PIRACY AS A BUSINESS FORCE

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I

In early 2007, the Swedish bit-torrent site The Pirate Bay launched a public appeal for funds to buy its own nation. The target of the proposed acquisition was a self-proclaimed independent state named Sealand. Perched atop an old World War II anti-aircraft gun emplacement long since abandoned by the British military, Sealand had been inaugurated by an Essex fisherman and part-time pirate radio entrepreneur, Roy Bates, in the late 1960s. Bates had originally intended to use the platform as a base for a revived pirate broadcasting effort, but in the end that plan had fizzled, and successive efforts to come up with some other way of making the 'principality' a going concern had been little more successful. The latest scheme had been to make it a data haven. In 2000, Westminster seemed set to legislate for all ISPs to be brought under the purview of official investigators. Sealand saw an opportunity in the move, and announced that it would offer a venue for anyone wanting to issue material to the Internet beyond the reach of any such state oversight. Its London-based commercial arm, named HavenCo, invited applications. Rather breathless press coverage seized on the prospect, trumpeting the massive bandwidth shortly to be brought onstream by banks of state-of-the-art servers housed in the fort's two massive concrete legs. Evoking as it did the world of Bruce Sterling's *Islands in the Net* (1988), Sealand was soon itself being evoked by academic extensions of this coverage such as Peter Ludlow's *Crypto Anarchy, Cyberstates, and Pirate Utopias*, published in mid-2001. Commentators made much of the role in the venture of Ryan Lackey, a young cipherpunk and economic libertarian devoted to using cryptography in the service of online free-market systems. Lackey had taken on the HavenCo position only two years after dropping out of MIT. With him on board, it looked like the first pirate utopia was about to be created.

Two years later, Lackey quit in disgust. As he did so, he revealed to an audience at DefCon the lamentable reality behind Sealand's supposedly visionary undertaking. Far from the grand leap into a brave new digital world that so many had projected, it had in fact been an amateurish affair, dogged by incompetence and internal feuds. The powerful servers had never existed, and the business model for the company had been rudimentary in the extreme. Lackey himself survived the fall. He would go on to work in Iraq, building communications and data networks for the US military. But HavenCo and Sealand never recovered. In 2006 a fire destroyed what little equipment there was on the fort. The very survival of the principality seemed in doubt. It was this that prompted The Pirate Bay takeover bid.

In the event, the bid to buy Sealand itself came to nothing. The Pirate Bay's public appeal for funds – contributors were to get citizenship in the data haven – raised far too little for a realistic bid, and in any case 'Prince' Michael Bates told Canada's CBC that copyright pirates would be inappropriate purchasers. Yet the prospective alliance was nevertheless an interesting moment in the continuing history of pirate media. Not least, it was interesting because it highlighted the fact that pirate media *had* a continuing history. For Sealand's origins lie in an earlier pirate enterprise - the pirate radio movement of the mid-1960s. There are distinct parallels between the business of pirate radio in that earlier age and the business of this data haven at least, if not of data havens in general. And the gap between representation and reality that Lackey's DefCon presentation revealed also finds plenty of parallels in the Sixties.[1] But what I want to suggest here is that something deeper than creative business practices link the two. They hint at a longer history of culture that accounts for some of the reputedly distinctive properties of digital creativity today.

Today's pirate philosophy is a moral philosophy through and through. An extreme form of the commitments seen more mundanely in various open-source and free-software circles, it has to do centrally with convictions about freedom, rights, duties, obligations, and the like (e.g. Coleman, 2005). In many cases these are tackled in a frankly libertarian framework, which bears comparison to Robert Nozick's *Anarchy, State, and Utopia* (1974), the classic statement of modern philosophical libertarianism the title of which was reflected in Ludlow's volume. But here and now the arguments extend to matters of information and knowledge: to what extent ideas originate in creative authors, and if so, how far they may

legitimately be enclosed.[2]   And here they mesh with a discrete tradition of economics and political science, including rational choice theory. What the Sealand/Pirate Bay moment highlights is the extent to which that conjunction is, first, historical in general - it extends back beyond the 1960s, in fact, to the 1920s, and perhaps even to the 1820s - and, second, specifically a product of debates triggered by broadcasting. Those debates concerned the proper relation between media, knowledge, and the public. To trace today's moral philosophy – the kind of thing seen in legitimate practical contexts in the anthropologies of hacker groups researched by Gabriella Coleman and Chris Kelty – back to pirate radio is to suggest for it a genealogy rather different from that most commonly invoked. The appropriate inspirations become not Stewart Brand and the *Whole Earth Catalog*, but Friedrich Hayek and – especially – Ronald Coase and their assaults on public media.[3] The difference matters because it in turn suggests that a much more ambiguous political legacy is in play.

II

We need to begin a long time before even the pirate radio boom of the 1960s, with the invention of broadcasting itself in the years following World War I. That process occurred in the middle of a century and a half in which media proliferated with accelerating speed. Beginning with photography and the telegraph, new means of capturing and conveying meaning appeared one after another: sound recording, film, radio, television, tape, digital media – and that is to list only the most successful. Fundamental questions of propriety and responsibility that arise with any new technology became especially pressing in this context, because there was no chance to settle them before each new innovation arrived.[4]

The most important of all the new media was arguably radio – not radio *per se*, which was merely 'wireless', but radio broadcasting. The practice of issuing out cultural signals across the ether intended for all and sundry, with no tracking of reception, was revolutionary when it began shortly after WWI. It expanded very rapidly indeed. As it did so it became the occasion for a series of fundamental re-evaluations – of information, of media, of science, and of the public. The terms of these re-evaluations were themselves not entirely new, of course. They can often be traced back to arguments in the previous two centuries about the practice of patenting, for example. But their use and impact were dramatic and wide-ranging. Much of the modern system of cultural creativity that arose after WWII would be shaped by them in one way or another.

In a certain respect, the impetus for this process was thought to come from the physical properties of radio itself. A major, indeed potentially ruinous, problem of early broadcasting was that of so-called 'ether chaos'. If more than one transmitter sought to broadcast on the same wavelength, the two signals would interfere; where several sought to do so, the interference could easily become severe enough to make listening intolerable or even impossible. As broadcasting boomed in the early Twenties, every modern nation faced this problem and sought to address it. (It is in fact not clear that the problem was as physically necessitated as participants tended to insist, but their perception that it was was widely accepted.) In major US cities, for example, there might be ten or a dozen stations competing at once.[5]

In modern political science it is customary to describe this predicament as a classic instance of the 'tragedy of the commons', but it is important to recognize both that that term was not used in the 1920s and that (just as with the original, medieval commons) there may have been non-legal norms in existence that mitigated the situation's tragic logic. In any case, attempts to deal with it coalesced around two major models. One, adopted in the USA, involved commercial stations organizing into national chains and being subjected to wavelength and other regulation by government experts. This was the approach that created the major networks (NBC, CBS), the Federal Communications Commission (FCC, originally the FRC: Federal Radio Commission), and the enduring controversy over wavelength auctioning (Streeter, 1996: ch.3). The other, pursued in the UK, involved a single, public-service broadcaster with a monopoly on broadcasting. This was the approach that created the BBC, license fees, detector vans, and the enduring controversy over public media (Briggs, 1961-95: esp. vols. 1-2). Different as they were, each strategy made the vast numbers of so-called 'amateurs' using radio in the 1920s into a problem. In the USA, they might perpetuate ether chaos; in the UK, as well as doing that, they might also undermine the monopoly position of the BBC. Unlicensed listeners in Britain were immediately dubbed 'pirates', and by the mid-1920s the General Post Office was deploying the first detector vans to track them down. The detector van soon became symbolic of Britain's broadcasting culture. It also marked the beginning of what would become a recurrent dream – the dream of a technical solution to media piracy (Johns, forthcoming).

There was a moral aspect to this from the outset. The BBC was always meant to be an instrument of cultural improvement. As its

original leader, Lord Reith, put it, the organization tried to give the people slightly better than what they wanted. That mission affected what kind of activity listening to broadcasts was supposed to be. In brief, it was supposed to be *work*. The problem of listener piracy was consequently not only financial and technical, but cultural. Pirate listeners might listen not only to *something else*, but also in *some other way*. Pirate listening threatened to create a population of autonomous, individual agents. As such it contributed to what became a huge public and political debate through the 1930s and 1940s on media, government, and public knowledge. In the UK, this debate initially focused on the practice of popular experimentation, especially in the radio field. The mass press insisted that the BBC's monopoly endangered science itself, by restricting the ability of individual citizens to experiment in the ether. Successive Westminster committees sought to reconcile the cultural necessity (as they saw it) for a public broadcaster with the freedom of inquiry. By the mid-1930s this had merged into the controversy over the public responsibilities of the scientist that was spearheaded by J.D. Bernal. In the United States, with its different model of broadcasting, the field of argument was similar, but the specific topics were not. Under Roosevelt, massive hearings took place into the role of patent-pool corporations – AT&T most famously, but also RCA and the 'radio trust' – in monopolizing the new field of electronic communications. This very bitter controversy in turn merged with a conflict, as in Britain, centrally about the public responsibilities of science. But in the US its primary focus was on intellectual property. What began as a controversy about cultural monopoly thus generated an attack on patenting as constricting freedom in science and public knowledge in general. As Daniel Kevles has traced in detail, this controversy ultimately shaped the postwar institutional structure of science itself in America (Kevles, 1977: 5-26).

What matters here is that these Anglo-American controversies, triggered by the rise of broadcasting, substantially decided how each society came to apprehend knowledge - science in particular - and its place in culture. The two most influential versions of what came to be called 'images of science' were, in the US, that of Robert Merton, and, in the UK, that of Michael Polanyi. Merton's insistence on a normative account of science was, of course, framed against the claims of the totalitarian powers to scientific preeminence; but it also denied explicitly that true science could be compatible with technological patents. That point emerged from Merton's contemporary work on mass media and its effects. Meanwhile,

Polanyi's very different view of science as a tradition-bound culture of tacit knowledge owed its own major debts to anti-patenting arguments of the pre-war years – and Polanyi himself issued a remarkable call for abolishing the intellectual property system. Such representations set the terms in which future debates about the relation between science and politics would be couched. This remains very evident indeed in the passionate exchanges that are taking place in the early twenty-first century over the role of patenting in the life sciences.

In the meantime a new generation of 'liberal' critics came forward to urge a post-war politics that would revive convictions that had in their eyes been eclipsed by Keynesianism. Polanyi was a central figure in these circles, which also included men like Arnold Plant, the British economist, and Karl Popper, and which looked to Friedrich von Hayek as their leader. This movement is relatively well documented for its impact on economics and political science. What is largely ignored is the centrality of issues of media and knowledge to their claims. In the UK, in particular, they made the public-monopoly broadcasting system into a lynchpin of their arguments against Keynesian orthodoxy. In doing so they integrated a strongly moral philosophical case against Intellectual Property (IP) into an ideology of neoclassical economics. Thus Plant, for example, assailed what he called the BBC's monopoly of 'property in programmes' as threatening an incipient 'information economy' (Johns, 2006: 145-64).

By far the most important participant in this postwar effort was an ex-assistant of Plant's, Ronald Coase. Coase would later win the Nobel Prize in recognition of his formulation of the so-called 'Coase Theorem', and indeed this side of his work has been accorded a central place in today's claims for online Open Source (OS) work instantiating a new economic model (Benkler, 2002: 369-446; Benkler, 2006: 59-63). But historically far more important was his empirical work on broadcasting and monopoly. In particular, Coase's devastating excavation of the 1920s process that had led to the establishment of the BBC, entitled *British Broadcasting: A Study in Monopoly*, did more than any other work to change the course of subsequent media history. Published as a book in 1950 – but with key sections having appeared already as early as 1947 – *British Broadcasting* presented a fine-grained forensic examination of the monopoly's creation and preservation. Not content with that, Coase then traced the conflicts it had endured down to the beginning of the postwar era, including its troubles with pirate

listeners and unlicensed rivals. And he gave substantial attention to alternatives that had repeatedly arisen, and that had been credible in their time: wired broadcasting, relay operations, and overseas rivals. (Of the latter the most notable was the International Broadcasting Corporation [IBC], set up by Conservative MP Leonard Plugge and eventually a thriving private company with a headquarters brazenly sited in central London; it was destroyed by the Luftwaffe in WWII.) The result left no room for belief that the monopoly was necessary, inevitable, or natural; nor for any complacency about its having been consensual at any point in its history (Coase, 1950).[6] It fortified the Conservatives to fight for a very different policy for the next new medium, television. It was consequently on Coase's grounds that commercial television was permitted in the UK from the outset. In the USA, it helped launch successive generations of attacks on the spectrum allocation system. In effect, *British Broadcasting* should be seen as the *Road to Serfdom* of the modern media.

III

In the 1960s Coase's arguments against information monopolies took practical form in the UK with the rise of pirate radio as a mass phenomenon. That pirate radio existed was in itself nothing new – there had been pirate broadcasters since at least the late 1920s, and they would continue to the present day. What *was* new in the 1960s, and what would not be repeated until much later (the mid-1980s, perhaps), was that pirate broadcasting became definitive of popular culture.[7] By virtue of an agreement reached with musicians' unions in the postwar era and based in principles of copyright, the BBC was barred from playing more than a few hours of recorded music every week – and, given its improving mission, much of that allocation was devoted to classical music. Thanks to this constraint on what was called 'needle time', the Corporation was reduced to mimicking hit records by employing session musicians to cover them for broadcast. By contrast, the pirate stations – based on ships moored outside territorial waters – could and did transmit an endless succession of the latest hits. So if you wanted to participate as a listener in the pop revolution signaled by Philip Larkin's *Annus mirabilis* of 1963, you could only really do so by tuning to pirate radio. A huge proportion of the British population did just that. The stations themselves claimed that their audience was larger than the BBC's; and if that claim was hard to verify, nobody doubted that it was at least plausible in principle. Moreover, the advent of transistor radios meant that listening as a practice bore no relation to the activity

familiar before WWII, which had been constrained by the sheer importability of contemporary receivers and aerials. Now all listeners were pirates, and pirate listening occurred anywhere – including, very importantly, in the car.

This altered significantly the meaning of the media arguments advanced a decade earlier by Coase. Coase had focused on the internal negotiations that lay behind the BBC's initial formation, supplementing this with accounts of organizations like the IBC which had sought unsuccessfully to challenge the monopoly. Now, the BBC looked like it might really be overtaken by disparate practitioners of piracy. The questions were how pirate media might be secured in this position of success, and what the implications would be if they were.

The first point was that for some at least of its protagonists – not just the managers and financiers, but the DJs themselves – pirate radio at this point had a marked libertarian ideology. It was often not very sophisticated or well thought out, but it was quite strongly felt and frequently articulated (one of the pirate ships was called the *Laissez Faire*). In this context, the *point* of pirate radio was to challenge the public monopoly of the BBC and eventually overthrow it, becoming legitimate itself in the process. The more professional of the pirate stations tended to see their future as involving a shift to land-based, local operations under a revised legal framework that would embrace commercial broadcasting. They were, then, as pro-BBC critics recognized, Trojan horse operations. But the more percipient among their backers realized that for this to come about, the pirates would have to amount to more than a cluster of independent, often ramshackle and semi-licit enterprises with no common front. They would have to become something like a *network*. And this ambition – which became explicit in the middle of the decade – became central to a media revolution.

The central figure in this process was one Oliver Smedley. A WWII veteran and convinced free-trader, Smedley had been a senior figure in the Liberal Party. In 1955 he had joined forces with another laissez-faire advocate, Antony Fisher, to launch what they christened the *Institute of Economic Affairs* (IEA). Although he is today almost a forgotten figure (he eventually left the IEA because it was not absolutist enough about free-trade principles for his liking, and has been largely written out of its advocates' histories), it was in fact Smedley who created the IEA's financial structure, provided it with premises, named it, and furnished its day-to-day expenses.[8]

At first a fringe affair, over time the IEA would become an immensely significant element in modern political and economic history. It became the first of a new kind of institution – a political think tank, dedicated to researching and publishing public issues on the basis of a clear and distinct set of ideological premises. Those premises were Coasian and Hayekian. Its principal purpose was to aid in the overturning of Keynesian economics in British governance. It became the most influential fount of 'new right' arguments prior to 1979. Margaret Thatcher hailed it as the incubator of her own ideology, and Milton Friedman agreed.

The IEA sought to publish its arguments for an informed but not necessarily technically expert audience. This it did almost from the beginning, giving rise to a series of radical economic tracts about such topics as pensions and resale price maintenance. Again, however, it has largely been forgotten that alongside these issues the IEA also developed a radical attack on broadcasting and intellectual property that extended across several publications in the 1960s. In its foundations, this attack was wholly derivative from Coase's *British Broadcasting*. A project for the resurrection of laissez-faire was apparently to begin by taking on the most successful and persuasive institution of public culture, the BBC. That, for Smedley and the IEA, was what pirate radio was *for*.

The IEA advanced this attack in three fronts: on TV, radio, and copyright. The first of its tracts to deal with the issue was entitled *TV: From Monopoly to Competition* (1962 – soon expanded and reissued, following the defeat of a campaign for pay-TV, as *From Monopoly to Competition – and Back?*). It placed commercial television in the context of a radically revisionist history of modern media based explicitly on Coase. This argued that commercial TV must be seen not as a fundamental departure, but as the latest and most successful of a series of alternatives to monopoly. Those alternatives extended back beyond Plugge's IBC to the amateurs of the 1920s. *Competition in Radio* (1965) then carried forward the case. This second tract was based on research carried out in concert with Granada TV, one of the commercial television broadcasters, and Radio Caroline – which, it is worth noting, was affiliated with Radio Atlanta, of which more in a moment. The radio tract began with the same argument as *TV*, sometimes reprising whole phrases verbatim. It retailed the history of the BBC monopoly, and the tale of the various challengers prior to the 1960s. Then it surveyed the Sixties pirates and their economic practices. Competition in radio could and must be permitted, it concluded, predictably enough. But

it focused particularly on the potential for local radio, which, it insisted, must be genuinely entrepreneurial and must arise out of local enthusiasm; it must not originate in the BBC, nor in any other 'paternalist' schema. It also must not be subsumed into a private 'network' (and hence quasi-monopoly), as had happened in commercial television (Altman et al, 1962; Thomas, 1965).

A third piece, *Copyright and the Creative Artist* (1967), then expanded on this emphasis on the local, individual character of culture. It outlined what it called the 'conflict between the producer and the "consumer" of intellectual property', combining Coase's line on media with Plant's skepticism about IP. Copyright, it insisted, had *never* produced a work of genius. Extending its term and range would simple impede progress among the law-abiding, while 'piracy' would flourish regardless. The tract marked a convergence of neo-liberal arguments against copyright and against monopoly broadcasting that had begun half a century earlier (Thomas, 1967).

What is especially worth noting about these IEA tracts is that they tried to teach a lesson about the social role of so-called 'pirates' in general. The radio tract in particular extended its Coasian case to argue that pirate broadcasters had a pivotal role to play in the development of a new politics of communication and public culture. Pirate broadcasters were examples of a broader type. They represented a form of commercial life that recurred frequently, but that the state and existing institutions always regarded as *immoral*. The radio tract thus culminated in a section entitled *'Piracy' as a Business Force*, which is included as a brief appendix to this paper. Short as it is, its tone - today rather unremarkable - was in its own time radical to the extent of seeming almost beyond the fringe. 'Hostility to commercial "piracy" is neither new nor unfamiliar', it argued. It was, rather, 'a reflex reaction by established interests to unwelcome and adventurous competition'. Newcomers to an established industry necessarily violated the 'tacit rulee' by which such an industry operated. One example was Allen Lane, who created Penguin Books in defiance of the comfortable norms of the pre-war publishing industry and revolutionized that industry. Another was a figure today far more obscure than Lane, but in the early 1960s literally a household name: John Bloom. Bloom was a pioneer of direct marketing who sold washing machines in vast quantities at drastically lower prices than conventional retailers. He fought a fierce battle against the retailers, and although he ultimately lost, he transformed the ways in which white goods were made, marketed, sold, and, indeed, used. The anti-pirate crusades were

always in reality directed against such radical innovators, the IEA claimed. Because the existing regime was assumed to be moral, they were cast as immoral *arrivistes*. The principal vehicle for this accusation in the case of pirate radio was the ships' proclaimed flouting of copyright. The IEA pointed out that they often paid courtesy sums – much as nineteenth-century American publishers had to writers like Dickens – and that the record companies, for all their public indignation, quietly made sure to provide the vessels with their new releases. But the real point was not to exonerate the pirates. On the contrary, the brazenness of their transgression was what mattered. Both Lane's revolution in reading and Bloom's in domestic life had taken root by virtue of massive popularity in the face of monopolists. The same was happening now in broadcasting. The pirate radio pioneers proved that the existing 'tacit rules' themselves were at fault. Those rules were the conventions and customs that defined the regime of intellectual property. And the BBC, of course, was the principal product and manifestation of that regime.

IV

This was no mere theoretical dispute. Smedley put his skills to work in creating an actual pirate radio station, and then in forging a pirate network. Initially he helped create Project Atlanta, the company behind Radio Atlanta, which became one of the first significant pirates. Atlanta soon merged with Radio Caroline. It was then that the scheme began to take the shape of a network – one able to compete against the BBC, and, being free of copyright constraints, to beat it. Meanwhile, more than half the Tories in the House of Commons endorsed the principle of 'freedom of the air', while the Labour Government seemed transfixed and incapable of either accepting or dealing with piracy. The real issue related not to individual pirate stations, in truth, but to this prospect of a pirate network. Richard Hoggart, the pioneer student of working-class reading practices, became the most vociferous critic of Atlanta and Caroline on this score. Hoggart repeatedly warned in the press that to legitimate pirate radio would be a cultural catastrophe. It would be, he declaimed, 'an act against democratic growth roughly comparable to reinstituting the taxes on knowledge'. Instead he urged his own plan for a 'university of the air'. For some years these two positions – pirate network versus university – fought it out in the press and Parliament. PM Harold Wilson, typically, seems to have been a fan of both. Eventually he would throw Labour's

backing behind a proposal for such an ethereal college, and in the 1970s it became the Open University.[9]

But by this time the world of pirate radio had imploded, and with it – temporarily, at least – the prospects for a pirate network. The full story is too complex and involved to tell here, but in essence Smedley found himself in a confrontation with a small-time rival in the pirate business named Reginald Calvert. Calvert had taken over an abandoned military fort in the Thames Estuary called Shivering Sands and, putting a transmitter on it, begun broadcasting as Radio City.   As the major pirate stations one by one reached understandings with the record companies and copyright agencies, City looked like becoming the last outstanding rebel – in a sense, the last *real* pirate. (The IEA listed it as the only one responsible for real interference in the ether [Thomas, 1965: 15 n.1].) For Smedley this might be disastrous, so he worked hard to bring City into his network. Calvert sought to do a different deal behind Smedley's back, and, incensed, Smedley and a London theatrical figure named Kitty Black decided to take pre-emptive action. They recruited a gang of dockers and raided the fort, taking the Radio City crew hostage. There followed a day and a half of increasingly tense negotiations, at the end of which Calvert showed up at Smedley's Essex cottage in distinctly threatening mood. Smedley picked up a shotgun and pulled the trigger at point-blank range. Calvert was dead before the ambulance arrived.

The killing dominated headlines. Smedley was initially charged with murder, but eventually went free on self-defense grounds. Calvert's death, meanwhile, became the catalyst for pirate radio's destruction – and perhaps for its apotheosis. Legislation was swiftly introduced to close down the whole 'squalid' enterprise. The Marine Offences Bill passed into law, outlawing the advertisements on which all the stations relied for their revenue.   Every pirate station except Caroline swiftly capitulated, and Caroline itself followed before long (it would later revive, of course). But to destroy pop music radio without providing for some alternative would have been politically suicidal, so the Government hastily found a way around the unions and their copyright-based needle-time restriction.   BBC broadcasting underwent the biggest transformation in its history. The country's first national pop music station, Radio One, was launched at the end of September 1967. Its most prominent personnel were recruits from the pirates. *New Society* called it a 'phony revolution.' But perhaps Calvert's old act, Screaming Lord

Sutch, put it better: 'They've turned out to be the biggest pirates of them all'.

It was soon after this that Radio Essex, a rival pirate station operated by Roy Bates – one-time associate of Smedley and long-time rival to Calvert – began to threaten Shivering Sands. The police initially thought it possible that Bates and Smedley were about to join forces. Instead Bates moved further afield, to a different kind of fort. Roughs Tower was much further out to sea. It was essentially a gun-emplacement set atop two broad, hollow, concrete legs. Bates now sent a party, expelled a token Caroline crew, and resolved to defend his territory against all comers. Secured in the end against private and state rivals alike, he eventually ditched his broadcasting schemes and declared Roughs Tower a new independent state. So it was that Sealand came into existence. And so we find ourselves at the point where this essay began.

V

From Sealand to The Pirate Bay – from radio piracy to digital piracy. How much of a transition is that? In one sense, certainly, it is a great one. There is no denying that the powers and practices of digital media are very different from those of analogue. But digital culture is still culture for all that. And as such, continuities and distinctions across history remain consequential in shaping it. For example, the HavenCo-Sealand system is, at least superficially, structurally homologous to the enterprises set up to run Radio Atlanta, Radio Caroline, and their peers. It seems plausible that there are real inheritances deserving to be traced between the business practices of the pirate radio outfits and those of a data haven like Sealand.

More generally, common to the areas of contention in today's 'pirate philosophies' are heavily moralized visions of the nature of creative work itself. An 'ethos' of openness or access is upheld as virtuous because true to the intrinsic character of genuine science. What is important here is not just that this normative tone is a product of history. That much is, as the philosophers say, analytic. It is the particular bit of history from which it has emerged that matters. What I am suggesting is that the moral philosophy of digital libertarianism today has a different genealogy from that usually invoked – a genealogy that leads not to Stewart Brand and ultimately John Stuart Mill, but to Oliver Smedley and Ronald Coase (and beyond them, indeed, to early radio pioneers, and even Victorian

anti-patenting campaigners).[10] And in addition, I am suggesting that the Coase who matters in this regard is not the author of 'Coase's theorem', but the historian who skewered the self-evident virtues of information monopolies in his analysis of the BBC.

Of course, those two Coases are not really separable. But once one recognizes this, one begins to see echoes in the broader economic case that was made by Friedrich Hayek and his allies after WWII and that, I am arguing, lay behind the IEA's defense of pirate broadcasting and its attack on copyright. That case was never only economic but also, and more fundamentally, moral – and epistemological too. Its proponents challenged the kind and quality of knowledge that it was possible for humans to have. The 'economic calculus' of central planning, Hayek and his side famously argued, was based on a false conception of social data – not only did planners not have adequate information, they could not possibly have it. Planning constrained freedoms on the basis of an unsupportable claim to science. And they constrained creativity – including science itself – on the same fragile basis. What was needed, Hayek himself had insisted, was someone 'on the spot', with access to knowledge of particulars. Social reality emerged all the time at the very local level, and was changing all the time at that level. Any centralized viewer would inevitably have a distant, and therefore partial and impoverished, view of social reality. The local character of practical reality was thus 'really the central theoretical problem of all social science' (Hayek, 1948: esp.77-8). What solved that problem must be a practice, not a theory, and one that could only be pursued by many people acting out in the field, not by one person in an office. For Hayek the manifestation of that practice in formal terms was the price system. The price system was thus in truth a system of information. A price for a good arose not because of its being set centrally, but because individual possessors of knowledge communicated just sufficiently to establish some degree of stability, without any one of them ever meeting more than a handful of others (Hayek, 1948: 86). It would be 'more than a metaphor', he concluded, to describe the price system as 'a system of telecommunications'. What he had left unsaid was that that system must not corrupt public knowledge by itself being interested – as would be the case if it were monopolized. In other words, it is plausible to argue that the assault on creative monopolies that we see in Plant, Coase, and the IEA reflected imperatives buried deep in the heart of what became the neo-liberal cause that attained ascendancy after the Thatcher and Reagan victories in 1979 and 1980. Perhaps

the pirate media controversies helped to make Thatcherism in particular what it was.

The point of the IEA's paean to 'piracy as a business force' was to evoke just such long timescales and major cultural transformations. It needed to, rather paradoxically, for the most proximate of reasons. In the early 1960s it looked as though a long campaign for 'dispersed' creativity had just been lost. Plant, Coase, and their allies notwithstanding, the Government was set against deregulating media. *De jure*, the BBC reigned. But at just this moment millions of citizens began using miniaturized, portable radios to tune out the monopoly broadcaster and search for unpredictable, semi-licit, and frankly commercial stations.[11] Smedley's cohort saw in this the possibility for a thoroughgoing challenge to an entire political and economic system. Their Project Atlanta would begin by undermining information monopolies. Piracy for them was to be first a business force, then a cultural force, and finally a political force. It promised to transform media in Britain and Europe, and thereby become the thin end of a counter-revolutionary wedge in economic and political culture. The immediate objective was the untrammelled commercialization of the broadcast media; the more distant aim, a free-market transformation of Britain itself. But another objective took shape in the process: the realization of a libertarian ideal of distributed creativity. We know now that in the middle term, at least, the Coasians won on all fronts. *Laissez-faire*, commercialization, and distributed creativity became orthodoxies in the 1980s and 1990s. What Smedley and his allies could not have perceived was that in winning so decisively, they would set the terms for another generation of conflict.

Appendix

'Piracy' as a business force

Hostility to commercial 'piracy' is neither new nor unfamiliar: it is a reflex action by established interests to unwelcome and adventurous competition. In business, energetic newcomers disturb accepted patterns and precepts. Even the most competitive industry settles sooner or later into an accepted establishment in which all members play the game according to tacit rules. To break the rules is not only professional bad form but also 'against the public interest'. The most recent example of this experience befell the unfortunate John Bloom: having set the domestic appliance industry by the ears and forced down prices by breaking through the conventional marketing structure, he brought upon himself vindictive criticism while he was winning and contemptuous dismissal when in the end he lost. In the communications world there are examples equally close at hand. The BBC obstructed John Logie Baird at a time when their monopoly was absolute, and when Baird's brilliant device for broadcasting live pictures seemed a threat to sound broadcasting. When the young Allen Lane tried to sell the first batch of Penguin books, few booksellers supported him: his sixpenny paperbacks were seen as an impudent challenge to an established and respectable trade. So he began by selling them through Woolworths and ended by revolutionising the book trade all over the world.

In business, as in large sections of British society as a whole, the energetic and inventive newcomer is commonly seen as an intruder, an upstart, an interloper, a disturber of the peace and of 'the done thing'. The national habit of closing the ranks extends through business and commerce and is still a force to be taken seriously in politics. Particularly suspect is the newcomer who makes no pretence that he is working for anything but profit.

At a time when 'growth' is the catchword of the moment, it may well seem incongruous that a dynamic force in salesmanship–commercial radio–should be simultaneously belittled and threatened with penalties: for the agitations of salesmanship, and the disturbances of jealously guarded markets, are the very stuff of growth and prosperity.

'Faceless uniformity'?

As a further reinforcement to the case for commercial radio, it is relevant to consider the charge commonly directed against the mass media, that they lead to a faceless uniformity of accent, fashion and attitude, that the pressures of modern communication destroy indigenous culture and are leading British society into a mid-Atlantic limbo. That this is greatly exaggerated is acknowledged by all but the most committed of authoritarians. But what, on the other side, was the effect of 30 years of unbroken monopoly by the BBC? Our standardised culture–in speech, habits and attitudes–owes quite as much to the BBC as, say, to the popular press or the big advertising agencies.

The trend towards standardisation under the BBC monopoly had other effects: in the view of many industrialists it alternatively coddled and thwarted the electronics industry, and it is only since the advent of Independent Television that the manufacture of TV sets and broadcasting equipment of all kinds has blossomed into a major industry. Again, local radio could have an important educational role to play in releasing the knowledge, imagination and intellectual energy of provincial universities for the benefit of listeners in those areas. Given a strong local demand (perhaps a large assumption), the teachers, lecturers, researchers and others best qualified to revolutionise adult education would reach unprecedented audiences by taking part in programmes on commercially operated local radio.

Endnotes

1   J. Evans, 'Blood, Bullets, Bombs, and Bandwidth', http://rezendi.com/travels/bbbb.html; 'Pirate Bay Ditches Bid for Own Nation', *The Local,* February 22, 2007, http://www.thelocal.se/article.php?ID=6496; 'Prince of Sealand', *The Hour* http://www.cbc.ca/thehour/videos.html?id=741185888.

2 There is a large literature on this theme, but a particularly impressive reflection on the recursive character of culture in software communities is in Kelty (2008).

3 For the centrality of Brand and the *Whole earth catalog,* see Turner (2006) and Markoff (2005).

4 The literature on radio is large and now very good; the effects of proliferating media are nicely caught in Gitelman (2006).

5 The classic treatment is Douglas (1989).

6 Coase (1950). Coase's study was very different in this regard from the works of others in his liberal economic camp such as Hayek. To a modern reader the distinction is very striking indeed. It is tempting to hypothesize that the BBC book may have had some indirect influence in shaping the critical empiricism that began to pervade studies of other valued cultural institutions, notably science, from the early 1960s. But this must for the moment remain merely a hypothesis.

7 The best account of the pirate radio phenomenon in this period is Chapman (1992). Enthusiasts have made an abundance of material available in print and online (including recordings of broadcasts), some of which needs to be used with caution.

8 This and the following paragraphs form the basis for a book I am currently writing entitled *Death of a Pirate.*

9 This story will be told in my *Death of a Pirate.*

10 For these, see Johns, *Piracy* (forthcoming).

[11] Some may be inclined to call this 'hacking' the broadcast system, and that is in one sense exactly what it was; but when terminology is so anachronistic it generally masks more than it reveals, and I think that is true in this instance.

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