

"Globalization and Diversity, UNESCO and Cultural-Policy Making: Imperatives for U.S. Arts and Culture Practitioners and Organizations"
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Global Markets, Culture and the Commons

Remarks by David Bollier

This panel is called "Into the Mainstream," and aims to address the question:
How do we ensure that cultural systems reflect the rich diversity of communities that exist in many countries?

If the advocates of cultural diversity hope to take our message to the mainstream, I believe our biggest challenge is to develop a more compelling grand narrative for explaining how cultural diversity originates, why it is important and how it can be sustained.

In global trade circles, the prevailing story for talking about culture is the story of *the market*. "Globalization" is all about expanding the governance rules of markets to all corners of the globe. It is about subjecting social relations and resource management to a matrix of property rights, contracts and market exchange.

According to this mainstream story, "value" is created by enclosing something in an envelope of private property rights, and through contracts to buy and sell those rights for money. This will result in robust markets and "development." According

David Bollier is Co-founder of Public Knowledge, a public-interest advocate for the information commons; Senior Fellow at the Norman Lear Center, USC Annenberg School for Communication; author of *Brand Name Bullies: The Quest to Own and Control Culture* (Wiley, 2004); and Editor of OntheCommons.org.

to the market story, this is how “value” is created – with “value” serving as a synonym for “money.”

But we all know, at a certain level, that the real value of the arts, culture and civic life cannot be expressed through any economic measurement. What is the value of indigenous artwork? What is the value of ethnobotanical knowledge? What about Native American folk stories or traditional designs?

Economists tend to believe that such questions have market answers. They point out, for example, how certain native plants can be patented and sold to pharmaceutical companies, or how building a cultural center can help develop a city's economy. The basic idea seems to be that culture is an under-leveraged resource, and that we need to learn the sophisticated techniques for squeezing more money out of it.

But if the idea of “cultural diversity” is going to mean anything, and if it is going to gain mainstream credibility, then we need to develop a better story for why culture has *intrinsic* value. We need a narrative that explains why art, music, film, literature, and other cultural art forms and practices are not simply feedstock for the market, but something that must remain inalienable in key respects if it is going to survive.

A 1997 United Nations report called *Protection of the Heritage of Indigenous People* made the important point that culture is an organic part of community, nature and spiritual life: “Indigenous peoples regard all products of the human mind and heart as interrelated, and as flowing from the same source: the relationships

between the people and their land, their kinship with other living creatures that share the land and with the spiritual world.... All elements of heritage should be managed and protected as a single, interrelated and integrated whole."

This is an important idea – the idea that culture is organically related to a community of people. Culture is not fungible; its artifacts and practices cannot simply be "broken off" from the whole without starting to harm to the community that created it. That's why it can be dangerous to regard culture primarily as private property – something that can be "owned" in an absolute sense and valued by its market price. To remain vital, culture must remain organically rooted in its community's soil; it must remain a system of non-economic relationships. Marketeers take this social context for granted; they assume it is self-replenishing when it clearly is not.

The problem, when we try to talk about cultural diversity, is that we do not really have a coherent policy language for expressing its real *value* as a functioning social system. We too easily adopt the default language of the market, which usually translates into that joke about the Golden Rule – "He who has the gold, rules." Culture becomes a pawn of the market.

Ultimately, this is the logic of cultural dispossession. It brings to mind the wealthy English industrialists who bought lands with priceless Roman ruins and pagan monuments like Stonehenge, and then proceeded to destroy them because,

after all, it was “their” property.¹ To me, it is a sobering thought that only a handful of corporations now own most of photographic archives that document American history – a private repository that is accessible only to those who can pay the money.

Even here at the Smithsonian, it was thought that the nation’s transportation history did not really belong to the American people, but to General Motors. At the Smithsonian’s urging, GM sought to annex this history by buying the naming rights to the transportation section of the museum.² A chunk of the history of aviation, as well, was due to sold to Lockheed-Martin and memorialized in the Lockheed-Martin Theater.³

If we are going to be serious about recognizing the value of culture – its pluralism, its authenticity, its vigor, its sustainability – then we must start by refusing to let markets be the ultimate arbiter of value.

I suggest that that will not happen unless we begin to develop a new language – a new analysis – for explaining why the market is an inadequate guardian of culture and why culture is valuable in its own right. We need a coherent, shared analysis that can respond to neoliberal market discourse, which is the normative language that American society uses to define value.

¹ Joseph L. Sax, *Playing Darts with a Rembrandt: Public and Private Rights in Cultural Treasures* (Ann Arbor, MI: University of Michigan Press, 1999).

² Commercial Alert press release, “Nader Criticizes Smithsonian Head for Naming Rights Deal with GM,” http://www.commercialalert.org/index.php/category_id/3/subcategory_id/45/article_id/32.

³ Commercial Alert press release, “Nader Asks Smithsonian Chief: What About Taxpayers?” at http://www.commercialalert.org/index.php/category_id/3/subcategory_id/45/article_id/23

The Commons as a Sovereign Source of Value

The grand narrative of intellectual property law – at least as interpreted by the World Trade Organization and the World Intellectual Property Organization – disagrees with this proposition. It holds that no one will create worthwhile music, film, paintings, etc., unless she has strict property rights and market incentives. But any true artist and any robust culture knows that there are deeper motivations for creating culture, many of which derive from our shared identities as members of a national community or creative subculture.

These cultural communities matter a great deal, and must be protected. For example, jazz, the blues and hip-hop are powerful musical traditions that grew up as shared, collective, inter-generational traditions. The market may have amplified their reach, but these art forms are not creatures of the market. Native Americans and other indigenous peoples know that communities lie at the root of their cultural creations.

The Internet is also showing us just how important community collaborations are to culture. Linux and other open source software are prime examples, but one can also cite collaborative websites, blogging communities, peer-to-peer networks and social networking software. One of the most exciting recent developments is the rise of participatory, distributed journalism and creativity – a phenomenon explored in Dan Gillmor's excellent book, *We the Media*.⁴

⁴ Dan Gillmor, *We the Media Grassroots Journalism, By the People, For the People* (Sebastapol, CA: O'Reilly Media, 2004).

The secret of electronic networks seems to be that they can create public goods more efficiently than either the market or government, while empowering the people as never before. Communities, according to complexity theory, can actually self-organize and negotiate their own rules, sanctions and other mechanisms to govern resources and themselves.

So far, the champions of globalization cannot seem to comprehend this fact. They continue to see the individual, and not the community or society, as the only important unit of action and analysis. They continue to see conventional property rights as a sufficient protector of cultural value. And they continue to measure value by market prices, and not by moral values, community identity or sacred beliefs.

The commons, by contrast, honors humanistic values on their own terms. It has also shown that it can be tremendously productive in its own right, without the legal and transactional apparatus of the market. Yet trade bodies are only willing to grant grudging exemptions – if that! – to allow commons-based innovations to exist and flourish. What is needed is a frank recognition of the actual power of the new commons-based models for creative knowledge and culture.

The undeniable vitality of the commons seems to really irritate property rights advocates. Just last week, Bill Gates actually red-baited the advocates of “free culture.”⁵ Gates lamented that “there are some new modern-day sort of communists who want to get rid of the incentive for musicians and moviemakers and

⁵ This is Professor Lawrence Lessig’s term for open source software, open access creativity and other unrestricted creative endeavors, as explained in *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (New York: Penguin, 2004).

software makers under various guises. They don't think that those incentives should exist."⁶ Gates is knocking down a straw man, of course, because the commons advocates who I know, such as the Creative Commons, do not reject the idea of copyright at all. His red-baiting defense of intellectual property reveals a deep ignorance and hostility to the commons as an alternative source of value creation.

One of the singular developments of our time is the creativity that flows from collective platforms such as the World Wide Web, free software, human genome sequencing, open access scholarly publishing, and open networking technical protocols.⁷ Yet when sixty-eight distinguished scientists and academics petitioned WIPO in July 2003 to host a meeting to explore the tremendous power of open, collaborative projects, the World Intellectual Property Organization rejected any meeting to explore such phenomena, saying flatly that its goal is to promote intellectual property rights. Like Bill Gates, WIPO regards IP law as an end unto itself. They refuse to acknowledge that IP law can be an impediment, and not an aid, to promoting creativity and culture.

Market Enclosures of the Commons

That's one reason why I find it useful to talk about the commons. It helps us pierce the dogma that has grown up around property rights and market discourse, and name the alternative kinds of value-creation that occur through social

⁶ Boing Boing web log, January 5, 2005, at http://www.boingboing.net/2005/01/05/bill_gates_free_cult.html.

⁷ Letter from 67 scientists, academics and others to WIPO Director General, Dr. Kamil Idris, July 7, 2003, available at <http://www.cptech.org/ip/wipo/kamil-idris-7july2003.txt>

communities. The commons, moreover, helps us describe a major pathology of our times, *the market enclosure of the commons*.

Governments throughout the world are conspiring with, or acquiescing in, the market's plunder of our common wealth. Companies are taking valuable resources *from* the commons – spectrum, natural resources, public lands, creative works and more – and converting them into private property. Once the cash value has been harvested, corporations tend to dump their wastes and social disruptions *back into* the commons, whereupon they declare, "It's *your* problem." Economists primly call these problems "market externalities."

To document this phenomenon, my colleagues and I at the Tomales Bay Institute recently produced the first annual report on The State of the Commons.⁸ The report is much like a corporate annual report to shareholders, but in this case we describe to commoners how our common wealth is being mismanaged, privatized and squandered.

The metaphor of enclosure draws upon British history, of course. The landed gentry decided they could profit quite handsomely by seizing huge tracts of shared meadows, orchards, forests and other land used by the common people. With enclosure, resources that had historically been managed by the community, through both formal and informal rules, were privatized and turned into commodities to be sold in the marketplace. In the research for *Silent Theft*, a book I published several

⁸ Friends of the Commons, *The State of the Commons, 2003/2004* (Point Reyes, CA: Friends of the Commons, 2003).

years ago, I came across a folk poem that colorfully describes what enclosure really means. It goes:

They hang the man and flog the woman
 Who steal the goose from off the common.
 But let the greater villain loose
 Who steals the common from the goose.

This is essentially what is happening to culture today. Our shared heritage is being enclosed for private market benefit. Instead of circulating freely within a creative community, culture is being locked up in strict property rights and converted into commodities. The vibrancy and value of culture are being flattened in the process. Culture becomes more homogeneous. Localism declines. Proprietary locks are put on more works, preventing their free and easy circulation and creative re-uses. Media concentration empowers corporate gatekeepers at the expense of everyone else, so that creative production is centralized and regimented for market sale.

The Disney Company may be the most prominent exemplar of this dynamic. As I describe in my new book, *Brand Name Bullies: The Quest to Own and Control Culture*, Disney has built its empire by appropriating dozens of folk stories and literary classics. This is fine as far as it goes, but Disney then uses its market power to supplant folk stories with its own copyrighted versions, which it aggressively defends through litigation. Worse, after taking so much from the public domain, Disney led the lobbying campaign in 1998 to persuade Congress to extend the term

of copyright protection for an additional twenty years. This bonanza essentially stole tens of thousands of cultural works from the American people.

Enclosure is an important concept because it allows us to name something that occurs when markets take control over culture. Ownership and control shifts from a community or the public at large, to private companies and wealthy individuals.

Why Develop the Commons Paradigm?

I am enthusiastic about the commons paradigm because it enables a new kind of dialogue that is not only political and polemical in the best sense, but humanistic and ecumenical. The commons is not a manifesto or ideology but rather a *flexible template* for talking about a wide variety of market enclosures and the rich productivity of social communities, especially online communities. To help showcase the positive and alarming developments on the commons, I recently started a new web portal and blog called OntheCommons.org.

Part of the challenge is to develop new legal and institutional mechanisms to protect the commons. Some of the notable existing models include the GPL (the General Public License for free software), public libraries, land conservancies, Creative Commons licenses, the Alaska Permanent Fund (which captures a percentage of state oil revenues for citizens). As a general rule, I have found that, what the corporation is to the market, the trust is to the commons. The point is to recognize collective rights, just as indigenous peoples do, and not just individuals rights.

I wish to stress that the commons is not simply a buzzword. It has a respected intellectual tradition. Professors Elinor Ostrom and Charlotte Hess at Indiana University are two leading scholars of the commons, especially those involving natural resources. Within the digital world, the commons has a number of insightful interpreters, including Professors Lawrence Lessig of Stanford University, Yochai Benkler of Yale Law School, James Boyle of Duke Law School, and Eben Moglen of Columbia Law School.

What really interests me about the commons is its practical, strategic value in making a new set of values heard in public policy discussions. My hope, indeed, is that the commons might be a useful framework in discussions about the UNESCO convention on cultural diversity. The commons can be useful here because it provides a new narrative that can explain the value of culture *apart from* its market valuations.

I must stress that the commons is not anti-market any more than environmentalism is anti-business. In each case, what is being sought is a more equitable balance between the market and the commons. In fact, I believe that markets and commons are complementary and synergistic. Both inter-penetrate each other and need each other.

This idea has become clear to me in the course of planning a conference at the Norman Lear Center at the USC Annenberg School. The conference is called "Ready to Share: Fashion and the Ownership of Creativity." We want to explore the fact that fashion is a huge, competitive global industry, yet *no one can own the creative design of clothing*. They are part of a large creative commons available to

everyone. Proprietary control is exercised through the trademarking of brand names and logos. The fashion markets absolutely depend upon an open design commons as the foundation for the vigor of private businesses.

This is true more generally. Businesses can only flourish if there is a commons (think roadways and sidewalks) that allow private property to be balanced against public need. Privatize the commons and you begin to stifle commerce, competition and innovation as well as social and civic needs. To defend the commons, then, is to recognize that human beings have collective needs and identities that the market simply cannot fulfill by itself.

I have a vision of the commons re-ordering our public mental maps, much as the meta-language of “the environment” did in the 1960s. The idea of “the environment,” recall, was a cultural invention. The air, water, soil and wildlife had always been there, of course. But they were not *conceptualized* in a coherent, unified way until Rachel Carson and others began to popularize the idea of “the environment.” As Duke law scholar James Boyle put it in a 1997 law review article, “Environmentalism for the Net,” bird watchers didn’t realize they might have something in common with bird hunters until “the environment” helped clarify their shared interests in protecting it.⁹

Once the idea of the environment took root, people could begin to make mental connections among diverse phenomena that had previously seemed unconnected. It turned out that dying birds were linked to household chemicals!

⁹ James Boyle, “A Politics of Intellectual Property: Environmentalism for the Net,” 47 *Duke Law Journal* 87 (1997).

Genetic mutations in humans were linked to industrial pollution. And so on. The language of the environment not only gave us an overarching narrative, it helped galvanize a political movement by providing a new, understandable story.

So today, the commons brings many attractive features to the table:

- ❑ It underscores the fact that the people own certain resources and must have the right and legal mechanisms to control them.
- ❑ It allows us to move beyond the dichotomy that we are all either sellers or consumers, when in fact we have other identities that are important to us.
- ❑ It brings into focus a wide variety of market abuses and puts them in a coherent conceptual framework.
- ❑ It is a positive vision that seizes the moral high ground; it is not just a reactive critique.

If the challenge in defending cultural diversity is how to “move into the mainstream,” I’d like to recommend that we develop the commons as a compelling and new grand narrative. Yes, we must talk about specific policy proposals for preserving culture. But it just may be that significant progress will first require us to develop a new story about why culture is valuable.

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