The Morality of Piracy in Academia

Peregrin Orien · Ashmoreth · 28 October 2026

Abstract

Institutional injustice explains academic piracy but does not absolve it. Piracy through shadow libraries remains wrong even where it is the lesser evil, and the greater evil is an arrangement in which those who write and those who read must both break the law for knowledge to reach its end. The historical university and the moral institutions that once governed the circulation of knowledge show that this impasse is neither inevitable nor adequately explained by the current political binary. Technology and piracy are compensations that allow society to live with the institution's failure instead of repairing it. The pirate who justifies himself, relieving the institution's failure while enlarging its prestige, becomes its *Shadow Client*[1]; and I propose what remains to him is confession.

Academic piracy occupies an uncomfortable moral position. When knowledge is locked behind paywalls, piracy can seem less like theft than a refusal to accept an unjust system, and the argument is compelling, since research depends on the circulation of knowledge, yet access to it is restricted by institutions that charge substantial fees, often without paying aught to the researchers whose work they publish. What is ultimately being sold—— then, as I too shall argue, is not access to knowledge, but access to the prestige these institutions confer upon it.

I. The Defense of Piracy

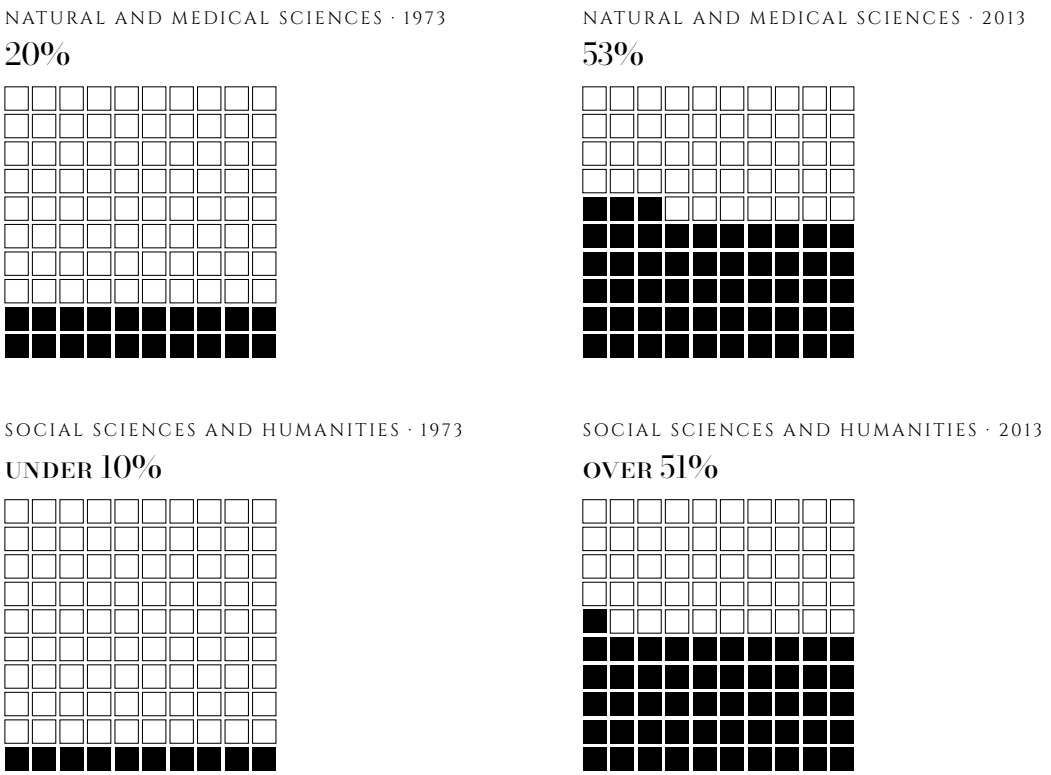
Contextualizing the defense. The ordinary defense of piracy begins from the economics of academic publishing. Papers are written by academics whose salaries are largely paid from public money, reviewed by other academics who are usually paid nothing for the work, and sold back to the universities and libraries that employ both[3] by a handful of firms, of which the largest, Elsevier,[4] reported in

1 Derived from *shadow library*, an online collection of copyrighted works distributed freely without publisher permission.

2 Larivière et al., "The Oligopoly of Academic Publishers in the Digital Era," 3, 5.

3 Buranyi, "Is the Staggeringly Profitable Business of Scientific Publishing Bad for Science?".

4 After its purchase of Pergamon's catalogue Elsevier "controlled more than 1,000 scientific journals, making it by far the largest scientific publisher in the world" Buranyi, "Is the Staggeringly Profitable Business of Scientific Publishing Bad for Science?".



Five publishers' share of all papers · each square is one percent; between 1973 and 2013 the five largest publishers went from about a fifth of all papers to 53 percent in the natural and medical sciences, and from under a tenth to over half in the social sciences and humanities[2]

its scientific, technical and medical division an adjusted operating margin of about 38 percent in 2025.[5] By 2013 five publishers already produced more than half of all papers in the natural and social sciences, a concentration which Larivière, Haustein and Mongeon describe as having increased steadily since the 1970s and most sharply since the advent of the digital era, while, in their words, "the value added, however, has not followed a similar trend".[6] In 2012 the library of Harvard, among the wealthiest in the world, told its own faculty that the cost of its journal subscriptions had become *"fiscally unsustainable"*.[7] Contrary to these stands Sci-Hub, which by March 2017 held 85.1 percent of all articles published in toll-access journals and offered, for such articles, greater coverage than the subscriptions of the University of Pennsylvania[8], and whose server logs, when *Science* examined six months of them in 2016, showed some twenty-eight million requests from nearly

5 RELX, *2025 Results Presentation*, slides 14–16; see also RELX, "Key Financial Data."

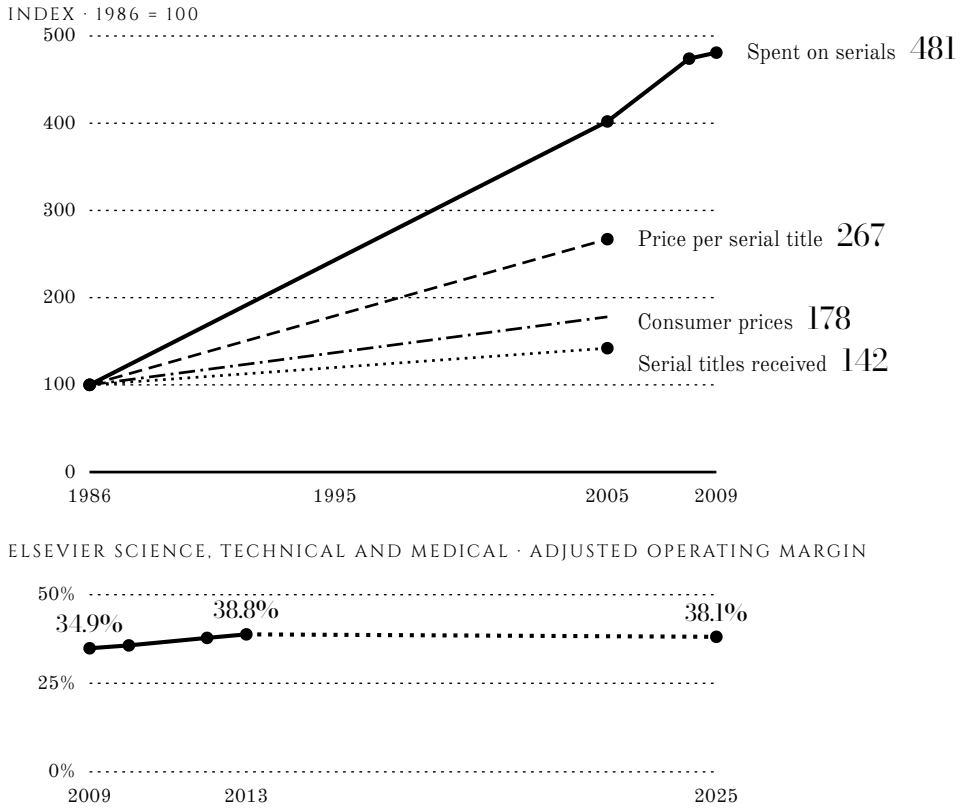
6 Larivière et al., "The Oligopoly of Academic Publishers in the Digital Era," 12; for 2013 see Larivière et al., "The Oligopoly of Academic Publishers in the Digital Era," 5.

7 Harvard University Faculty Advisory Council, "Faculty Advisory Council Memorandum on Journal Pricing."

8 Himmelstein et al., "Sci-Hub Provides Access to Nearly All Scholarly Literature," 1.

every country, about a quarter of them from countries of the OECD.[9]

Whence the defense concludes that each download is a small act of *justice* against an *unjust* enclosure of knowledge.



Price against value · from 1986 (= 100) the median research library came to spend nearly five times as much on journals, each title costing over two and a half times as much, while it received less than one and a half times as many titles and consumer prices did not double; below, Elsevier's margin on science, technology and medicine, held near 35–39 percent (2014–2024 not shown)[10][11]

Against Defense. With most of what the defense says contra institutions that be, I fully agree. The difficulty is how we are to understand, without justifying it, an act that responds to institutional injustice, a tension academic publishing makes particularly clear, though it extends to other forms of digital piracy. The injustice

9 Bohannon, "Who's Downloading Pirated Papers? Everyone," 508, 510; summary at Copyright Evidence Wiki, "Bohannon (2016)."

10 Association of Research Libraries, *ARL Statistics 2004–2005*, graph 2; Association of Research Libraries, *ARL Statistics 2007–2008*, graph 2; Association of Research Libraries, *ARL Statistics 2008–2009*, graph 2. ARL reports cumulative change only, so the chart joins the reported years with straight lines.

11 Reed Elsevier, *2010 Results Presentation*, slides 7–8, 57; Reed Elsevier, *2013 Results Presentation*, slides 8–10; RELX, *2025 Results Presentation*, slides 14–16. The margins for 2009–2012 are calculated from reported revenue and profit; the 2013 margin is as reported on the original allocation of costs (37.0 percent on the revised).

of these institutions does not, by itself, settle the morality of taking from them, and the defense commits a fallacy, usually unnoticed, by which a judgment about the institution—— that it encloses what was written in order to be read, and so has *failed* in its purpose—— is carried over into a judgment about the act of taking from it, as though the injustice of the institution that withholds were transferred, now as justice, to the act of piracy. To treat piracy as wholly justified is to let the wrongs of an institution determine the moral character of the act committed against it, and to condemn it without qualification is to ignore the conditions under which it occurs.

If theft is understood as the overriding of a claim, then piracy wrongs someone even when it deprives none of anything—— if it wrongs someone, then the pressure under which it is committed makes it a *lesser* evil (relative to) without making it any *less* an evil (in absolute magnitude thereof)—— if the pressure is real, regardless of what one holds on the wider question of property surrounding it, then the institutions have *failed*.

Theft Without Deprivation? It has been argued that a copied paper remains in its publisher's possession. In what sense, then, has anything been stolen? Jefferson expressed this objection in 1813—— "he who receives an idea from me, receives instruction himself without lessening mine".[12] If theft necessarily involves deprivation, piracy would seem to fall outside its definition. But this assumes that what makes theft wrong is the loss of property it causes, rather than the claim it overrides. A lost sale is a real loss, but where no sale was possible, as with a reader who cannot pay, the claim is overridden all the same. Jefferson's objection, moreover, concerns ideas, and the pirate takes not an idea but research, i.e. the published result of labor, funding, review and production, and it is the text, not the idea, that copyright reaches.[13]

Theft need not deprive a man of a possession to wrong him, since it can violate his right to decide what happens to something over which he holds a legitimate claim, and Jefferson writes that *society might grant such a claim over the profits of ideas to encourage the production of useful knowledge*[14], whence it follows that where that claim is legitimate, copying against its holder's will can be wrong even when no property is lost.

I will make this argument deliberately without assuming any belief in intellectual property, so as to avoid the common economic and political argument—— in which (1) some laissez-faire and libertarian writers reject intellectual property as a state-created monopoly, whereas (2) Marxist critics understand it

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12 Jefferson, "To Isaac McPherson, Monticello, August 13, 1813," 334.

13 "Although copyright does not apply to ideas, journals leverage the copyright covering an article's prose, figures, and typesetting to effectively paywall its knowledge" Himmelstein et al., "Sci-Hub Provides Access to Nearly All Scholarly Literature," 1.

14 Jefferson's claim is a conventional grant, which society may make or withhold "without claim or complaint from anybody", not a natural right Jefferson, "To Isaac McPherson, Monticello, August 13, 1813," 334.

through private appropriation, commodification and the control of socially produced knowledge[15] —— I do not intend to settle or invoke their dispute, and will rest instead on a principle prior to both, theft in its fuller moral sense, which cannot be reduced to the taking of a physical object, nor to the violation of a property right, nor even to deprivation as it is commonly understood, the loss of something one held. Moral language has long extended theft and its analogues to non-material things, from honor and labor to agency and trust[16], and law codifies this moral impulse, where copying of a trade secret or the assumption of another's identity is called theft and law punishes the theft of services as it punishes the theft of things[17], while economics counts services as output alongside goods, and the wages withheld from workers, an estimated fifteen billion dollars a year in the United States from minimum-wage violations alone, go by the name of *wage theft*[18], though the worker never held what he is said to have lost, his loss being only of what was owed to him (a claim). Here the two sides of the political dispute, and the disciplines of law, economics and the anthropology that so often stands

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15 For the libertarian case, Kinsella, for whom patents are "government-granted monopolies" Kinsella, "Against Intellectual Property," 7. and intellectual property "transfer[s] partial ownership of tangible property from its natural owner to innovators, inventors, and artists" Kinsella, "Against Intellectual Property," 8; and Boldrin and Levine, for whom the right of creators "to control how purchasers make use of an idea" is an "intellectual monopoly" Boldrin and Levine, *Against Intellectual Monopoly*, 8. For the Marxist case, Karakilic, for whom intellectual property rights are "directed politically towards the enclosure of commons" Karakilic, "Rethinking Intellectual Property Rights in the Cognitive and Digital Age of Capitalism," 1. For a Lockean defense, Moore, "A Lockean Theory of Intellectual Property Revisited," 1069.

16 Aquinas says one "is bound to restore a man his good name, no less than any other thing one has taken from him" Thomas Aquinas, *Summa Theologica*, II–II q. 73 a. 2, p. 293, and backbiting, "according to its genus", is "a more grievous sin than theft" Thomas Aquinas, *Summa Theologica*, II–II q. 73 a. 3, p. 295. Smith ranks among the "most sacred laws of justice", after those guarding a man's person and property, "those which guard what are called his personal rights, or what is due to him from the promises of others" Smith, *The Theory of Moral Sentiments*, II.ii.2.2; Kant holds that whoever makes a lying promise "wills to make use of another human being merely as means" Kant, *Groundwork for the Metaphysics of Morals*, Ak. 4:429–30, p. 47; and Marx observes that "conscience, honour, &c." can be "offered for sale by their holders" Marx, *Capital*, chap. 3, p. 115. The law, too, treats a breach of trust as a taking, "fraud akin to embezzlement" *United States v. O'Hagan*, 654. On the inseparability of economic and moral obligation, see Graeber, "On the Moral Grounds of Economic Relations," 65. and anthropology's "refusal to segregate the moral from the material" Peebles, "The Anthropology of Credit and Debt," 225; both are cited for this principle only, not for their view of gift exchange and pre-capitalist societies.

17 Economic Espionage Act of 1996, which reaches whoever "without authorization copies, duplicates" a trade secret (§ 1832(a)(2)) 18 U.S.C. § 1832, Theft of Trade Secrets, 444; Identity Theft and Assumption Deterrence Act of 1998, Pub. L. 105-318, which added § 1028(a)(7) 18 U.S.C. § 1028, Fraud and Related Activity in Connection with Identification Documents, Authentication Features, and Information, 308, 311; the *Model Penal Code* defines "obtain", for the whole article on theft, "in relation to property" and "in relation to labor or service" American Law Institute, *Model Penal Code*, sec. 223.0(5). In each, what the law protects is the victim's claim to its exclusive use.

18 On services as output, see European Commission et al., *System of National Accounts 2008*, para. 6.10, 6.17, p. 96; on the theft of services, American Law Institute, *Model Penal Code*, sec. 223.0(5); minimum-wage violations are "one form of wage theft" Cooper and Kroeger, *Employers Steal Billions from Workers' Paychecks Each Year*, 1, estimated at "over $15 billion annually" by extrapolation from ten states that together account for 53 percent of employment in the United States Cooper and Kroeger, *Employers Steal Billions from Workers' Paychecks Each Year*, 9.

against each other, agree, as they reckon theft by the claim it overrides—— Adam Smith called the property every man has in his own *labor "the original foundation of all other property"* and *"the most sacred and inviolable"*, Robert Nozick held labor so far owned that *"taxation of earnings from labor is on a par with forced labor"*, and Marx built his critique of capital on what he called *"the theft of alien labour time, on which the present wealth is based"*[19], a theft he found in an exchange which is, by his own account, *"by no means an injury to the seller"*, since the worker is paid the full value of his labor-power and loses nothing he held, so that the theft Marx condemns is a theft without deprivation.[20] Nor does the defender of the market reckon otherwise, since interest and rent are owed to the lender and the landlord not for anything taken from their hands, but for the claim each holds on what his capital or his land will yield, *"present goods"* being, in Böhm-Bawerk's phrase, *"as a rule, worth more than future goods of like kind and number"*[21], and capital spent upon the making of knowledge, in its labor, in the risk of its failure and in the waiting for its return, holds the same claim on what it yields as capital spent upon anything else. The libertarian who grants a claim on capital's yield must then explain why capital spent on research holds none, and the Marxist who condemns the taking of surplus labor must explain why labor spent on knowledge alone may be taken—— only Kinsella escapes, by denying that labor can be owned at all.[22]

Those who confine theft to the taking of physical things, so as to acquit the copying of ideas, thus contradict themselves and the broader view is not a moral nicety but a demonstrable fact of how people reckon what is owed to one another. Whether knowledge ought to be privately owned is distinct from whether overriding another's claim thereto constitutes a moral wrong, and whether publishers exercise their claim justly—— in terms of their prices, exploitation or their restrictions—— is a distinct question again, and an important one (see § II). The moral judgment of piracy, as a lesser evil that remains an evil, therefore stands whatever one believes about property, and no theory of property, whether it calls copyright a legitimate claim, a monopoly granted by the state or an expropriation by capital, can by itself turn the act into a good. Nor does the publisher's own wrong, however great, justify piracy. Abusing a right is a separate wrong that requires its own remedy, and pirating the publisher's paper is not one of them. Reading a pirated paper in private is not the act of revolution its defenders claim,

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19 Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, I.x.c.12, 1:138; Nozick, *Anarchy, State, and Utopia*, 169; Marx, *Grundrisse*, 705. Nozick concerns taxation, not theft, and is cited for the ownership of labor it presupposes.

20 The excess of the value labor-power creates over its own price is "without doubt, a piece of good luck for the buyer, but by no means an injury to the seller" Marx, *Capital*, chap. 7, sec. 2, p. 216.

21 Böhm-Bawerk, *The Positive Theory of Capital*, bk. V, chap. 1, p. 237. The Austrian school justifies interest by a claim on future yield rather than present loss. See also Kinsella, "Against Intellectual Property," 1 n. *.

22 Kinsella, consistently with his own premises, holds that "strictly speaking, labor cannot be owned" Kinsella, "Against Intellectual Property," 27 n. 73.

because it leaves the publisher's power unchanged if not stronger (see § III).

It is pleaded, too, that the publisher first stole the paper from its author, so that to copy it is only to recover stolen goods. But the author transfers his copyright by consent, in exchange for the journal's certification and the standing it brings,[23] and other venues remain open to him; that he consents under an administration which judges him by where he publishes (see § II) makes the bargain unfair, but not a theft, since he receives what he bargained for. Its unfairness falls less on the author than on the public, which pays for the same research more than once, and on a society kept from knowledge it has funded. The publisher's claim is therefore no stolen good, and the pirate who overrides it does not recover a theft but commits one.

Nor is all piracy morally equivalent. Taking from an independent author or small developer who depends on sales is more clearly wrongful, since it takes the bread of the one who made the work. Taking from an institution whose restrictions unjustly obstruct access may, by contrast, constitute a lesser evil—— the act remains wrong—— just less wrong.

Calling piracy a lesser evil describes its relation to the greater injustice under which it occurs—— it subtracts nothing from the wrong involved in the act itself. The common mistake is to treat morality as a calculation in which the good secured by an act cancels its wrong, until what was wrong becomes acceptable, or even good. The strongest form of this argument is necessity, which moral and legal tradition alike admit—— e.g. Aquinas held that where need is manifest and urgent and admits no other remedy, all things become common,[24] and the later moralists confined this to extreme necessity, as modern law excuses only an act that avoids a greater harm than the one it commits.[25] Yet access to an academic paper, however important to a life of study, seldom meets either condition—— even the physician seldom needs tonight the paper behind a paywall, since what saves a life is established knowledge, lawfully at hand, and to stake it on the latest experimental design would be nearer malpractice than medicine.

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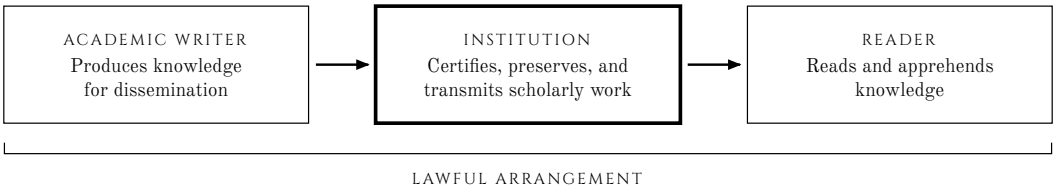
23 Most academics "willingly sign the copyright transfer forms that have been required by many journal publishers since at least the 1990s", though to publish outside the established journals "would still take significant moral courage" and "may be seen as a career risk" Fyfe et al., *Untangling Academic Publishing*, 16.

24 Thomas Aquinas, *Summa Theologica*, II–II q. 66 a. 7, pp. 232–233.

25 The later Catholic moralists confined Aquinas's principle to *extreme (life threatening) necessity*: Liguori rejects as less probable the opinion that grave necessity suffices and cites Innocent XI's condemned proposition 36, "Permissum est furari, non solum in extrema necessitate, sed etiam in gravi" Liguori, *Theologia Moralis*, vol. 1, bk. III, tract. 5, nn. 520, 1:500; and the *Catechism*, which limits it to "immediate, essential needs (food, shelter, clothing ...)" Catholic Church, *Catechism of the Catholic Church*, sec. 2408. Secular law draws a like line, admitting necessity only where "the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law" American Law Institute, *Model Penal Code*, sec. 3.02(1)(a).

II. ON FAILURE OF OUR INSTITUTIONS

The Fracture. Knowledge has a natural *end*[26], which is its purpose——*i.e. dissemination by those who produce it and its apprehension by those who seek it*, and a scholarly institution exists so that both may be accomplished within *lawful* arrangement beneficial to both——



In present academic publishing both ends are met outside the law. Academics routinely post their own papers in breach of the agreements they signed with publishers,[27] since they receive naught from the sale of the published version and their interest is in being read for both moral (dissemination of research) and socioeconomic reasons (prestige)[28]—— whereas students and researchers pirate the published versions of those papers, for the lawful route to them runs through subscriptions and affiliations they often do not have.[29] Reviewers, for their part, work without pay for the journal, and their time in 2020 has been estimated at over 100 million hours, worth more than $1.5 billion for reviewers based in the United States alone.[30]

When the creators of knowledge and the seekers of knowledge must both operate outside the law to achieve the natural end of knowledge, the institution itself is objectively fractured, and ***objectively***, since the fracture is visible in the conduct of every party in the arrangement and does not depend on opinion but reality of present situation. It is an institution that loves no one, serving neither the one who writes nor the one who reads, and treating both alike as sources of revenue.

What the Publisher Sells. Aileen Fyfe and her colleagues trace how scholarly communication, largely non-commercial until the Second World War, passed

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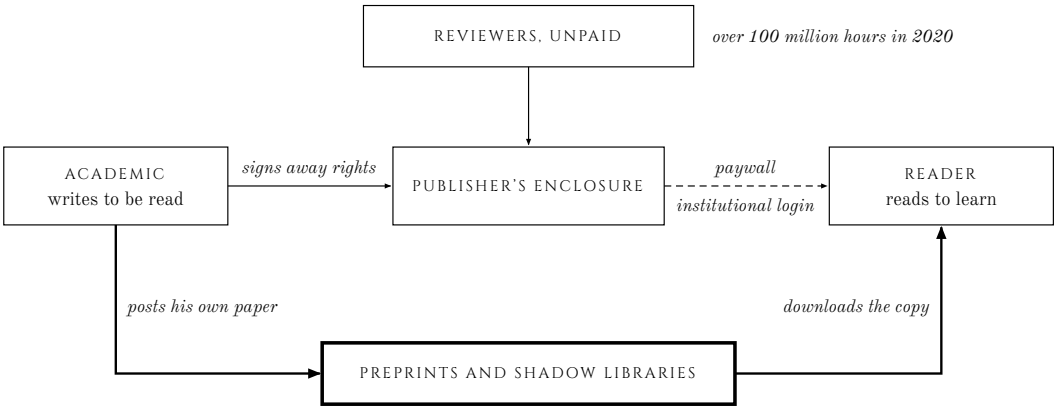
26 End in the sense of *telos*, the purpose for which a thing exists.

27 Fyfe et al., *Untangling Academic Publishing*, 16; "green open access to toll access articles via licit services ... remains quite limited" Himmelstein et al., "Sci-Hub Provides Access to Nearly All Scholarly Literature," 1. Publishers "have a track record of litigation with regard to articles outside of their paywalls", including suits against ResearchGate Grossmann and Brembs, "Current Market Rates for Scholarly Publishing Services," 9, citing refs. 38–40.

28 Here moral and socioeconomic incentives already coincide, see § IV.

29 Scholarly access remains concentrated in institutions (universities, medical centers), often excluding smaller and developing-world institutions Himmelstein et al., "Sci-Hub Provides Access to Nearly All Scholarly Literature," 1; see Bohannon's Tehran doctoral student Bohannon, "Who's Downloading Pirated Papers? Everyone," 508.

30 Aczel et al., "A Billion-Dollar Donation," 1.



The Fracture

after 1945 to commercial firms, and how "control of the measures of academic prestige—— starting with the management of peer review, and extending to the development of metrics—— has been silently transferred from communities of academic scholars to publishing organisations".[31] Larivière, Haustein and Mongeon observe that in the electronic world typesetting, printing and distribution are easily performed or no longer necessary, and that what keeps researchers dependent on the publishers is "one essentially symbolic function of publishers, which is to allocate academic capital".[32] In many journals this task has been relegated to academic as well—— formatting a manuscript to a journal's template, fixing its figures and bringing its bibliography into the house style can cost a researcher days of tedious work unless the research was fully planned from the start—— thus the labor has not fully disappeared so much as changed hands, since authors in many fields now submit their manuscripts already set in the journal's own template[33], so that the service which once justified the publisher is now performed for it by the author.

A comparison, moreover, of some twelve thousand papers posted to arXiv, chiefly in physics, mathematics and computer science, with their published versions found that the "vast majority of final published papers are largely indistinguishable from their pre-print versions",[34] and I would expect the humanities to differ little.

What a university buys from a publisher, then, is chiefly the name of the

31 Fyfe et al., *Untangling Academic Publishing*, 4–14; the quotation at 13.

32 Larivière et al., "The Oligopoly of Academic Publishers in the Digital Era," 12–13.

33 Grossmann and Brembs price copy-editing, typesetting, and figure/table formatting as publisher services Grossmann and Brembs, "Current Market Rates for Scholarly Publishing Services," 3. In my own observation there is increasing prevalence of journal-formatted manuscripts across many prestigious journals.

34 Klein et al., "Comparing Published Scientific Journal Articles to Their Pre-Print Versions," 2–4. The comparison covered 12,202 papers posted to arXiv and their published versions, with a second corpus from bioRxiv, measuring the similarity of titles, abstracts and body text.

journal,[35] because an academic administration which over the last half-century has grown faster than its faculty[36] judges *scholars* by where they *publish*,[37] the rank of a journal is legible to someone who does not share in the *scholarship* it ranks—— i.e. an administrator with no training in a scholar's field can still judge the quality of his scholarship by the rank of the journals he publishes in—— and so the university must subscribe, at whatever price is asked, to the journals by which its own members are judged.[38] That price, which produces the margin, is charged for papers the publisher neither wrote nor reviewed and which arrive largely edited and typeset, while the services that remain have been priced at about 400 dollars for a representative article,[39] which can be reproduced without any serious cost.[40] The older doctrine of the just price held a price justified when it answers to the labor and risk of the seller and is agreed by a buyer free to go elsewhere,[41] and *a price charged to a typical university, for labor that is mostly the buyer's own, to a buyer who cannot go elsewhere, meets neither condition.*

The Guild of Masters. The fracture is not a problem awaiting a solution no one has found, since qualification, books and the copies of texts were once governed by the *community of learning* itself—— a master licensed at one *studium generale*

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35 The profits of commercial journals "are simply rents that they can collect because of their position as a focal point in a game of coordination" Bergstrom, "Free Labor for Costly Journals?," 12, and "all they own is the journal name" Bergstrom, "Free Labor for Costly Journals?," 18.

36 Ginsberg, *The Fall of the Faculty*, 24–25, 33.

37 "Journal rank guides the appointment and promotion policies of research institutions" Brembs et al., "Deep Impact," 7; in Spain a minimum number of research assessments is required "for securing tenure" Hicks, "Performance-Based University Research Funding Systems," 258.

38 "Since each article is unique, libraries cannot substitute one journal subscription for another without depriving their users of potentially crucial access" Himmelstein et al., "Sci-Hub Provides Access to Nearly All Scholarly Literature," 1; publishers "believe that the demand for their journals is very price inelastic and they are eager to charge what the market will bear" Bergstrom, "Free Labor for Costly Journals?," 18.

39 "The publication costs for a representative scholarly article today come to lie at around US$400" Grossmann and Brembs, "Current Market Rates for Scholarly Publishing Services," 1.

40 Scholarly publications are "information goods with high fixed and low variable costs" Larivière et al., "The Oligopoly of Academic Publishers in the Digital Era," 11; even in print, marginal subscriber costs were "about $.02 per subscriber per page" Bergstrom, "Free Labor for Costly Journals?," 6; and digital products can be "reproduced, and delivered virtually at zero marginal cost" Karakilic, "Rethinking Intellectual Property Rights in the Cognitive and Digital Age of Capitalism," 4.

41 The doctrine of the just price comes from Aristotle Aristotle, *The Nicomachean Ethics*, V.5, p. 119. and Aquinas Thomas Aquinas, *Summa Theologica*, II–II q. 77 a. 1, p. 317. The test of the seller's labor and risk belongs to Duns Scotus, "quod lucrum correspondeat labori, industriae et periculis" Duns Scotus, *Opera Omnia, Vol. 18*, Ordinatio IV d. 15 q. 2, p. 317. (misprinted 117 on the page); and condemnation of monopoly prices comes from the school of Salamanca, as in Molina, "Monopoliis quousque emptio, & venditio illicita, aut iniusta, reddatur" Molina, *De iustitia et iure*, disp. 345.

could teach at any other[42], membership opened libraries held in common[43], and copies were rented at prices the university fixed.[44] The medieval university was a guild of masters and scholars[45], one of the many institutions that once stood between the sovereign and the individual[46], of the kind Ostrom found missing from every account that frames the government of shared goods as a choice between the state and private property.[47] It kept its freedom by its capacity to migrate[48]—— when the queen's sergeants killed students in 1229, the masters of Paris left the city for two years and returned only under a papal charter confirming their right to govern themselves[49]—— and by the privileges of a Church[50] whose power was subsidiary, exercised from outside the kingdom, whereas the power of the modern *sovereign* state is centralized and exercised from within. The medieval university exemplified the alternative: an institution combining supra-sovereign autonomy with subsidiarity to the community, thus preserving both institutional

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42 By the thirteenth century, studium generale denoted what would become a university; the licentia (ius) ubique docendi entitled its holder *"to teach throughout Christendom"* Verger, "Patterns," 36. Gregory IX extended this right to Toulouse in 1233, and Nicholas IV recognized it for Montpellier (1289), Bologna (1291), and Paris (1292) Nardi, "Relations with Authority," 89, 95. Recognition remained uneven: Salamanca's 1255 license excluded Paris and Bologna, while Oxford never obtained it Nardi, "Relations with Authority," 93, 95.

43 The Sorbonne library was "accessible par leur entremise aux maîtres et étudiants de l'université de Paris (après 1290)" Buchholzer, "Usages et usagers des bibliothèques au Moyen Âge," sec. tion "La bibliothèque du collège de la Sorbonne."; the preface of the Sorbonne subject index (c. 1321–1338) speaks of "la bibliothèque commune ... offerts à l'étude de tous" Jullien de Pommerol and Vieillard, *Le registre des prêts de la bibliothèque du collège de la Sorbonne (1402–1536)*, 12–13, quoted in Buchholzer, "Usages et usagers des bibliothèques au Moyen Âge," annex.

44 Ray, "The Pecia System and Its Use in the Cultural Milieu of Paris, c1250–1330," 21–24; on university jurisdiction over the book trade, Rouse and Rouse, "University Jurisdiction over the Book Trade," 73–97, cited in Ray, "The Pecia System and Its Use in the Cultural Milieu of Paris, c1250–1330," 22 n. 33.

45 The term *universitas* "is drawn from the term for many kinds of cooperative associations" and had to be specified as *universitas magistrorum et scholarium* or *universitas studii* Rüegg, "Themes," 8.

46 The university was among the "corporate entities of the church (abbeys, monasteries, universities, and orders)" structured by its horizontal constitution North et al., *Violence and Social Orders*, 65, in whose corporate arrangements "the seeds of an elite organization independent of the state are visible" North et al., *Violence and Social Orders*, 67, the beginning of the "perpetually lived organizations", "whose existence is independent of the lives of their members", on which open societies rest North et al., *Violence and Social Orders*, 23.

47 Ostrom, *Governing the Commons*, 1.

48 Verger, "Patterns," 53.

49 *Paris, 1229.* After a tavern brawl at Saint-Marcel the queen, Blanche of Castile, sent the provost and his sergeants, who killed students who had taken no part in it; the masters suspended teaching and dispersed for two years, "from Reims to Angers, from Orléans to Toulouse, and also abroad, to England, Italy and Spain", until the conflict was settled by Gregory IX's bull *Parens scientiarum* (13 April 1231) Gorochov, "The Great Dispersion of the University of Paris and the Rise of European Universities (1229–1231)," 100–101, 104.

50 In 1252 Innocent IV declared the masters and scholars of Siena "completely immune from taxes and forced labour (*servitia, tallia, collecta*, and *angariae*) levied on their person or property by the city of Siena", and in the *studia* he founded he provided that teachers and students should enjoy "the same privileges, indulgences, freedoms, and immunities as their colleagues in the *studia generalia*" Nardi, "Relations with Authority," 90–91; the privileges of the *universitates*, "exemption from taxes, dues, or 'reprisals'", rested on regulations "established long ago, predominantly by the church" Nardi, "Relations with Authority," 97.

independence and local accountability, irrespective of where authority resided.[51]

That the guild was abused gave no sovereign, whether a king or the republic (or its tyrants) that succeeded him, the right to take it into his own hands and call it protection, since to legalize an abuse does not make it good, yet the state did so, with a theory that "with few exceptions supports state authority over any guild-like group"[52], so that the freedom it now grants the university is conferred from above and withdrawn from above.[53] This was not always the case, and need not remain so.[54]

Yet the modern state seldom needs the crude abuse of a purge, since it governs the university more often through the law it writes and the value (money) it attaches to that law, and it is by these, directly and indirectly, that the managerial university and the publisher's enclosure were made. Directly, the publisher's power rests on a monopoly the state confers and enforces, since copyright, assigned by the author as a condition of publication, gives each journal the only lawful copies of what it prints, so that no journal is a substitute for another and the library that needs a paper must buy it from the one seller who holds it.[55] Indirectly, the state

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51 Subsidiarity, named by Pius XI in *Quadragesimo anno* (1931), §§ 79–80, the "principle of subsidiary function" (*subsidiarii officii principio*) Pius XI, "Quadragesimo anno," 203, and codified by the EU to restrict Union action to what Member States cannot sufficiently achieve themselves Consolidated Version of the Treaty on European Union, art. 5(3), p. 18, has older roots in the overlapping jurisdictions of medieval Europe, in the "dual nature of Christian sovereignty" divided between pope and emperor Whalen, *The Two Powers*, 1–2. and in the independence of towns, dioceses and guilds. Its substance runs through Althusius's associational commonwealth Althusius, *Politica methodice digesta*, chap. 9, p. 114, Tocqueville's associations Tocqueville, *Democracy in America, Part the Second*, pt. 2, ch. 5, p. 114. and Ostrom's polycentric governance Ostrom, *Governing the Commons*, 101, 133, against Bodin's absolute and perpetual sovereignty Bodin, *Les six livres de la République*, I.8, p. 89, Hobbes's hostility to subordinate commonwealths Hobbes, *Leviathan*, chap. 29, p. 174. and Rousseau's rejection of partial associations Rousseau, *Du contrat social*, II.3, p. 45, and Tocqueville traced centralization from the Old Regime through the Revolution Tocqueville, *L'Ancien Régime et la Révolution*, bk. II, chap. 2.

52 Black, *Guilds and Civil Society in European Political Thought from the Twelfth Century to the Present*, 27; and on the turn of learned thought towards the state from the Renaissance onwards, Black, *Guilds and Civil Society in European Political Thought from the Twelfth Century to the Present*, 105.

53 On the Soviet suppression of genetics, confirmed in August 1948, see Borinskaya et al., "Lysenkoism Against Genetics," 1; on the German civil service law of April 1933, which affected "around 15 percent of all professors and lecturers", Deutsche Forschungsgemeinschaft, "How Research and Funding Were 'Aryanised.'"; and on the 1950s, when "more than a hundred people were dismissed or threatened with dismissal for political reasons" and "the academy, an institution ostensibly dedicated to intellectual freedom, collaborated in curtailing that freedom" under pressure from outside, so that the state acted through the university it governed, Schrecker, *No Ivory Tower*, 10–11, 44.

54 Liberty, in Acemoglu and Robinson's account, lasts only where the state "can itself be shackled by common people, by norms, and by institutions—in short by society" Acemoglu and Robinson, *The Narrow Corridor*, 27, a balance that is "always a work in progress" Acemoglu and Robinson, *The Narrow Corridor*, 28. and "fragile and can easily break if society ceases to be vigilant" Acemoglu and Robinson, *The Narrow Corridor*, 67.

55 The "Ingelfinger law" against submitting a manuscript to more than one journal "is still a universal rule in academic journal publishing, often enforced by copyright transfer agreements. Hence, each journal has the monopoly on the scientific content of papers it publishes: paper A published in journal Y is not an alternative to paper B published in journal Z" Larivière et al., "The Oligopoly of Academic Publishers in the Digital Era," 12; on copyright as the paywall, Himmelstein et al., "Sci-Hub Provides Access to Nearly All Scholarly Literature,"

made the rank of a journal the currency of the university, since from the British Research Selectivity Exercise of 1986 onwards governments have allocated research funding by assessing what universities publish, and such assessments matter less for the money they distribute than for the competition for prestige they set in motion.[56] In India the academic performance indicators of the University Grants Commission, introduced in 2010, made the number of a teacher's publications a condition of his appointment and promotion, and journals that publish for a fee grew so fast that more than 88 percent of the unindexed journals on the Commission's own approved list failed minimum standards of quality.[57] Withal, in China universities have paid cash rewards of up to 165,000 dollars for a single paper in an indexed journal.[58] In America the compliance federal regulation demands of universities, some 27 billion dollars a year, between 3 and 11 percent of what they spend apart from the hospitals many of them run,[59] must be staffed by the very administrators whose growth outran that of the faculty,[60] and the burden is heavier than this estimate, which counts only what federal rules require, since faculty who hold federal grants report spending 44.3 percent of their research time on administrative tasks.[61] An administration once installed to meet the state's demands grows, as Ginsberg argues, by its own interest beyond them, which in part explains why, between 1975 and 2005, administrators at American colleges and universities grew by 85 percent and other professional staff by 240 percent while the faculty grew by about half, and why administrative spending in constant dollars had already risen, between 1947 and 1995, by 235 percent against 128 percent

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1; on the transfer forms, Fyfe et al., *Untangling Academic Publishing*, 16. On the state's enforcement, see n. 84.

56 "It is the competition for prestige created by a PRSF that creates powerful incentives" Hicks, "Performance-Based University Research Funding Systems," 251; the British exercise was introduced "with the explicit goal of increasing selectivity in the allocation of public resources" Geuna and Piolatto, "Research Assessment in the UK and Italy," 260, 263.

57 The study examined 1,009 journals of the list's "university source" component (from a random sample of 1,336) that were indexed in neither Scopus nor Web of Science, found that "about 88.9% ... did not satisfy the minimal requirements", and attributed the growth of such journals chiefly to the Commission's guidelines of 2010, which introduced the academic performance indicator, and its regulations of 2013, which required published papers before a doctoral thesis could be submitted Patwardhan et al., "A Critical Analysis of the 'UGC-Approved List of Journals,'" 1300.

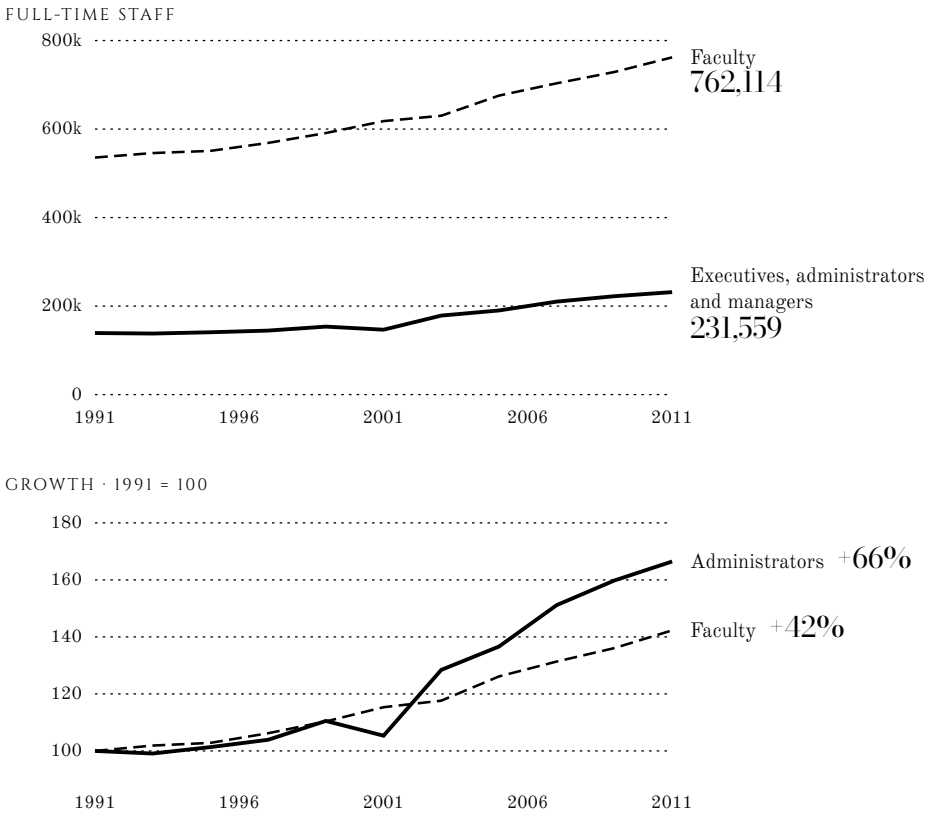
58 The survey covers "168 university documents ... at 100 Chinese universities", with rewards starting at 30 dollars Quan et al., "Publish or Impoverish," 2.

59 In the Boston Consulting Group study commissioned by Vanderbilt University, "regulatory compliance represents 3 to 11 percent of higher education institutions' nonhospital operating expenses", and the findings, "extrapolated to the entire U.S. higher education sector, ... resulted in an overall annual compliance estimate of $27 billion" *Vanderbilt News*, "Study Estimates Cost of Regulatory Compliance at 13 Colleges and Universities." For Vanderbilt alone, about $146 million, or 11 percent of its non-hospital operating expenditures, see Vanderbilt University, *Fact Sheet*.

60 Ginsberg, *The Fall of the Faculty*, 24–25.

61 Principal investigators estimated that "an average of 44.3% of their research time associated with federally-funded projects was spent on meeting requirements rather than conducting active research", against "approximately 42.3%" in the surveys of 2005 and 2012 Schneider, *2018 Faculty Workload Survey*, 3.

for instruction.[62] The state thus created the administrator's need for a measure of scholarship he could read without reading it, and the publisher sold him that measure, so that the *fall of the faculty* and the *rise of the publisher* are two sides of one policy—— and when governments and the bodies they fund have tried to undo the enclosure, they have paid the same publishers to open it, as Germany's national agreement with Springer Nature in 2020 paid 2,750 euros for each article.[63]



Growth of Administrators against faculty, between 1991–2011[64]

Scarcity and Failure. The Middle Ages were poorer than the present, and a text that existed in a few copies could be read only where those copies were.[66] Tech-

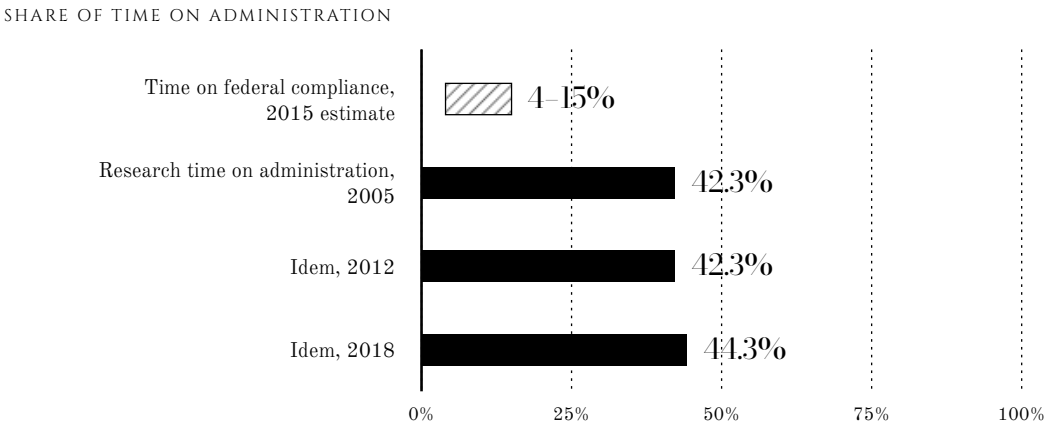
62 Ginsberg, *The Fall of the Faculty*, 24–25, 33.

63 A "Publish and Read" fee of €2,750 for each article, for "well over 13,000 articles a year", "paid from central subscription funds" Max-Planck-Gesellschaft, "Springer Nature and Germany's Projekt DEAL Finalise World's Largest Transformative Open Access Agreement."

64 National Center for Education Statistics, "Table 314.20. Employees in Degree-Granting Postsecondary Institutions, by Sex, Employment Status, Control and Level of Institution, and Primary Occupation."

65 *Vanderbilt News*, "Study Estimates Cost of Regulatory Compliance at 13 Colleges and Universities"; Schneider, *2018 Faculty Workload Survey*, 3.

66 In 1338 the library of the Sorbonne, a renowned study library, held 1,720 volumes, of which about three hundred were chained for consultation in the "magna libraria" Buchholzer, "Usages et usagers des bibliothèques au Moyen Âge."; the scholars of Paris obtained "books and writing materials ... supplied by univer-



Estimated against reported burden · federal compliance alone is estimated at 4–15 percent of the time of faculty and staff, while faculty with federal grants report spending over 42 percent of their research time on administrative requirements of every kind[65]

nology has abolished that scarcity,[67] yet the reader outside a university, or in a poorer country, is still shut out, not because the text is rare but because he cannot pay, and three quarters of the requests in Sci-Hub's logs came from outside the wealthy countries[68]—— so that inequality caused by scarcity, which was the fault of none, has been replaced by inequality caused by failure, which is the fault of some.

Technology ought to have repaired this weakness (of material scarcity) while leaving the institutional advantage (of self-government) intact, and it has done otherwise: because it kept the convenience of the individual reader steady, or improved it, the decline in the freedom and quality of the institutions behind that convenience has gone unseen. Where technology falls behind institutional decline, the gap is visible and provokes upheaval—— where it holds convenience steady, the freedom on which convenience rests can be removed without anyone noticing until it is too late. *Nothing argued so far romanticizes the Middle Ages: the material poverty of that age was a weakness technology could cure, while the loss of institutional freedom in ours is a weakness technology has served to hide.*

The Failure of the Politico-economic Binary. Neither side of the political binary answers either failure, the political or the material. The libertarian is right that

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sity booksellers, known as stationers" Ray, "The Pecia System and Its Use in the Cultural Milieu of Paris, c1250–1330," 21.

67 Larivière et al., "The Oligopoly of Academic Publishers in the Digital Era," 11–12; Karakilic, "Rethinking Intellectual Property Rights in the Cognitive and Digital Age of Capitalism," 4.

68 Bohannon, "Who's Downloading Pirated Papers? Everyone," 510. Not all of this traffic is exclusion: many who use Sci-Hub could reach the same papers lawfully, and choose it because the lawful route is slower (see n. 97).

copyright is a monopoly granted by the state,[69] but its abolition would not dissolve the publisher's institution, since what holds that institution together is prestige, not the law or the cost of printing[70]—— Sci-Hub has already abolished copyright in practice for 85.1 percent of the papers published in toll-access journals[71], and the publisher's margin stands untouched[72], because the administrator who must judge a scholarship he does not share would still buy the name of the journal, whether his university were funded by a ministry or by the market, the need arising not from who pays for the university but from who governs it. The socialist is right that knowledge has been enclosed by capital, but the state he would trust to open it is the state that installed the metrics from which capital profits,[73] and the greatest of its mandates for open knowledge have so far been paid to the enclosure they meant to open, and where a mandate frees the text without paying, libraries subscribe as before, so that the enclosure of prestige survives that of the text.[74]

Nor does either answer the inequality of failure, since the market's own remedy for the poorer reader, the Research4Life program, through which publishers in partnership with agencies of the United Nations open their journals free or at low cost to institutions in poorer countries, excludes every country whose national income exceeds a trillion dollars, however poor its readers, so that its rule measures the size of a market and not the need of a reader[75], while the state's remedy, the national license by which governments now buy a country's access to whole catalogs of journals, opens them only to members of the institutions it covers, so that the reader outside them is shut out as before and the enclosure is paid in full for keeping its gate.[76] Both place the remedy in the relation between the individ-

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69 Kinsella, "Against Intellectual Property," 7; Boldrin and Levine, *Against Intellectual Monopoly*, 8.

70 Fyfe et al., *Untangling Academic Publishing*, 4–14; Bergstrom, "Free Labor for Costly Journals?," 12.

71 Himmelstein et al., "Sci-Hub Provides Access to Nearly All Scholarly Literature," 1.

72 RELX, *2025 Results Presentation*, slides 14–16.

73 Hicks, "Performance-Based University Research Funding Systems," 251.

74 Some mandates pay publishers nothing directly: the NIH requires deposit in PubMed Central within twelve months of publication National Institutes of Health, "Revised Policy on Enhancing Public Access to Archived Publications Resulting from NIH-Funded Research (NOT-OD-08-033).", and the 2022 OSTP memorandum requires access without embargo only to research funded by the federal government, and only from policies due by the end of 2025 Nelson, *Ensuring Free, Immediate, and Equitable Access to Federally Funded Research*, 1, 3. Libraries subscribe all the same, since no journal can replace another (see n. 38), since journals come in bundles that make it "very difficult for university libraries today to cancel subscriptions" Larivière et al., "The Oligopoly of Academic Publishers in the Digital Era," 12, and since the journal's name still decides appointment and promotion (see n. 37); the publisher's margin stands as before RELX, *2025 Results Presentation*, slides 14–16.

75 "Countries, areas, or territories with a total GNI above US$ 1 trillion are not eligible for Research4Life Programmes regardless of other factors" Research4Life, "Eligibility Criteria." Research4Life works "in partnership with" WHO, FAO, UNEP, WIPO and ILO, Cornell and Yale Universities and "more than 200 international publisher partners", and Hinari is its health collection Research4Life, "About Research4Life."

76 Germany's Projekt DEAL agreements cover the institutions that take part in them Max-Planck-Gesellschaft, "Springer Nature and Germany's Projekt DEAL Finalise World's Largest Transformative Open Access Agreement."; India's One Nation One Subscription, approved on 25 November 2024, pays almost ₹6,000 crore for 2025–2027 for nearly 13,000 journals of 30 publishers, available only to institutions "under

ual and the sovereign and between sovereigns and both pass over the community of learning that once governed qualification, books and copies for itself, whose freedom never depended on whether the power above it was a ministry or a firm, but on whether that power was subsidiary to the community's own government, as the Church's was when it defended the guild against its town and its king.[77] Both take the secular sovereign, whether an institution such as a monarchy or a republic or an abstraction such as the market, as the sole source of legitimacy, and subsume every other kind of institution under it, suffocating freedom of academic community and people desiring to learn from them.[78]

III. Pirate as Shadow Client

Exit and Drift. Why, then, does the fracture persist? Piracy creates a paradox—— by providing a way around the institution's restrictions it allows people to live with a system they might otherwise have reason to challenge, so that the system's failures are exposed while their consequences are softened. Since all have found a way around the system, the pressure to repair it dissipates. Authors (see § II) break their agreements to reach their readers, by posting preprints (usually lawful)[79] or by passing published copies to readers and shadow libraries (in breach of them)[80]—— readers obtain the published versions through leaked institutional logins, as Sci-Hub does in part[81], which exposes the converse of the authors' breach, that piracy depends on the institution it evades, since shadow libraries can copy only what universities still pay for. Neither route alters the arrangement that withholds the paper.

In Albert Hirschman's terms piracy is an exit: those who most need the literature leave the paying constituency without leaving the literature (an exit unfelt, its revenue coming from libraries), and the pressure they might have exerted from

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the management of the Central or State Government" Prime Minister's Office, Government of India, "Cabinet Approves One Nation One Subscription (ONOS)."

77 See nn. 49 and 50.

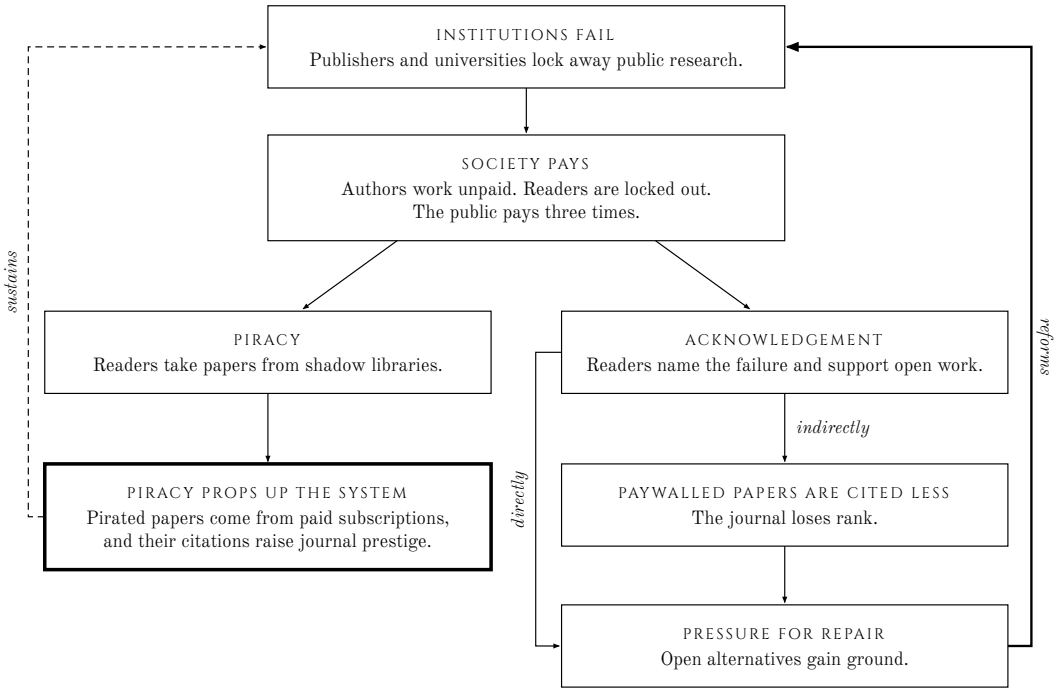
78 Contrast the "wide range of organizations independent of the state" that marks open access orders North et al., *Violence and Social Orders*, 113, and the requirement of "both state and society running together and neither getting the upper hand" Acemoglu and Robinson, *The Narrow Corridor*, 40, whereas basic natural states "do not support a rich civil society because few (perhaps no) organizations exist that compete with the state" North et al., *Violence and Social Orders*, 45.

79 Himmelstein et al., "Sci-Hub Provides Access to Nearly All Scholarly Literature," 1.

80 Shadow libraries are "thought to be 'peer-produced commons'", as Gigapedia was built by "nearly nine thousand small contributors", and in LibGen individual submissions account for "around 18 percent of the collection", though it grew chiefly by integrating large existing collections Bodó, "Library Genesis in Numbers," 54.

81 Sci-Hub is said to obtain "leaked authentication credentials for educational institutions" Himmelstein et al., "Sci-Hub Provides Access to Nearly All Scholarly Literature," 2.

within leaves with them.[82] Mahoney and Thelen call an institution in this condition one in drift, "the neglect of institutional maintenance in the face of slippage between rule and practices on the ground"[83], where the rules of copyright stay in force, practice moves to preprints and shadow libraries, and nobody enforces the rules to effect or replaces them[84], which is the impasse: the institution cannot recover the purpose it has lost, and those who suffer from it have no reason to build a replacement so long as each can make a private way around it.



The Shadow Client loop. How the failed institution passes its cost to society

The Shadow Client. The pirate who goes to a publisher's catalog, and to no other, to find what is worth reading concedes that the publisher holds the authority to say what is worth reading—— he covets its property, and in taking it he affirms its value, so that he becomes what I call the *Shadow Client* of the institution, dependent on it to define which knowledge is worth having and standing to it as the other side of its coin, a participant who believes himself its adversary, resisting the

82 "Some customers stop buying the firm's products or some members leave the organization: this is the exit option" Hirschman, *Exit, Voice, and Loyalty*, 4; see Hirschman, *Exit, Voice, and Loyalty*, chaps. 1–4.

83 Mahoney and Thelen, "A Theory of Gradual Institutional Change," 24; the concept of drift they take from Jacob Hacker Mahoney and Thelen, "A Theory of Gradual Institutional Change," 17.

84 Elsevier obtained statutory damages of "$150,000 for each of the 100 infringed copyrights ... for a total of $15,000,000" against Sci-Hub and the Library Genesis Project in the Southern District of New York in 2017 *Elsevier Inc. v. Sci-Hub, No. 15-cv-4282 (RWS), Default Judgment and Permanent Injunction*, 3, after a preliminary injunction to suspend the sites' domain names, while Sci-Hub went on being served from other domains Himmelstein et al., "Sci-Hub Provides Access to Nearly All Scholarly Literature," 2.

institution while helping it endure by abiding by its prestige and its valuation. The pirate who justifies his piracy as a fight against the institution in fact sustains the authority of the very institution he condemns, and this ironic tragedy is the proof that the justification fails. The Shadow Client is more than a figure of speech, since the economics of piracy have long shown that unpaid copies can serve the brand they are taken from. A study of spreadsheet and word-processing software in Britain between 1987 and 1992 found that six of every seven users had pirated copies, and that the pirates, by recommending the programs to others, generated more than 80 percent of the new legal buyers, and economists of the music industry have since argued that free downloading can raise a label's sales by letting listeners sample what they later buy.[85] In scholarship the service the pirate renders is still more direct. Articles downloaded from Sci-Hub have been found to be cited about 1.72 times as often as comparable articles that were not,[86] and citations are the measure by which journals are ranked.[87] Every pirated paper that is read and cited therefore adds to the prestige of the journal that enclosed it, and so to the value of the very *name* the university must keep buying.

The cost of that *name* falls on the public. The research is paid for largely by governments and by the fees of students, which have risen sharply[88]—— the reviewers are paid, if at all, by the universities that employ them,[89] and the same universities then buy the results back through their libraries. An investment analysis written for Deutsche Bank in 2005 described the structure of the industry as a "bizarre" "triple-pay" system.[90] The money spent in this way buys, beyond the few hundred dollars of services an article requires,[91] nothing but the brand, and the pirate, whose reading and citing enlarge the brand, enlarges the bill that others pay. The pirate who justifies himself helps to keep this *inefficient* and *maladaptive* arrangement as it is. Mahoney and Thelen give him a precise place among the agents of institutional change. The *parasitic symbiont* "exploit(s) an institution for private gain even as (he) depend(s) on the existence and broad efficacy of the institution to achieve this gain", and flourishes where "expectations about institu-

85 Givon et al., "Software Piracy," 29; see also Peitz and Waelbroeck, "Why the Music Industry May Gain from Free Downloading," 907.

86 A study of 8,661 articles from twelve journals Correa et al., "The Sci-Hub Effect on Papers' Citations," abstract and section "Materials and method". It finds an association, not proof that piracy causes citation, since a paper much read is likely to be both downloaded and cited, and the direction of influence is disputed.

87 "Journal rank is most commonly assessed using Thomson Reuters' Impact Factor (IF)", which "is a metric for the number of citations to articles in a journal (the numerator), normalized by the number of articles in that journal (the denominator)" Brembs et al., "Deep Impact," 3, 6.

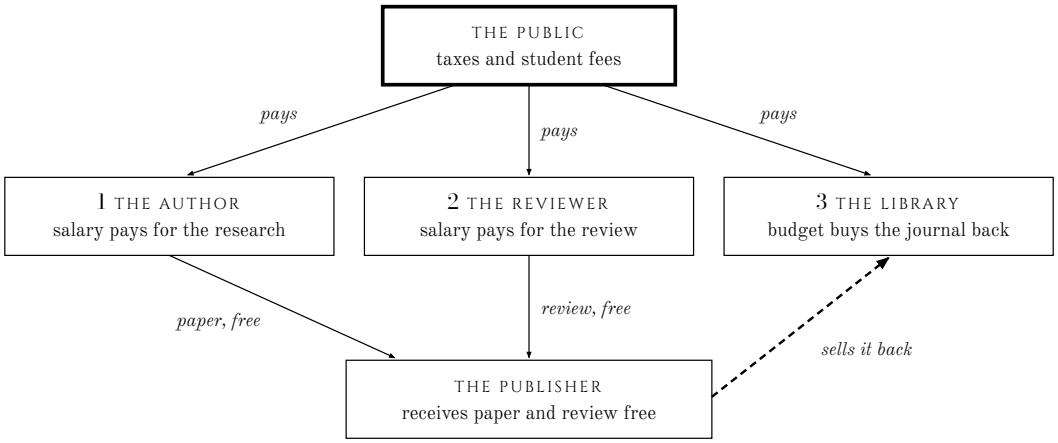
88 "Sharp tuition increases" Ginsberg, *The Fall of the Faculty*, 23; "why college tuition is so high and increases so much each year" Ginsberg, *The Fall of the Faculty*, 27.

89 Aczel et al., "A Billion-Dollar Donation," 1; Buranyi, "Is the Staggeringly Profitable Business of Scientific Publishing Bad for Science?".

90 A 2005 Deutsche Bank report, quoted in Buranyi, "Is the Staggeringly Profitable Business of Scientific Publishing Bad for Science?".

91 Grossmann and Brembs, "Current Market Rates for Scholarly Publishing Services," 1.

tional conformity are high, but the actual capacity to enforce those expectations is limited"[92], which is the condition of academic publishing exactly—— the *mutualist* symbiont, who "violate(s) the letter of the rule to support and sustain its spirit"[93], is the academic who posts his own paper so that it may be read, and the pirate who claims kinship with him has mistaken one kind of agent for the other.



The public pays Thrice[94]

Weapons of the Weak. Nor can the pirate claim the standing of the weak against the strong. James C. Scott described pilfering, foot dragging and false compliance as the "ordinary weapons of relatively powerless groups"[95], and on this reading piracy is a weapon of the weak against an institution that has wronged them, yet Scott himself sets its limits, warning against romanticizing such weapons, which rarely do more than marginally affect exploitation, and observing that squatters may take more land piecemeal than an open invasion would win, "though the *de jure* distribution of property rights is never publicly challenged".[96] Such is the pirate's position exactly, since he reads more than any open campaign for access would have won him while the publisher's title stands unchallenged but rather confirmed by his access to it—— much of the traffic is not resistance at all, since many readers use Sci-Hub simply because it is quicker than their own library's login. The critics of Sci-Hub who point to that convenience reveal less the idleness of readers than the efficiency the gatekept route has taken from them.[97] The

92 Mahoney and Thelen, "A Theory of Gradual Institutional Change," 24.

93 Mahoney and Thelen, "A Theory of Gradual Institutional Change," 24.

94 The 2005 Deutsche Bank report, quoted in Buranyi, "Is the Staggeringly Profitable Business of Scientific Publishing Bad for Science?".

95 Scott, *Weapons of the Weak*, 29.

96 Scott, *Weapons of the Weak*, 29–30, 32.

97 Critics of Sci-Hub complain that many users "can access the same papers through their libraries but turn to Sci-Hub instead—for convenience rather than necessity", and Bohannon finds that "the data provide some

weapons of the weak are real, but against this institution their effect is drift, which remains an accommodation however much it is called a struggle.

Civil Disobedience. Nor is the pirate a civil disobedient, though he is often called one.[98] Civil disobedience, on the account that has stuck, is a public breach of law that gives notice, appeals to the community's sense of justice, accepts the penalty and seeks a change in the law,[99] whereas the reader downloads in private, seeks the paper and not the reform, and bears nothing—— and the wider defense of uncivil and covert disobedience, which might admit him, admits only acts of resistance, and to resist an injustice is to refuse to cooperate with the mechanisms that sustain it,[100] which the reader who takes his reading from the publisher's catalog does not do (see *The Shadow Client*). Those who put their names to the act and bear the judgment against them stand on other ground,[101] and the reader borrows their standing without its cost.

The Maxim of the Pirate. To call it acceptable to obtain knowledge by illegitimate means is to say that the legitimate means need not be reformed. Kant's categorical imperative tested the false promise by asking what would follow if everyone made promises without intending to keep them, and found that the practice on which the false promise depends would cease to exist[102]—— the maxim of the pirate who justifies himself has the same structure, since if everyone took and no one paid, the funding (of university not the publisher) that produces what is taken would end before anything had been built in its place, and Sci-Hub would have nothing left to copy.[103] Evil is in this sense a parasite on the good, consuming what its

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support for that claim" Bohannon, "Who's Downloading Pirated Papers? Everyone," 510. A publishing executive blames librarians for "the perception that access is difficult", a librarian answers that authentication systems "are there to enforce publisher restrictions", and a doctoral student describes the lawful route: "I have to click through to 'Check Access through GWU' and then it's hit or miss ... If I put [the paper's title or DOI] into Sci-Hub, it will just work" Bohannon, "Who's Downloading Pirated Papers? Everyone," 512. See also n. 108.

98 Downloading from Sci-Hub and sharing papers peer to peer are described as "acts of civil disobedience" in Pryor-Darnell et al., "Professional Ethics, Copyright Legislation and the Case for Collective Copyright Disobedience in Libraries," 154, though the same page reports speed, accessibility and user experience as the main reasons researchers give (see n. 97).

99 Rawls's definition, as summarised, cited in Delmas, *A Duty to Resist*, 25, 259 n. 6.

100 Delmas, *A Duty to Resist*, 16–17, where acts count as principled disobedience in part by their motivation and context. Delmas allows that covert disobedience may be justified, and counts the routine covert drinking under Prohibition as such Delmas, *A Duty to Resist*, 104, and she justifies Swartz's downloading of millions of articles from JSTOR as protest and as education of the public about digital rights Delmas, *A Duty to Resist*, 90.—— a defense that rests on the act's addressing the public, which the private reader's does not.

101 For the judgment against Sci-Hub and its founder, see *Elsevier Inc. v. Sci-Hub, No. 15-cv-4282 (RWS), Default Judgment and Permanent Injunction.* Swartz's own manifesto asks those who share to come into the light and declare their opposition "in the grand tradition of civil disobedience" Swartz, "Guerilla Open Access Manifesto."

102 Kant, *Groundwork for the Metaphysics of Morals*, Ak. 4:422, p. 39.

103 Himmelstein et al., "Sci-Hub Provides Access to Nearly All Scholarly Literature," 2.

own existence depends on.[104] A better institution would have to be built. (see § IV.) The pirate already has the benefits of the closed journal's review without its obligations, and the effort that might have built a new vessel is spent keeping a passage open into the broken one. Others bear the consequences, since an institution that cannot measure its loss answers it with tighter access controls and with litigation[105]—— the anthropologist Alexander Dent, studying film and music piracy in Brazil, describes piracy and its policing as produced together, each growing with the other.[106] The pirate bears a consequence too. One who pirates while holding piracy to be wrong keeps his guilt, and his guilt keeps the fracture in view and keeps him a possible supporter of reform, whereas one who justifies piracy relieves the discomfort by changing what he believes in place of what he does[107], and so acquires a stake in the arrangement as it stands. The same holds of the piracy of software, films, games and fiction, where the pirate depends on the industries he resents and leaves them as they are.[108]

IV. Confession of Failure

Confession, Not Justification. If piracy is an evil in its full weight, if the institution that provokes it is a greater evil kept at an impasse by the compensations that let each man live with its failure instead of repairing it, and if the justification of piracy is itself one of them, then what remains to one who pirates and will not justify it is *confession*, which is more than *acknowledgment*, since to *acknowledge* is only to

104 In the Western tradition, see Augustine, for whom evil is no substance but the privation of good (*privatio boni*), able to exist only in a good thing that it corrupts, so that were the good wholly consumed the evil would cease with it: "what is that which we call evil but the absence of good?" Augustine, *Enchiridion*, chaps. 11–14, pp. 22–26.

105 Publishers bear the costs of paywalls and of litigation Grossmann and Brembs, "Current Market Rates for Scholarly Publishing Services," 9; for the suit against Sci-Hub and the seizure of its domains, see n. 84.

106 Intellectual property "has always been constituted by its dialogic relation with its violations" and its policing "has made piracy simultaneously more urgent and more intimate, while amplifying its reach" Dent, *Digital Pirates*, 151–52.

107 The smoker may quit smoking or, to resolve the dissonance, come to believe that smoking is not harmful Festinger, *A Theory of Cognitive Dissonance*, 5–6. Walzer makes a related point through the firing-squad example: if a man who believes an execution is wrong is comforted by the possibility that his rifle contains a blank, his moral opposition is not sufficiently serious. Genuine moral conviction cannot be dispelled by uncertainty about one's role; even when overriding a moral rule is justified, it should leave a residue of guilt Walzer, "Political Action," 174.

108 It is often said, after Gabe Newell, that piracy is "almost always a service problem and not a pricing problem" Newell, "Interview." The claim is partly right, since a lawful copy is often harder to obtain or use than a pirated one, and partly wrong, since price also drives readers and users away, and the services commonly cited in its favor, such as music streaming, succeed where the lawful price is close to nothing. In either case it settles nothing morally: that improved service can recover Clients is irrelevant to the moral permissibility of piracy; likewise the proposed remedy is also beside the point, since the services that would render piracy unnecessary were once provided by the scholarly community itself Ray, "The Pecia System and Its Use in the Cultural Milieu of Paris, c1250–1330," 21–24.

admit a fact, and to *regret* it only to feel it as one's own,[109] *while to confess is to name the act as a fault, to own it as one's own, to affirm the standard it falls short of, and to bind oneself to amendment* (of the arrangement as well as the act).[110]

One can in good conscience: (1) neither condemn piracy without acknowledging the failure that leaves readers without lawful access to what they need, (2) nor justify piracy, which would call an evil good, since the absence of lawful options describes the situation of the one who pirates without altering the moral character of his act, and the grave fault lies precisely in turning an act of necessity (ambiguous at best) into a moral good.

Three Objections.

1. It may be objected that moral philosophy has long allowed this, since it calls the lesser evil *justified* and grants only that *some residue of guilt remains*,[111] but such a concession surrenders the word and haggles over the remainder—— to *justify* is to make just, and an act that remains a wrong is not made just by being the least of the wrongs on offer, since the ordering of evils is an ordering within evil, and to stand first among them is not to cross into the good.[112] That an act was the one to choose describes the *choice*, not the *act*, and to fold the one into the other is the defense's own fallacy (see § I), carrying a judgment from one object to another—— the pirate hears in *justified* not *least bad* but *good*, and the nuance usually kept in a footnote is the first thing the pirate forgets.

2. It may be objected that this is relativism, since the rule seems kept absolute in principle and set aside wherever need presses, but that is not so—— relativism lets circumstances change the moral character of the *act* until the standard is bent to fit the need and the *actor* is declared innocent, whereas confession lets circumstances explain the choice while the *act* remains an evil whosoever commits it and whatsoever presses him, so that even where it was the *"best possible option"* the one who made it remains answerable for the wrong it involved, since, as Ruth Barcan Marcus argued, an obligation that

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109 Williams calls *agent-regret* the regret one can feel only for one's own acts, which reaches even the faultless, as his lorry driver who runs over a child, and adds that some doubt would be felt about a driver who too readily took a spectator's view of what he had done Williams, "Moral Luck," 27–28.—— the pirate who justifies himself does just that, looking on his act from without, as the defense looks on the institution.

110 Medieval doctrine held restitution of what was taken unjustly necessary for salvation Thomas Aquinas, *Summa Theologica*, II–II q. 62 a. 2, pp. 170–171, and modern moral philosophy holds atonement incomplete until the wrongdoer "commit[s] herself to reforming her character" Radzik, *Making Amends*, 86, as many accounts of apology require "an avowal henceforth to pursue that course" and a promise "to forbear from reoffending" Smith, *I Was Wrong*, 19.

111 An act "may be exactly the right thing to do" and yet leave its agent "guilty of a moral wrong" Walzer, "Political Action," 161; Gowans separates what "ought to be done" from a moral responsibility the one who does it may still fail Gowans, *Innocence Lost*, 58.

112 Gowans himself holds it "wrong to violate" a responsibility even where responsibilities conflict Gowans, *Innocence Lost*, ix.

> is overridden still leaves its residue[113]—— it is rather the *critics* who are relativists, keeping their own hands clean through formulas of *intention* and *consequence*, stretched past their own conditions,[114] by which an act done for a good end, or with an unintended harm, is declared innocent, so that the relativism they charge to confession is their own projection. (3) Whence justification ought to be avoided, lest it become a loophole for acts with no necessity behind them, and confession is no hypocrisy, since the hypocrite hides the act and pretends it is virtue. La Rochefoucauld called hypocrisy—— *the homage vice pays to virtue*[115], confession pays it without pretense, whereas justification refuses it, deluding the pirate with the virtue he has failed, an act of comfort and not of prudence.

Justification from Left and Right. Justification, disastrously, is offered from both sides of the political and economic argument—— writers in the free-market tradition hold that intellectual property is a monopoly given by state, so that copying is no theft and *pirate* defends the freedom of the market, as *Stephan Kinsella* argues that rights in ideas conflict with property in physical things and *Michele Boldrin* and *David Levine* that copyright and patent are monopolies whose costs outweigh their benefits[116], while writers on the left hold that the enclosure of knowledge is an expropriation by capital which the pirate resists, as *McKenzie Wark* writes that "*information wants to be free but is everywhere in chains*" and Sci-Hub's founder, *Alexandra Elbakyan*, calls it "an openly communistic project", since "private ownership of science by corporations is contradictory to science itself".[117]

Each side may be right about the institution, and their broader ideological warfare concerns me not, nor do I intend to settle it—— my issue is that both commit the same fallacy, putting a justification where confession ought to be. The morality of piracy (see § I) is the same whatever one believes about property, so that neither side of the binary can alter the act by its account of the institution—— what each does instead is to repeat the defense's step (see § I), carrying a judgment about the institution over into a judgment about the act, and each can do so because it reads institutions through an abstraction of self-interest. The free-market writer, though not Smith, who wrote of sympathy before the butcher, trusts the invisible hand by which we expect our dinner not from the benevolence of the butcher,

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113 Dilemmas "are not settled without residue" Marcus, "Moral Dilemmas and Consistency," 121, 131.

114 The doctrine of double effect comes from Aquinas, "nothing hinders one act from having two effects, only one of which is intended" Thomas Aquinas, *Summa Theologica*, II–II q. 64 a. 7, p. 209, and survives in western secular medical ethics and law, as on palliative care with the "foreseen but unintended 'double effect' of hastening the patient's death" *Vacco v. Quill*, 807–808 n. 11. Relativism borrows form but drops condition.

115 La Rochefoucauld, *Réflexions ou sentences et maximes morales*, no. 218, p. 85. « L'hypocrisie est un hommage que le vice rend à la vertu ».

116 Kinsella, "Against Intellectual Property," 8; Boldrin and Levine conclude that "progressively but effectively abolishing intellectual property protection is the only socially responsible thing to do" Boldrin and Levine, *Against Intellectual Monopoly*, 243–44.

117 Wark, *A Hacker Manifesto*, para. 126, p. 67; H C-(M), "Academic Research."

the brewer or the baker but *"from their regard to their own interest"*[118], and the Marxist a history in which "it is not the consciousness of men that determines their existence, but their social existence that determines their consciousness"[119], so that for the one a good order arises from interest well directed and for the other a bad order from interest owned by a class, and in both the moral character of persons is deduced from categories defined in advance, self-interest set against altruism and the individual against the class, instead of being understood in the real relationships in which men live and build.

Seen in those relationships the dichotomy dissolves, and what remains will sound like the plainest of moral lectures: good institutions are made by good morals—— i.e. by people, through the labor, sacrifice, love and trust they give to a community, as the masters of the medieval guilds gave theirs to the universities, and the scholars who built arXiv and the open journals of the Public Library of Science[120] gave theirs to open archives. Those masters sought honor and these scholars seek citation and standing, since prestige, honor, profit and other forms of reward are realities of human desire and carry no vice in themselves—— they run as readily within an extractive institution that loves no one as within a good one built by love, so that their presence neither proves that an institution was built by selfishness nor tells us what built it, and the desire of one scholar for standing does not oppose the sacrifice of another who reviews without pay.[121] What distinguishes the good institution from the failed one is the moral action of those who build and keep it, which neither a market's invisible hand nor a utopian policy can supply in their place. To justify piracy by either creed is therefore an illusory virtue, and a false virtue is no virtue at all, since it replaces the confession that an imperfect world, in which no human action is perfect, demands of us, and it is only by confession that we can hope.

What the Confessor Keeps. The one who confesses thus keeps what the one who justifies has given up. Because he does not call his act good, the arrangement that drove him to it stands condemned as one that drives men to wrong, and so he keeps his complaint against it—— because he names the act as his own fault, he owes

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118 Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, I.ii.2, 1:26–27. *The Theory of Moral Sentiments*, which Smith revised until the year of his death, opens: "How selfish soever man may be supposed, there are evidently some principles in his nature, which interest him in the fortune of others, and render their happiness necessary to him, though he derives nothing from it except the pleasure of seeing it" Smith, *The Theory of Moral Sentiments*, I.i.1.1, and the invisible hand appears but once in the *Wealth of Nations* Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, IV.ii.9, 1:456. On "Smith's unambiguous emphasis on the need for going beyond self-interest", see Sen, "Uses and Abuses of Adam Smith," 262–65.

119 Marx, *A Contribution to the Critique of Political Economy*, preface, p. 21.

120 arXiv.org runs on an annual budget given as an average of $826,000 for 2013–2017 Klein et al., "Comparing Published Scientific Journal Articles to Their Pre-Print Versions," 2, and the Public Library of Science publishes, in *PLOS ONE* alone, "more than 30,000 papers per year" Larivière et al., "The Oligopoly of Academic Publishers in the Digital Era," 6.

121 Aczel et al., "A Billion-Dollar Donation," 1.

an amendment, and that debt binds him to the work of repair—— and because he holds a better arrangement possible, and knows that it waits on men such as himself, his complaint and his debt turn to hope rather than to resentment. It is by those who keep this discomfort, refusing to be comforted by an excuse assigning themselves virtue they deserve not, that the institutions which would make piracy unnecessary will be built.

Conclusion

Many who read this essay will, before the week is out, take a paper from Sci-Hub, and I do not ask them not to—— I ask only that they not call it good. The reader who takes and confesses still owes something, and the debt is paid not in private workarounds, which only ease the drift (see § III), but in work that returns the allocation of standing to the community of learning (the review given to an open journal and withheld from an enclosed one, the paper sent to a journal its scholars govern, the vote in faculty that judges a scholar by his work and not by the name of the journal that printed it), small amendments, i.e. the labor of which institutions were always made. The masters of the medieval guild built theirs so, and the scholars of arXiv theirs, and neither waited on state or market to permit it. The pirate who justifies himself owes nothing and so builds nothing, whereas the one who confesses carries his debt into the very arrangement he would repair, and it is by such debtors that a better institution, in which there would be nothing left to confess, may yet be built.

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