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"It takes thirty leaves to make the apple."

-Thich Nhat Hanh

The creative wealth of the past exists in the present as a commons, a special kind of commons that cannot be worn out no matter how many citizens use it. There was a time when "commons" meant land communally held, fields where all citizens might pasture their sheep, for example, or woodlots where all might gather firewood. These have mostly disappeared; only so many sheep can be grazed and only so much wood removed before the grass will not return, the trees fail to reseed themselves. But creative wealth has no such limits; its carrying capacity is endless. The technology for making eye glasses cannot be exhausted by its use, nor would the works of Homer or Confucius be diminished should every man and woman on earth have read them.

Americans have always had an awkward relationship to creative commons, nor have we known very well how to engender them, how to encourage talent in the present so that our common- wealth might increase, and leave the generations that follow us richer than we are. We are a nation of individualists, and the commons make us nervous. Called on to decide how best to empower the talented we regularly decide to do nothing at all, assuming that the free market is the best arbiter of value, and that the gifted are most blessed when the community simply leaves them alone.

An amusing example of these assumptions in action may be found in the 1936 movie, *Mr. Deeds Goes to Town.* Mr. Deeds is a simple, small-town lawyer who receives a huge inheritance out of the blue, one that obliges him to move to a mansion in the big city, and wield some big city powers. He tries his best, but his village intuitions and plain-spoken ways make him ill suited to his new role. In one scene, Mr. Deeds discovers that he is chairman of the board of the opera, that the opera has lost money, and that he is expected to make up the loss out of his own pocket. "Me!?" he exclaims, as if he'd been asked to commit an unnatural act. He can't understand why the loss should be his problem, nor why, if the opera sells tickets, it loses money. "We must give the wrong kind of shows," he concludes. "I personally wouldn't care to be the head of a business that kept losing money. That wouldn't be common sense."

A similar "common sense" motivated recent Congressional attacks on funding for the arts and the humanities. A few years back, speaking against such funding, California Representative Duncan Hunter proudly pointed to a realist painting of a cowboy on his horse and declared its maker, Olaf Wieghorst, "the dean of Western artists in America," "one of the finest artists in the world," "the highest priced artist" in America, and—the logical conclusion—a man who never received a grant in his life. Mr. Hunter, like Mr. Deeds, clearly thinks that an artist in need of money must have a very poor head for business, or must be putting on the wrong sort of show. As Mr. Hunter's testimony ended, one could hear Representative Robert Dornan in the background shouting "artists must suffer, not suckle at the federal payroll!"

American democracy was born coeval with its commercial ethic, and with the Romantic assumption that artists thrive best in stringent solitude. Two centuries later, our love of commerce and the myth of self-reliance still shine so brightly as to cast in deep shadow not just the possibility, but the fact, of their opposites. We can see the price of the painting, but not the cultural inheritance that made the painting possible; we can see the individual talent but not the commons where all talent must feed. Nor is it only the Misters Deeds and Hunter who suffer such blindness; take the way a well-known writer recently described his nineteenth-century cultural ancestors. In an essay called "Patronage: Easy Money," the travel writer Paul Theroux catalogs with skeptical wit the foibles and egotisms of artists and their patrons over the centuries. When he finally arrives at the shores of America, Theroux gives a list of mid-nineteenth century authors~Poe, Melville, Stow, Thoreau, and others—and then remarks: "Perhaps these American writers had heeded

Emerson's call...to be self-reliant. None I have mentioned had patrons..." (see Sources, Theroux, p. 262).

The worlds of Mr. Deeds and Mr. Hunter are so self-contained it is not clear to me how one would go about unpacking them, but in Mr. Theroux's case we have a historical record, one that allows us to question his assertion and see what complexities it hides. "None...had patrons": let us take this remark as a point of departure to reflect on how American artists have been supported in fact, and on how they might be supported in the future. Let us see what lies hidden behind the cliché of self-reliance.

I

If we are speaking of patronage in the strictest sense, it is accurate to say that most nineteenth century writers had none. James Joyce received, for twenty-three years, a regular cash stipend from Harriet Weaver: *that* is patronage, and no American in the nineteenth century had it. But Theroux's remark is wrong if we step outside the mythic frame, and consider how the apparently self-reliant in fact get by in this world. Years ago when hippie friends of mine retreated to the back country, cutting their own firewood and canning their own vegetables, I used to tease them: "Smelting your own iron yet? Distilling that kerosene? Grinding your own spectacles?" It is impossible to be wholly self-sufficient in this world, at least not with any self yet known to humankind.

Nineteenth-century American artists are no exception, the brilliance of their myth-making not withstanding. Take the author from Theroux's short list who might at first glance seem to be the most successfully independent, the man who famously retreated from his community to build his own house, plant his own beans, and think his own thoughts: Henry David Thoreau. It is true that Thoreau had no patron in the conventional sense, and that he made time for writing by simplifying his life and by working a series of mundane jobs-teaching school, making pencils in the family pencil shop, surveying his neighbors' land, and so on. For some people, having two kinds of work makes for a salutary rhythm, and sometimes that was the case with Thoreau, especially with surveying, which let him walk the woods and fields as he earned his keep. But at other times having two jobs means only that one of them does not get done.

The fate of Thoreau's first book, *A Week on the Concord and Merrimack Rivers,* leads to an illustrative example. The book failed when it appeared in 1849, and Thoreau ended up owing considerable money to his publisher. One of Thoreau's biographers, Henry Seidel Canby, reports that several years later, in order to settle the debt, Thoreau says he "was obliged to manufacture a thousand dollars' worth of pencils and slowly dispose of and finally sacrifice them..." (Canby 278). How many pencils did a man have to make at that time before he had "a thousand dollars' worth"? In the best of times the Thoreau family got $6 a gross for good pencils. If that is the case, then Thoreau must have made at least 24,000 pencils to settle his debt (250). People often suppose that true artists will do the work regardless of what support they get, and that may be true in some cases. It wasn't in Thoreau's, as we know from the great pile of work he left unfinished when he died of tuberculosis in 1862, aged 44. For me, the most haunting part of that pile is the eleven volumes of handwritten notes-half a million words-that Thoreau had prepared for a book on the American Indians. I would rather we had that book than whatever remains of all the marks made in all the ledgers by all of those 24,000 pencils.

I begin with this example of absent support and unfinished work the better to set in relief the larger story I want to tell, the one about the work we *do* have from Thoreau, and the ways in which the world around him enabled him to make it. The tale might well begin with the fact that young Henry went to Harvard College with a tuition scholarship. An old estate in Chelsea, Massachusetts, had been left to the College, and while Thoreau was an undergraduate he was supported by its rents (Harding 47). Beyond this, the young man's day-to-day expenses were paid by his family, not just his parents but his aunts and his siblings, two of whom were working as schoolteachers (Harding 38). It is worth remembering, too, that endowed institutions such as Harvard are benefactors to all their students, regardless of who pays the tuition and fees. Nowadays it may cost twenty-five or thirty thousand dollars to study for a year at an ivy league school, but that figure would be double or triple if those schools were not endowed. Old, tax-exempt colleges with large trust funds are the patrons of *all* their students, including the rich who may proudly think they get no aid.

In Thoreau's case, the most important feature of the accumulated wealth that was Harvard College turned out to be its library, only fifty thousand volumes in the late 1830s but nonetheless the best in the nation. Years later, just before his death, Thoreau told a young man about to enter Harvard that its collection of books was the finest gift the institution had to offer (Harding 38). In that library when he was twenty years old Thoreau read Emerson's *Nature,* the book that gave him a first road map into his own adult life; it was there in later years that he discovered in an encyclopedia how to make a pencil superior to any then made in America (and thus reversed the family fortunes); and it was there he regularly made himself huge commonplace books of poems by the English poets.

Such post-graduate research would not have been possible, however, had he not been granted special access to the collections. In those days, ordained ministers were the only nonresident alumni allowed to withdraw books, and

Thoreau thus had to ask the college president for privileges. His petition argued, on the one hand, that he wasn't really a "nonresident" because the railroad effectively made Concord a part of Cambridge, and, on the other hand, that as a scholar he was a species of minister: "I have chosen letters for my profession, and so am one of the clergy embraced by the spirit at least of [the college's] rule" (Thoreau, *Correspondence* 249). The letter worked, and thus did Thoreau receive his pass into the commons of scholarship. Like an endowed college, a great library is a gathering of past wealth, a patron to its patrons, and this Thoreau had all his life.

In other areas Thoreau received support that was both more direct and more personal, particularly that which arose from his friendship with Ralph Waldo Emerson. Thoreau lived with Emerson and his family for two extended periods, once before he lived at Walden pond, and once after. He was Emerson's handyman, and he helped take care of the children. This was a paid position, with room and board, but Thoreau was no servant; Emerson, fourteen years older, took in the younger man because he supported Thoreau's ambitions. As when a young scientist gets a chance to work in the lab of an older scientist, money may be involved, but to imagine it is a job and nothing more fails to catch the spirit of the thing.

Furthermore, it was Emerson who enabled the two years Thoreau spent at Walden Pond. The land belonged to Emerson. The men exchanged favors: Thoreau cleared a field and built the cabin, and Emerson later acquired these improvements. This too was not a gift outright, then, but again it was hardly work for hire, either. Emerson thought Thoreau could write a book if he were given the needed solitude, and arranged for him to have it. He was right; by the time Thoreau left the cabin, he had written the bulk of the only books he published in his lifetime, *A Week* and *Walden.*

Emerson's help did not stop with housing, either. In countless ways he fostered the climate in which the younger man could do his work. His house was the site of an on-going post-graduate seminar where one might argue about the editing of *The Dial* with Margaret Fuller or discuss the mating habits of turtles with Louis Agassiz. His personal library was one of the ports of entry by which European Romanticism and Asian religions passed into the United States. One book in particular deserves to be mentioned. In the 1830s Emerson acquired from England a copy of the first English-language translation of the *Bhagavad-Gita,* done in 1785 by Charles Wilkins; he and Thoreau read it together with great attention, and it turned out to be key to Thoreau's developing spiritual life. It gave him the image of the Yogi whose religious practice requires that ideas be embodied in acts, and it gave him the anti-Yankee idea that acts may be performed with no desire for gain.

The relationship between Emerson and Thoreau was not without strain, to be sure. There were years when the men tired of each other, and years when Thoreau felt diminished by the distance between Emerson's success and his own. A late entry in Thoreau's journal reads: "I should value E[merson]'s praise more, which is always so discriminating, if there were not some alloy of patronage and hence of flattery about [it]" (Canby 347). Even this complaint supports my general point, however, that in all the ways I've listed, and more, Emerson was Thoreau's sponsor during most of his career.

Emerson's benefactions probably cannot be over-emphasized, but they hardly close the list of ways in which Thoreau was enabled by the community around him. Of great use to both men, for example, was the lyceum movement, a cooperative town lecture institution on the order of a public library. The citizens of Concord started their lyceum in 1829, and twelve-year-old Henry Thoreau joined immediately. In Concord as elsewhere in New England, a local lyceum committee provided a room, fuel, lights, and fees for a series of lectures each season. A significant portion of Emerson's disposable income came from such fees (which is one reason he could buy the land at Walden Pond); Thoreau himself was not a stirring speaker and never made much money at it, but the movement gave him the audience for which he first spoke the work that later became books. The Concord Lyceum was the workshop for his early drafts. His essay "Walking," for example, was not published until a month after his death, but he had spoken versions of it in public in 1851, 1852, 1856, and 1857. Nowadays the colleges provide lecterns where writers may speak their work and earn some rent money; a hundred and fifty years ago it was the lyceum movement, and Thoreau relied on it.

There is more, of course. There was the time Emerson set Thoreau up with a tutoring job in New York, so that he could work on his literary contacts. There was one of those contacts, the editor of the New York *Tribune,* Horace Greeley, who always made sure Thoreau's books were reviewed, who loaned Thoreau money when he needed it, and who worked as his literary agent without a fee. There was the family house that immensely simplified the project of simple living. And always there was that gift outright, the thousand acres of neighboring forest and field spread out for anyone with the wit to enter them.

But I doubt that the point I'm after needs more elaboration. It is a fact that Thoreau wrote *Walden* without a patron in the strict sense, but it is a fact that hides the larger truth. We have *Walden* because of Thoreau's talent and his remarkable sense of purpose, but we have it also because an intellectual and spiritual climate encouraged the work, and because he was surrounded by institutions, friends, and family who provided the material conditions without which no talent ever bears fruit.

II

The community and institutions available to a young artist in nineteenth-century Massachusetts accomplished, informally and on a small scale, what the United States Congress more recently hoped the national endowments might accomplish, formally and on a national scale. The 1965 enabling legislation for the arts and humanities endowments reads, in part: "While no government can call a great artist or scholar into existence, it is necessary and appropriate for the federal government to help create and sustain not only a climate encouraging freedom of thought, imagination, and inquiry, but also the material conditions facilitating the release of this creative talent."

Except for the matter of scale, this language dovetails quite precisely with my sense of what Thoreau both needed and got from his community. Sometimes by luck, sometimes by design, he had both the encouraging climate and the material conditions. With Harvard College and its library, or with the lyceum movement, he found institutions created expressly for such purposes; beyond those things, he had unusual good fortune. It was a bit of luck to be born within walking distance of Emerson's house, a bit of luck that Emerson owned the Walden woods, a bit of luck that the railroad could take a man to Cambridge and back in one day, and so forth.

The problem both then and now for those who care about the creative commons in America is to figure out ways to encourage happy accidents such as these, or better yet, ways to turn them into happy designs. "Enlightenment is an accident," the Buddhist masters say, "but there are ways to make yourself accident prone." Happenstance always attends the appearance of "climate" and "conditions," but those who wait on happenstance alone rarely see either of these. "Chance favors the prepared mind," said Louis Pasteur, and it will favor the prepared nation, too. Our national fables notwithstanding, there is no such thing as a self-reliant artist; there is always a supporting (or inhibiting) context, and our collective action (or lack of action) always affects that context.MTiose who wish to live in a land where the talented regularly realize their gifts will do well to make sure that the ground has been prepared to receive them.

Much has already been done, of course, to improve the ground, or at least to lessen the vagaries of an artistic life. A writer like Thoreau is not likely, nowadays, to have to manufacture 24,000 pencils to pay his debts, and much more likely therefore to finish his book on the Indians. Emerson may have been rich for his day, but private fortunes beyond anything he ever dreamed of have been turned into philanthropic foundations that consistently support creative endeavor. Colleges and universities never used to have artists in residence, and many now do. Writers not lucky enough to have a friend with property on a lake can now turn to over sixty art colonies for the loan of a cabin in the woods (or a quiet room in the city, for there are urban colonies, as well). There was no income tax in Thoreau's day, but also therefore no provision for tax-deductible contributions to encourage wealth to flow in particular channels. (In 1989—a year when the National Endowment for the Arts had a budget of $170 million—American colleges, museums and non-profit arts organizations received over $1 billion in such donations.) And of course there were no nineteenth-century state arts agencies, and no national endowments.

There are two classic rationales for creating institutions such as these to support the arts. First, there is the understanding that some valued enterprises are not well delivered by market forces alone; thus in the arts—but also in pure scientific research, spiritual life, education, healing, and so on—we regularly convert market wealth (great fortunes, citizen's taxes) into grants and subsidies. Second, there is the understanding that the market itself benefits from a lively artistic scene; great museums or symphony orchestras keep the nearby hotels and restaurants busy, and may therefore be worthy of public support when they can't get by on their own.

Without abandoning either of these rationales—for both are true—I'd like to explore a third approach. The arts regularly generate their own currents of wealth, and rather than treating them as charity cases, or as loss leaders for some imagined "true" commerce, there ought to be ways to channel that wealth back to freshen its source. If there is a commons of creativity there ought to be a way to manage it so that it perpetuates itself. There ought to be ways for the arts to support the arts.

To the list of innovations that have appeared since Thoreau's day I thus want to add two lesser-known but thought-provoking examples, one real and one proposed.

The real one is the Recording Industries Music Performance Trust Funds. About fifty years ago members of the American Federation of Musicians were concerned about the way in which recorded music had cut into the number of live performances and hence into the number of available paying jobs. The record industry clearly benefited from the talent of working musicians; might there be a way for working musicians to benefit from the success of the industry?

There was. An agreement worked out between the musicians' union and the recording industries instituted a kind of tithing: a fraction of one percent of the sales of phonograph records (and now tapes and CDs) goes into a national fund, administered by a trustee appointed by the Secretary of Labor (and thus independent of both the musicians and the

recording companies). The monies from this fund are then distributed to pay musicians who play live music—in schools, shopping malls, parks, community centers, hospitals, senior citizens centers, and so on. In the 1995-96 fiscal year the fund took in almost $8 million. Because it collaborates with co-sponsors for most events, the fund distributed more than twice that amount during the same period. About $3,000 was paid out in Mt. Vernon, Ohio, near where I live, to support a concert series in the old town theater. Musicians in New York City received over $1 million.

At both ends of this chain of events there are individual musicians playing music, but in the middle is a royalty system that allows the art to support the art.

A similar thing could happen on a larger scale had we the will to create it. The suggestion has come from several quarters, most notably from Senator Christopher Dodd of Connecticut, that we alter current copyright law in a way that would draw on the existing wealth of the arts and humanities to support the arts and humanities. Specifically, the idea has been to extend the current term of copyright for twenty years, and use the resulting income to create true endowments for the arts and the humanities. (Under current law, the copyright term for individuals is the lifetime of the author, plus fifty years; copyrights held by institutions and corporations have a term of seventy-five years. This proposal would add twenty years to each of these.)

The rationale behind such a change will be more evident if I say a word about the history of copyright and patent. Both institutions arose to perform a double function: to encourage creativity *and* to bring its fruits into the public domain. If we had no patent law, one of two things might happen: either inventions would remain trade secrets in perpetuity, in which case the public would pay royalties forever, or inventions would become public immediately, in which case the inventor would never benefit. Patent law prevents both of these; it allows inventors to gather royalties for a set term, after which inventions become public properties. Copyright law has the same double function: the creator of a work is supported for a term, after which the work becomes available to all without fee. During his lifetime Charles Dickens's work paid him very well, but now his novels, and all the other great works of nineteenth-century fiction, are a public property. They are a commons like our national parks, but easier to manage and more widely spread.

Both patent and copyright, then, treat creative works as private goods for a term, and then as public goods, as commons. What proposals to change copyright law do, in effect, is to add a middle term between the private and public, a transition period during which wealth generated by copyright would underwrite currently active creative talent. Or, to put it another way, for a limited period we would consider as "the public" those men and women who are currently dedicating their lives to the arts and humanities, those who are most directly the aesthetic and intellectual heirs of the past, and who will be most directly the benefactors of any future cultural commons.

All such proposals recognize that while the lives of individuals are constrained by time, our creative commonwealth is not. It arises from the past and extends into the future. "If I have seen further than others, it is by standing upon the shoulders of Giants," said Sir Isaac Newton. All creative people are empowered by an inheritance from the past, a gift that can only be repaid by dedicating a portion of our present labors toward the future.

Such is not our habit in the late twentieth century, I realize. How striking it was to hear recently that Benjamin Franklin once deposited money in a Philadelphia bank, the compound interest of which he said was to be spent two-hundred years later for the benefit of that city. I would be hard pressed to think of any deed done in my lifetime intended to benefit men and women living in the 2190s. This century has as one of its hidden wounds a weakened sense of such temporal obligations. That wound was first struck, it seems to me, by the detonation of atomic weapons, which made it seem possible for the first time in history that the human race might actually have no future. That, plus our reluctance to limit growth, has meant that we now treat the future as if it were a colony of the present, a distant land whose riches we may exploit. Colonizing economies used to extract their wealth from powerless and distant nations; the new colonialism exploits the powerless and distant future. We light the cities of the present with atomic power and leave the future to dispose of the waste; we grow our crops in a way that destroys soil that took millennia to build, never thinking where the future will do its planting. We do not empower our descendants, we steal from them.

But that does not have to be the case. One of the reasons I am attracted to the proposal to extend copyright is that the endowments it promises will be slow to build, and are thus clearly directed toward artists and scholars not yet born. It is noble, adult, and civilized to create such institutions, ones that will empower a future we ourselves will not live to see. It is one of the few ways we have to acknowledge our debt to the dead, and to embody our link to those who are not yet born. It signifies that we believe in ourselves as an enduring civilization, not just an economy, and it thus begins to heal our wounded sense of time. In honoring the past and the future, we enlarge the present as well, and make ourselves at home in our own day.

III

I realize I took on a hard case when I chose to use Henry Thoreau to question the myth of self-reliance. Thoreau *was* remarkably self-reliant. He could not only make a pencil, he could make a machine to grind the graphite for that pencil. He could build a chair, and he could build a house. He could feed himself for weeks on horn pout and corn meal. Hiking in high mountains, he could dig a little spring when he got thirsty, and sleep under a board when he got cold. Moreover, Thoreau was famously hostile to philanthropic and communal endeavors. His standard response to all calls for reform was that reformers should improve themselves before improving the world. Asked once to join a commune he declined, saying that even if he were admitted to heaven he hoped to bake his own bread and wash his own linens (Harding 125).

And yet all these facts and self-descriptions fail to tell the full story of Thoreau's creative life. He did, in fact, contribute time, energy, and imagination to those things that mattered to him. He wrote, traveled, and lectured in the fight against slavery. He joined the "commune" of the Concord Lyceum, and periodically served as its leader. For those matters that lay close to his own heart he was not above imagining collective action, as witness this entry in his journal from 1859:

> Each town should have a park, or rather a primitive forest, of five hundred or a thousand acres, where a stick should never be cut for fuel, a common possession forever, for instruction and recreation. We hear of cow-commons and ministerial lots, but we want men-commons and lay lots, inalienable forever.... All Walden Wood might have been preserved for our park forever, with Walden in its midst, and the Easterbrooks Country, an unoccupied area of some four square miles, might have been our huckleberry-field.... As some give to Harvard College or another institution, why might not another give a forest or huckleberry field to Concord? A town is an institution which deserves to be remembered (Canby 428-29).

Yes, Thoreau was skeptical of collective action, but his skepticism was meant to sort trivial commons from the commons that mattered, and wilderness mattered to him (in this excerpt he has imagined our national parks long before any of them were deeded). And yes, Thoreau was self-reliant, but he did not make Harvard College; he did not make the college library, nor Emerson's library; he did not initiate the lyceum movement; he did not create the remarkable community that was Concord, Massachusetts in the 1840s; he did not create the Sudbury and Concord rivers, nor the endless acres of field and forest along their banks. All these were given to him, some by nature, some by luck, some by friends, and some by ancestors who worked on his behalf without ever knowing who he was.

In short, it is true that Thoreau wrote *Walden* without a patron in the sense that Harriet Weaver was a patron, but it is a truth insufficiently subtle. We have *Walden* because there was a climate ready for it, and because its author was, as I said before, surrounded by the many things that all talent must have before it can ever bear its fruit.

How best to create such climates and conditions is a question we yet debate in this country. We may differ on the means, but we should be united toward the ends. Let us begin by recognizing how deeply all creative enterprise needs to be fed by its larger community. Let us work to build the institutions that will make all talent prone to the happy accident of its fruition. Let us create a future that will be proud to name us as its ancestors. Thoreau liked to dwell on those old books that tell of an age of heroes, a time when gods and giants walked on this earth. Nor did he believe that such an age lay only in the past; it is always near at hand, ready to be reborn as soon as there are men and women who will decide to be its heroes.

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_*_ In 1935 it was the WPA's Federal Art Project that freed Willem de Kooning from commercial work and set him painting full time. As he later said, the Project "gave me such a terrific feeling that I gave up painting on the side and took a different attitude" *(The New York Times,* March 20, 1997, p.A16).

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Appendix

While researching the proposal to build the arts and humanities endowments by extending the term of copyright, I discovered that a competing proposal has been before the Congress, one that would reduce, rather than foster, our creative commonwealth. The following is my response to that proposal—an op-ed essay articulating the choices to be made. It was first printed in the Los Angeles Times, September 7, 1997.

Public Domain or Private Gain?

The Debate over Copyright Extension

The mother lode of creative work from the early days of film and sound recording will soon begin to enter the public domain. Congress, however, is considering a bill that would keep that from happening, one that would essentially transfer this enormous wealth—several billion dollars, probably, though no one will say for sure—from the public domain to the pockets of private corporations and individuals. As this wealth might otherwise be used to support the community of artists and scholars from which it ultimately derives, it would be a serious loss if the decision to give it away were not joined to the debate about how to support creativity in this nation.

A 1994 proposal from Senator Christopher Dodd of Connecticut lays out a cunning way for this nation to use the value of past intellectual property to support artists and scholars working in the present. Dodd's "Arts Endowing the Arts Act" would add twenty years to the term of copyright protection, and use the income from those extra years to underwrite current creative work. At present, American copyright protects an individual's work for his or her lifetime, plus fifty years; corporations with works "made for hire" (most films, for example) hold rights for seventy-five years. Under Senator Dodd's proposal, at the end of each of these terms, the rights to an additional twenty years would be publicly auctioned, the proceeds going to build a true endowment dedicated to the arts and humanities.

By contrast, this year Senator Orrin Hatch of Utah is sponsoring a bill that would extend the term of copyright for twenty years, the proceeds of this remarkable windfall going simply to the current holders of the rights. Supporters of Senator Hatch's bill point out that the European Union has directed its member states to unify their terms of copyright at "life plus seventy years," and they contend that many benefits would follow if we did the same, chief among them an increase in the American balance of trade. They also point out that many countries follow "the rule of the shorter term" when foreign and local laws differ; thus if the American term is shorter, Americans will forfeit income they might have otherwise earned abroad.

None of these arguments holds up under scrutiny. The arithmetic doesn't make sense, for one thing. As I mentioned, corporations owning made-for-hire work currently hold copyrights for seventy-five years; under Senator Hatch's bill the term would run ninety-five years, a welcome change for ASCAP and the Motion Picture Association, but not one that brings our law into harmony with European law (to do that would mean *reducing* the work-for-hire term by five years, not adding twenty to it).

As for gains in the balance of payments or losses under the "rule of the shorter term," we should remember that Europeans are not the only consumers who will pay for this change. The bulk of the cost of this corporate handout will be borne by our own citizens, who will be obliged to continue paying royalties for work that would have otherwise become common property. In this light, to extend copyright for twenty years amounts to an unprecedented taking from the public sphere, as if Congress were to hand the deed to Yellowstone Park to a private mining company, asking nothing in return.

Since its beginnings in the eighteenth century, American copyright law has sought to balance private gain and public good. It is a bargain struck between the state and the makers of intellectual and artistic property: the state makes sure creative citizens get paid if someone uses their work, and it puts the courts and the police at their disposal to protect those interests. In exchange, it asks that the work eventually become a public good, one that all citizens may use without fee. This bargain is well put in the U.S. Constitution, which allows Congress to grant "exclusive right" to authors and inventors "for limited times": "exclusive" so that creators may benefit short term, but "limited" so that the public may benefit long term.

If Congress now wants to change the terms of copyright, the crucial question to ask, therefore, is not about harmony with Europe, but about the Constitutional mandate to balance private and public good. The beauty of the Dodd proposal is that it not only addresses issues set in motion by Europe's longer term, but it does so without any theft from the public side of the scale. It adds a middle term between public and private, a transition period during which we designate as "the public" that community of artists and scholars whose calling already makes them the initial heirs of our cultural patrimony.

I myself think it would be best if the income from such a plan went to build true endowments for the NEA and the NEH so they might eventually be free from their reliance on congressional funding. For many years, those of us concerned with supporting creativity in this nation have sought some way in which the arts and humanities might benefit from their own streams of wealth, rather than having to go begging for tax dollars. The American creative community already has riches and income. It needs no handouts, it needs only institutions designed to translate some of that wealth into support for those who labor in the present to create the cultural riches we will pass on to our descendants.

By extending copyright to help build the endowments, Congress can create such an institution. If, on the other hand, it extends copyright with no regard for the public domain, it will have done little more than sponsor a remarkable theft.