

Arts and the Commons

Practices of Cultural Expropriation in the Age of the Network Superstructure

Carlos Escaño

«La propriété étant un droit inviolable et sacré, nul ne peut en être privé, si ce n'est lorsque la nécessité publique, légalement constatée, l'exige évidemment, et sous la condition d'une juste et préalable indemnité»

Property being an inviolable and sacred right, no one can be deprived of private usage, if it is not when the public necessity, legally noted, evidently requires it, and under the condition of a just and prior indemnity.

Article XVII, Declaration of the Rights of Man
and of the Citizen (French National
Constituent Assembly, 1789)

1. Prologue

4'33" is a musical work created by the composer John Cage in 1952. It consists of silence. Nothing but silence. Silence for four minutes and thirty-three seconds. In 2002, the band The Planets released their album *Classical Graffiti*. The thirteenth song on the album was called 'A One Minute Silence'. Exactly one minute of silence. It was reported that John Cage's estate had sued The Planets for plagiarism. They were accused of having plagiarised silence.

In the end, it was settled out of court, but the controversy caused a media storm which served to highlight the crucial issue of copyright: silence, one of the most beautiful common goods in existence, was at the centre of a potential lawsuit. What will be the next commonly-owned space to be closed off, commodified and appropriated?

2. Introduction: common artistic spaces *between* subjectivities

We excitedly and openly witness the infinite proliferation of the work of art in its reception, reading, expectation and symbolic reinterpretation. This idea was noted by Eco (1989) when he alluded to the great opportunities, in the range of cultural output, for making unforeseeable aesthetic discoveries. Similarly, Gadamer (1998) stated that all artworks acquire a certain richness that moves away from the univocal, and they thus take on an endlessly interpretive and multivocal character. This diversity of interpretation is multiplied by the sheer vastness of the community of agents who access, produce and reproduce the creative dialectic in the arts. There is thus a clear conclusion to be inferred from this, one which alludes to the arts as a form of thinking that is inscribed within this community, a form always somewhere between the singular and the plural, in a community that emerges and develops by moving from person to person (Pontbriand, 2013): commonality helps us

create a link with the arts, a practice that is itself located somewhere 'between' – between the individual and the collective, between the self and the experience of the world, between the self and the other. This connection is further perpetuated as the community develops, reinterprets, symbolises, produces and reproduces these aesthetic discoveries. The relationship in question, i.e. between the community and the arts, reminds us that Barthes (1986) claimed there is no time other than that of enunciation, and this, ultimately, supports the idea that everything is written in the here and now. And that, even if certain ideological structures seek to alter the times, the community-based relations and the modes of channelling aesthetic discourses, these are all contradicted in the act itself of aesthetic discovery and production, which – permanently and presently – crosses over all cultural generations, an act that comes from the conceiving and sharing of our knowledge, culture and artistic creation.

3. Network Superstructure and Empire

Paul de Man (1996) explained that, whether we know it or not, whether we like it or not, many of us are somewhat Hegelian when we try to think of historical periodisation as the development of an individual or collective consciousness. This periodising (therefore Hegelian) logic entails a collective categorisation of consciousness in the way it deals with the concept of the network superstructure. The allusion to Marxist theory – which is clearly indebted to the Hegelian school of thought –, as a way of justifying the concept, is inexcusable. In social production, certain relations are established, and they make up the economic structure – the infrastructure –, i.e. the foundation upon which a juridical and political superstructure is built: in other words, the mode of production of material life conditions the process of social, political and spiritual life (Marx, 1970). If we change this economic foundation, the superstructure built upon it could also be transformed: the juridical, political,

religious, artistic and philosophical forms – or rather, the ideological forms.

Nevertheless, assuming the existence of a superstructure means acknowledging a certain conceptual premise: the idea of ideology. As Juan Martín Prada (2001) notes, the concept of ideology still comes up in the works of authors such as Hall, Eagleton and Fraser, who continue to defend its relevance for the analysis of cultural and artistic output. In contrast, this concept is largely rejected by the theoreticians of difference, such as Deleuze, Guattari and Foucault, who inspired postmodern social theories. The concept of ideology itself is deemed typical of the decline in metanarratives as indicated by Lyotard (1984): the end of meta-storytelling, the end of history, the end of the subject. The end of ideologies.

The postmodernisation of the infrastructure conforms to new parameters that are discussed and expounded in socioeconomic theory from opposing ideological poles. As such, it is condemned within post-Marxist reflection and the approaches of new liberalism. As Hardt and Negri (2006) point out, the new system that emerged in the late 20th century is not only defined by the decline of the nation states, by the deregulation of the international markets and the end of antagonistic conflicts between states – the new paradigm is both a system and a hierarchy, a centralised set of rules and a vast production of legitimacy, spread far and wide around the world. A dynamic, systemic structure, the *Empire* – as Hardt and Negri call it – is formed, not only out of sheer force, but also out of the ability to present said force as a good at the service of justice and peace. We should not think of nation states as supreme, sovereign authorities, neither outside their borders, nor inside. Sovereignty has taken on a new form, made up of a series of national and supranational organisms, united by one single logic of power: the Empire. As Braudel (1977) has stressed, capitalism only triumphs when it becomes identified with the state, when it *is* the state.

Those theories which heralded the end of history and all its ideologies lose political ground when one of them actually reaches

hegemony. Fredric Jameson (1991) highlighted the meaning of postmodernism as its being the cultural reflection of a triumphant metanarrative. It has been proven that the state ideology and superstructure have become less prominent, and they do not adapt with the necessary political precision in order to suit the present globalised context. In their place, the concept of Empire has proven useful, as a dominant ideology, as well as a new superstructure: a network superstructure, which, as a comparable exertion of power, maintains certain important ideological apparatuses that allow for its own development and self-preservation. This exertion of power serves to perpetuate a particular cultural system.

The superstructure, that social layer that includes the legal-political and ideological authorities, now becomes a plural and transnational action, in the interests of the hegemony of the empire. This is a network superstructure, compound and diverse, more complex than the nation state. The network superstructure obeys the nature of the network society in which we live together.

4. Neoliberal hegemonic apparatuses: the appropriation of the common

Social and historical experience has shown us that, since the end of the 20th century, late capitalism, marked by globalisation, and neoliberal in nature, has constructed the ideology of the Empire, using strategies no longer exclusively controlled by states, and which determine our social space. Within this context, the concept of ideology is still useful for carrying out a reading of our post-digital society. From a Gramscian perspective, the superstructure and infrastructure have reciprocal influence on each other, and their perseverance can be ascribed to what Althusser (2014) called 'ideological apparatuses', which, in line with this Gramscian view, can be understood as hegemonic devices. There has been a transfer of power, from the state to the empire, and the apparatuses for the exertion

of power and the ensured reproduction of the material requirements for production have altered their own activity and complexity. The states' ideological apparatuses, such as schools, juridical and political apparatuses, information, as well as the cultural institutions, have all undergone an evolution in their modes, management and expansion, albeit with the same clear objective: to ensure the Empire's control over freedom, and the much-desired unification of the *res publica* and the *res privata*. The network superstructure groups together a combination of ideological apparatuses in order to achieve hegemony and keep on with the interminable action of merging the commons and the private spheres, until it is complete. Adapting Braudel's idea: capitalism only triumphs when it becomes identified with the commons, when the commons become private. Following Gruppi (1972), it can be inferred, from this complex development, that hegemony has achieved not only an institutional and economic political action, but it is also cultural, moral, and of a global, supra- and transnational worldview. Within this network superstructure it is worth highlighting the importance of those cultural approaches which, ultimately, obey political actions. To do so, we should consider exactly how different hegemonic apparatuses have been implemented, i.e. those which allow for the consolidation of this network superstructure.

4.1. 1st hegemonic apparatus: digital enclosures

From the 15th to the 19th century, the common lands in England were enclosed. These lands had previously been common to all, but they were transformed into private spaces, controlled by a single proprietor (Boyle, 2008). The feudal lords, legitimised by the 'Inclosure Acts' (legislation developed with the express purpose of expropriating lands, in the old spelling), claimed ownership of these lands – often resorting to violence – that had otherwise belonged to everybody, for communal use. These enclosures were a revolution of the rich against the poor, turning the social order

on its head, and destroying old rights and customs (Polanyi, 2001). This became known as the first enclosure movement. James Boyle (2008) establishes, by extrapolation, a direct link with today's post-digital world, where a second enclosure movement is in force: digital enclosures, a contemporary globalist strategy for the privatisation of knowledge and culture, as perpetrated in the digital context by its association with the copyright model, which in turn has its own international appropriation strategy. We can see how, today, a political and juridical space has been established which reinforces the privatisation of non-physical common goods, on behalf of corporations who fence off and enclose knowledge. That is, they favour contracts that turn intellectual output into an exclusive good, commodifying it, and laying out an entire structure of multilateral international agreements so that these 'communal digital lands' can be exploited, following artificial logics that are limiting and competitive. To speak of digital enclosures is to speak of the apparent need for intellectual property rights, as in laws such as ACTA in Europa, SOPA in the United States, or TRIPS agreements and treaties such as TTIP (Martínez, 2012). In the network society, the international legal framework supports and enforces the copyright model and the appropriationist activity of the Empire, with devastating effects that curb common cultural action, and where the digital context is its favoured field of action.

4.2. 2nd hegemonic apparatus: Han's digital panopticon

Bentham's panopticon, as an architectural device of imprisonment, is the embodiment of the disciplinary society of control. A penitentiary space, designed in the modern era so that all the prisoners are visible to the guards. Anybody who is aware of the fact they are being watched thus reproduces, of their own accord, the coercive actions of power, leading to a state where power works automatically, where the subjects modify their own behaviour (Foucault, 1977). The residents of today's panopticon, i.e. the digital

panopticon, communicate with each other intensely and they willingly expose themselves – that is, they actively participate in the construction of the panopticon (Han, 2017). Surveillance becomes a shameless, guilt-free act, since, according to Han, the inmates voluntarily make themselves visible, and they freely give out their own information, not out of coercion, but out of an internal need. This is an act of self-exploitation, but it comes with a feeling of freedom (Han, 2015; Zafra, 2017). The digital panopticon is crudely manifested in the ‘big data’ operations of the 4.0 industry, and the social networking services are the tip of the iceberg, which work with a two-sided form of control. On the one hand, the control exerted works better within a digital field that is hegemonised by the corporation of the Empire: Facebook, Instagram and Twitter filter out content, depending on certain political and cultural narratives. On the other hand, the very nature of the Internet is shrunk down: hypertext is constricted, and expressive and cultural freedom is limited to an enclosed space in the network.

The digital society of control makes widespread use of ‘freedom’, and ‘transparency’ is really a neoliberal device to ensure that individual freedom is manifested as capital freedom. The free individual is degraded to being a sex organ of capital: “[Capital] copulates with the Other of itself by way of individual freedom” (Han, 2015, p. 4). Self-exploitation in the guise of freedom, and willing internal action that is systematised and then spread on the network – this is all far more efficient than external coercion. Even so, with this hypothesis, Han does not acknowledge the fact that when the existence of a systemic network is pointed out, an artifact of external control is thus generated. The digital network was born as a hybrid agent, post-digital, made up of an algorithm and a network of subjects. It is a system that in itself facilitates a framework for organised internal coercion. Therefore, we can infer that it works as an external network that fosters internal coercion. It is an exogenic system that takes advantage of the individual’s endogenous psychological mechanisms. Informative, emotional and

communicative relations between peers are exposed to alienation. Digital communicative action is a new form of production which eliminates all distance in favour of speed (Han, 2015), leading to a context that paves the way for the commons to be turned into a commodified space.

4.3. 3rd hegemonic apparatus: software and ideological control

Software is a layer that covers all the areas of contemporary societies, and if we want to understand but also participate in the current methods of control, communication, representation, simulation, analysis, decision-making, memory, vision, writing and interaction, we must not overlook the role of software (Manovich, 2013): the functional elements of social media and mobile phones have today formed their own ecosystem, and software has become the world's interface. Within this interface, due attention should be paid to the programming of the social networking services themselves, as well as the programming of the media software for creating contemporary aesthetics and culture. On the one hand, there is the software developed by Adobe, Apple, Cowpland Research Laboratory and other corporations, for the generation of cultural production, and on the other hand there is the software that sustains and shapes social networks, like Facebook or TikTok, developed as exclusive products. In other words, great swathes of the entire worldwide cultural output depend on the programming of software that, in terms of usage and development, is by definition completely opaque and impenetrable, and cannot be reproduced or studied. This is an attack on transparency and the dissemination of knowledge as a common good, and it asserts blatant ideological control over such knowledge. It is impossible to view the algorithms that this software uses, and this is an advantage for the enactment of Han's panopticon-style control, where the external network of coercion is not visible.

5. Production, property and cultural commons in the network superstructure

“The production of experience, subjectivity, the production of community, of the affects or of concepts, of passion or sense, the production of desire, the production of meaning. . . everything is production. Nothing today can evade its being included in this process” (Brea, 2007, p. 35). The Empire system absorbs all human action: everything exists under the cloak of production. The act of producing itself has its value, carried out by a workforce who sustain the production of experience, community, concepts or emotions. Non-material work is the coming together and realisation of affective and intellectual work, of work that produces concepts and desires, as well as how they are to be negotiated (Brea, 2007).

A distinguishing feature of the production of non-material commodities regards the issue of ownership itself. Essentially, the production, reproduction and transmission of non-material goods, whether in the form of symbols, codes, signs, emotions or responsibilities, does not involve any act of dispossession from whoever produced it (Brea, 2007). The sharing of ideas, emotions and symbols is a natural act per se. The commons make their nest in this nature. These things exist in order to be given away, to be possessed and shared, and it must be accepted, responsibly and reciprocally, that they are intended for permanent (re)production. As such, the production of non-material goods is a natural feature of the commons, but forcing an artificial framework to be built around it leads to it becoming a terrain for lawsuits and debate around these goods' inherent propensity to reproduce. There is not a natural scarcity of ideas and information (Vaidhayanathan, 2001) – instead, artificial scarcity arises because of the legal and juridical system (of western intellectual property), regarding the creation of its products. This system has brought with it a globalist colonising process, where peripheral nations have been forced to import the western legal imaginary and copyright legislation, with the result being

that those forms of community-based knowledge – which do not fit into the copyright model – are not recognised, and hegemony is ceded to the political and cultural west (Martínez-Cabezudo, 2014). The intellectual property system is the fundamental ideological legitimisation of digital enclosure, and it works to safeguard the panopticon, serving as an ally in the development of exclusive software.

Here, in this context of production and property, is where the cultural aspect is subjected to a fundamental contradiction: culture is a territory with a fluctuating and diverse history of expression, of transience, of community-based experience in a space somewhere ‘between’, ever subjugated by an infrastructure and superstructure that control, reorganise and oppress its very nature. For this contradiction to be resolved, a reappraisal of the cultural commons is necessary, for the sake of protecting and revitalising its nature.

If we accept the didactic explanations of the P2P Foundation (Bauwens, Kostakis, Troncoso, & Utratel, 2017), the commons are to be understood as a form of social organisation, incorporated into the space of governance that has historically been seized by means of the institutional exercising of the concept of the State. We could also include here another supranational organisational dynamic which is determined by the international economic relations of the market – as embodied in the figure of the Empire – and these relations also serve as the organising agent of society, inasmuch as, depending on its degree of influence, it sets out the social and cultural relations between these states. Yochai Benkler (2003) points out the institutional categorisation which ensures that the concept of the commons remains oriented towards a governance of the use and provision of all those resources that belong to everybody. This backs up the idea that no individual person or hands can have exclusive control over their use and provision, and it proposes that those resources catalogued as common goods can and must be at the disposal of a community, based on clearly defined rules. In short, the concept of the commons “is a general term that refers to

a resource shared by a group of people” (Hess & Ostrom, 2007, p. 4). This categorisation is characterised by its diversity, elusiveness and breadth (Lafuente, 2007). That is, the commons are elusive because they are a benefit that we only really perceive when they are under threat, they are diverse because they can have many different modes of existence, and wide-reaching because they encompass a broad range of distinct natural, social and bodily goods.

5.1. Practices of cultural expropriation in the age of the network superstructure

In order to contextualise the practical forms of action that challenge the paradigmatic framework of cultural property, it is worth focusing on the idea of appropriation. The postmodern cultural emergence at the end of the 20th century led to the analysis of the practice of appropriation, which plays a prominent role inasmuch as it allows for the analysis of all forms of representation, not only the image or representational sign, but also all the cultural institutions and the history of art as instruments of power (Martín Prada, 2001). Martín Prada (2001), following Kuspit, indicates that the critical potential of appropriation is not present in most appropriationist practices, which have turned it into a language-based procedure. Those which do carry out a critical exercise go beyond the exposing of totalitarian social ideologies, and they call into question totalitarian artistic ideology, that is, the idea that art administers perception, with aesthetic and spiritual aims.

There are appropriationist dynamics that seek to reflect upon and act critically against the hegemonic framework of cultural ownership, focusing on the network superstructure - they could also be called practices of *cultural expropriation*. Thomas Ziehe (1991) uses the term, in a highly negative sense, to refer to the way in which the media colonises individuals’ ways of living and imaginaries. In the present article, we consider the concept in a more positive light, because it re-establishes equity and works towards emancipation. Regarding

public law, expropriation is understood as a transferral from private ownership to the state, as and when required for the social good. Under this perspective, and bearing in mind the ideological parameters and apparatuses of the network superstructure, the complexity of generating hegemony goes far beyond the sphere of the state. Taking care of public goods and issues is a responsibility of the commons, transcending the borders of the nation states, beyond their remits that are so curtailed by national partitions. Cultural expropriation therefore becomes an act of symbolic resistance, protection and warning, based on commonality: to return to common ownership that which has been snatched away. It is about understanding the idea of expropriation as a space for political demands, and as way of warning against hegemonic practices. Expropriation should be interpreted both in metaphorical and activist terms: to foster the construction of a collective imaginary which protects the commons by means of appropriationist practices. In turn, it influences those politically and socially articulated values that generate (counter-)hegemony, helping in the struggle to oppose those schemes, plotted by the neoliberal structure, in which the model of copyright and intellectual property is deployed as a colonising battering ram. This blunt force is used in the interests of propagating its juridical-legal strategy and, along with it, hyper-commodification. A work of expropriation that benefits the commons. Enforcing the copyright model involves a permanent work of enclosure, while expropriation seeks out those escape routes, oversights and practices that might help bring back into collective ownership those areas that have been alienated, taken away. These appropriationist - expropriating - techniques re-establish the *inalienable and sacred* right of the need for public and common goods.

There are forms of commons-style appropriationism on the Internet that reveal, more so than any other strategy, the so-called 'anthropological turn,' almost ethnographic, in current artistic creation, as noted by Martín Prada (2018). These strategies focus on the accumulation of materials, on collage, repetition, imitation, irony and parody, DJ-like actions, practices of collective creation, remixing,

remaking and tasks of archiving and selection/transformation. Broadly speaking, appropriationism has followed the methodological tradition that began with the concept of the ready-made in the early 20th century, or the practices of cutting, mounting and mixing by Hindemith in the 1920s, or by Schaffer in the mid-century. Now that they are immersed in the digital age, appropriationist dynamics have been further elaborated by names such as Sollfrank, Napier Koenig, Kutiman, Bard, Burks and Bookchin.

These actions and direct references inspire work that comes under an expropriationist perspective of the network superstructure, where a symbolic casuistry should be pointed out:

First of all, there is a very recent and clear example of expropriation, one which deals with the conservation and evolution of the ecosystem around the commons of digital art. In February 2020, Damien Riehl and Noah Rubin copyrighted 68.7 million melodies, which were subsequently returned to the public domain (via the platform archive.org). The melodies were generated based on basic combinations of musical notes, developed by an algorithm that operated at a rate of 300,000 combinations per second (Cole, 2020). Each year, tens of millions of songs are released globally, and since the combinations of notes are very limited, it is more and more likely that songs will coincide and use the same or very similar sequences. The ultimate aim was to protect artists from plagiarism lawsuits. It was an exercise in the protection of the commons, the protection of the basis of the musical universe.

Elsewhere, there is the practice of the parodic political remix. A good example is *Déjalo salir #8M #HuelgaFeminista* ('Let It Out #8th March #FeministStrike'), by Zemos98 and United Unknown. It is a satirical piece which plays around with the remake and the political remix, making use of the aesthetics of advertising (it remixes the famous Kenzo advert directed by Spike Jonze in 2016), in which there is an apparent criticism of the depoliticised workings of so-called liberal feminism. Along similar lines of political remixing is *El político neoliberal* ('The Neoliberal Politician', 2013) by Pony

Bravo, which condemns, by means of parody, the economic and hegemonic episteme by representing its world leaders. In these cases, the expropriating logic is seen in the construction of a commons-like political discourse, using an otherwise fenced-off aesthetic universe. They are a direct appropriation of the codes of audiovisual storytelling, as a way of developing political and social resistance and strategies that are based on the commons.



Fig. 1: Screenshot from *Déjalo salir #8M #HuelgaFeminista* ('Let It Out #8thMarch #FeministStrike'), by United Unknown and Zemos98. Link: <<https://www.youtube.com/watch?v=ZqhbCSMAtXU>>

In a similar way, as a strategy for deconstructing the discourse around the concept of the author (a linchpin for the idea of intellectual property), it is worth mentioning the line of action in the project *Stray Cinema* (2009-11), developed by Michelle Joy Lloyd, which used the discourse of open and collective remixing, where the different audiovisual products were constructed with shared footage that was available to all participants. This was a thought-provoking piece about the creation of the hegemonic cultural narrative in the network superstructure, achieved by showing other

possibilities for taking part in the cultural landscape and legacy by means of community-based methods and usages. Along these lines, it is also worth highlighting the exquisite remixing in the 'narrative movie mashups' by Da Silva, notably *Hell's Club* (2015, 2017). It is a masterclass in editing, with great attention to detail, which ironically reaches the same conclusion: appropriation has great potential for storytelling, for forming new narratives based on the existing cultural heritage. That is, to *return* something to collective use, something which in theory should not have to be returned, given that it was originally intended to be accessed and enjoyed by the spectator, as a universal right.

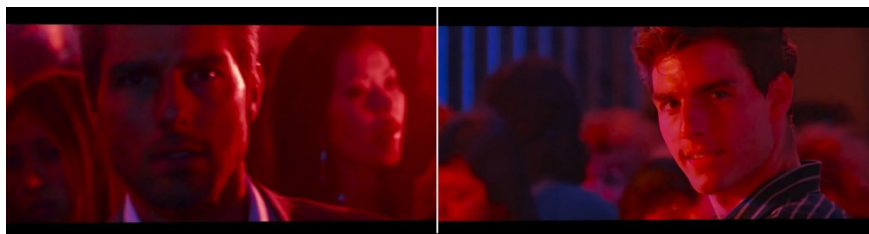


Fig. 2: Screenshots from *Hell's Club* (2015) by Antonio Maria Da Silva (AMDSFILMS). Link: <<https://www.youtube.com/watch?v=QajyNRnyPMs>>

Finally, there is a third casuistic mode that is worth highlighting, as shown in the performative action *Torture Classics* (2010) by Bernhard and Lizvlx, in which they present a selection of sixty pop hits that have been illegally copied for this art project. This compilation features a collection of songs used by the United States army to torture prisoners at the Guantanamo Bay detention camp. The piece invites us to reflect on the legality and supposed legitimacy of torture, as opposed to the illegal use of a copyright-protected production. This reflection addresses, bluntly, the absurdity of (digital) enclosures enforced by a network superstructure, and it warns us of the terrifying power of cultural policies, as well as social and globalist policies.

6. In conclusion

Contemporary artistic action, in its discourse of permanent reconstruction and variability, reflects a general trend in our culture towards processes of multivocality and multiple possibilities (Eco, 1992). This essential fact plants a contradiction at the very heart of the neoliberal model, which is devoted to perpetuating a one-way and excluding productive/political line. At the turn of the millennium, as this superstructure was garnering great strength, most postmodern political theory warned that the only effective route to true social change would be to bolster the lines of resistance against the existing forms of power, rather than seeking to overthrow it (Martín Prada, 2001). This situation could be understood as a kind of 'utopia of fear', alluding to and readapting Judith Shklar's thesis (1989) when, under the principle of negativity, she proposed that the ultimate goal should not be to set up desirable situations, but rather to prevent reprehensible ones. Of course, today's culture offers us a whole range of necessary post-digital forms of resistance, which allow for a reversal of the ownership dynamics that are implemented and reproduced with the hegemonic apparatuses of the network superstructure. They are forms of resistance configured as commons-like practices to alert to and point out how to generate (contra)hegemonic actions and thought. But the futility of devising systemic alternatives, and the firm belief that there is no heuristic possibility of coming up with other (common) worlds, all form part of the many effects propitiated by the same hegemonic apparatuses of the network superstructure. Therefore, aside from seeming to be spaces for resistance against hegemonic power relations, the forming of cultural utopias is still a social and historical imperative, an exercise in responsibility that involves all the agents involved in the cultural discourse, all those who reside somewhere *between* their artistic education, research and production. *Omnia sunt communia*; all things are held in common.

"Plus on est de fous, plus on rit."

(French refrain; "The more, the merrier.")

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