The Debate Nobody Knows:
Network Neutrality's Neoliberal Roots and a Conundrum for Media Reform

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Discussions about network neutrality largely have been divorced from network neutrality's connections to neoliberalism. This article seeks to rectify this, performing three tasks. First, it resituates the history of network neutrality as a concept within the development of what economic historians as Philip Mirowski have termed a *neoliberal thought collective*. Second, it speaks to the particularly neoliberal form of activist organization that was required to secure the Federal Communications Commission's reversal of a decade-plus of policy. Last, I offer a brief outline of the cultural labor the network neutrality debate performed as a consequence of the way it was historically justified. Network neutrality is, perversely, a site of neoliberalism's construction. Media activism going forward must deal with the ambivalences this produces.

Keywords: neoliberalism, network neutrality, media reform, broadband policy

James Rorty (1934/2004), the adman turned radical, once warned critics of advertising not to mistake the function of advertising for "the thing itself" (p. 132). Directing ire at commercial messages alone would be to ignore the broader political economy of advertising and its effects. This exhortation is newly relevant now in a different register. After the U.S. Federal Communications Commission (FCC) in 2015 reversed more than a decade of policy (far more, if the debate's antecedents are considered) in a proceeding historic in terms of public participation, the celebrations of activists are certainly warranted. Yet, analysis of the latest struggle in its present terms makes the kind of error against which Rorty militated.

Network neutrality, taken as a whole, has been largely divorced from discussion of the neoliberal project itself. To this end, in this article, I seek to accomplish three things. First, I show how network neutrality as it was conceived is, in fact, part and parcel of the development of the neoliberal project. Second, I speak to a particularly neoliberal form of activist organization that was required to secure the result of the last year. Last, I offer a brief outline of the cultural labor the network neutrality debate performed as a consequence of the way it was historically justified. Network neutrality is, perhaps perversely, a site of neoliberalism's construction. Media activism going forward must deal with the ambivalences that result.

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Getting Past Present Terms of Debate

Network neutrality has spawned an immense literature: A recent Google Scholar search for the term (performed March 6, 2016) rendered nearly 7,000 results. These largely hew to the notion in terms of open versus closed networks (Wu, 2011) or of corporate interests versus the public interest (McChesney, 2013; Meinrath & Pickard, 2008); of arguments over engineering of networks (Clark, 2007; Lehr, Sirbu, Gillett, & Peha, 2007); and of arguments over pricing, double-sided markets, and consumer surplus foregone or gained (Economides & Hermalin, 2012; Faulhaber, 2007; Hazlett & Wright, 2012; Yoo, 2004, 2005, 2006). Production on the topic continues in these veins; it is seemingly inexhaustible. To be sure, numerous new features continue to require deep thought.

This seeming inexhaustibility is indicative of important features of the present policymaking environment. My interest here is in the epistemic underpinnings of policy, their implications for media policy politics, and the cultural labor performed by such debates. To get at such notions, taking a discursive approach to policy, particularly of network neutrality, proves useful. Thomas Streeter (2013), building on his own discursive analyses of the making of policy found in his *Selling the Air* (Streeter, 1996), has spoken recently to the value of discursive analysis in policy matters. His emphasis is that discursive practices are hardly epiphenomena of some real economic relations elsewhere; rather, they are generative of new conditions themselves: "Policy is one of the places where one can see the state creating capital" (Streeter, 2013, p. 495). Discursive analysis has certainly not been absent. Kimball (2013) takes a proto-Foucauldian approach to debates as they unfolded in the 2000s, paying particular attention to the "contingent and contested nature of discursive construction" (p. 44) in the alliances that took shape. Lentz (2013) addresses the network neutrality debate directly, emphasizing the intersubjective history of the use of terms such as *neutral* in FCC discourse long before network neutrality became an object of debate in and of itself. However, the term *network neutrality* has assumed a life of its own beyond the term *neutrality*, stemming from its links to a particular epistemological history of a materialist guise.

Missing in this realm is an examination of the concept plotted against the construction of the epistemological underpinnings of policymaking itself. This involves examining the issue obliquely, using it as a lens through which to discern broader moves afoot. To do so, I draw from published and unpublished arguments by activists and industry players from the late 1990s through the present. For older arguments, the Internet archive provided snapshots; the FCC's Electronic Comment Filing System repository provided primary materials for current debates. Interviews with present and former staff of the FCC were conducted in fall 2010; many of these individuals would speak only on background, and I respect their wishes here. I followed up archival research with interviews with key activists in the network neutrality fight in late summer and fall 2012 and early 2015. I connect these data with historical work by economic historians, tracing the contours of the neoliberal project from its conception. Seen through this lens, the voluminous secondary literature that fed into these debates becomes, in an odd twist, primary.

The following represents analysis of a small number of these artifacts taken together. In analyzing these materials, I take seriously Sum and Jessop's (2003) call for a "cultural political economy." Such an approach "take[s] the argumentative, narrative, rhetorical, and linguistic turns seriously," examining the role of discourse "in the making and re-making of social relations and its contribution to

their emergent extra-discursive properties" (p. 14). Finally, it accepts the "(in)stability and the interplay of objects–subjects in the remaking of social relations" and thus the need to think about "the importance of remaking subjectivities" (pp. 14–15) in political economic work. A useful rubric is found in Maxwell and Miller (2012) in which Benjamin's image of the rag picker is used as "a motif for philosophical or historical method in times of chaotic change that could not be captured by social scientific controls" (p. 103). This is exactly my method by necessity—network neutrality becomes a lens through which we can observe forces surrounding the development of the Internet (and broader life) obscured in the technocratic debates that emerged.

Knowledge, Network Neutrality, and the Neoliberal Thought Collective

The concept of network neutrality cannot be analyzed outside the concept of neoliberalism. On the one hand, Harvey's (2005) formulation of neoliberalism as a primarily redistributive system of "accumulation by dispossession" (p. 159) undergirded by a strong ideological firmament has proven useful for explaining the current conjuncture. Freedman (2012), building on accounts as those of Harvey and Schiller (2000, 2007), theorized network neutrality's interactions with neoliberalism as a confrontation of reductionist promarket thinking opposed to broader questions of the social purpose toward which these networks would be put. In such a context, he argues, network neutrality as a debate was reduced to traffic management issues cast in economistic logics: Policymakers limited discussion to narrow topics of "ill-defined notions of transparency, competition and 'openness'" (p. 109). When the FCC issued even weak rules in 2010, he sees this as activism overcoming economistic thinking, even as "the determination of the Republicans, together with some major industry figures, to overturn the rules demonstrates the continuing presence of pro-market, anti-state ideologies" (pp. 109–110). Dolber (2013) similarly argues that a form of "informationism" emerged that constricted the terms of debate; such discourse tended to put labor and capital on equal footing (using garage startups as exemplars of the benefit of an open Internet or lionizing large Internet interests which sided with pro–net-neutrality advocates) and held a seeming abiding faith that new technologies would almost in and of themselves facilitate full citizenship. All the same, he does not explore this discourse's historical construction.

Of late, I have faced my own growing frustration at the increasing overdependence on the narrative provided by Harvey (2005) and its derivatives. His otherwise immensely useful oeuvre on neoliberalization seems to lead to too-easy descriptions and explanations (ironically without explanation). Although it is not a functionalist account by any stretch, other work which rests upon its foundation seems occasionally to grant the neoliberal drive a systemic neofunctionalism with which activists who seek to push back against its worst ills can do little. In contrast (but hardly counter to) this foundation, recent work by Philip Mirowski and colleagues (Mirowski & Plehwe, 2009) traced the epistemological origins of neoliberalism, adding increased historical precision to such notions: "It is not enough to rest satisfied merely pointing at the seemingly potent generic political power of economic ideas, as did both John Maynard Keynes and Friedrich Hayek," Mirowski (2009, p. 433) writes; one needs to "better understand the political and economic power of neoliberal ideas as they nave played out in philosophy, economics, law, political science, history, sociology, and many other disciplines" (Mirowski, 2009, p. 433; see also Mirowski, 2013). As opposed to defining neoliberalism as merely a concrete set of principles, it also needs

to be viewed as a project of a loosely bound thought collective with a set of epistemic commitments rooted well beyond economics, reaching into politics and even science.

Mirowski and his cohort find tracing the origins, strategies, and writings of the Mont Pèlerin Society an effective "Rosetta Stone" for this thought collective. Emerging in the wake of the Second World War, this was an international effort spearheaded by Friedrich Hayek to transform how not just "consumers" operated but also society overall, capital included. Although organized by capital in consort with academic interests, participants did not seek dogmatization of the academy. They saw mutual cause in the development of wide-ranging theory to confront, at a theoretical level, "both socialist planning philosophies and classical laissez-faire liberalism, rather than searching for timeless (essentialist) content. . . . It was flexible in its intellectual commitments, oriented primarily toward forging some new doctrines that might capture the imaginations of future generations" (Plehwe, 2009, pp. 14–15), sometimes tacking left as well as right. The aim was not to "revive a dormant classical liberalism" so much as it was to "forge a neoliberalism better suited to modern conditions" (Van Horn & Mirowski, 2009, p. 160). It sought to enable cross-fertilization among academia and "professional problem-solvers" who were themselves "scrupulously detached from active politics and from factional affiliations [who would] subtly and unobtrusively guide or arbitrate political debate by their own discussions" (Van Horn & Mirowski, 2009, p. 160, quoting Henry Simons). The founding meeting was populated with professors, journalists from *Fortune* and *Newsweek,* foundations, think-tank executives, business executives, and publishers of *Readers' Digest*. By 1981, political figures would be included as well (Plehwe, 2009, p. 21). The development of the Chicago School of Economics—which would become central to legal and antitrust thought over the coming decades (Just, 2015; Yoo, 2005)—finds its roots in the nurture of the Mont Pèlerin Society (Van Horn & Mirowski, 2009).

The loose collective that emerged harbored points of agreement, however. The members' vision for the "good society" would require political effort; it would not come about naturally (Mirowski, 2009, p. 434). This said, "for purposes of public understanding and sloganeering, market society must be treated as a 'natural' and inexorable state of humankind . . . natural science metaphors must be integrated into the neoliberal narrative" (Mirowski, 2009, pp. 435–436). The state, then, must be redefined, not destroyed. Underlying this new state–subject relationship is a "double truth," struck upon by Hayek: Whereas an "elite would be tutored to understand the deliciously transgressive Schmittian necessity of repressing democracy . . . the masses would be regaled with ripping tales of 'rolling back the nanny state' and being set 'free to choose'" (Mirowski, 2009, p. 444), "improving their lot in life by engaging in market exchange" (Mirowski, 2009, p. 437). Such a system could be transformed into a moral code masquerading as "a radical, leveling philosophy, denigrating expertise and elite pretensions to hard-won knowledge, instead praising the 'wisdom of crowds' . . . but neoliberals are simultaneously elitists: they do not practice what they preach" (Mirowski, 2009, pp. 425–426).

A story of neoliberalism as a thought collective is not merely "simply economic history." Such insight leads us away from the trap of confusing the marketing of the orthodoxies or the stances of powerful capitalist interests via think tanks and "bought research" for their constitution, even as the cultivation of same was critical to the effort. I am careful to heed the warnings here of Harvey (2005) that the broader regime that surfaces is not simply "an example of erroneous theory gone wild . . . or a case of

senseless pursuit of a false utopia" (p. 152). The development of the broader system's theoretical underpinnings possesses its own materiality. Important as well, this is hardly to posit the development as any "conspiracy theory"—its origins represent conflicting and contradictory efforts of numerous interests to react to ongoing developments in fits and starts. Those involved

> are not the all-knowing, all-seeing caricatures of conspiracy theory; they were people who sought to build a political movement, who faced difficulties and setbacks, who often disagreed with each other about the right course of action, and who could not control the circumstances under which they worked. (Phillips-Fein, 2009, p. xii)

It is also more than such efforts as the confidential memo by Associate Justice Lewis Powell to the United States Chamber of Commerce arguing at length that the chamber should lead an "assault upon the major institutions—universities, schools, the media, publishing, the courts—in order to change how individuals think 'about the corporation, the law, culture, and the individual'" (noted in Harvey, 2005, p. 43). Powell was actually behind the times. This was no mere sales effort: It was a transformational movement that needed time and effort to attain the degree of coherence that it attained, a "long-term philosophical and political project" (Mirowski, 2009, p. 426). This would be a reeducation effort for all elements of society, capital included, even if those elements of the Mont Pèlerin Society may not have completely agreed with that part of the program at all times.

Connecting Network Neutrality to the Neoliberal Project

The development of network neutrality as a concept did not exist in a vacuum: It relied heavily on such undercurrents long under construction. It is hardly progressive in its origin, despite its recent "leftish" status in the United States. Its origins can be found in the wake of struggles surrounding the commercializing Internet environment of the late 1990s (McChesney, 2013; Schiller, 2000). At issue were fights surrounding cable franchise agreements in what became termed *open access* debates. The Telecommunications Act of 1996—itself the product of years of debates before its passage—attempted to establish a regimen within which the Baby Bells would compete against each other in each other's regions after having served as regional monopolies following the breakup of AT&T in the early 1980s (Horwitz, 1989; Nuechterlein & Weiser, 2005). Whereas telephone wires were required to share their lines with competitive Internet providers (thus the burgeoning growth of dialup competitors at the time), cable wires were not (a fuller discussion can be found in Nuechterlein & Weiser, 2005). Cable remained "siloed" as its own technology with no such requirements; in addition, local cable franchises (even if part of larger entities) were still subject to negotiations with local authorities when changes in ownership occurred or when these franchises came up for renewal.

When AT&T decided to get into the cable business in the late 1990s by announcing its purchase of cable giants Tele-Communications, Inc. (TCI) and MediaOne, local cable regulators commenced instituting requirements for AT&T to permit rival Internet competitors to provide service over AT&T's new cable wires. The Mt. Hood Cable Regulatory Commission (MHCRC) of Portland, Oregon—which boasted a vibrant local ISP community—led the charge (MHCRC, 1998a, 1998b; Nuechterlein & Weiser, 2005). The commission found help from a group of advocates based in Washington, DC, principally the Media Access

Project, Consumers Union, the Consumer Federation of America, and the Center for Media Education (later the Center for Digital Democracy), which, in an early form of online activism, launched nogatekeepers.org to chronicle the ensuing struggles ("Welcome and Introduction," 1999). These public interest players had an erstwhile ally in America Online—at this time, still a dial-up Internet service—that possessed its own interest in gaining access to broadband lines.

Municipalities across the country began following suit, seeking their own open access conditions as part of their negotiations with AT&T (initial efforts following on Portland's heels are mentioned in Consumer Federation of America, 1999; Diddlebock, 1999; "ISPs Band Together," 1999), aided by the same DC-based advocacy groups. Importantly, these efforts were networked. At every step, the Clinton FCC, then headed by Chairman William Kennard, put up roadblocks, either refusing to take action or hamstringing their efforts. Nonetheless, AT&T found itself playing a countrywide game of whack-a-mole: There were now myriad potential points of resistance to its plans. Significantly, for a time, open access activists were winning.

These efforts were ultimately rebuffed. The Kennard FCC approved the AT&T–TCI and AT&T–MediaOne mergers with no open access provisions. Later, America Online defected from the coalition, pursuing its own high-speed wire via its purchase of Time Warner. The merger was allowed to go through with weak open access provisions that only served to put another nail in the concept's coffin. With the election of George W. Bush, the FCC, headed by Michael Powell, snuffed out hope of the issue's resurrection via the 2002 Declaratory Ruling (FCC, 2002) classifying cable wires as "information services" rather than "telecommunications services" and thus shielding cable companies from opening their wires to competitors for the foreseeable future.

Tim Wu's (2003) proposal of the concept of network neutrality provided an opening to continue debating the role that providers of the Internet played in this ecosystem, albeit on different terms. Wu's fear was that open access regimes alone would hardly prevent possible discriminatory practices from occurring. What gave his new notion such power was its concrete proposal, which Wu submitted to the FCC (Wu & Lessig, 2003). Network neutrality as a principle—and, importantly, as a state, not a policy in and of itself—"provide[s] a balance: to forbid broadband operators, absent a showing of harm, from restricting what users do with their Internet connection, while giving the operator general freedom to manage bandwidth consumption and other matters of local concern" (Wu, 2003, pp. 167–168). The task would be to separate what forms of discrimination are desirable from those that are not. Such a rule puts control of network use—in terms of what kinds of blocks might be desired by parents, for instance—in the hands of end-users without the network operator having a veto.

Wu's theoretical allegiances, however, have been paid little heed. "The promotion of network neutrality," Wu (2003) says,

> is no different than the challenge of promoting fair evolutionary competition in any privately owned environment, whether a telephone network, operating system, or even a retail store. Government regulation in such contexts invariably tries to help ensure that the short-term interests of the owner do not prevent the best products or

> applications becoming available to end-users. The same interest animates the promotion
> of network neutrality: preserving a *Darwinian competition among every conceivable use
> of the Internet so that only the best survive* [emphasis added]. (p. 142)

There is a stark difference between this justification and those observable in the fights over open access: With the latter, even as the overriding concerns were discrimination by broadband providers against unaffiliated content, the nature of the Internet itself as it took shape loomed large. The Media Access Project's Andrew Schwartzman, writing to the City of Los Angeles in response to its own call for input on open access conditions in its franchise negotiations, noted that open access might mean the difference between saving local freenets and not-for-profit entities working with local service providers (Media Access Project, Center for Media Education, & Civil Rights Telecommunications Forum, 1999). The Center for Digital Democracy's Jeff Chester and Gary Larson (2005), writing after open access fights were upended by the Powell FCC, expressed concerns surrounding hypercommercialization of the online space. The online universe "lack[ed] the set-asides and signposts that demarcate the nonprofit sector in the real world" and

> seemed scarcely to distinguish between for-profit and noncommercial. . . . We have yet
> to find a way to map these values onto the virtual world, where style often triumphs
> over substance and where marketing and cross-promotion often exert the same
> tyranny-of-the-majority pressure on new media that Nielsen ratings and box-office
> receipts exert on the old. (p. 186)

Wu's conception served several important functions. For one, it offered these same advocates a new foothold in their continuing efforts to shape rapidly converging broadband networks despite Powell's terminal roadblocks. Upon revisit, however, another function grows in prominence: Wu had effectively built a bridge between the arguments of consumer advocates and the descendants of the neoliberal thought collective. In lieu of an argument in favor of democracy or regarding commercialization, the concepts were considered subsumed in a theory of evolutionary survival-of-the-fittest competition, the preferred metaphor of the thought collective of old. An online theory of democracy does not seek one survivor; it seeks numerous or, at the least, a method for respecting nonmajority views. Further cementing the connection, his paper responded at least in part to Farrell and Weiser's (2003) argument that broadband monopolists would "internalize complementary externalities" of their networks. That is, monopolists had little incentive to botch the services dependent on their networks because monopolists benefitted from "efficient" applications markets using their wires ("efficiency" could take several forms). It was an extension of the "one monopoly profit" theory developed by Richard Posner and Robert Bork.

This epistemological (yet materially constructed) freight—the notion of the Internet as a calculative engine to ferret out the best and eliminate the rest—explains the open faucet of literature to follow: The terms of debate, now relocated to well-trod ground, were well established. Incumbents would pour resources into the hands of friendly academics and think tanks; network neutrality proponents would be forced to scramble to respond to each emergent argument as new variants surfaced. Early entries appeared from the Progress and Freedom Foundation's demand for agnosticism in regard to a preference for "smart" versus "dumb" networks (Thierer, 2005); Yoo (2004) added theoretical and analytical heft to

this notion with a reframe of 'network diversity' that posited that we should welcome the possibility of numerous networks reaching users, each with differing specializations and prioritizations. A "second wave" emerged with new urgency after the *Brand X* decision of 2005. Yoo (2005, 2006) intensified and doubled down on his arguments and was joined by Sidak (2006), who provided a detailed application of welfare maximization theory to the debate. McTaggert (2006), then senior regulatory counsel for Canadian telecommunications giant TELUS, presented a pointed interrogation as to whether the Net was ever really "neutral." The *International Journal of Communication* collected numerous of what its editors saw as the most significant positions in the debate, nearly all of which hewed to this terrain (Peha, Lehr, & Wilkie, 2007), as would the numerous FCC workshops held before its 2010 Open Internet proceeding and the 2015 Open Internet proceeding.

As much as others attempted to push the boundaries (Meinrath & Pickard, 2008), these perspectives established the norm of debate if one desired to be taken seriously in policy circles. As a result, in perverse ways, network neutrality as justified served the needs of telecommunications and cable opponents of open access regimes. For one, with the move away from a structural separation framework to one that necessitated monitoring discriminatory activity aboard every local network—an incredibly challenging task—they stood to gain in keeping the debate from ever reapproaching the question of separation of service from conduit. The now dominant Chicago School view of antitrust had a long history of mistrust of regulators' abilities to monitor such things. Moves barring structural separation looked like content regulation, something anathema to U.S. discourse.

Network neutrality in these senses is thus arguably among the most neoliberal of debates. It was not a struggle against capital; rather, it was against a particular business model: private carriage as opposed to common carriage. It created an odd political brew. Sandvig (2007) noted the strange resurgence of de Sola Pool's ideas:

> de Sola Pool [in his 1983 *Technologies of Freedom*] sought to advance a neo-liberal agenda of increased competition by warning against the menace of government intervention. In this, his agenda appears consistent with network neutrality critics like Yoo. However, the policy proposals he suggests are identical to those advanced by network neutrality advocates like Wu. One reason for this is that the regulatory context is so different now that de Sola Pool's proposals sounded like "hands off!" 23 years ago, and yet these same proposals are now the tools of interventionists, and sound like "hands on!" (p. 144)

Our new historical lens explains this discrepancy. Ideas and debates stemming from those spawned by the neoliberal thought collective had long percolated in communications policy; I hardly argue that such ideas were new in the early 2000s. However, Wu's intervention—the pivot from open access, the discussion he enjoined, and the justification offered for his new term—was necessary to shunt debate surrounding the Telecommunications Act's evolving interpretation explicitly and firmly onto the firmament they offered. Recall, too, that the neoliberal project was not merely procorporate: What the benefactors of that movement obtained was a range of theory that called for the all-encompassing system, capital included,

to be transformed. If anything, Sandvig's revelation is a recognition that capital would justifiably strike back against certain of the core tenets of this new system if it suited it.

A Neoliberal Form of Organization

Advocates soon learned through experience that to engage a neoliberal argument, one needs a neoliberal form of activist engagement: one that recognizes, in its own way, the "double truth" understood by Hayek. That is, there is a necessary management of popular knowledge of these regulatory issues. In this context, particularly instructive is to observe moments when policy debates are rendered either more "heterogeneous" or more "diverse" in the sense supplied by Laclau (2005), reinvigorating the vision of "radical democracy" developed initially by Laclau and Mouffe (2001). "Difference" here marks a closed "space" for politics, one that is easily managed. Heterogeneity hints at a pervasive dread that the positions available are hardly exhaustive, rendering decisions and judgments difficult, if not impossible: Politics proper can thus continue. Diversity is the "death" of politics; once all positions have been named, they need only be accommodated by overarching systems; the game is over. The "radical democratic politics" envisioned by Laclau (and Mouffe) militates against the closure diversity offers. To return to the issue at hand, Wu's conception of net neutrality—less in his proposal, but in its justification—rendered a debate that had been largely heterogeneous (open access) now diverse.

One former FCC staffer, who would speak only on background, confided in me one of his experiences. One particular set of deliberations revolved around an order regarding the revision of a form that companies would need to submit to the agency. Involved in the making of any such policy in the end involves "the spreadsheet," quite literally an Excel spreadsheet "that describes the comments, gives quotes, page numbers, general issues also keyed to comments." The staffer did not really know what happened "higher up the [staff] food chain," but there was generally a good-faith effort to get all offered comments in. "Now, the 'fun' part doesn't really start until late," he told me. "Often these orders aren't really ready until the last minute. On this particular proceeding, we worked until midnight—often these things really even take longer. There was a chart up on the whiteboard put up by the deputy bureau chief. Along the top were each of the commissioners besides" the chairman's. The chairman's "own positions would be along the left side: Via a check-box approach this was where the ending 'balancing' goes on." He paused for a minute. "I'll never forget that whiteboard. In the end it comes down to the whiteboard. Every so often the chairman's legal aide would step in and monitor the discussion, seeking enough on each side"—here, meaning Democratic or Republican—"to make the thing 'passable' even with dissentions" by other commissioners.

To be present (metaphorically, if not physically) when the whiteboards were drawn up, advocates in Washington would need to mobilize people "outside the Beltway" to legitimize their epistemic presence. A particular expertise would be required as well for legitimacy because of the bridge built by Wu. Constituents with limited knowledge of such terms themselves could express popular support for a particular position (for or against these advocates), but little else. Their knowledge would be considered, at best, a form of "ersatz" understanding of it.

They would need to be both mobilized and managed at one and the same time. This was accomplished several ways. One way would be to completely disarticulate the network neutrality proposal from the ontic content of its moorings by flipping Wu's contention around, taking the state of network neutrality to be achieved as, now, a policy to be invoked. So done, the empty signifier was then set adrift, ready to find itself articulated to new foundations and justifications, not always in its proponents' favor. The effect of this was that whereas the issue became increasingly tractable with the broader public, the ersatz understandings were nonetheless prevented entrance to the official debates because of this detachment from its original foundation.

There are numerous ways of eliminating the ersatz from consideration in Washington. In the past, the majority FCC members simply stopped attending town meetings when ordinary people would actually show up (Powell in the mid-2000s was repeatedly razzed by activists for not coming to his own town halls; for a more recent example, see Consumers Union, 2014). Submission of comments to the FCC via its online Web form is incredibly intimidating for newcomers. When media reform group Free Press compiled an algorithm that allowed the easy filing of comments to the system, the FCC installed a feature on the search page that one could check to eliminate "brief text comments." As it became regular practice to encourage members to file comments in controversial proceedings, this button became a permanent feature, conceivably to quickly discern the "important" or "substantive" comments.[1] (With Obama's ascendancy, an additional button was added to provide exclusively these comments in a nod toward inclusivity, even if unactualized.) The FCC provided other means for submission of comments, but it is unclear if these actually ended up being considered at all. An FCC staffer in 2010 told me that comments submitted via the agency's blog, and not its official comment engine, were essentially flung into a wall.

Such new input that may heterogenize the field of action needed to be reined in and classified, revealing the field every bit as diverse as it had been rendered with the elimination of the open access debates from consideration. It drove those economists long affiliated with telecommunications policy debates nuts. Bruce Owen, for instance, would exclaim in 2007,

> net neutrality debate has taken place in the rhetorical equivalent of the fog of war. The originators of the debate chose to invent new language to describe both a familiar economic problem and a familiar legal and regulatory solution to that problem. Much of the popular writing by pro-neutrality advocates is maddeningly vague and heavy with sloganeering. Their argument seems tailored chiefly for political effect rather than analytical rigor. It has taken several years for scholars on both sides to penetrate the fog. (pp. 15–16)

Back to basics: "Translated into the language used by economists, the debate is about preventing bad (anticompetitive) behavior by vertically integrated firms that enjoy market power at one stage or another of the vertical chain of production" (Owen, 2007, p. 16), to be "implemented through detailed price regulation, an approach that has generally failed, in the past, to improve consumer welfare relative to what might have been expected under an unregulated monopoly" (p. 14). Letters signed by numerous

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[1] See http://fjallfoss.fcc.gov/prod/ecfs/comsrch_v2.cgi

economists—some directly or indirectly subsidized in their efforts, some not at all—appeared making virtually the same points (Baumol et al., 2007).

However, the point is not even the influence of paymasters here, nor any possibility that the opinions, tacks, and output of these individuals would be swayed by corporate largesse. It would not; it was not necessary. Such support merely kept the process moving and enabled the production of discourse, which was what was sufficient. The inscription of network neutrality as a neoliberal debate is less in regard to policy outcomes (either the weak rules of 2010 or the stronger ones of 2015); it is about how a particular production of discussion, of discourse, is itself sustained with resulting effects. All involved were less solving any policy problem than keeping a machine in motion with sufficient energy to sustain itself.

The Cultural Labor of Network Neutrality

This second-order problem was called back into relief with the tremendous service the Sunlight Foundation performed in parsing the hundreds of thousands of comments submitted in 2014 (Lannon & Pendleton, 2014). The transparency group determined, using natural language processing algorithms, that of the initial batch, less than 1% of the initial comments opposed network neutrality. Given the sample size of more than 800,000 comments at this time, at one level, this is useful information: The ersatz were quite effectively mobilized. Yet, this is actually a perfect illustration of the dead, diverse politics Laclau abhors. Another FCC staffer, speaking as well on background in 2010, wondered to me why the throngs who would occasionally protest FCC actions outside the building just did not come in to express their grievances directly. This would amount to channeling effort into activity fraught with peril; it could help or hurt their cause. Helps: They may well get taken seriously. Hurts: Their engagement might hint that their activities, once viewed as mysterious, threatening, or just annoying, could be categorized among the available options presented by the logics pervading a (merely) diverse epistemic setting, and thus could have sense made of them. They could be filed away, one more voice in the pot that, when the whiteboard is sketched, does not matter anyway.

What the Sunlight Foundation did not observe was the debate, in its unity, effectively pushing the problem of a broader intensification of particular developments within capitalism farther down the hole. One might reasonably see in the fights that raged through 2014 an instillation of a neoliberal dystopia, particularly in reading through comments by those largely barred from the rooms in which whiteboards fashioned futures. In the Sunlight Foundation's initial pass, more than half the comments noted Internet access "as an essential freedom," with other key themes being small businesses, innovation, consumer choice, consumer fees, and competition. Among the voluminous comments collected by Free Press (Aaron, 2014), it takes little time to find similar, familiar frames:

> As a citizen, computer professional, researcher, and small business owner, net neutrality
> is crucial to my success and functioning. I need access on a level playing field to the
> entire Web; I need my site's visibility on a level playing field. . . . These goals can only
> be achieved by declaring the Net a common carrier utility and enforcing net neutrality.
> (p. 7)

Another commenter said, "What happened to letting the market decide? Haha, what a sham, the 'free' market. Say no to this monopolistic outline these rules propose for yet another of our media, perhaps the most important" (p. 15). Another commented, "No less than our freedom and democracy are at stake. Net neutrality protects us from a form of capitalist totalitarianism" (p. 23).

The role of capital as a whole is rarely critiqued; given this lack, one might argue that "capitalist totalitarianism" may have already arrived. Rather, it is the role of a particular sector that is vilified, and not necessarily for bad reason. Crucially, these commenters were hardly dupes: Network neutrality had become about survival, as numerous civil rights groups were quick to comment, particularly in terms of expanding entrepreneurial opportunities for people of color alongside supporting free expression and facilitation of civic engagement. It provided "new ways to access capital, such as crowdfunding" (Internet Freedom Supporters, 2014, p. 9). The importance of the Internet in "applying for work, doing schoolwork, finding a home, and running a business" (here, from colorofchange.org, 2014, p. 2) is pervasively expressed. This is to say, network neutrality had increasingly become about survival in a particular context. Hearn's (2008) description of the neoliberal self, and the observation of autonomist scholars who argue that today's forms of production and labor are "progressively 'articulated' in (and commanded by) valorization and accumulation processes of capital that function according to a logic that differs from 'industrial' logic" (Mezzandra, 2010, pp. 11–12), lead one to conclude that the urge to "save the Internet" was as much about communities saving themselves as it was about any right to free expression.

The irony may be that the mechanisms by which this activism was undertaken may have served to entwine activists even more tightly into the systems against which they were struggling. When Fight for the Future, one of the most prominent players in the latest round of debate, sent out a celebratory e-mail on the heels of President Obama announcing his support for strong rules in November 2014, a discussion of the strategies that had been employed noted that they had always pushed against cable companies, "not telcos, or ISPs" (H. Wilson, personal communication, December 2, 2014). This was partially just smart messaging (cable companies perennially among the most freakishly unpopular in the United States), but even more so, it was something revealing of our time, of what is necessary in this arena of struggle to remain legitimate in the corridors of power. It certainly was not the activists targeted by this e-mail who wrote the new rules.

The double truth rears its head: The form these rules would take was up to the actors legitimated by the outpouring of support of the ersatz. A look into the *ex parte* filings shows that network neutrality's proponents recognized that to win in the regulatory sphere, an alignment with a particular sector of capital—the new startups—would be increasingly necessary. Such alliances are hardly extraordinary; this said, the emergence of this sector as a new force capable of swaying both the president and the FCC does serve as a significant data point in diagnosing broader developments. An FCC meeting in November 2014 featured representatives of America Online, Google, the Computer and Communications Industry Association, DISH, Engine Advocacy, the Internet Association, Tumblr, Microsoft, Yahoo!, and activist groups Demand Progress, Daily Kos, and MoveOn (Ammori, 2014, p. 1). Another in February 2015 included public interest actors Free Press, New America's Open Technology Institute, the Internet Freedom Business Alliance, and even the Ad Hoc Telecommunications Users Committee, Level 3, Cogent, Netflix, and COMPTEL (Kronenberg, 2015, p. 1). The Ad Hoc Telecommunications Users Committee—representing

a long-standing group of powerful business interests including United Parcel Service, Bank of America, Visa, and Ford that have commented for years on numerous FCC proceedings—pressed for full reclassification as well as oversight of broadband peering in 2014, although it left these issues alone in 2010 (Ad Hoc Telecommunications Users Committee, 2014).

Network neutrality in practice, as discourse, reconstructed a particular form of labor and instilled this form as freedom. Etsy, taking part in meetings with the FCC, emphasized in its materials new forms of flexible labor of which it was a part: "Etsy sellers personify larger shifts in the economy, most notably the recent dramatic increase in flexible forms of work, the rise of Internet-enabled, peer-to-peer businesses, and declining economic security within the middle class" (Etsy, 2013, p. 8). Noting secular increases in self-employment and nontraditional contract work, Etsy sellers were found to be cobbling together income from several sources. "The Etsy community reflects this trend towards diversifying income to bolster economic security and resilience. 58% of all Etsy sellers work other jobs in addition to managing their creative businesses" (Etsy, 2013, p. 9, footnote omitted).

When sites such as Etsy or Tumblr turned to their users to defend net neutrality, it was a brilliant double move. On the one hand, these sites were clearly important to their users. By the same token, having users defend Etsy or Tumblr from the vicissitudes of the largest cable and telecom incumbents stood as defense of a particular form of platform capitalism under construction. One user of Etsy made the case perfectly. This user was well versed in aspects of the policies under discussion:

> These principles of fairness and openness should not only apply to the so-called last-mile network, but also at points of interconnection to the broadband access provider's network. Likewise, strong net neutrality rules must apply regardless of whether users access the Internet on fixed or mobile connections. (Hurtado, 2014, p. 1)

However, the focus of her concern is key; it is one of survival, clearly economic:

> The FCC's proposed rules would be a significant departure from how the Internet currently works, limiting the economic and expressive opportunity it provides. Investors, entrepreneurs and employees have invested in businesses based on the certainty of a level playing field and equal-opportunity marketplace. The proposal would threaten those investments and undermine the necessary certainty that businesses and investors need going forward. The current proposed rules, albeit well-meaning, would be far-reaching. Erecting new barriers to entry would result in fewer innovative startups, fewer micro-entrepreneurs, and fewer diverse voices in the public square. *The FCC should abandon its current proposal and adopt a simple rule that reflects the essential values of our free markets, our participatory democracy, and our communications laws* [emphasis added]. (Hurtado, 2014, p. 1)

The neoliberal thought collective would be very proud of this self-adopted equation of free markets and participatory democracy.

Conclusion

None of this is to diminish the efforts of the advocates for network neutrality, nor is it to denigrate the role Tim Wu played. To be clear, capital did not drive the endgame of these debates: Activists did. Activists had to convince new sectors of capital—the startups—to engage. With smart mobilization, with years of coalition building, this outcome was a result of their hard-won efforts. Similarly, activists made strategic decisions to argue in particular terms with government officials—framing the debate in economic terms, terms that Wu aided in constructing—and other terms with the general public; in the end game of the most recent proceeding, efforts were intensified to bring other discourses to the FCC. Activism was nothing if not pragmatic: A division of labor appeared between different groups that each spoke to different constituencies but consulted on overarching strategy (see, for instance, the letter sent to activists by Evan Greer of Fight for the Future reported in Picket, 2015). It is a falsehood to argue that activists were pawns in capital's game; nor were large firms or emergent startups the true heroes of the story. Although during the mid-2000s large entities such as Google were players in these debates, by 2014 they had stepped back and left the field to upstarts and pro–net-neutrality public interest groups. Indeed, in the end stages, *The Wall Street Journal* noted that Google recommended to the president that he not push for the reclassification of broadband networks as telecommunications networks—from which the rules drew their strength—after all (Nagesh & Mullins, 2015).

Rather, a new dimension to media reform activism and research is apparent. Network neutrality was a neoliberal debate; to counter it, a neoliberal form of organization was necessary. The debate, taken as a whole, performed tremendous cultural labor, aiding in inscribing a particular, emergent form of capitalism as freedom in ways just starting to be understood. Network neutrality is a battle of survival in neoliberal times; in the United States, on the surface, it meshed well with the goals of a vibrant free press and diverse forms of expression and experimentation. At the same time, it fed, in the material and cultural manner that it was fought, into the continued constitution of what autonomist theorists have termed the "social factory." For these reasons, the connections between the development of present-day media policy debates and the efforts of the neoliberal thought collective need to be better understood.

The media activists that wrought 2015's (tenuous) victory face a real conundrum going forward. Even as engaging on existing ground is necessary, in the broad, the irony exists that the fight etches neoliberal imperatives ironically more deeply into the social terrain; the lack of closure on these debates additionally performs labors in excess of their result. Connecting the material, mutual constitution of available discursive terrain to the political economy of communication and policy presents perhaps a next frontier of communications research in policy.

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