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# Conclusion:
# Putting Cultural Environmentalism into Practice

The premise of this book has been that meaningful reform in information law and information policy requires a deep and fundamental rethinking of the most basic assumptions on which they are founded. Properly understood, "cultural environmentalism" requires engagement with culture in all its messy, materially embedded heterogeneity, and demands that we learn to value privacy as well as access and interstitial complexity as well as seamless rationalization. Put differently, it requires change in a culture that thinks culture and materiality unimportant and that treats gaps in market and informational frameworks as imperfections to be eliminated. That argument, though, suggests a chicken-and-egg problem: cultural change and legal change are both necessary, but each is dependent on the other. How are we to begin? A final lesson from everyday practice, however, is that practice does not need to wait for an official version of culture to lead the way. It seems appropriate, therefore, to close this extended meditation on the necessity of putting practice into cultural environmentalism with some thoughts on strategies for putting cultural environmentalism into practice.

Let us begin by returning to the point where we started: to the enclosure and environment analogies that proponents of free culture and A2K have invoked to support their arguments for reform. Reconsidered in historical and cultural perspective, those analogies usefully illuminate three important directions for the practice of cultural environmentalism.

One direction concerns the way that we talk about cultural environmentalism. Over the past decade, legal scholars have applied themselves with a will to the task of reimagining information-policy discourse in cultural environmentalism's image, producing new theoretical constructs and elegant economic models. That work has produced much that is valuable, and has strengthened calls for a new way of thinking about information law and policy. What I have in mind here, however, are narratives that are relentlessly ethnographic and that force attention over and over again to the ways that culture moves, to the ways that subjectivity is made and remade, and to the ways that the play of everyday material practice leads to technical and social innovation. In a word, putting cultural environmentalism into practice requires good storytelling. We need stories that remind people how meaning emerges from the uncontrolled and unexpected--stories that highlight the importance of cultural play and of the spaces and contexts within which play occurs.

A second direction concerns the relationship between cultural environmentalism and the practice of regulation. Some scholars charge that if taken seriously as a prescription for law- and policy making, the theory of capabilities for human flourishing would undermine social welfare because its distributive-justice requirements would stifle technological and market innovation.[1] That argument presumes that innovative processes are not already constrained by the demands of existing interest groups; it presumes, in other words, that such processes now follow essentially neutral, merit-based trajectories, which the capabilities approach would derail. The presumption of a neutral baseline places the burden on reform proponents to prove that the changes they advocate will not make matters worse. And the argument about the vulnerability of innovative processes posits that the possibility of transformation in the technological and economic conditions of contemporary life is oddly fragile, simultaneously within our grasp and at constant risk of slipping away. But those conclusions are historically and theoretically unfounded.

In his history of the (first) enclosure movement and the industrial revolution in Britain, Karl Polanyi wrote about a "great transformation" of economic and social systems, driven by the need to subject labor, land, and money to the demands of a rapidly industrializing and increasingly nationwide market economy. As Polanyi explained, however, labor, land, and money are "fictitious commodities"; they are not produced for sale and exist independently of the market system that attempts to dispose of them. Although powerful social forces may press toward unrestricted commodification of these items, their regulation purely by market mechanisms

> would result in the demolition of society. For the alleged commodity "labor power" cannot be shoved about, used indiscriminately, or even left unused, without affecting also the human individual who happens to be the bearer of this peculiar commodity. . . . Robbed of the protective covering of cultural institutions, human beings would perish from the effects of social exposure; they would die as the victims of acute social dislocation through vice, perversion, crime, and starvation. Nature would be reduced to its elements, neighborhoods and landscapes defiled, rivers polluted, military safety jeopardized, the power to produce food and raw materials destroyed. Finally, the market administration of purchasing power would periodically liquidate business enterprise, for shortages and surfeits of money would prove as disastrous to businesses as floods and droughts in primitive society.[2]

In fact, the dislocations and disasters described by Polanyi occurred, and caused immense suffering to the ordinary people who lived through them. The human suffering occasioned by enclosure and industrialization was alleviated not by the workings of the market, but by the development of "protective countermoves," such as regulation of wages and working hours, that were rudimentary precursors of the social safety net that modern industrial societies employ. Those reforms--all of which were experiments--did not stifle the burgeoning industrial economy, which proved more than robust enough to tolerate them. Instead, they prevented it from consuming itself.

This historical example holds three important lessons for policy makers in the emerging information society. The first lesson concerns the difference between historicism and determinism. Like the first "great transformation," the transformation now underway is probably inevitable. Fifty years from now, we will think of information networks and information markets differently than we do today. Many concepts that seemed unquestionable today will strike us as quaint and outmoded. That said, however, there is still enormous room for discussion about what the emerging information society will look like. Polanyi's analysis reminds us that the precise pathways of transformation are not predetermined. What is inevitable is change, not any particular set of economic, political, or social institutions.

The second lesson concerns the fiction of a self-regulating market economy. It is dangerous folly to think of markets as separate and independent from the societies in which they operate. In particular, the message that Polanyi sought to impart about the commodification of labor, land, and money applies to information as well. In the networked information society, human beings amass and trade or withhold information to promote self-interested economic goals. At the same time, information is stored in human minds and transmitted by human communication. It is the stuff of our collective culture, and a shift to the pure-commodity vision of information is neither feasible nor desirable. To avoid injustice, policy makers must consider the welfare of humans in addition to the welfare of markets.

The final lesson of the first enclosure movement is outside the frame of Polanyi's analysis. Those who opposed the first great transformation did not include only dispossessed tenant farmers, but also a group of agitators who have come to be called Luddites. Today, we think of a Luddite as someone who opposes technological advance, but historians have shown that this was not necessarily true. What the Luddites opposed, instead, was technology developed in a particular way and deployed in the service of an economic philosophy with which they deeply disagreed.[3] The Luddite challenge could not be met simply by enacting wage and working-hour regulation. It required recognition of the fact that the trajectories of technological development are not inevitable, and that some kinds of labor, though inefficient by commodity-market standards, may be worth privileging for their own sake. Such recognition was not forthcoming, and the Luddites became a vignette for the history books, a cautionary tale for technological naysayers.

So retold, the tale of the Luddites poses an important challenge for scholars and policy makers in the emerging networked information society. If technologies do not have natural trajectories, it is our obligation to seek pathways of development that promote the well-being of situated, embodied users and communities. When our preferred policy prescriptions persistently produce information architectures and institutions that undermine human flourishing in critical ways, it is time to question them and to experiment with ways of doing better. The tale of the development of regulatory countermoves to mitigate industrialization's costs, meanwhile, reminds us that attention to human values need not undermine the future of valuable innovation. Processes of technological and economic innovation are self-motivating; they are not so easily derailed. Both stories suggest that putting cultural environmentalism into regulatory practice entails looking backward, and taking seriously history's lessons about

the complex interrelationship of innovation, regulation, and social welfare. They suggest, as well, that those who oppose attention to human values should bear the burden of justifying their preference for existing patterns of influence over technological development.

A third direction for the practice of cultural environmentalism concerns the market valuation of information and information services. Technologies do not have fixed developmental trajectories, but they do have trajectories, which emerge gradually as the result of many decisions made by individual and institutional actors. Prevailing understandings of market value and market risk have large consequences for the design of information technology products and services and for the development and funding of new information technology ventures. Making different decisions requires different methods of assessing value and risk.

As we have seen throughout this book, the theme of risk management pervades debates about information law and policy. Firms that invest in copyrighted content argue that more complete copyright rights provide important security in an increasingly uncertain world. Firms and governments that make use of personal information advance a different version of the uncertain-world argument, asserting that derogating from their current freedoms will undermine profitability, sap innovation, and jeopardize security. These linked arguments for logical completeness in entitlements and regulatory restraint reflect an understanding of risk in which gaps in legal and informational frameworks produce vulnerability. That view in turn shapes the operation of capital markets, where a range of players from venture capitalists to private-equity analysts rely on financial projections to steer investment in information and technology firms.

The understanding of the relationship between information and risk management reflected in contemporary information-policy debates is a seductive one, but it is incomplete. Practices of risk identification and risk management are socially constructed in important ways. Although we are culturally predisposed to understand them that way, incomplete legal and informational frameworks do not themselves create risk. The possibility of harm from unpredictable future events is an unavoidable fact; to undertake any prospective enterprise is to confront risks of all sorts. Strategies focused on the elimination of gaps in informational frameworks can magnify risk, either by exacerbating preexisting dangers or by creating new ones. One seeking evidence for that proposition need look no farther than the recent and still-ongoing meltdown of the global financial system, an event precipitated by the toxic combination of reliance on automated, logically complete financial models and regulatory deference to those models.[4] In a similar way, reliance on the logics of commodification, transparency, and exposure simultaneously creates large risks to the processes of human flourishing and disables policy makers from recognizing those risks.

Meanwhile, there is ample evidence that capital markets do not understand how to value either the positive externalities that result from imperfect ownership rights in intellectual goods or those that result from incomplete access to consumers' personal information. Consider YouTube, which has struggled to turn a profit despite its high market valuation. YouTube's owner, Google, faces ongoing pressure from investors who fail to see the profit potential in

users' home-created videos of themselves, their children, and their pets, and who would prefer to see Google devote more efforts to attracting mainstream, predictably monetizable content. Social-networking giant Facebook has pursued a variety of schemes for monetizing users' personal information, repeatedly angering its subscribers, because extant metrics for market success demand and reward such monetization.

Putting cultural environmentalism into practice requires sweeping changes in the theory and practice of valuing information so that market logics will not push quite as inexorably toward commodification, transparency, and exposure. Corporations and financial institutions have struggled with the balance sheet and stock market implications of sustainable-development policies. Efforts to generate an "economics of sustainability" and associated metrics for corporate social responsibility have borne some fruit, but work in that direction is still preliminary. In a similar way, the institutional actors that play central roles in the cultural ecology will need to struggle with the financial implications of sustainable-development policies designed to nurture the cultural environment. Financial accounting and projection are decidedly unromantic topics, but the central importance of financial markets in the organization of cultural and technological production suggests that practitioners of cultural environmentalism should give those topics their sustained attention.[5]

Strategies for implementing cultural environmentalism will not emerge full-blown. As we have seen, that is not the way either culture or innovation works. They will emerge gradually as the result of situated actions taken in the belief that a just information society should prize both openness and privacy (even though that requires difficult distinctions to be made and maintained), that innovation can serve human values (even if the endpoints are not clearly in view), and that human flourishing requires the relaxation of technocratic logics (even in the face of our own discomfort). This great transformation too seems unthinkable, but it is within our reach.

# Notes

[1] See, for example, Epstein, "Decentralized Responses to Good Fortune and Bad Luck."

[2] Polanyi, *The Great Transformation*, 73.

[3] See Jones, *Against Technology*, 9, 47-49.

[4] For discussion of the role that technologically driven risk management played in the collapse of the global financial system, see Bamberger, "Technologies of Compliance." On the cultural construction of risk more generally, see Beck, *Risk Society*; Douglas, *Risk and Blame*; Ericson & Doyle, *Risk and Morality*.

[5] See, for example, Heal, *Valuing the Future*; Rogers, Jalal, and Boyd, *An Introduction to Sustainable Development*, 260-312. One noteworthy early effort to develop practices for valuing the cultural environment is Pasquale, "Toward an Ecology of Intellectual Property."