A POLITICAL ECONOMY OF UTOPIA?

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John Perry Barlow's two essays capture a yearning to escape the oppressive clutches of the two most important institutional forms in modernity: the state and market society. *A Declaration of the Independence of Cyberspace* is explicitly against the modern state. One might say, "All right, but apart from the sanitation, the medicine, education, wine, public order, irrigation, roads, a fresh water system, and public health, *what have the Romans ever done for us*?"[1] The *Declaration* reflected not only a libertarian utopia that assumed that if only the state were to back off markets will take care of it all, but also a left-anchored critique of the state as a critical site of protecting the power and privilege of elites, insistence that individual self-actualization demanded a state contained within narrow boundaries, and a deep skepticism of all forms of authority, as Fred Turner showed in *From Counterculture to Cyberculture*.[2] *Selling Wine Without Bottles* is not against markets or payment as such, but rather a resistance to the totalizing vision of commodity exchange as all there is. In this, for me a telling passage was:

> [M]ost of what a middle class American purchases has little to do with survival. We buy beauty, prestige, experience, education, and all the obscure pleasures of owning. Many of these things can not only be expressed in non-material terms, they can be acquired by non-material means.
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> And then there are the inexplicable pleasures of information itself, the joys of learning, knowing, and teaching. The strange good feeling of information coming into and out of oneself. Playing with ideas is a recreation which people must be willing to pay a lot for, given the market for books and elective seminars. We'd likely spend even more money for such pleasures if there weren't so many opportunities to pay for ideas with other ideas.
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> This explains much of the collective "volunteer" work which fills the archives, newsgroups, and databases of the Internet. Its denizens are not working for "nothing," as is widely believed.

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[1] MONTY PYTHON'S LIFE OF BRIAN (Sony Pictures 1979).
[2] FRED TURNER, FROM COUNTERCULTURE TO CYBERCULTURE (2006).

Rather they are getting paid in something besides money. It is an economy which consists almost entirely of information.[3]

Here was the nub of it. An ambition to live in spaces where the commodity form was not everything. Where we could produce with and for each other in relations of social exchange. The problem was not so much markets as markets. It was the totalizing sense that markets are all there is. Nothing captured this so clearly at the time than the battles over music copyright, where the Recording Industry Association of America's (RIAA) vision of a celestial jukebox meant that music was a relationship that should be fully mediated by money, down to the briefest moments of pleasure or cultural reference. The position that Barlow presented here, widely shared by many of us who worked to theorize and practically construct the public domain, was a vision that music was a social relationship and that markets had to be cabined alongside a robust commons-based cultural production.

I spent much of the last twenty-five years focused primarily on the latter of the two problems—the extent of the market and how we can escape its totalizing reach. Only occasionally, and quite late in my own work, did I turn to how we think about how we counter the oppressive potential of the state without losing the benefits of its ability to deliver public goods, contain market power, and redistribute wealth.

As I was preparing for the oddly introspective exercise of writing my contribution here, I dug up an August 1995 draft of the job talk with which I tried to persuade law schools to hire me. I opened with this:

Recognizing this historical moment presents us with a rare instance at which we can make choices about the architecture of the new technological base upon which our society and economy will be built. Choices we make now will affect investment and use patterns, which in turn will further affect the paths along which technology itself will develop, and will affect how we conceive of information and knowledge, and how we produce and consume that information and knowledge. The network architecture and the patterns of use of electronic communications that will develop from these choices will have significant effects on our cultural, social, and economic structure.

And then closed with:

Because the attributes of digital communications technology have the potential to effect profound changes in the way we interact with

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[3] John Perry Barlow, *Selling Wine Without Bottes: The Economy of Mind on the Global Net*, 18 DUKE L. & TECH. REV. 8, 23–24 (2019).

one another, the stakes of how we regulate the networks through which we will interact are very high. We could move ourselves towards a society in which the production and consumption of information and knowledge is decentralized and diversified, emphasizing those attributes of digital technology that make possible nonhierarchical, open communications available on a more-or-less equal basis to all end users. We could also move our society towards a centralized economy, in which a few large information conglomerates have such fine-tuned information about our preferences, powers, and vulnerabilities, that they can exert a tremendous amount of control over our every choice. We will likely move towards something that is neither Cybertopia nor Orwell's dystopia. But where along the spectrum from phobia to utopia our society will actually end up will likely be affected by accumulated choices we make today and tomorrow about who controls the various components and aspects of the communications infrastructure upon which our information society will be built. That is where legislators, judges, and lawyers come in, for in every legal decision, regulatory action, or law that effects an institutional determination about who controls which resources that are pertinent to the development of the electronic communications network, a piece of our future is being determined.

Plus ça change.

In the 1990s, the particular institutional battle over power to control the information economy and society were battles over the scope of commons. I thought that the most important choices would be about property and commons—in particular how building robust commons could provide a steady resource base on which decentralized, self-governing communities and individuals could construct a robust system of information, communications, knowledge, and cultural production that was not dependent on market relations and could provide a measure of freedom from powerful market actors, as well as from the state.

The primary failure of that vision was that except in important isolated settings, where commons-based practices took root early and were able to outcompete the state and the market, expansion of the domain of nonmarket production has stalled.

The fundamental battle that I think Barlow insisted we join, and that I too focused on, was the right battle for its time. It continues to be the case that battles over the shape of property rights and technological affordances will shape bargaining power within markets, and will shape the existence and relative prevalence or importance of non-market forms of production and social exchange. It's still the case that in principle, as we project twenty-five years forward, we might be in a world in which a

core set of basic materials is pumped into our homes as electricity and water are, and feed distributed fabricators (3D printers) become as ubiquitous as laundry machines or microwaves. Such a system would allow us to share designs as free and open source software (FOSS), user innovation, or fan fiction are shared today, and to fabricate much of the stuff we need in non-commodified, household production for our own use and to share and exchange with others. No one has captured the potential for such a non-commodified society like Cory Doctorow in *Walkaway*. It's still the case that the pattern of control over energy generation could shift toward a distributed system, as solar panels and wind turbines get connected over a neutral, public grid. It's still the case that services that depend on platforms could be structured as cooperatives. Whether any of these developments will emerge will depend in large measure on what institutional choices we make about the technology and about how it is used in actual institutional settings and firms. It will depend on whether this time (unlike in the 1990s), we will succeed in seeing a population-level cultural change from people perceiving themselves as consumers to people seeing themselves as producers. And it will depend on whether we can integrate that shift into our day to day practice as a revised view of the state and the market, rather than as a displacement.

And there's the rub. Because the kind of optimism that typified Barlow's writing, as well as at least some of my own, is much harder to sustain now that we've seen how the successes of the first generation of battles over the commons have turned out.

Facebook runs over TCP/IP and WiFi. The fact that the underlying carrier technology and the Internet Protocol are open access commons turned out not to have been enough to preserve people's freedom from the power of a small number of corporations. Both on the consumer end, like Roku, and on the cloud services side, Linux is everywhere. The Internet of Things could not run on anything other than FOSS and spectrum commons. And yet, these devices are all centrally controlled, and many function as the sensors for pervasive surveillance systems. Just as industrial manufacturers cheerfully emitted pollutants and effluents into the commons of the air and water to externalize some of their costs, so too are Facebook, Google, Amazon, and Apple finding ways of constructing new bottlenecks above and below the open layers, creating new toll booths and points of observation,[4] and using the "free" nature of the open parts of the infrastructure as low cost input from

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[4] *See generally* Yochai Benkler, *Degrees of Freedom, Dimensions of Powe*r, 145 DAEDALUS 18 (2016).

which to then mine our "biopolitical public domain," as Julie Cohen puts it.[5]

What the past quarter century has taught us is that there are five basic failure modes of commons-based strategies to construct more attractive forms of social relations.

1. Companies and countries can usually sustain focused strategic efforts for longer and more actively than distributed networks of users. They can and do use these advantages strategically to re-centralize control over consumers and voters using mechanisms that are layered over or circumvent the still-open parts of the ecosystem. This is not true in all cases; Wikipedia has enough activated users that they are able to overcome concerted efforts to distort information; major FOSS development projects of core pieces of infrastructure beat out proprietary solutions. But, as Wikipedia approaches its 20th anniversary, we have to recognize that these major examples of successful distributed commons-based social production continue to be our prime examples. Time and again over the past twenty years we have seen companies spending money to harness relatively passive consumers— whether it is in carrier-operated WiFi networks that completely overshadowed the emergence of community wireless networks, or whether it is in the App economy that Apple introduced, based on the App Store model, that increasingly has displaced for most people the open-standards based personal computer running an open-standards based html browser. And in the past five years we have seen countries find ways of using the open nature of communications to engage in propaganda and manipulation, as well as to track dissidents and opponents by tapping into the surveillance capabilities that companies developed to continuously gather information about their users for commercial sale.

2. Distributed social relations can themselves develop internal hierarchies and inequities (the Iron Law of Oligarchy), as current debates over Wikipedia and FOSS gender participation ratios and governance make clear.

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[5] *See generally* Julie E. Cohen, *The Biopolitical Public Domain: The Legal Construction of the Surveillance Economy*, 31 PHILOSOPHY & TECH. 213 (2018).

3. Distributed open communications have provided enormous play for genuinely hateful and harmful behavior, such that we find ourselves seeking some power to control the worst abuses—the power of the platforms we want to hold democratically accountable, or the power of countries to regulate those platforms for us. As early as Gamergate, when networked gamers mobilized to harass and intimidate women: game developers and media critics, in the name of geek masculinity and free speech, and more prominently since the various elections of 2016, we have come to appreciate the extent to which fully distributed networks can underwrite abusive behavior.

4. More fundamentally, as long as we live in a society where people have to make money to eat and keep a roof over their heads, markets produce stuff we really like and want. For all the broad complaints about Amazon, it has produced enormous consumer welfare. More directly, for all the romanticization of fan videos and remix, the emergence of subscription streaming services like Netflix and Amazon Prime has been a boon to professional video creators and underwritten a golden age of professional video entertainment and narrative, both fiction and non-fiction.

5. States are still necessary to counter market power, provide public goods on a sustained and large-scale basis by using coercive taxing and spending powers, redistribute wealth, and provide basic social and economic security for the majority of the population.

Markets and states have proved remarkably resilient and adaptive. Even where technological standards and institutions made it possible for commons-based, distributed action to take root, both market actors and states have found ways to impose their goals on most of the population. This occurred primarily when the population engaging with technology shifted from the more active and technically capable early adopters to encompass a broader range of users, most of whom couldn't, or didn't care to, use the freedoms that early adopters had put in place for themselves. In part, this "domestication" of user creativity was done as a sustained, intentional campaign, like the RIAA and MPAA's litigation and legislation campaign against remix culture in favor of the celestial jukebox. In part, it may simply reflect the diversity of motivation among human beings and the prevalence of the culture of passive consumption when it is available. Perhaps there simply are more sheep than cats.

Beyond the simple fact that market and state actors re-emerged as central sources of power, states in particular seem to present a much more likely source of accountable power and counteracting force to market-based power than was the prevailing sense among both left- and right-libertarians in the 1990s. A resurgent progressive movement is fighting hard to change the basic narrative on how important it is to harness the state, accountably and democratically, to play its core roles.

So this, to me, is the great challenge facing those of us who still want to think of technological change in terms of its effects on social relations. We need a clearer and more fully articulated political economy of technology. We need a better understanding of what the state and the market are for, in the context of a genuine three-way interaction between state, market, and commons-based production specifically or social, nonmarket production more generally. And we need to internalize the limits of anarchism, whether of the right or left spin. I see present debates over blockchain, cryptocurrencies, and re-decentralizing the net, and I see in them a rededication to the ideals that Barlow expressed so poetically. The words are still there, but the music seems out of sync with the beat of the times.