
CULTURE'S OPEN SOURCES

The Political Agnosticism of Free and Open Source Software and the Inadvertent Politics of Contrast

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Free and open source software (FOSS), which is by now entrenched in the technology sector, has recently traveled far beyond this sphere in the form of artifacts, licenses, and as a broader icon for openness and collaboration.¹ FOSS has attained a robust socio-political life as a touchstone for like-minded projects in art, law, journalism, and science—some examples being MIT's OpenCourseWare project, School Forge, and the BBC's decision to release all their archives under a Creative Commons license. One might suspect FOSS of having a deliberate political agenda, but when asked, FOSS developers invariably offer a firm and unambiguous “no”—usually followed by a precise lexicon for discussing the proper relationship between FOSS and politics. For example, while it is perfectly acceptable and encouraged to have a panel on free software at an anti-globalization conference, FOSS developers would suggest that it is unacceptable to claim that FOSS has as one of its goals anti-globalization, or for that matter any political program—a subtle but vital difference, which captures the uncanny, visceral, and minute semiotic acts by which developers divorce FOSS from a guided political direction. FOSS, of course, beholds a complex political life despite the lack of political intention; nonetheless, I argue that the political agnosticism of FOSS shapes the expressive life and force of its informal politics.

FOSS gives palpable voice to the growing fault lines between expressive and intellectual property rights, especially in the context of digital technologies. While free speech and property rights are often imagined as linked and essential parts of our American liberal heritage, the social life of FOSS complicates this connection while providing a window into how liberal values such as free speech take on specific forms through cultural-based technical practice: that of computer hacking.² Whereas, traditionally, censorship and state intervention were seen as the primary threats against the realization of free speech, the social practices of free and open software raise the idea that forms property can be antithetical to the principles of free speech, “principles” that are constantly under social revision though they might appear as timeless and obvious. Source code, the blueprint for programs that most non-technical users rarely see, is becoming an object to construct claims about vocational rights and the appropriate scope of First Amendment law;³ FOSS has not only transformed the dynamics of software development but is also shifting understandings of the appropriate use of intellectual property instruments and the scope of free speech protections.

I argue that the wedge placed by practitioners between FOSS and politics is significant to an anthropological assessment of the liberal underpinnings and reformulations of FOSS and the wider socio-political effect of its vast circulations. My thesis is that the denial of FOSS’ formal politics enacted through a particularized cultural exercise of free speech facilitates the broad mobility of FOSS as artifacts and metaphors and thus lays the groundwork for its *informal* political scope: its key role as a catalyst by which to rethink the assumptions of intellectual property rights through its use and inversion. It works because it recalibrates some of the distinctions and associations between free speech and intellectual property—it revises intellectual property law and channels it toward the protection of free speech, instead of its “conventional use” of securing property rights. Christopher Kelty aptly describes this as “openness through privatization, which makes it the most powerful political movement on the Internet, even though most of its proponents spend all their extra energy denying that it is political” (2000:6).

Political intent and subjectivity are indeed noticeably absent in the constitution of the free software and open source movement, which differs from more formal political endeavors and new social movements predicated on some political intentionality, direction, or reflexivity or a desire to transform wider social conditions. FOSS uniqueness as a “new social movement” stands precisely in the “extra energy” noted by Kelty to deny political associations of

various kinds.⁴ While technical or economic rationalities are often the native explanation for FOSS, a taken for granted form of cultural liberalism and the pragmatics of programming mutually inform and reinforce the hacker aesthetic distaste for politics. In other words, political denial is culturally orchestrated through a rearticulation of free speech principles, a cultural positioning that simultaneously is informed by the computing techniques and outwardly expresses and thus constitutes hacker values. It is this practice that I refer to here as “political agnosticism.”

The purported political neutrality of FOSS, inscribed into its technological artifacts through licenses, has facilitated an unfettered circulation of its technologies. FOSS is made visible to wider publics through its extensive use and resignification. The witnessable set of practices, such as collaborative production and the creative deployment of licenses, has become a social point of contrast by which the assumptions of the American legal intellectual property system are partially destabilized. It thus conveys an implicit critique of the opaque logics enveloped in the neoliberal drive to make property out of everything and, at this historical conjunction, seemingly out of very little.⁵

As noted by Herman and Coombe in this journal, the persuasive force of neoliberal rhetorics of property rights lie in their corporeality as an habituated ethos that defines the proper, veritable, and, thus, supposedly singular relationship between consumers, objects, and corporations. Though they astutely assert that intellectual property regimes are bent toward the “incorrigible” and are “resistant to revision,” FOSS has inadvertently performed with some degree of success against this habituated stance. FOSS provides another existing and *transposable* model for new legal possibilities composed of an aggregate of practices, licenses, social relationships, artifacts, and moral economies and, thus, enters a wider public debate on the limits of intellectual property primarily through visible cultural praxis. Its “success” is that it transformed what is purported to be a “singular” field of intellectual property law into one that is now multiple, offering new instruments and justifications for their use.⁶

Political Agnosticism

To understand the logic of political denial, it is instructive to define the rationale for freedom formulated in the philosophical underpinnings of FOSS licenses. The moral and semiotic load of free software is *a commitment to prevent limiting the freedom of others*. This is done to realize a sphere for the unfet-

tered circulation of thought, expression, and action for software development. This vision is clear in three key documents that guide the choice and creation of every free and open source license: the Free Software Definition, the Debian Free Software Guidelines, and the Open Source Definition. In these charters, freedom underscores an individual's right to create, use, and distribute software in a manner that will allow exactly the same for others, so long as license rules are followed—the goal of which is to enact a *universal sphere* for the flourishing of free forms of action and thought. All provisions in these documents work through a logic of non-discrimination as to achieve universality. Within this purview, source code, the line-by-line directions that programmers write to make software applications, is treated implicitly and explicitly as a form of speech. Writing source code is thus akin to “speaking” while licenses establish the conditions that allow for the free and unrestricted expression of speech.

A utilitarian ethic of openness is increasingly seen as obvious and indispensable in order to develop the “state of the art.” FOSS developers also place an extremely high premium on open technical production as an avenue for expressive activity. While hackers see the spread of free software as socially beneficial because it allows a diverse range of “others” to deploy their software (like you, me, the Mexican school system, the government, and even “Big Brother”), the primary significance of FOSS is personal: it is something which protects the “food” for them to “hack on” so that they can exercise their right to learn from and create more speech (source code) for others to share and extend. According to hackers, the fact that anyone can use FOSS and that it can be directed towards economic, political, and personal ends is a positive side-effect of openness; they consider it a testament to the power of a neutral political commitment.

The “free” of free software rests on yet reposes a wider Anglo-European socio-cultural sensibility for expressive rights, which underscores ideas of individual autonomy, self-development, and a value-free marketplace for the expression of ideas. As a number of critical scholars argue, forms of political neutrality are immanent to free speech doctrine (Brown 1995, Fish 1999, Marcuse 1965, MacKinnon 1993, Passavat 2002). These critiques treat decontextualized neutrality primarily as ideological scaffolding that justifies a politics of individual liberties over those of structural equality. While relevant in other ways, it is analytically deficient to analyze the free speech elements of free software as an example of these otherwise cogent analyses—that is, as an augmentation or verification of an already existing and mystified American liberal tradition.

The hacker aesthetic distaste for politics and their free speech codes can only be meaningfully ascertained as “cultural practice” if placed within the scope of their lived practical and material actions, not just in relation to how their values express or map perfectly onto some existing regime of value such as liberalism; If not, we construe their moral orders as vacuous and thus, decouple their values from a particular way of life and the historical conditions that enable and constrain what they do.⁷ Also to simply assert that the free speech character of FOSS is an expression of liberal values occludes key questions of investigation, for example: why is a language of expressive rights compelling to programmers, and how does the local rearticulation of expressive rights shift the wider juridical and cultural face and expressions of liberal values? Continuity of liberal traditions does not mean sameness. In other words, it reminds us that free speech, privacy, and property right have complex histories born from material and discursive struggles over meaning, even if such principles are socially construed as beyond the turmoil of history.⁸

The freedom of free software, while influenced by wider liberal sensibilities, is fundamentally shaped by the pragmatics of programming and the social context of Internet use. My contention is that values for expressive rights as formulated in free software philosophy were and are compelling to programmers because they hold affinities with their technical *habitus* borne from “practical” (as in meaningful, embodied, and collective action) experiences formed around the pragmatics of programming and the aesthetics of technical architectures. In addition, in recent times, it has afforded a wider cultural and political language by which to objectify to themselves and larger publics the nature of their technical life world, an objectification buttressed within a hacker public sphere and as a political vector to make claims against the aggressive application of intellectual property restrictions.⁹

Programmers describe their craft as an activity that allows for personal unrestricted forms of creativity, expression, learning, and action, enacted through a medium, the digital computer, and preferably interfaced through a transparent and flexible, technical environment (like UNIX). Passion that is understood to be the basis of the hacker ethic (Himanen 2001, Levy 1984) is fueled by a practice that allows programmers great flexibility and control in creation (Turkle 1984), creations which are put to use and hence seen as highly valuable. Programmers over decades of intense interaction come to viscerally experience the computer as a general purpose machine that can be infinitely programmed to achieve any task through the medium of software written by humans with a computer language. The technological potential for unlimited programmable capabilities

melds with what is seen as the expansive ability for programmers to create. For programmers, computing in a dual sense, as a technology and as an activity, becomes a total realm for the freedom of creation and expression. In essence, computing is understood and experienced (sometimes reflectively, other times implicitly) by FOSS hackers as the very micro-sphere for the unfettered circulation of thought, expression, and action that freedom within the macro-sphere FOSS seeks to achieve through licenses.

Downloading music and watching movies, socializing in chat rooms, playing highly addictive mutli-player games, creating software *libre*, meeting future girlfriends and wives on chat channels, reading your news daily online—all these activities contribute to a strong practical orientation and embodied disposition that the activity of communicating on and creating through a computer is a space of freedom for entertainment, production, pedagogy, and sociality.

More than ever, hackers actively and self-reflexively constitute these values within a type of public sphere where hackers discuss the corporate and legal practices that are seen to impinge on their ability to engage in such forms of “free” expressive making (Coleman and Hill 2004). The indiscriminate application of patents to software algorithms and other encryption and copyright laws, such as the Digital Millennium Copyright Act (DMCA), are construed as threats to the free ability of programmers to write source code, which hackers and programmers have only recently come to conceptualize as a form of communication worthy of the broadest protections afforded by First Amendment law.

Despite this incipient cognizance of the legal threats to free speech, what grows out of this particular life world of intense, lifelong programming and networked sociality is an overt aesthetic dislike for politics and a culturally embodied experience of freedom that conceptually shuns politics. Put simply, political claims outside of software subtract from, tarnish, and censor the sphere for the free circulation of thought, action, and expression. It is felt that if FOSS was directed towards a political end, it would sully the “purity” of the technical decision-making process. Political affiliation also might deter people from participating on development, thus creating an artificial barrier to entry into this sphere whose ideal and idealized form is a transparent meritocracy.¹⁰ A political tag is also perceived to curtail one’s personal freedom for deciding how to best interpret this domain of activity—a form of censorship and thus a highly polluted association to conjure.

In addition, the pragmatics of computing is a means by which to typify political activity as distasteful, unappealing, and ineffective. While program-

ming is considered a transparent, neutral, highly controllable realm for thought and expression where production results in immediate gratification and something *useful*, politics tend to be seen by programmers as buggy, mediated, and tainted action clouded by ideology that is not productive of much of anything while it insidiously works against true forms of free thought. You can't tweak politics in an elegant and creative way to achieve something immediately gratifying, and thus it goes against everything programmers think and love about computing.

The Inadvertent Politics of Contrast

I now shift my discussion to assess the political implications of FOSS. The multiple uses of FOSS and its transposability and visibility are simultaneously conditions for what I call a *cultural critique through contrast*. To explain what I mean let's visit our own field for a moment. Anthropology has historically unsettled our essentialist and universal assumptions about human behavior by contrasting them with those of people from other places (cf. Benedict 1959, Mead 1928, Marcus and Fisher 1986, Mauss 1967, Sahlins 1976). The disciplinary vehicle for this, it has been noted eloquently, is ethnography which "serves at once to make the familiar strange and the strange familiar" (Comaroff and Comaroff 1992:6). FOSS, among many other things, functions as a form of critical ethnography *writ large*. While a critical anthropology is based on a consciousness of its politics, FOSS inadvertently has become a vehicle by which to rethink the naturalness of intellectual property law. It exemplifies what Marcus and Fisher call "defamiliarization by cross cultural juxtaposition" (1986), the difference being that juxtaposition arises out of an accidental cultural and not intentional anthropological practice. Its ability to conjure contrast, I argue, results from its marked visibility and transportability partially borne from its purported political neutrality.

Free and open source hackers have been effective in coding FOSS as politically removed—a "neutrality" made material and socially effective through licenses. The effect is that the freedom within FOSS exudes a similar productive ambiguity that Prakash (1999) locates in the sign of science in his study of Indian nationalists who directed the icon of sciences as "the sign of rationality and progress" towards justifying their anti-colonial liberation aspirations. Due to this productive ambiguity that resists political affiliation of left, right, and liberal, FOSS has circulated extensively, though the relevance of freedom and openness mutates along the way of its excursions, fueling economic, govern-

mental, popular, and leftist articulations as justifications and alternatives. For example, I.B.M and other business that use FOSS emphasize it for its “market agility” and its ability to empower the consumer. I.B.M. adopts a neoliberal language to interpret the significance of FOSS to its consumer publics. On the opposite side of the spectrum, leftist media websites such as Indymedia.net run almost entirely on FOSS while its activists adore it for its subversive, anti-capitalist potentialities. The commons movement, centered on the idea of creating public goods to reinvigorate democratic principles, pragmatically built their licenses and justifications around the already existing practice of FOSS (Bollier 2002, Lessig 2001). Each group situates it in ways that empowers and legitimates their own aspirations, but through their particular efforts they extend FOSS to wider publics. And though there are distinct imaginaries grafted onto FOSS, certain implicit political messages within the *labor and law* of free and open source software also gain visible prominence.

Through its visibility and use by multiple publics, FOSS makes apparent, and to some extent “strange,” the assumptions that dominate the social landscape of intellectual property. It opens to critical scrutiny the liberal moral “habituations” that stringent intellectual property instruments are indispensable to foster innovation and creation. Thousands upon thousands of developers laboring to make software *libre* provides potent critiques and viable alternatives since it is realized by the social performance of collective labor and licenses that others can and now do use. Perhaps most significant is that FOSS enjoins others to become part of its performance in various ways: use of FOSS artifacts and licenses, participation in projects, reflection of the larger meaning of collaboration, and the reuse (and reconfigurations) of its licenses for other non-technological objects, such as college courseware, music, books, and movies.

Actualized labor in practice undermines current theories of labor in the law whose nature is to pose singular models for the proper relationship between legal means and ends. Licenses like the copyleft rupture the naturalized “form” of intellectual property by inverting its ossified and singular logic—through the very use of intellectual property—a move not unlike Marx’s inversion of Hegelian idealism, which retained Hegel’s dialectical method to repose history not as an expression of the “Absolute Idea” but as humanity’s collective creation through labor. Using copyright as its vehicle, the copyleft places copyright literally on its head and in the process demystifies copyright’s “absolute” theory of economic incentive. The copyleft says, we are not the passive “subjects” of an almighty, unchangeable law, but actually can create the law to serve us *for other ends*: in the case of FOSS, that of free

speech. While many hackers might think you can't tweak politics in an elegant and creative way to achieve something immediate and useful, Richard Stallman, the mastermind behind the copyleft, showed through a clever legal hack that politics can be gratifying and indeed very productive.

Conclusion

Over the course of the last thirty years, anthropologists have increasingly left for the field by staying home. Research in medical clinics, scientific laboratories, online communities, city neighborhoods, and high schools, to name a few such locations, has shifted the meaning of anthropological practice, the implications of theoretical critique, and the identity of the ethnographer (Marcus 1999). The nature of this research makes more clear that normative and ubiquitous regimes of values, such as those posed by liberalism, science, and capitalism, have a much more variegated expression when located in particular institutions, social groups, or an assemblage between them. In other words, the local is as much here as it is "there" in foreign or small scale societies, and part of the task of a critical anthropology is to conjoin the exercise of anthropological critique with the cultural processes of "defamiliarization" and critique located in historical practice, not in theory.

The source and the effect of political agnosticism has been the focus of this piece. FOSS, I have argued, is one local instantiation of liberal values, a rearticulation centered on reposing the relationship between intellectual property and free speech law by redirecting the use of licenses to protect expressive activity. FOSS sensibilities of freedom and the growing hacker assertion that source code is speech, largely regimented as politically neutral through liberal values, are also rooted in methodologies, values, and techniques constituted around the act of writing code and expressed visibly in a wider public social sphere of hacking. Through FOSS' visibility, circulation, and use, the juridical understanding of free speech is shifting while some of the ingrained assumptions of intellectual property law have already been partially destabilized, the wider effect of which has been to open up a social space for new legal possibilities.

The feature of critique that arises through the cultural struggle to recreate and redefine meanings and associations, I have come to learn, is much more ephemeral than the supposed ephemera of virtual social spaces. It is a moment in time whose nature is to shock other "socially situated actors" into a process of cultural rethinking that shifts practices in other areas of social

life. The nature of the shock is to lose its “shock value” so to speak and sink back into the natural state of affairs as soon as a set of practices are more or less stabilized. The journalistic, popular, and native narrative retelling of the rise and importance of new practices or political sensibilities often don’t integrate this moment of cultural defamiliarization, focusing instead on the rubric of great men and their ideas or explanation through unintended consequences that may not have been part of its genesis. Thus, the task of a critical anthropology within complex multi-cultural societies is to keep a mindful orientation toward these powerful yet elusive processes of cultural contrast and defamiliarization so that its politics can be more effectively known, acknowledged, and directed.

ENDNOTES

¹This is a short piece with many large ideas. Most of them have congealed through conversations with friends and colleagues. I would like to thank dmh, ck, rex, hacim, and mako for their comments and suggestions. A special thanks to Patrice Riemens whose works and insights are largely responsible for getting me to think differently about the unique nature of hacker politics.

²For an explicit defense and affirmation of the inseparability between strong property rights and civil liberties see Gray (1996) in his review of liberal political thought and more recently in Epstein (2003). However, legal scholars since at least the 1970s have perceptively analyzed the ways in which IP and expressive rights exist in tension with each other (cf Nimmer 1970, Benkler 1999). Copyright law limits access to and use of certain forms of “expressive content” and thus inherently curbs the deployment of copyrighted material in other expressive activity. However, the predominant legal rationale for the state sanction of intellectual property instruments is that they are mechanisms by which to “harvest” a marketplace of ideas so that any negative consequences of censoring speech are far outweighed by this purported public benefit. FOSS fundamentally challenges the rationale that censorship is a justifiable means to induce a marketplace of idea.

³It is important to appreciate that the links made between source code and free speech are historically recent. To my knowledge, it first appeared as a published argument in a paper among programmers in the early 1990s (Salin 1991). It increasingly became a prevalent association in the writings of Richard Stallman, the founder of Free Software Foundation. The “encryption wars”—the right to freely publish and use cryptography—also contributed to this consciousness. A notable case in these struggles was *Bernstein vs. the Department of Justice*, first filed in 1995. The Berkeley Professor Daniel Bernstein successfully argued that he had a First Amendment right to publish strong forms of encryption despite government restrictions that treat strong cryptography as munitions. While these legal contexts were crucial, neither Salin or Bernstein questioned the validity of copyright law as a barrier to speech. What free software added to the story of expressive rights among programmers was a more fundamental challenge to the idea of property for software.

⁴As many studies reveal, politics far exceeds activities formally designated as such. Healing rituals that integrate and reconfigure dominant signs (Comaroff 1985), dance (Martin 1998), popular festivals and literary genres (Bakhtin 1984), and everyday forms of workplace resistance such as foot dragging and ritualized fainting (Ong 1987; Scott 1985) are a small sampling of the wide array of phenomena treated as fundamentally political even though they

are not cast in those terms. My argument about the political agnosticism of FOSS draws from the starting point of these (and many other) works: that politics has a life beyond that of the obvious and directed. However, while many of the highlighted examples of “politics without intent” carry a politics, many of these forms are not premised on the very value and idea that these forms are not political, which I find analytically significant for this particular case.

⁵Currents in intellectual property law over the last thirty years are marked by the expansion of rights commandeered by intellectual property owners matched by the opening of new markets and materials for the scope of private property. Shifts in intellectual property application have been explored in relation to the academy and scientific production (see Slaughter and Leslie 1997, Mirowski and Sent 2002); its impact on cultural life, democracy, and innovation (see Betting 1996; Boyle 1996; Coombe 1998; Lessig 1999, 2001); and as a reconsideration of approaches of the relevance of IP for indigenous knowledge (see Graves 1994, Brush and Stabinsky 1995, and Shiva 1997).

⁶I am not claiming that traditional intellectual property rights have now lost any of their force to structure objects, property relations, and the organization of science. I also am not in the “business” of making predictions about the ways in which the rise of a novel application of intellectual property laws such as those of FOSS will dilute or strengthen current neoliberal property rights regimes. However, it is vital to point out that until FOSS, the American and European state of intellectual property law was largely a singular sphere of rights with little room to think outside their assumptive boxes.

⁷In other words, I want to conjoin the study of liberalism to wider socio-cultural processes. For two pieces that examine the cultural life and force of liberalism through the angle of governmentality see Joyce (2003) and Rose (1999). Both inform my understandings of liberalism as a mode of thought that is socially lived through practice, can be treated as a cultural and spatial force, and is productive of unique subject positions. Their emphasis on materiality, informed by the work of Latour, helps to situate broad values as significant to wider cultural processes. However, I depart from their framework as they offer a view in which the effect of liberal values take on widespread, uniform instantiations whereas my research interest is to show the more particularized expression of such values through cultural activity and the wider effect of such.

⁸See the collection in Bollinger and Stone (2002) for an examination of the complex juridical and socio-historical history of free speech doctrine in the American context.

⁹Here I refer to the mobilizations enacted by hackers between 1999-2003 to protest the DMCA and the arrest of two programmers, Jon Johansen and Dmitry Sklyarov. In my dissertation, I argue that these protests had the effect of stabilizing the association between free speech and source code that had been under cultivation for at least a decade as a social ethos within the context of the free and open source software movement. I would like to note that though I argue FOSS practitioners place a wedge between FOSS and politics and tend to dislike politics on an aesthetic level, this does not mean, of course, that they are culturally hardwired to avoid politics. However, the exceptional nature of these mobilizations confirm what I argue here: FOSS and their right to program should not be directed toward political ends. FOSS, and other forms of computing, should primarily be about the exercise of individual expressive activity protected under the dual rubric of academic freedom and free speech.

¹⁰A discourse of radical openness and accessibility, posited against the idea of politics, is often expressed by FOSS hackers and, I would say, enacted to some degree in the structure of many projects that try to stay away from the culture of bureaucratic monotony and frustrating “red tape” common to government agencies and some corporations. Of course, there are certainly informal and structural barriers for entry whether it is class, gender, or depth

of technical knowledge. FOSS hackers often mistakenly conclude that explicit forms of exclusiveness and discrimination are the only barriers to participation.

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