rely on skills and supply chains developed by workers in their capacity as legitimate laborers of subcontracted firms (Brown 2003; Frazier, Bruss, and Johnson 2004). Aside from what locals view as improvements, the only distinction between licit and illicit is the consecration of the law. Likewise, the coders and programmers who designed and built online platforms for movies and books – such as Ninja Video and the [www.library.nu](http://www.library.nu) – were responding to down-market demand being unmet by legitimate content providers (Andrews 2012; Ficher 2011; Kelty 2012).

Ninja Video facilitated international TV viewing, disregarding the nationally segmented markets of television that make it impossible to view all broadcasts across the world. Owners of this content limit international broadcasts so that they can sell them later in highly-profitable redistribution and syndication arrangements: meanwhile, consumers interested in this programming and the discussions it creates in that global community have no legitimate outlet through which to view it. In the case of [www.library.nu](http://www.library.nu), which became an outlet for a variety of works, but primarily expensive textbooks, great care was taken to produce user-friendly files and a catalog including reviews and extensive metadata. In each case, the distribution service was far better at meeting the needs of the global community than any other on offer – and each entailed a significant amount of work and ingenuity. More importantly, they accord with the Social Science Research Council/World Bank study on Media Piracy in Emerging Economies, which finds that lower priced or lower quality fakes are often the only thing locals can afford – and sometimes the only version of the product distributed widely in the global South (Karaganis 2011).

On the flipside, legitimate corporations engage in theft and destruction on a regular basis. The oil tankers that form one of the key targets for the ‘violent’ maritime piracy recounted by John Burnett tote the product of companies that regularly engage or turn a blind eye to various human rights abuses and environmental destruction that impacts directly the lives of everyday people around the world: from toxic oil spills impacting the health and safety of indigenous

communities in Ecuador to families in rural Pennsylvania who are denied medical care for illnesses resulting from unregulated hydraulic fracturing (Burnett 2002; Business Staff 2012; Sawyer 2004). We could also add the practice of 'biopiracy' where Pfizer and other pharmaceutical corporations have appropriated long held traditional medicinal practices. The difference between these forms of violence is that one has both the de facto enforcement and de jure legitimation of the nation state (see Robinson et al from this volume).

### **“Crime” and the stateless state of the neoliberal utopia**

In a very practical manner, all of these forms of crime, whether officially sanctioned by the state or not, are made possible by the technological and material changes of globalization and digitization. Maritime piracy would hardly be rewarding on the scale it is were it not for the innovations in port logistics and the invention of the shipping container making it possible to capture an enormously valuable vessel with a miniscule crew (Bonacich and Wilson 2008; Levinson 2006). The ballooning production of counterfeit products cannot be separated from the shift from branded manufacturing to branded marketing – where the bulk of the monetary reward for the production of our clothes and technical objects comes not from the hard labor of Southern factory workers, but the immaterial work of lawyers, designers, and marketers in the North (Collins 2003; Klein 2002). Media piracy and serious cyber-crime like bank fraud are the inevitable result of the digital revolution that aided the expansion of both of these industries throughout the world (Glenny 2011; Miller, Govil, McMurria, Maxwell and Wang 2005).

This regime uncertainty should give us pause, allowing us consider the kind of world we'd like to live in: instead, we see politicians doubling down in the interest of powerful incumbents.

In this sense, the increasingly organized forms of piracy are homologous to other forms of crime becoming especially prominent in areas of the world newly introduced to the economic pressures of neoliberalism. In his survey of mostly Eastern European and Post-Soviet crime syndicates Misha Glenny gives his assessment of its causes:

The collapse of the Soviet Union is the single most important cause of the exponential growth in organized crime that we have seen around the world in the last two decades. Almost overnight, it provoked a chaotic

scramble for riches and survival. From the bitter wars of the Caucasus to the lethal shoot-outs in towns and cities, this was a deadly environment as a new class of capitalist exploited the vacuum of power by seizing whole industries and raiding state coffers. Accompanied by an orgy of consumption and decadent behaviour, the like of which was last witnessed a century ago under Tsar Nicholas, it sucked every citizen into its vortex of violence [...] Russia's economy became a giant Petri-dish of Chicago-school market economics, but among the cultures they were busy cultivating was a Frankenstein that slipped out through the door of their laboratory almost unnoticed. (2009, 66-67, 71)

This environment was not just an accidental product of a rapid transition: it was designed by International Monetary Fund (IMF) bureaucrats and US Treasury Department officials like Lawrence Summers and Jeffrey Sachs who presumed that the neoliberal agenda they preached is the baseline of human nature, requiring little to no functioning state. In a sense they were correct: the state could no longer guarantee safety and, according to Glenny:

The police and even the KGB were clueless as to how one might enforce contract law. The protection rackets and mafiosi (*sic*) were not so clueless – their central role in the new Russia was to ensure that contracts entered into were honored. They were the new law-enforcement agencies, and the oligarchs needed their services. Between them, the oligarchs and the mafia groups defined the justice system of the new Russia. Between 1991 and 1996, the Russian state effectively absented itself from the policing of society, and the distinction between legality and illegality, morality and immorality barely existed. (73)

It is in this context of the neoliberal dissolution of the state that piracy and crime become such a major concern. For while Russian crime syndicates may watch out for the needs and interests of their paymaster oligarchs, they are unlikely to concern themselves with protecting international contracts or foreign intellectual property rights. 'Crime' in this context becomes a site of contestation; many things that would be off limits in a different setting become permissible, if not necessary.

I highlight this not just to muddle permissive relativism with regard to criminality and the law. Instead it is to point to the process through which the legitimacy of the law is constructed and the role that 'illegal' actions and actors often play in its constitution. The liminal space occupied by contemporary piracy is evidence of the lack of legitimate jurisdiction on the part of the state. This gap



is opened by the political disintegration of the imperial North, on one side, and the uncertain regime of neo-imperial control those formerly hegemonic nations have imposed via treaties of trade and mechanisms of international finance.

The fantasy of a purely neoliberal law overlooks the imperative that its coercive political instruments must be secured by the consent of the governed. Ultimately, the force that will compel adherence to the law is not tighter restrictions or highly technical monitoring mechanisms: it is the feeling that the law and the dominant order has something to offer other than, as the old man said, ‘chains’ (Marx 1988, 86). Here, the violence of the state coerces the population to jump at the command of transnational capital.

## Conclusion

In his book *Remix*, Lawrence Lessig looks at the technological capabilities available to the children of the global North – and the attempts to make posting a Youtube video punishable to the same extent as opening a bootleg video store. This prompts him to ask what it means to raise a generation of criminals. In the US context, youth are the main victims of the “‘war’ on ‘piracy’” we’re staging: “Criminalizing an entire generation is too high a price to pay for almost any end. It is certainly too high a price to pay for a copyright system crafted more than a generation ago” (2008, xviii).

While the stakes appear high in the domestic struggles over intellectual property rights, the real controversy is not the criminalization per se, but the interests the law seems to serve. Thus we have (at least) two further alternative interpretations of Jon Stewart’s long forgotten joke – though by now it has morphed from throwaway basic-cable humor to a rallying cry. On the one hand, politically, it points out that these equivalent forms of violence are perpetrated on us all at some level – either literally or potentially – and the appropriate response to both should be massive civil disobedience. Social crime should win the day precisely because it challenges the often corrupt, nay criminal, enforcement of the law. We are a class in ourselves and should therefore support all actions that advance our interests – such that we become a class for ourselves.

The key objection here is a reification of capitalism: if there is no copyright, if there is no property, how will we make a living? How will we support ourselves if we cannot rely on the sale of our labor or the sale of the fruits of our labor? I am sympathetic to this objection, not because it is true, but because I feel sorry

for those who expect that it will always be true. We are living through a tiny blip in historical existence called capitalism: it will end and something else will emerge in its place. Will we be the ones to shape it or will someone else? This is both a reversal of the realist understanding and its hopeful revision.

It's rather surprising that this limited horizon of imagination still exists for so many. It has been twenty years since Francis Fukuyama famously pronounced the "End of History" – where the Hegelian dialectic of history reached its final synthesis with liberal (i.e. neoliberal) capitalist democracies (Fukuyama 1992). Yet since that time we've witnessed a range of system-wide failures, capped off by what Alex Callinicos calls "The Twin Crises of the Liberal World:" the catastrophe of the US war on Iraq (which Fukuyama eventually denounced) and the 2007-08 financial collapse, which, like the war in Iraq, was only the most recent and most colossal of the series of failures we've been treated to as careful adherents of the key tenants of neoliberalism (Callinicos 2010; Fukuyama 2006). Why then is his and his comrades' vision still the defining discourse of our age? Why is it, "Easier to imagine the end of the world than it is to imagine the end of capitalism," as Mark Fisher paraphrases Slavoj Žižek paraphrasing Frederic Jameson (2009, 2).

It is possible that we just didn't understand neoliberal boosters like Fukuyama. In his dismissal of the Bush Doctrine in Iraq, and neo-conservatism in general, he distanced himself from the interpretation that his book declared liberal (capitalist) democracy inevitable. Evidently he never intended this as his argument. Instead, he writes:

*The End of History* is in the end an argument about modernization. What is initially universal is not the desire for liberal democracy but rather the desire to live in a modern – that is, technologically advanced and prosperous – society, which, if satisfied, tends to drive demands for political participation. Liberal democracy is one of the byproducts of this modernization process, something that becomes a universal aspiration only in the course of historical time. (2006)

In other words, the only thing that makes people interested in his liberal utopia is modernization and prosperity – or a proportional share of them. He may have a point, but he still seems naïve about this process: since the imperial powers took the reins, the modernization process has tended towards the maintenance of an international division of labor and power. The only route to modernization for

an increasing swath of the world is to rise up in anger against those preventing it, be it the British Empire, the local courtesan potentate, or the transnational corporations that now rule over both.

This leads to the final interpretation, which is really just the complete reversal of the dominant moral inequivalence fundamental to this chapter's framing joke. In this, the resistance against both autocratic dictators and the economic power secured by the current hoarders of intellectual property rights are not just common elements of our collective struggle – they are necessary to the advancement of civilization and modernity as such. We must push past both in order to truly achieve the promises of modernity.

This hearkens to the early modern days of seafaring pirates and pirate publishers, both of whom were challenging the dominant order, both of whom presented an alternative to the current order, an alternative we could and should continue to explore. In addition to the cultural memory of those 17<sup>th</sup> century bandits, pamphleteers, and Levellers, we have four centuries of social and technological advancement. We should be using both to our advantage rather than settling for a system of wage labor and private property that was conceived of as innovative when long range communication was conducted by semaphore telegraph – or allow the reification of an intellectual property rights regime that insists we progress no further. With the eclipse of the welfare state and the generalized condition of precarity, we should finally realize that we really all are in this thing together.

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