## Autonomy

#### We can’t choose which ideas we choose to create – any creative thought is a recombination or variation of previous memes an inventor holds no right to

Gunten 15 [Andreas von Gunten, philosopher with an MA in Philosophy, 2015, “Intellectual Property is Common Property,” Philosophy Archive, https://philarchive.org/archive/VONIPI]

THE CREATOR AS A MEME COPY MACHINE We usually think of every cultural expression as a result of one or more person’s labour. But it is more than just ‘labour’ that we attribute as the input factor for the result of a creative process. It is a kind of extraordinary creativity, which not every person is fortunate enough to have. For some it is even the divinity which talks to us, through the creator. Our perception of the artist is often that of a genius. But is the creator then really a creator in the sense of being a creative agent, or is he just a means to represent and reproduce what the ‘Zeitgeist’, God or his unconsciousness creates? Is the inventor really an inventor or is he just an explorer of what is already there? In other words, is creativity something where we act as active agents, or is it something which just happens unconsciously inside our neural system? In the closing chapter of his 1976 book, The Selfish Gene, Richard Dawkins introduces his postulate of the meme (Dawkins 2006).2 In 1991 Daniel Dennett used this concept as an important building block for his account of how human consciousness can be understood from a materialist perspective (Dennett 1993). The term “meme” is an abbreviation of the ancient Greek word “mimeme” which stands for ‘imitator’. A meme is a cultural expression, or a behaviour which reproduces itself while jumping from brain to brain. This happens through human imitation. Imitation is the building block of human culture and tradition. The brain is the copy machine for the memes. Cultural evolution occurs, like biological evolution, as soon as there is information which shows variation, selection and heredity. Memes get copied by imitation. During this copy process they are sometimes changed only slightly, and sometimes they are recombined with other memes, which leads to variation. Some memes are more successful in getting copied than others, which gives us selection. For example the idea of nations and states was more successful than the idea of a society without authorities; the idea of a person-like God was more successful than the pantheistic or animistic world views, or the story of two lovers who are not allowed to come together and eventually commit suicide is told in different variations and settings over centuries, and so on. The concept of the meme is important for our analysis of intellectual property because it gives us a framework to explain cultural evolution as an interpersonal process from which we cannot postulate one individual as the exclusive creator of a creative work. Ideas cannot realise themselves without brains, but brains are not the creators of ideas, they are just the hosts for the replication process. Even if an individual person recombines different memes, which is more common than the simple copying from one meme, it is still a copying process, which we cannot really operate ourselves actively. It just happens with us, inside our brains. As I am writing this text, I am not really in charge in the sense that I decide which memes I am taking and combining with others. I do of course have the experience of ‘thinking myself,’ but this is not what actually happens inside my brain according to Daniel Dennett (1991).3 Everything I write here is the result of a continuous meme copying and recombination process. One association leads to another. The river of consciousness is full of surprises which I cannot claim myself as an active agent to be responsible for, in the sense that I can insist on an exclusive property right for what comes out of my brain.4 Artists also often talk about having the sense of not being in charge while creating their artwork. They emphasise that they don’t know how it comes about that they are creative. They usually are not aware of what is going on in their consciousness while creating a piece of art, or at least are not able to explain it. It is common that they talk about inspiration on which they depend and that one has to wait until it arrives. Sometimes it does not arrive at all. The idea of the need to be inspired by outside forces to be able to be creative can be traced back to the Muses of Greek mythology. The romantic concept of art, which emphasises that the genius has the benefit to let the divine express itself through the artist, also leads to the idea that the genius himself is not in charge here, but something else is. Human beings and their memes are living in a symbiotic system. Cultural expressions seem to be continuously replicated inside brains, and from brain to brain, so to speak. Each copy is slightly different from its original and is at the same time another original for the next replication procedure. This is important because it shows that all expressions are equal in the sense that they are all copies and originals at the same time. We should not imagine memes as singular representations of expressions or ideas in our brain though. They are rather complex compositions of many different aspects and attributes of them in different places and at different times as Daniel Dennett explains in his multiple drafts model (Dennett 1991:111ff). THE CREATIVE PROCESS AS A COLLECTIVE PROCESS Because ideas jump from brain to brain in the form of memes the creative process has to be seen as a collective process. Every piece of art, every patent, every musical pattern, every behaviour is always the end- and starting point of a continuous collective process of human creativity and innovation. Ideas are represented through expressions. These can be words, images, music melodies, behaviours and so on. There are no ideas without representation, which means that we cannot communicate or experience ideas without them being expressed somehow. The ideaexpression relationship is far more complex and controversial than we can discuss in this paper, but for our purpose (to point to the mechanism of cultural evolution through copying) it should be sufficient to understand its general aspects. Every expression of a human being is the result of the recombination of what has been expressed by someone else and of the meme copying process inside his neural system. We have evidence for the collective aspects of creativity from Ludwik Fleck’s philosophy of science. According to Fleck it is not correct to assume that human beings think individually. We should accept the fact that ‘cognition is a collective process’ (Sady 2012). ‘A truly isolated investigator is impossible… An isolated investigator without bias and tradition, without forces of mental society acting upon him, and without the effect of the evolution of that society, would be blind and thoughtless. Thinking is a collective activity… Its product is a certain picture, which is visible only to anybody who takes part in this social activity, or a thought which is also clear to the members of the collective only. What we do think and how we do see depends on the thought-collective to which we belong.’ (Fleck 1935b, cited in Sady 2012) Fleck is stressing here that without mental content from other members of the thoughtcollective we belong to, we would not be able to give meaning to our thinking. We could also say that Fleck describes some of the cultural effects of the meme-replication-process. This becomes even more apparent when we look at how Wojciech Sady describes the definition of Fleck’s thought collective: ‘A thought collective is defined by Fleck as a community of persons mutually exchanging ideas or maintaining intellectual interaction (Fleck 1935a, II.4). Members of that collective not only adopt certain ways of perceiving and thinking, but they also continually transform it—and this transformation does occur not so much “in their heads” as in their interpersonal space.’ (Sady 2012) The continuous transformation of ideas in ‘their interpersonal space’ is what we could also call cultural evolution. And even if Fleck has provided his account in the special context of the question of how scientific research works, we can easily adapt it to the creative process as such. Not only in science but in every aspect of creativity, cultural evolution is at work. Let us imagine in a short thought experiment a human being born on an island, where his parents have died right after his birth. Somehow he has managed to survive and he is living now as an adult alone on this island. It is rather unlikely that he has started to paint images in his leisure time, but for the sake of the argument, let us assume he did. But what seems to be rather implausible is that he paints images in the style of cubism without any social interaction or cultural heritage. Cubism is a typical example of a phenomenon of cultural evolution and at the same time an example of how our society tends to attribute cultural innovations to individuals even if there is much evidence that it is more an emergence of the “Zeitgeist” than a creative event by a single genius. Pablo Picasso and Georges Braque are usually said to be the inventors of cubism, while at the same time it is considered as a fact in art history that there were different pre decessors and influences which prepared the ground to let the new movement arise. We can consider the members of the cubist movement as a thought collective in Ludwik Fleck’s sense and adapt his findings to the process of art production. Even if we consider Pablo Picasso to be one of the most important artists of cubism it does not seem very probable that he would have created the same type of paintings had he lived in the eighteenth century or had he been raised by a worker family in Manchester around 1850. And it also does not seem very likely that cubism would not have evolved if Pablo Picasso had never lived at all. Nevertheless, it cannot be denied that it was Picasso who painted Les Demoiselles d’Avignon and not some thought collective. There is at least a substantial individual part in the creative works of artists of any kind. There is no artwork without the decision of the artist to start working on it. If he decided to plant trees instead of creating a piece of art, there would be no painting, song or text we could enjoy and analyse. This is definitely true, but the question is, is this enough to consider him as the only source of the result and to provide him therefore with the rights to exclusively exploit the benefits from it? It is undeniable that there lies labour in every cultural artefact, and this labour can usually be attributed to the creators. It was Pablo Picasso who moved the paint brushes to create his Les Demoiselles d’Avignon and not Paul Cézanne. But the fact that this picture looks how it looks cannot be attributed to Picasso alone. Let us assume the meme model and the thought collective are adequate conceptual descriptions for how human expressions and ideas evolve interpersonally. It still can be said that what we call being creative is what is new or original, and that this is exactly what the individual aspect of creativity represents. The problem here lies in the question: what is to be considered as new or original? As we have seen in the case of cubism, even when we can assign a new category to an artistic style, it has not evolved out of nothing. The borders of such categories are always blurred and arbitrary, and they fade away as soon as we try to find them. And even what we consider as radically new and original in the history of our culture, like cubism, or as another example the theory of relativity formulated by Albert Einstein, can be traced back to former works by other individuals which were necessary foundations for Picasso or Einstein to make their discoveries. There is never anything radically or totally new in human culture. Every cultural expression evolves slowly from its predecessors. Evolutionary steps are very small: so small that they usually are not detected. It is the last straw that breaks the camel’s back. The famous big theories, the so-called new inventions in art or the great discoveries in science are always results of long-lasting interpersonal creative and evolutionary processes. It looks as though it is mere luck that the memes are combined in a particular way inside a neural system from a specific individual and not through someone else’s. Of course, the artist or the scientist has often contributed a lot of personal education and work to bring themselves into the position to be able to make this very last important step for a new discovery or a new kind of cultural work. But it remains a small step compared to the whole process which was needed before he could take this step. Albert Einstein knew this as well. He said at a meeting of the National Academy of Science in 1921: When a man after long years of searching chances on a thought which discloses something of the beauty of this mysterious universe, he should not therefore be personally celebrated. He is already sufficiently paid by his experience of seeking and finding. In science, moreover, the work of the individual is so bound up with that of his scientific predecessors and contemporaries that it appears almost as an impersonal product of his generation. (Einstein 1921:579) The creator or author is far from being passive in this process. As we have seen above, it was Picasso who painted his paintings and it was Einstein who wrote his papers. So there is definitely an important individual part in every cultural work. But when we take the collective aspect of the creative process we have sketched so far into consideration, it looks like it just does not seem to be justified to attribute the originality to the individual by whom it was expressed. The person who creates a work should not be seen as its author or creator but more as its source. This kind of attribution gives respect to the individual part without stressing it too far. There are many practical reasons to attribute the work to a source. It helps others to refer to it, it may help to understand it better, it may even help to give some other kind of reward (e.g. money) to its source. But just because we are the source of a piece of work, we cannot thereby claim that we are the single author or creator and therefore the owner of it. Such a treatment of the work is also in line with Kant’s account of the person ality rights of an author. While attributing the source of an expression, we esteem the individual part one has on the creation of a cultural expression without making him the sole creator and exclusive owner. Both the postulation of a meme theory and the concept of the thought collective may lead to several objections. The most important is that the concept of free will may not be compatible with these views. Meme theory as proposed by Daniel Dennett has to be considered as a materialistic theory of the mind. Materialistic theories of the mind and the concept of the thought collective can be called deterministic in their character. It is disputed whether free will is compatible with determinism or not, and we cannot discuss this question in this paper. And it is true that if we hold the view that free will exists and that it is not compatible with determinism we have to reject meme theory and maybe Fleck’s thought collective as well. But we could still accept that creativity and innovation are more to be perceived as interpersonal than individual processes; we just have to find another theory which is not in conflict with free will. Anyone who insists on the view that ideas and expressions are naturally owned by the individual from whom they occur, must also provide a plausible theory as to how minds produce ideas independently from their social environment. I do not assert that such a theory does not exist, but I have not come across one yet. But if we accept that we are merely a source rather than a creator of cultural expressions, and if the only thing which we can take into account for intellectual property rights is the labour we have contributed and not the creativity itself, there seems to be little ground for any personality-based account of intellectual property rights. The only hope for the justification of the personal property of cultural expressions and inventions lies now in the utilitarian arguments, which are the ones we are going to examine in the following chapter

#### IPR’s abstract status means usage by others doesn’t harm your own property rights

Gunten 15 [Andreas von Gunten, philosopher with an MA in Philosophy, 2015, “Intellectual Property is Common Property,” Philosophy Archive, https://philarchive.org/archive/VONIPI]

EGALITARIAN JUSTIFICATION FOR INTELLECTUAL COMMONS A just society from an egalitarian point of view gives individuals, in addition to equal rights to maintain and develop a life according to their own desires, equal access to worldly resources, such that the rules for distributing the resources equally amongst its members can overrule the personal freedom of the individual14 . As we have seen above, intellectual property rights are monopoly rights which grant a temporary privilege to exclusively exploit income rights from abstract objects which are created collectively. Nevertheless there are several possible arguments to justify these rights on egalitarian grounds. First, it could be argued that these privileges are not arbitrary. They are granted to individuals who deserve them, because they are the creators or inventors. It is not individuals with the most money who get the monopoly rights from the state, but those who are willing to bring their ideas into existence in form of expressions. If a privilege for creators serves the goal of getting a more equal distribution of wealth, it can be justified. A second point is that social justice from the egalitarian point of view needs state-enforced redistribution of goods, and therefore the state needs an intellectual property rights framework to redistribute the profits which can be raised from abstract objects. And a third argument would be that intellectual property rights are rights which help the individual creator against exploitation by powerful corporations or other organisations. While discussing these arguments, we should be aware that we tend to apply distribution problems from physical objects to abstract objects. And in the world of physical objects and a private property rights-based society, we do in fact face the problems which come with unequal appropriation of worldly resources. An individual who has more talent may be able to appropriate resources faster than others, so that in the end there is nothing left. Today, there is not one square foot of land on our planet which is not ‘owned’ by someone. Whether the owner is an individual or a collective of some sort, there is always someone who claims ownership. Land and every other worldly resource are finite15 and therefore there is always a struggle about the question of to whom they belong. But in the case of abstract objects, the situation is totally different. The use of abstract objects like cultural expressions, ideas, inventions and so on is not limited simply because someone else is using them, as we have discussed already. If I build my house on a piece of land, and someone wants to do the same on the same piece of land, he has to send me packing. He then has the land and I don’t. If I invent a wheel and use it for my convenience, I can share this invention without reducing its value for me. In fact any invention and any expression can be shared by anyone without dimin ishing its utility for others. The value for me also does not reduce if someone who has more capital at his disposal than I do is able to produce wheels to sell them on a market. I can still use my own wheel, which I have created. There is even a chance that the producer of the wheels innovates on it and makes it better, and as he cannot claim intellectual property rights either, I am able to use his ideas to upgrade my wheel as well. If there is a demand for wheels, chances are high that I will still be able to find my market for my handmade wheels, even if a lot of other ‘wheel makers’ are producing them at lower costs. Buyers do not value only monetary aspects; a lot more is often taken into account for a buying decision. In a world with private intellectual property rights the rights holder can exploit the income exclusively; in a world with intellectual commons everyone has the chance to do so. From an egalitarian point of view this fact raises the problem that the more talented and/or the more powerful may be able to exploit the profits from the cultural expressions of any kind much more effectively than the less talented, whether this is the creator or someone else. This is partly true, but it is true in any world, whether there exists a legal framework for intellectual monopoly rights or not. We can see this very well in the actual situation in our world. Most of the income from intellectual property rights is concentrated around a few big players in every market. The main difference is that the powers are more stable in a world with intellectual property and more dynamic in a world without. In a world without intellectual property rights, monopolies could still occur but they would be de facto monopolies, and these types of monopolies will not last long. The abolition of intellectual property rights would lead to a more fragmented and decentralised economic situation as no one can be prevented from copying inventions and cultural expressions. Profits will be near zero for those who just copy and will be higher for those who innovate on the copy. Intellectual property rights are not an effective instrument for redistribution of income or wealth. From an egalitarian point of view the problem of inequality persists, and as intellectual property rights are monopoly rights they create even more inequality on one part between the “winners” and the “losers” inside the system, but also between rights holders and users. If we consider the situation that without intellectual property rights, the use of any expression or invention is open to everyone, we can easily see that in such a world a much more diverse market would evolve. As there are no monopoly rights, probably many more individuals and smaller groups would use the cultural expressions which are free to use, and remix them with their own ideas to create new products and services to make a living. With the system of intellectual property rights which we have in place now, the exploitation of the inventor or the creator through big corporations is the reality. Only for a few ‘superstars’ might the situation be the other way around. There are two main reasons for this. First, it is expensive to get and even more expensive to enforce intellectual property rights; and second, the big money lies in the portfolio of rights and not in the single expression. Even if there are blockbusters which generate a multiple of the income from the average ‘product’ for the rights holders, it is usually the backlist, the sum of thousands of single products, which is the important source of a permanent revenue stream for the big rights holders. But isn’t it the case that the creator gets at least his share from the revenue stream and without intellectual property rights these companies could take everything for themselves without even thinking of letting the creator or inventor participate? This is true, but for most creators the share is so small that it does not contribute to enhancing their economic situation. In many cases they would be in a better situation to generate income with their creations if they had not exclusively sold the licences for the exploitation of his work to a single company. From an egalitarian perspective, the most important question is: how can wealth be distributed equally amongst the people? The intellectual property rights regime obviously does not contribute much to solving this problem; it rather looks like it does the opposite. I do not argue here that the absence of individual intellectual property solves the general distribution problem, but it leads to a situation where many more people can benefit from cultural expressions, scientific research and inventions than now, and therefore less redistribution is needed.

#### IP has no material basis and arbitrarily infringes on actual (property) rights – all patents are expressions of publicly available laws of nature

Long 95 [Roderick T. Long, American professor of philosophy at Auburn University with a PhD in philosophy from Cornell, 1995, “The Libertarian Case Against Intellectual Property Rights,” Free Nation, http://freenation.org/a/f31l1.html]

The Ethical Argument Ethically, property rights of any kind have to be justified as extensions of the right of individuals to control their own lives. Thus any alleged property rights that conflict with this moral basis — like the "right" to own slaves — are invalidated. In my judgment, intellectual property rights also fail to pass this test. To enforce copyright laws and the like is to prevent people from making peaceful use of the information they possess. If you have acquired the information legitimately (say, by buying a book), then on what grounds can you be prevented from using it, reproducing it, trading it? Is this not a violation of the freedom of speech and press? It may be objected that the person who originated the information deserves ownership rights over it. But information is not a concrete thing an individual can control; it is a universal, existing in other people's minds and other people's property, and over these the originator has no legitimate sovereignty. You cannot own information without owning other people. Suppose I write a poem, and you read it and memorize it. By memorizing it, you have in effect created a "software" duplicate of the poem to be stored in your brain. But clearly I can claim no rights over that copy so long as you remain a free and autonomous individual. That copy in your head is yours and no one else's. But now suppose you proceed to transcribe my poem, to make a "hard copy" of the information stored in your brain. The materials you use — pen and ink — are your own property. The information template which you used — that is, the stored memory of the poem — is also your own property. So how can the hard copy you produce from these materials be anything but yours to publish, sell, adapt, or otherwise treat as you please? An item of intellectual property is a universal. Unless we are to believe in Platonic Forms, universals as such do not exist, except insofar as they are realized in their many particular instances. Accordingly, I do not see how anyone can claim to own, say, the text of Atlas Shrugged unless that amounts to a claim to own every single physical copy of Atlas Shrugged. But the copy of Atlas Shrugged on my bookshelf does not belong to Ayn Rand or to her estate. It belongs to me. I bought it. I paid for it. (Rand presumably got royalties from the sale, and I'm sure it wasn't sold without her permission!) The moral case against patents is even clearer. A patent is, in effect, a claim of ownership over a law of nature. What if Newton had claimed to own calculus, or the law of gravity? Would we have to pay a fee to his estate every time we used one of the principles he discovered? "... the patent monopoly ... consists in protecting inventors ... against competition for a period long enough to extort from the people a reward enormously in excess of the labor measure of their services, — in other words, in giving certain people a right of property for a term of years in laws and facts of Nature, and the power to exact tribute from others for the use of this natural wealth, which should be open to all." (Benjamin Tucker, Instead of a Book, By a Man Too Busy to Write One: A Fragmentary Exposition of Philosophical Anarchism (New York: Tucker, 1893), p. 13.) Defenders of patents claim that patent laws protect ownership only of inventions, not of discoveries. (Likewise, defenders of copyright claim that copyright laws protect only implementations of ideas, not the ideas themselves.) But this distinction is an artificial one. Laws of nature come in varying degrees of generality and specificity; if it is a law of nature that copper conducts electricity, it is no less a law of nature that this much copper, arranged in this configuration, with these other materials arranged so, makes a workable battery. And so on. Suppose you are trapped at the bottom of a ravine. Sabre-tooth tigers are approaching hungrily. Your only hope is to quickly construct a levitation device I've recently invented. You know how it works, because you attended a public lecture I gave on the topic. And it's easy to construct, quite rapidly, out of materials you see lying around in the ravine. But there's a problem. I've patented my levitation device. I own it — not just the individual model I built, but the universal. Thus, you can't construct your means of escape without using my property. And I, mean old skinflint that I am, refuse to give my permission. And so the tigers dine well. This highlights the moral problem with the notion of intellectual property. By claiming a patent on my levitation device, I'm saying that you are not permitted to use your own knowledge to further your ends. By what right? Another problem with patents is that, when it comes to laws of nature, even fairly specific ones, the odds are quite good that two people, working independently but drawing on the same background of research, may come up with the same invention (discovery) independently. Yet patent law will arbitrarily grant exclusive rights to the inventor who reaches the patent office first; the second inventor, despite having developed the idea on his own, will be forbidden to market his invention. Ayn Rand attempts to rebut this objection: "As an objection to the patent laws, some people cite the fact that two inventors may work independently for years on the same invention, but one will beat the other to the patent office by an hour or a day and will acquire an exclusive monopoly, while the loser's work will then be totally wasted. This type of objection is based on the error of equating the potential with the actual. The fact that a man might have been first, does not alter the fact that he wasn't. Since the issue is one of commercial rights, the loser in a case of that kind has to accept the fact that in seeking to trade with others he must face the possibility of a competitor winning the race, which is true of all types of competition." (Ayn Rand, Capitalism: The Unknown Ideal (New York: New American Library, 1967), p. 133.) But this reply will not do. Rand is suggesting that the competition to get to the patent office first is like any other kind of commercial competition. For example, suppose you and I are competing for the same job, and you happen to get hired simply because you got to the employer before I did. In that case, the fact that I might have gotten there first does not give me any rightful claim to the job. But that is because I have no right to the job in the first place. And once you get the job, your rightful claim to that job depends solely on the fact that your employer chose to hire you. In the case of patents, however, the story is supposed to be different. The basis of an inventor's claim to a patent on X is supposedly the fact that he has invented X. (Otherwise, why not offer patent rights over X to anyone who stumbles into the patent office, regardless of whether they've ever even heard of X?) Registering one's invention with the patent office is supposed to record one's right, not to create it. Hence it follows that the person who arrives at the patent office second has just as much right as the one who arrives first — and this is surely a reductio ad absurdum of the whole notion of patents. The Economic Argument