

# Beyond Software - Steps Towards A Free Society

**Presentation by Lev Lafayette to Software Freedom Day,  
September 21st, 2013**



# Beyond Software - Steps Towards A Free Society : What Sort of Freedom Have We Been Talking About Today?

- 1.1 Primarily, "free as in speech", but also (indirectly) "free as in price" (but only in virtue of the first). Why Free Software? It provides the opportunity to review, modify, and distribute - primarily a matter of liberty. Different licenses provide variable levels of "software freedom" (e.g., from proprietary, shareware, shared source, various permissive licenses, GPL, BSD, to public domain). Free licenses - as defined by the Free Software Foundation - require that the freedoms provided to the recipient of GPL-like license must be passed on. e.g., Proprietary software is licensed under exclusive legal right of the copyright holder. Public domain software, which is not subject to copyright and can be used for any purpose. Free and open-source software (FOSS) is software that can be classified as both free software and open source software. Shared source: allow individuals and organizations to access source code for reference, security auditing, and development.
- 1.2 Also have been discussing various freedoms concerning copyright and patents, the freedom not be subject to undue investigation, how to use free and open source software to protect oneself online, how free and open source software can be an enabling technology for public decision making, and how free and open source software communities and organisations operate.

# Beyond Software - Steps Towards A Free Society : What Is Freedom Anyway?

2.1 Senator Rick Santorum, (Rep., Penn. presidential primaries candidate, 2012) campaigned under the slogan "Freedom", even though of his political positions were aimed at restricting individual freedoms and social rights. The U.S. invasion of Afghanistan (and several smaller operations) is officially called "Operation Enduring Freedom". Is this freedom?

2.2 At the end of World War II Stalin spoke of "Henceforth, the great banner of the freedom of the peoples and peace between the peoples will fly over Europe". Murray Rothbard claimed "That a person is 'free to starve' is therefore not a condemnation of the free market, but a simple fact of nature". Kris Kristofferson sung "Freedom's just another word for nothing left to lose." Is this freedom?

2.3 Freedom (from Old English) or liberty (from French and Latin) are defined as the absence of constraints. Eric Fromm (1941) in "The Fear of Freedom" drew the distinction between "freedom to" and "freedom from". Isaiah Berlin (1958) followed this with "Two Concepts of Liberty"; positive liberty representing enablement through resources) and negative liberty representing absence of external restraint. Charles Taylor (1985) argues that whilst negative liberty is the absence of external constraint ("opportunity-concept"), positive liberty is when one can act according without internal constraints ("exercise-concept").

# Beyond Software - Steps Towards A Free Society : Positive and Negative Liberty and Beyond

- 3.1 Negative liberty is often framed in terms of property in one's self and action-orientation. Locke (1689) in the "Two Treatises of Government" famously remarked "every man has a property in his own person: this nobody has a right to but himself", extending it include personal property rights "The labor of his body, and the work of his hands, we may say, are properly his." John Stuart Mill (1859) in "On Liberty" speaks of the absolute protection of individuals in "self-regarding" actions (liberty of conscience, tastes, opinion, speech etc); the only restrictions in "other-regarding" actions is where there is clear and demonstrable harm and only then if the harm caused is greater than the harm caused in preventing it (a utilitarian perspective).
- 3.2 Positive liberty entails the sociological concepts of structure and agency, as well as the physical capabilities. Hannah Arendt (1958) in "The Human Condition" argues that freedom is only achieved when one is lifted out the survival of labour, the market-relations of work, and into the public realm of action; "the *raison d'être* of politics is freedom, and its field of experience is action.." In doing so, Arendt is raising the idea of positive liberty representing political freedoms, such as civil liberties and human rights (including social welfare), as well as noting the need for 'mutual liberty' (c.f., Alexis de Tocqueville, Democracy in America, 1835).

# Beyond Software - Steps Towards A Free Society : Positive and Negative Liberty and Beyond

3.3 Berlin recognised a paradox in positive liberty; that to provide positive liberty may lead to a removal of negative liberties. Gerald MacCallum (1967) argues that the distinction is artificial and the two interpretations actually converge and posits an alternative triadic relation; consisting of an agent, certain preventing conditions, and certain doings or becomings of the agent. Recently Philippe Van Parijs (1997) in "Real Freedom For All" has combined the two concepts of freedom arguing that to be truly free one must be free from the external constraints (negative freedom) and possess the means to achieve their end (positive freedom)

# Beyond Software - Steps Towards A Free Society : From Freedoms To Rights

- 4.1 The philosophical foundations of individual freedom and liberty become social rights when they are embodied as the normative and legal rules of a society. These can be distinguished between natural and legal rights, claims and privileges, individual and group, active and passive - and importantly positive and negative rights. Positive rights usually suggest social action, whereas negative rights usually mean social inaction.
- 4.2 Negative rights may include; freedom of worship, freedom of speech, freedom of association, freedom of movement. Positive rights may include personal property, public protection of person and property, social welfare. In the question of contemporary technologies there is also the issues of content access, censorship, anonymity, encryption, and integration.

# Beyond Software - Steps Towards A Free Society : From Freedoms To Rights

4.3 It is at the point of the transference from freedoms to rights that the question of property rights becomes increasingly significant; the liberal philosophical concepts of self-ownership and the extension to personal property by the mixing of labour become politically charged issues with the discovery that not everyone supports freedom (negative or positive!). Some of the reasons for this include the following: (a) arguments that certain freedoms are an affront to the social collective or majoritarian views (e.g., blasphemy and other conflicts with religious views and morals) that will lead to the breakdown of traditional society, (b) that certain freedoms are a threat to the interests of a nation-state and its security (e.g., freedom of information, whistle-blowers etc), (c) that certain social rights (e.g., from group defamation, hate speech) are an infringement on others (freedom of speech), (d) that certain economic rights (e.g., social welfare) require an infringement on others (e.g., taxation).

# Beyond Software - Steps Towards A Free Society : From Freedom to Rights and Justice

5.1 The challenge is how to introduce real freedom, as social rights, in a manner that maximises freedom to the many with minimal constraints. Classical liberal tradition is largely understood as allowing freedoms in self-regarding acts, and informed consensual relations in other-regarding acts, and policing constraints on these liberties is expensive (e.g., victimless crimes)

5.2 However the results of a system of political economy can have subtle effects on significantly limiting freedom. Classical liberal political economists - including John Locke, Adam Smith, David Ricardo, John Stuart Mill, and Henry George particularly drew attention to the damaging effects of private ownership of economic land as a factor of production. Because economic land is ontologically a prior to production a moral claim to ownership is dubious. Further it is relatively fixed quantity, with each site representing a monopoly in its own right. So each item of ownership which excludes others raises the price without contributing to production. In other words, it is a natural and necessary monopoly which engages in rent-seeking (deriving income for the owner without contributing to production). Attempts to reduce the damaging effects of this are introduced as site-based rating systems or land-value tax.

# Beyond Software - Steps Towards A Free Society : From Freedom to Rights and Justice

5.3 Monopolies (or monopolistic) behaviour is profit maximising and therefore is enticing. The price is based on determining the quantity to be sold, rather than in a competitive environment which is the price it can get. Monopolies are established and maintained by barriers to entry - sometimes these are introduced for consumer protections (e.g., medical qualifications). There are also monopsonies (many sellers few buyers) which are distortions to a competitive market - the labour market is often cited as an example.

5.4 Positive and negative externalities can also enhance or restrict utility. Externalities are effects from an economic transaction which are effects outside and in addition to those who engage in the transaction. A classic example of negative externality is various forms of pollution, and a positive externality generalised health and education.

# Beyond Software - Steps Towards A Free Society : Innovation and Public Information

6.1 One of the best means of providing positive liberty is through technological innovation. Some innovators argue that IP laws (e.g., trademarks, patents, copyright) provide an incentive to engage in innovation because the mechanism will create a temporary monopoly. As the monopoly is extended the social benefit of innovation is reduced and the private benefit is increased. This varies significantly across different industries with software patents argued as particularly damaging to the software innovation; organisations such as the Open Invention Network offers royalty-free patents with the caveat that the organisation using them agrees not to assert patents against Linux.

6.2 Information which has high innovative potential, has high utility, significant externalities (mitigating negative, enhancing positive), has high levels of replicated research, and is currently subject to private monopolistic behaviour is an ideal target for social activists to move beyond software freedom and towards information freedom. Publically funded research, for example, should most certainly be made free and open source (such as academic journals), especially those in life-saving industries (e.g., health). In some cases (e.g., public-private partnership in health research) would require a subsidy method from resource-rents as opposed to establishing lasting - and increasingly lasting - monopolies.

# The Isocracy Network, Inc.

The Isocracy Network Inc. – dedicated to liberty and common wealth - Annual General Meeting  
Tonight

At United Voice Union Offices, Capel Street, North Melbourne, 18:00

With Speaker from LEAP on the Costs of Prohibition and the Decriminalisation Of Drugs

