

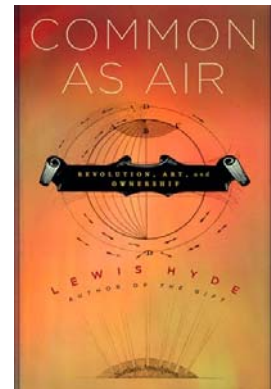
Lewis Hyde, **Common as Air: Revolution, Art, and Ownership**. New York: Farrar, Straus and Giroux, 2010, 306 pp. \$26.00 (hardcover).

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"The Congress shall have Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

~Article I, Section 8 of the U.S. Constitution

In *Common as Air*, Lewis Hyde takes a polymathic approach to the attitudes and infrastructures of "the commons," suggesting that our societal approach to copyright has lost its way. In so doing, we have used copyright to turn intellectual property from an engine of progress into a tactic to stifle innovation. Hyde traces the thread of copyright as a legal idea, created not just to enforce the rights of the author, but also to ensure the development of a vibrant public sphere in which ideas can be shared and built upon. Almost three centuries ago, the notion of copyright provided a limited term of ownership; over time, the protection was lengthened. Today, it allows for an increasingly permanent form of control over the fruits of intellectual labor. *Common as Air* argues that the original goal of copyright legislation—"To promote the Progress of Science and useful Arts"—has been lost beneath the increasingly lengthy periods for which ownership is assigned to creative work. Hyde's definition of this creative work includes both copyright and patents; he argues that all intellectual property stands on giants' shoulders for its composition, and that it must return to the public domain in order to pay this debt.



Hyde begins by exploring the rights and responsibilities of land ownership as legally constituted under English law, including the rights of common access to privately held land. Early legal and traditional governances over "the commons" included the rights of commoners to reclaim that which was wrongfully enclosed, through a periodic ritual that included the uprooting of unwarranted fences. Even outright ownership of land was circumscribed by enshrining duties to the community; the rights and protections offered by the community called forth accompanying responsibilities.

Like Hyde's groundbreaking *The Gift*, this volume examines the relationship between creative endeavor, community, and commodity. In *Common as Air*, Hyde locates creativity as a communal enterprise where authors rely on the work of their predecessors and comrades to develop their intellectual leaps. T. S. Eliot's remark that "Immature poets imitate; mature poets steal" is not a comment on the mastery of thieves, but a recognition that this mature theft is what allows for new, original combinations. Among his case studies, Hyde makes a brief nod toward the ample scholarship exploring the roots of Bob Dylan's enormous appropriations of existing folk music culture, both contemporary and centuries old. Through Dylan, he arrives at Rimbaud's critique of the self as a locus of individual creativity: "I is someone else" ("Je est un autre"). This "I," according to Hyde, pales in comparison to the heft of cultural

context when it comes to the creation of work: “No solitary imagination gives birth to song, any more than spruce alone gives birth to violin music” (p. 201). This is equally true in science, where researchers are often participants in larger efforts and depend on a history of discovery for their building blocks. Hyde’s description of battles between publicly and privately funded projects to map the human genome shows that even the knowledge created in describing the natural world is a target for ownership by private interests.

Hyde’s recurring focus on Ben Franklin’s profile emphasizes Franklin’s links to—and public indebtedness to—collaborators and peers in the community of researchers. Although Franklin explicitly offered a model of participation in the wider intellectual flows of public life, an ideology of American lone-wolf exceptionalism soon overtook this colonial ideal. Franklin’s notion of contribution to, and integration in, a wider world of ideas was replaced in 19th-century America by an Emersonian individualism that rejected the community model of knowledge creation in favor of heroic genius. Newton’s “shoulders of giants” were replaced by the giants themselves. In the century after his death, artistic renderings of Franklin systematically erased his supporting cast and framed Franklin as a lone electrical experimenter. This twist is part of a cultural move away from the notion of a “common self,” constructed and informed by those around us. The move toward a conception of the individual as the sole creative locus enabled a newly consolidated notion of ownership to surround creative production. This cultural shift, Hyde argues, has allowed a new enclosure movement to make inroads against the rights of free access to information that copyright is designed to protect. This enclosure movement has effectively limited the flow of knowledge into the public sphere by creating walls and limitations around work that was, itself, the product of collaborative enterprise and discourse with other creators, past and present. Hyde echoes James Boyle’s concerns about the dangers of circumscribing the “intangible commons.”¹

To counter this new enclosure movement, Hyde advances a moral case for defining production as collaborative production. By viewing creativity as the result of a set of dialogues with others, *Common as Air* argues that the individual rights deserved by authors should be weighed against the common uses of their work, and that authors should acknowledge their intellectual debts to the wider world by passing on the chance for others to build on their advances. The nature of public life is that a work must be released into the public to have value, and limitations on that release lower this public value. Expressing the public self in the realm of ideas is also an act of generosity that draws on and contributes to the common store of ideas in a society.

Hyde does not call for abandonment of intellectual property protection. Instead, he advocates a reversion to a Founders-based originalism that understands copyright as necessary to encourage innovation, but also as an artificial limitation on the free flow of knowledge. Hyde avoids offering a practical policy framework for enacting this normative ideal, instead aiming to restore an idea about ownership to the public discourse. He emphasizes the commercial prospects of “free software” and the ability of Creative Commons licenses to offer rights to the public to access and build upon the works of others. This is an admirable goal, and an effective rhetorical strategy (especially in the present political

¹ See Boyle, J. (2003). The second enclosure movement and the construction of the public domain. *Law and Contemporary Problems*, 66(33), 33–74.

moment), but it seems a slight retreat from the non-commercial utopian undercurrent of *The Gift*. Nonetheless, this return to the Framers' notions of *why* and *how* copyright should function would be properly revolutionary in the present age of enclosure, as it would restore to authors a primary element of creative production: duties.