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PIRATES, INDUSTRY, AND THE STATE:  
PERSPECTIVES ON THE CONSTRUCTION OF A SPOIL-SPORT IN  
AN AGE OF COPY RIGHT

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Review of: Martin Frederiksson and James Arvanitakis (eds.) (2014) *Piracy: Leakages from Modernity*. Sacramento, Litwin Books, 370 pp.

From Jack Sparrow to Somali hijackers, from torrents to fake Gucci bags, pirates and their loot are prominently present in contemporary culture. The eighteen essays collected in *Piracy: Leakages from Modernity* attempt to analyze a variety of piracy practices, and relate them to broader social transformations. As the authors have diverse vocational backgrounds, ranging from economy and sociology to political theory and law, the collection shows a wide variety in methodological approaches. Altogether, they provide a rich overview of different piratic practices as well as a balanced description of their political potential.

Despite the diversity in these essays, many of them seem to share certain fundamental assumptions. This applies, first of all, to the modernity referred to in the title. Out of the various essays, a picture emerges of a late-capitalist, neo-liberal society, in which an important role is played by the circulation of information and the commodification of culture. As Lucas Logan concludes in his essay on intellectual property rights (IPR), ‘communication technologies are the fuel for the 21<sup>st</sup> century global economy and are regulated by capitalist market forces and states that further entrench established power relations’ (141). The main target of many essays

consists of the ‘capitalist market forces’ that are mostly identified as US-based media and entertainment industries. Various essays sketch these industries as old, slow, centralized organizations that are out of touch with the reality of digital file-sharing. Rather than seizing upon the possibilities of this new reality, so it seems, they are ‘protecting their pre-digital distribution infrastructure’ as well as their ‘[long established] profit-making pattern’ (201). As aptly pointed out by You Jie, the so-called defense by the entertainment industries against the threat of file-sharing is exactly what motivates their use of the term piracy, as well as their recourse to legal force. As Sean John Andrews argues, ‘US lobbyists for the content industries have been (...) demanding legislative efforts to protect their dying business model’ (98). Arguably the lobbyists have so far been quite successful, as state agencies appear to willingly assist in enforcing the property rights of the entertainment industries. Telling in this regard is the influence that the US has exercised upon Spain in order to have its IPR regulation reformed and upheld, as revealed by Wikileaks documents and discussed by Logan (137). Although much attention is paid to the US, the EU did not remain free from a similar intertwinement of market interests and legislative reform. As a result ‘powerful states are able to assert authority over, and force legal, regulatory and economic regimes, on weaker states’ (140). The corollary is that the discourse on piracy falls apart in, on the one hand, a strongly legalistic language, varnishing over the power-relations by using terminology of ‘compliance’ and ‘harmonizing’ regulative frameworks; on the other hand, the protection of IPR is phrased in moralistic terms, such that file-sharing is branded as theft and robbery.

Efforts to globalize IPR date back to the nineteenth century (79), but as Logan paraphrases Peter Andreas and Ethan Nadelmann, the process of global IPR protection speeded up in the post-World War II period (144). However, this process clashes particularly fiercely with the rise of the Internet, and its initial conception as a free and open web. This clash seems to be well-illustrated by the public outrage at the US Stop Online Piracy Act (SOPA) and the Protect Intellectual Property Act (PIPA) in 2011, as well as at the international Anti-Counterfeiting Trade Agreement (ACTA, 2012). Interestingly, James Meese observes that protests largely attacked the reforms because their enforcement entailed a threat to free speech, not because they implied a further privatization of intellectual

property (23-24). The essay by Andrews does allow for a critique of privatization, as he draws the familiar analogy between the closing of the commons in eighteenth-century England and the closure of the web as a space to freely share and distribute knowledge. In both cases, the 'social bandits' who violate the new privatized order belong to the margins of society: then, the peasants whose decrease in resources forced them to seek employment in the newly developing industries, now, locals in the Global South who cannot afford, or have no legitimate access to, text books, TV shows or music.

The essay by Sonja Schillings covers a wider historical period, and also succeeds in laying bare the century-old distinction between white pirates and 'black' Muslim ones. The non-white pirate, she argues, is 'associated with collective and inherently hostile Otherness that seeks to overcome the West' (77). The white pirate, however, was conceived as pursuing his material self-interest by joining the Muslim pirates and relinquishing his Christian, European identity. As a result, he was held individually responsible, whereas the non-white pirate constituted an anonymous threat that had to be eradicated. Out of the highly individualistic white pirate evolved eventually, Schilling contends, the image of the pirate as a social rebel. The dichotomy between non-white piracy and white piracy echoes in a number of essays, and especially so in those few that refrain from defining contemporary piracy primordially as a digital practice. The article by Hatzapoulis and Kambouri describes street vending of counterfeit goods by migrants on the squares of Athens, including the square that the Occupy movement took possession of. Although Occupy activists explicitly rejected the racist violence faced by the migrant vendors, they did ask the vendors to leave the square as the commercial activity of selling goods conflicts with the activists' intention to collectivize public space. Engaging in a commercial activity, the vendors were not considered as political actors (278ff). The essay by Robison, Drodzweski and Kiddell on 'biopiracy' in a way reverts the dichotomy between the white, rebellious pirate and the anonymous non-white pirate. They describe the – partly successful – fight against the patenting by companies of plants, animals, and processes that were historically cultivated by marginalized indigenous communities. Interestingly, these communities and their support groups deploy the discourse of 'biopiracy' and 'anti-piracy' as a rhetorical tool to affirm their

collective right vis-à-vis the property right of (for instance pharmaceutical and agricultural) companies. Hence, the companies using IPR are framed as the pirates, rather than the communities who deem their knowledge a common asset.

The above essays are insightful as to the variety of piracy. However, the cover of the book indicates the central core of this collection: with a recurrent pattern of the copyright-logo, occasionally interrupted by a skull-and-crossbones sign, the focus is on the digital sharing of copyrighted content. Out of the very different essays and approaches, a many-sided picture emerges of who this 'pirate' is. Three types, already sketched by Meese in the first essay, and partly also by Virginia Crisp in the second chapter, recur throughout the book. The first type is the pirate who we know from the anti-piracy discourse of the entertainment industry: the one who makes money out of file-sharing, and is thus considered 'parasitic' on the creative work of individual artists. Meese cites Kim 'Dotcom' Schmitz of Megaupload as a prime example: Megaupload, at some point 'one of the world's largest file-sharing sites' (25), was extremely profitable, until the moment the servers were taken down and Schmitz faced trial. Pictures of Kim's tokens of excessive wealth – his fleet of cars, his villa – played a major role in the subsequent slur campaign. Interestingly, a number of essays show that file-sharers justify their practices by distancing themselves from those 'pirates' who are in it for the money. As a result, they resemble the rhetoric of the entertainment industries – of which they are the main target. As Crisp puts it: '[file-sharers] have adopted parts of the anti-piracy rhetoric to pour scorn on those that they perceive to be the real pirates: that is, both those who engage in the unauthorized circulation of physical goods for economic reward as well as some of the major owners of copyright' (50).

The second type is the pirate as constructed by advocacy groups and political organizations such as the 'Pirate Party': the pirate as a social rebel. This pirate is conceived as 'a "subversive radical" engaged in a power struggle with the cultural industries' (43). As shown by Jonas Andersson and Stefan Larsson in their extensive study of users of The Pirate Bay and their motivation, this conception is especially prevalent among active uploaders. 'Seeding' and uploading torrents are thus highly politicized by the

file-sharers themselves. As file-sharing is part of the fight for a free, not-for-profit culture, the pirate deliberately challenges the establishment, and especially the legitimacy of IPR.

The third type shows the pirate as the banal consumer of media products. As Meese argues, piracy is an everyday practice of the ‘mainstream digital citizen, more interested in questions of infrastructure and access than opposition and exclusion’ (30). As this ordinary pirate is mostly interested in obtaining media fast and cheap, (s)he can act quite like a nagging, impatient customer. This is well-illustrated by Vanessa Mendes Moreira De Sa’s essay on ‘fan subtitling’ in Brazil: groups of dedicated fans spending their free time on providing subtitles to foreign TV shows. Despite the quality and the speed with which they deliver their free service to a huge audience, some fan-subtitlers admit that ‘they often felt that impatient viewers did not value their efforts’ (297-298). Piracy, rather than deliberately ideologically opposing the entertainment industries, might be the result of decades of immersion in commodified culture. This does not mean that there is no political potential in ordinary piracy, but Francesca Da Rimini and Jonathan Marshall convincingly argue that ‘[i]f this is a type of radicalism, it is one whose radicalism is unintentional, emerging out of the same forces that try to shut it down’ (341).

Despite the breadth of the essays, one perspective is only marginally present: that of the artists whose work is pirated. Only the essay of Balázs Bodó and of da Rimini and Marshall consider their interests, albeit in an indirect way. It should be granted that these artists make up a very heterogeneous group, ranging from well-established bands that are independent from the big recording companies, down to those who use social media to create, and reach out to, their fan base. Arguably, the claim that piracy is a form of stealing from artists is overblown by the entertainment industries. Nevertheless, if there is a copyright war going on between the big entertainment industries and those fighting for free culture, the artists are likely to end up in the buffer zone.

In general, this collection gives a plausible and rich account of the different forces at work in the construction of the contemporary pirate. Because the book does such a good job in showing the intricacies of this con-

struction, the structure of the book might be a little puzzling. The editors separate the book into three sections that address the ‘ontology’, the ‘politics’, and the ‘practices’ of piracy. However, their motivation for the tripartite structure does not sufficiently distinguish between the ‘*ontological* basis’, ‘the *politics* of piracy from a macro perspective, analyzing how piracy relates to structures of power and processes of transformation’, and ‘piratical *practices* (...) [that] carry different meanings and have shifting implications in various contexts’ (5-6). Exemplifying this is the category of ontology, which the editors, quite convincingly, define in terms of power relations and practices. Once we agree with the editors that ‘piracy is neither homogeneous, not essential’ but rather ‘a label that certain actors slap on others for specific reasons’ (5), the concept of piracy seems to be a social construct that emerges within power relations and social practices. Hence, it is hard to see how one can distinguish between ‘ontology’, ‘politics’ and ‘practices’: indeed, many of the essays show how these are intimately interwoven with one another.

Based on their arguments against copyright as a means of privatizing common goods, a great number of the authors seem to be committed to open access. It is therefore surprising that many of them do not offer (easy) access to their papers, as this would have prevented the privatization of their – mostly publicly-funded – research. Overall, the quality of the essays differ sharply, with an occasional essay that could have benefited from additional language editing. Other chapters, however, such as the ones by Lie, Bodó, da Rimini and Marshall, argue lucidly and convincingly against the simplistic dichotomy of pirates and industry, and do a great job in exposing the ambiguities inherent to contemporary practices of piracy without downplaying their political potential.

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Liesbeth Schoonheim – Pirates, Industry, and the State

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