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MARXISM AND OPEN ACCESS IN THE HUMANITIES: TURNING ACADEMIC LABOR AGAINST ITSELF

Abstract: Open Access (OA) is the movement to make academic research available without charge, typically via digital networks. Like many cyberlibertarian causes OA is roundly celebrated by advocates from across the political spectrum. Yet like many of those causes, OA's lack of clear grounding in an identifiable political framework means that it may well not only fail to serve the political goals of some of its supporters, and may in fact work against them. In particular, OA is difficult to reconcile with Marxist accounts of labor, and on its face appears not to advance but to actively mitigate against achievement of Marxist goals for the emancipation of labor. In part this stems from a widespread misunderstanding of Marx's own attitude toward intellectual work, which to Marx was not categorically different from other forms of labor, though was in danger of becoming so precisely through the denial of the value of the end products of intellectual work. This dynamic is particularly visible in the humanities, where OA advocacy routinely includes disparagement of academic labor, and of the value produced by that labor.

Keywords

labor; open access; ideology; immaterial labor; scholarship; higher education

i.

Open Access (OA) is an umbrella term for a number of related proposals (and the policies implementing them) according to which academic research should be made accessible online, usually without charge to readers and with weakened copyright protections (for complete descriptions of OA, see, e.g., Budapest Open Access Initiative 2002, Shieber and Suber 2013, Suber 2012, UNESCO 2015, Willinsky 2006).¹ Leading OA advocate Peter Suber defines OA work as “digital, online, free of charge, and free of most copyright and licensing restrictions” (Suber 2012, 4). OA is frequently, by supporters and critics alike, described as if it fully embodies, or is at least consistent with, Marxist or socialist political and economic theories.² The reasons for this are clear enough: OA appears to substitute non-market, share-and-share alike, “communal” or “common” property relations for capitalist ones. OA demands almost universally that products be given away without charge and, somewhat less universally, that producers either revoke or never invoke all or most of their property interests in those products. On the surface, this abolition of property rights sounds like it realizes, or is at least harmonious with, a crucial aspect of communism as Marx described it.

Yet these appearances are, too often, merely that. OA advocacy, especially in its more extreme forms, lacks robust critical grounding for its propositions in credible Marxist or socialist economic theory—or, for that matter, in any deep consideration of what is for Marx and many other thinkers the central category of political economy, namely labor. To the degree that they refer at all to economic theories, OA advocates are more likely to invoke theories from the right than from the left, sometimes without appearing to know they are doing so. This should come as no surprise to observers of digital culture: at a general level, the unknowing or unspoken advancement of rightist ideas as if they were realizations of left politics is a hallmark of what some scholars have called *cyberlibertarianism* (see Golumbia 2013a, 2013b, in preparation, and references therein). It is thus no surprise that the foundational theory found in the works of the most prominent OA advocates depends far more on generic and largely untested theses familiar in cyberlibertarian discourse (“information wants to be free,” there are no distribution costs for information on the internet, the internet is such a radical change in information distribution that it invalidates all existing forms of information delivery, and most critically, the idea that intellectual property is an anomaly in the historical evolution of property rights, rather than fitting squarely into that history) than on theories with robust foundations in left-leaning economics or political economics. Wikipedia, to take as an example the most visible non-academic pro-OA project (Mietchen 2014) that has done much to promulgate the OA and related Free Culture (Lessig 2005) dogmas, was founded and is still guided in many ways by Jimmy Wales, an ardent follower of Ayn Rand and Friedrich von Hayek who explicitly built the encyclopedia on his understanding of rightist economic theory.³ Yet some on the left (e.g. Firer-Blaess and Fuchs 2014) gesture at Wikipedia as if it realizes our aims as well, without any significant engagement with the actual history, overt ideology, or political praxis of Wikipedia and the Wikipedia community, all of which are deeply reflective of reactionary politics.

Further, even when it does engage, albeit very lightly, with the kinds of economic considerations familiar in Marxist analysis, OA advocacy tends to focus exclusively on *property*, noting that in most accounts of Marx’s utopian communist vision, property relations will have dissolved, and that because OA appears to dissolve those relations, it must fit with communism, and often on consumption. They typically overlook altogether what is for Marx the central economic category: not property or consumption, but *labor*. For reasons that should be apparent to anyone with even a passing familiarity with Marx’s work, the idea that one segment of labor should abandon—or worse, and this is my overt topic here, should be forced to abandon—whatever interests it may have in the products of its labor is at best difficult to motivate and, at worst, instances the kind of bourgeois ideology that typifies the way that the capitalist class turns the working class against itself. We find nowhere in Marx the idea that property relations can or should be dissolved prior to the implementation of communism, or that the loosening of property relations in individual sectors (including that of immaterial production) has anything to do with bringing about communism. Marx, in general, wants workers to be *more* connected to their labor and its products, not less so. This is nowhere more apparent than when Marx and Engels offer their famous formula in “The Communist Manifesto”: “the theory of the Communists may be summed up in the single sentence: Abolition of private property” (Marx and Engels 1848, 26). Marx and Engels are clear that they mean this to happen at a global level, not within particular segments. Further, in that famous document they specifically exempt the products of individual labor from the communist vision of a society without private property:

We by no means intend to abolish this personal appropriation of the products of labour, an appropriation that is made for the maintenance and reproduction of human life, and that leaves no surplus wherewith to command the labour of others. All that we want to do away with is the miserable character of this appropriation, under which the laborer lives merely to increase capital, and is allowed to live only in so far as the interest of the ruling class requires it. In bourgeois society, living labour is but a means to increase accumulated labour. In Communist society, accumulated labour is but a means to widen, to enrich, to promote the existence of the laborer.
(27)

It is the seam between OA's relation to property on the one hand, and its relation to labor on the other, that this paper attempts to open wider. There is, I believe, a fundamental mismatch between any thick account of labor and labor rights and the political passion for OA, a mismatch that is too easily papered over by the inchoate cyberlibertarian politics of digital culture. This is even more true when we take a larger contextual view of the place played by academic labor in contemporary political economy: out of all the segments of labor, to say that academic researchers in particular should be forced to sacrifice the value of their labor can be seen much less as a realization of Marx's economic theories than as a characteristic example of his (and other Marxists') theories of ideology, where proletarians become convinced to sacrifice whatever value their labor may have, while larger concentrations of capital are in no way disrupted by, and may even benefit from, this self-abnegating attack, in the name of larger ideals of "freedom" and "openness" that cannot be articulated so as to match up with the principles that appear to be championed. OA, as Joss Winn has written so aptly of Open Education movements in general, is much more legibly about "freedom of things rather than freedom of people" (Neary and Winn 2012, Winn 2012); this "freedom of things" aligns itself strongly with the often-implicit cyberlibertarian focus on economic freedom versus social justice and human equality, and, as in much cyberlibertarian discourse, continually demands we look away from the conditions under which labor is performed (and almost as much the conditions of production) to look instead at the privileged role of the consumer.

There is much to say about OA, some of which dovetails with the analysis of the movement's foundation that follows here, but that is outside the purview of this specific discussion. What I offer here is an attempt to consider OA *as* a discourse on labor, both in terms of what it directly says about labor and its relation to value, and in terms of the way it construes property and production in relation to labor. In general, it is the fervor for OA that should concern Marxists and socialists, especially as expressed in the idea that OA should be *mandated* at either the institutional or governmental level (for recommendations that OA be mandated, see, e.g., Shieber and Suber 2013, Suber 2012, and Hall, Bilicsi, and Ball 2016 for an official EU policy statement). As with most parts of cyberlibertarian dogma, this perspective seems far more informed by destructive intent and ideology toward certain existing institutions and practices than its most strident advocates appear to recognize, even as they openly recommend that destruction.

This does not mean that OA is uniformly a bad idea: it is not. In many ways it is, very clearly, a good idea. In particular, versions of voluntary "green" OA, where researchers may or may not deposit copies of their works wherever and under whatever conditions they choose, and the voluntary creation of OA journals when not accompanied by pressure, institutional or social, to refrain from publishing in non-OA journals, strike me as welcome. Pressure against the largest for-profit academic publishers, especially Elsevier, that take rights from writers and charge exorbitant fees that turn largely into corporate profits, is also welcome, although this pressure need not be directly associated with OA.⁴ But it is a good idea that has been taken far beyond the weight that the arguments for it can bear, and frequently fails to take into account matters that must be of fundamental concern to any left politics. Further, it is a good idea that is surrounded by a host of ideas that are nowhere near as good, and that fit too easily into the general rightist attack on higher education, especially in the humanities, that operates worldwide today. Some of the inspiration for my analysis comes from the writings of OA advocates themselves, in which a distinct negativity about academic research and creativity are repeatedly seen. This comes even from humanities scholars themselves, in which it is not unreasonable to see scholars arguing not only that their labor has no value, but that they should even have to pay for the privilege of doing it (in the form of Article Processing Charges, APCs, where authors pay \$1000 or more for OA journal publication).

Two additional points seem important to mention at the outset. First, I do think there is a fundamental contradiction in the theory of OA that is somewhat outside of the scope of this paper, although I do address it at some points in what follows: the idea that what we have until the last decade or two called "publication" somehow *restricts* access to information, rather than making information more available. To some extent there is a bit of Orwellian doublespeak going on when we are told that publishers and

libraries are in the business of restricting access to information (I discuss this at greater length in Columbia, in preparation), using words like “gatekeeping” and “paywalls” to describe the enterprises of *distributing* and *making available* informational and creative goods. The destructiveness in this impulse is clear enough in the dismissive rhetoric and arguments marshaled by OA advocates, especially their hostility toward libraries and publishers, often at least appearing to think that the elimination of these institutions would in turn ensure worldwide uninhibited access to information, when the entire history of freedom of speech and freedom of the press suggest much the opposite (it is also an interesting mark of the power of ideology that librarians are among those most frequently arguing, essentially, against the existence of libraries). There is also a related rejection of the idea that the industries of publishing and editing have anything at all to offer the makers of creative work, when again, history suggests just the opposite. Here, again, we see ideology in action: writers and creators arguing that resources should not be directed toward the promotion and distribution of their work, in the name of wider promotion and distribution. In addition, one notes that in the fields most directly devoted to publishing, such as newspapers and magazines, the grounding cyberlibertarian beliefs that “information wants to be free” and that publishers charging money for their works were dinosaurs that would soon be extinct, have turned out to be starkly false, in that the majority of major newspapers and many magazines have in fact turned to subscription models, at least for full access to their content: it is manifestly not the case that the widely distributed availability of information via digital media inherently implies or entails that information be provided without cost to the reader, or that libraries and commercial publishers no longer serve a purpose (in fact, the somewhat widespread insistence on OA among librarians, while understandable when directed at skyrocketing commercial journal costs, can also appear as an instance of labor turning against itself when it becomes a full-out demand that all scholarship must become OA).

Secondly, OA advocates too frequently lump every discipline and every kind of creative output into one basket. Humanities scholars are perhaps in a particularly unusual position regarding OA (see Allington 2013, Brienza 2012, and Columbia 2013c for critical discussions of the impact of OA on the humanities, concerns which are not adequately addressed in the pro-OA Eve 2014), due to the facts that 1) their publications are in general much less expensive than are those in the sciences, often by a factor of tens or hundreds (see, among many other sources, Abelson, Diamond, Grosso, and Pfeiffer 2013; Brienza 2012; Larivière, Haustein, and Mongeon 2015); 2) the public need for speedy access outside of institutional protocols to humanities research is much less clear than in, for example, medicine; 3) humanists frequently (much more frequently than many commentators appear to realize) earn a substantial portion of their income from the intellectual property interests they have in their research, whereas in other fields these direct interests are sometimes less important and may be supplanted by more directly commercial interests that can be realized by other institutional mechanisms, such as “technology transfer” and corporate spinoffs. The case for mandated OA in certain scientific fields, and for projects that have been directly and fully funded by the Federal Government-funded projects, is frankly much stronger than is the *general* case for OA (although even that case deserves close scrutiny), which is my subject in what follows, though it still raises some of the questions I discuss, particularly with regard to the corporate relationship to OA. Further, many academics who are in the US categorized as humanists, including creative writers (in my home Department, nearly half of the full-time English faculty are creative writers), *have categorized as “research” in the terms OA uses the entirety of their creative output*, in a way very different from scientists, doctors and engineers (on the specific challenges OA poses for creative writers, see, e.g., Magee 2008, Sinor 2014, Thomas and Shirkey 2013). At the edges of the OA movement we see the suggestion that artists, musicians, novelists, journalists, nonfiction writers, and many others who work in universities should be prevented from owning the fruits of their labor, and should sacrifice the right to control where and how their work is used, which should offend the sensibilities of Marxists and of anyone concerned about the fate of the humanities in the contemporary educational environment.

It is important to state at the outset that my concern here is with *research* as a fundamental component of academic labor. While it is certainly not the case that all academic laborers do research or should be required to do so (I am personally in favor of having tenured or tenure-equivalent professors in most

disciplines for whom teaching is their primary activity), the OA discourse is primarily about research, in whatever form the laborer chooses to define “research”—although as I say at several points below, some of the arguments in favor of OA would appear at least conceptually to entail that teaching, too, should (or must) be delivered without compensation to the worker. At the same time, one detects a fairly significant disregard for research, especially in the humanities as if it were some form of “elite” activity that does not deserve the same consideration as labor that teaching does. I find it curious that such arguments should develop within the humanities of all places, and resist it in the strongest possible terms: an informed polis absolutely requires free inquiry across the board; a society so structured by science and technology as is ours needs views that stand to some extent outside the sciences with special urgency; and while I point to some well-known authors below to show just how central intellectual property is to the work of scholarship, it is arguably the case that professors at lower-ranked institutions depend even more than their colleagues at Ivy League universities for a substantial portion of their wages. The militancy in some quarters of the humanities against research is another instance of academic labor turning against itself.

My goal is to show that the general case for OA as it is currently made is incompatible with fundamental aspects of Marxist theory, and with most thick accounts of labor rights, and therefore to argue only that future OA advocacy must address these issues far more clearly than it has so far. Further, I hope to disqualify the most-frequently cited OA justification, that any amount of what is too bluntly called “public funding” automatically entails the absolutely free distribution of all research. All things being equal, I am in favor of researchers having the option to make their research available, if they so choose, in a variety of OA and quasi-OA venues, and I make my own research available this way. I am, for reasons I detail below, more concerned about the current push toward so-called Green OA in which academics are strongly encouraged to deposit their work in *institutional* repositories than in academics making that work available in personal or 3rd-party repositories, even when the institutional repositories are “public” and the 3rd-party repositories are owned by commercial enterprises. My target here is the grounding on which the notion of mandated OA rests, and in particular when that mandate results from a cribbed and inaccurate account of academic labor and its relationship to the public role of academic research.

The problem, to put it as straightforwardly as possible, is 1) that the argument used to support OA mandates rests on transparent and ideologically-motivated falsehoods regarding the funding of academic labor in the US, and 2) that in turn this argument captures much more than the proponents of the OA movement seem to realize: if the argument is valid, it drastically limits the rights of academics in particular (although it also should capture, but is rarely described this way, all government workers), as against all other classes of workers, to have what Marx recognizes as a mature and responsible relation to their labor: it literally makes academic laborers *servants*, in a way that Marx himself clearly saw as exploitative. Although it does not appear this way today, in the long run the argument that academics in particular have no right to own the products of their work cannot help but demean the pursuit of scholarship itself to the point where it is no longer a profession in which a worker would have a rational interest in selling his or her labor, particularly in those segments, like the humanities, where copyright is central to the worker’s ability to maximize wages. This is nowhere more evident than in OA’s focus on the work of academics to the exclusion of actual commercializable intellectual property, where concentrated profit and the power that rises from that should, if OA advocates were consistent and if OA truly were a left-wing program, make up the primary site for OA advocacy. Instead, OA as it is currently formulated works to hand more power and profit to these corporate interests while systematically denying individual producers the right to much more modest ownership interests in their own work product—unless, it is interesting to notice, they choose to package their research into corporate form, via so-called “technology transfer,” a program that OA not only fails to resist but actually appears to work in harmony with. OA seems in this case to work very neatly with the neoliberal precaritization of labor, and in particular academic labor, to make the pursuit of disinterested knowledge on which democracy itself is said to depend an impossible goal.

ii.

Throughout the OA literature, as throughout much of digital culture, we are told that special, new categories are required to analyze the social today, and that our existing analytical categories are insufficient to the task. With regard to labor, writers on the left are likely to invoke as necessary the category of “immaterial labor,” introduced by Maurizio Lazzarato in a 1996 essay of that name. As articulated by Lazzarato, part of the Italian Autonomist Marxist movement with other figures like Paolo Virno and Antonio Negri, the theory of “immaterial labor” is supposed to capture what is distinctive about the new forms of labor evidenced particularly in digital technology and its emphasis on the development and manipulation of ideas and other “immaterial” forms of activity over above the production of material goods. Developed by Tiziana Terranova (2004) into the associated concept of “free labor,” the concept has become the dominant one through which creative activity has been conceptualized as labor today. The suggestion, at least taken from an extremely high-level view, is that Marx’s theoretical apparatus was not sufficient to account for the shifts in labor practices we have seen since the shift away from “productive” factory-based labor in the developed world, usually referred to by the term “post-Fordist.”

What is odd about this is that one editor of the volume in which Lazzarato’s essay first appeared, the prominent Italian autonomist Marxist Paolo Virno, has long advocated what strikes me as an entirely different framework within which to view post-Fordist capitalism, one that has the virtue of being located in Marx’s thought rather than outside of it. As Virno writes in his *Grammar of the Multitude* (2004),

Marx analyzes intellectual labor, distinguishing between its two principal types. On one hand, there is immaterial or mental activity which “results in commodities which exist separately from the producer [...] books, paintings and all products of art as distinct from the artistic achievement of the practicing artist” (in Appendix to *Capital, Vol. I*, “Results of the Immediate Process of Production”: 1048). This is the first type of intellectual labor. On the other hand, Marx writes, we need to consider all those activities in which the “product is not separable from the act of producing” (ibid., 1048)—those activities, that is, which find in themselves their own fulfillment without being objectivized into an end product which might surpass them. ... The second type of intellectual labor (activities in which “product is not separable from the act of producing,”) includes, according to Marx, all those whose labor turns into a virtuosic performance: pianists, butlers, dancers, teachers, orators, medical doctors, priests, etc.

So then, if intellectual labor which produces an end product does not pose any special problems, labor without an end product (virtuosic labor) places Marx in an embarrassing situation. The first type of intellectual labor conforms to the definition of “productive labor.” But what about the second type? I remember in passing, that for Marx, productive labor is not subordinate or fatiguing or menial labor, but is precisely and only that kind of labor which produces surplus-value. Of course, even virtuosic performances can, in principle, produce surplus-value: the activity of the dancer, of the pianist, etc., if organized in a capitalistic fashion, can be a source of profit. But Marx is disturbed by the strong resemblance between the activity of the performing artist and the *servile* duties which, thankless and frustrating as they are, do not produce surplus value, and thus return to the realm of non-productive labor. Servile labor is that labor in which no *capital* is invested, but a wage is paid (example: the personal services of a butler). (53-54)

While Virno claims that the category of “unproductive labor” puts Marx in an “embarrassing situation,” the best-known proponents of the autonomist theory in the English-speaking world, Michael Hardt and Antonio Negri, go much farther. In fact, despite taking the name of the second volume of their autonomist trilogy, *Multitude*, from Virno’s work, Hardt and Negri do not consider this argument even worth engaging: “the old Marxist distinctions between productive and unproductive labor,” they write, “as well as that between productive and reproductive labor, which were always dubious, should now be completely thrown out” (2004, 135).

Lazzarato goes further still:

Marx, in line with classical economists, distinguished the productive (labor employed by a capitalist) from the unproductive (domestic laborers, according to Adam Smith's example, who, although more numerous than factory workers, consumed but did not produce new wealth). This is still the point of view from which one offers critiques of "finance" for being unproductive, unlike "industry," which is considered the source of national wealth. (Lazzarato 2012, 152)

But this is a fundamental reinterpretation of the categories as Marx uses them; indeed finance capital is discussed at length by Marx, repeatedly, but *not* as part of unproductive labor. Lazzarato's distinction between "productive" and "unproductive" has much more in common with far-right theories about "unproductive" members of society than it does with Marx's work, where the distinction is, as Virno points out, meant to distinguish between activity that does not ordinarily result in a marketable end product: finance capital, to the contrary, is *only* concerned with marketable end products, and therefore is right at the heart of *productive* labor, as Marx defines the term.⁵

By not engaging deeply with Marxist thought about the categories of productive and unproductive labor, current discussions of the forms of labor in digital environments suggest that Marx's thought is in important ways no longer applicable to our age. Whether or not this is true, demonstrating it would require a direct engagement with Marx's work on the subject. In this case it is not at all clear why Marx's thought should not be taken seriously.⁶ Particularly because the category of unproductive labor focuses not on the kinds of *activity* in which the laborer engages, but instead on the *endpoints* toward which that activity is oriented, it gives us a very different angle from which to view academic labor in particular. For it is clear that according to Marx's definition, which like much in Marx was built on the work of Ricardo, Smith, and other classical economists, nearly *all* academic labor is unproductive. And to Marx, the main problem with unproductive labor in a capitalist economy is not that the laboring activity is "material" or "immaterial": it is that because of the lack of orientation toward a marketable end product, *whether material or immaterial* (for immaterial *end products*, as Virno points out, were well-known to both Marx and the markets of his time), unproductive labor is always in danger of being subsumed into the condition of *servility*. That is, those who engage in unproductive labor are always in danger of becoming something like indentured servants: like butlers, they are not exactly slaves (although of course slaves could be made to be butlers), but they are very different from laborers who can point to a marketable end product to indicate their value to capital. They are, essentially, trapped in a system wherein they are required to do work at the pleasure of a rentier, and lack the ability to sell their labor in the way productive laborers can. (These analyses focus on creative and intellectual labor and its relationship to other categories of labor; see Winn 2014a, 2014b, 2015, for robust direct accounts of the nature of academic labor in a Marxist context.)

In a recent critical analysis of the immaterial labor literature, Marxist sociologist Henrique Amorim (2014) points out that it is a signal mistake to think that because some labor is "immaterial" or intellectual—an assessment of the objective form of labor practice itself, which has been most fully described by Alfred Sohn-Rethel in his idiosyncratic *Intellectual and Manual Labour* (1977)—it is a different *kind* of labor in Marx's sense. To Marx it is irrelevant whether labor is intellectual or manual with regard to whether it is productive or unproductive; the notion of "immaterial labor" at least in some of its uses appears to obscure this, and has at times been deployed to antagonize the productive/unproductive distinction. While intellectual and manual labor "can be differentiated sociologically" (Amorim 2014, 93),

The intrinsic character of labour as labour, however, is not constituted by any of these particularities but by common characteristics. Marx called this common element, which is present in all labour in capitalist society, abstract labour, defining this as the average working time socially necessary for the production of commodities. Commodities are not exchanged for their use values, but for the value of the labour that is crystallised in them. Thus, concrete labour, which is particular, specific and distinguishable, is subordinated, historically and socially, to abstract

labour; that is, to a general labour that expresses different values, which makes it socially interchangeable. (94)

By mistaking the concrete labor (in Marx's terminology) for material labor and "concrete labor" for the category that interested Marx, proponents of the immaterial labor thesis miss the fact that he was instead concerned with *abstract* labor, and that this categorization applies whatever the end product of labor might be.

Amorim helpfully points out how the mistaken focus on the immateriality of labor products can have resulted in an unfortunate misapplication of Marx's theories to the current historical moment:

the answer given by the 'knowledge economy' apologists to the last question ['why should the intangibility of immaterial commodities prevent the generation of value from their production?'] is based on a misunderstanding of the concept of the value of labour, especially the notion of working time used by Marx. In the belief that only the production of physical commodities is counted by capital as producing value, immaterial production is seen as the negation of capital because it cannot be quantified in time units. Hence, instead of examining how capitalist society is itself produced, the 'knowledge economy' proponents focus on how production is organised within capitalism; and instead of looking at the social relations within which immaterial production takes place, they highlight the physical or abstract substance of the raw material used for such production. Materiality is then understood as a synonym for palpability. Thus the historical perspective based on the synthesis of conflicting social relations is reduced to the materiality of physical things, as if these things were not also an expression and synthesis of social relations. (98)

Of course, Marxists are not alone in thinking that the immaterial end products of digital labor somehow make that labor—or even those end products—different in kind from other forms of human enterprise. This is a widespread presumption throughout contemporary culture, and it infects OA directly, as it does much of the Free Culture movement: that what is important about cultural products (or intellectual property) is the degree of difficulty and the resources necessary to make copies of them. Yet this is to accept capital's own self-description: "capital aims to combine the production of material and immaterial commodities, in the process articulating distinct regions, technologies and managerial approaches" (102). This presumption has strongly negative effects for the organization and defense of labor on which Marxist politics rest: "the combination of traditional industrial production with newer forms, drawing on cognitive labour, has broadened capital's domination and exploitation of labour, resulting in the extreme subordination of the working class" (102). Rather than looking for ways to exempt a very narrow segment of labor from considerations that apply to labor everywhere, we should be exploring how all laborers can build solidarity with each other.

iii.

Pro-OA arguments echo broader ones regarding Free/Libre and Open Source Software (hereafter FLOSS) and "Free Culture" in that they begin with a wholesale rejection of the notion of intellectual property. The phrase "copyright monopoly" is used frequently in these discussions, although this phrase relies on a specialized meaning of "monopoly" and a strange resistance to that form of monopoly alone, when other far more legible forms of monopoly—for example, Google's monopoly over the entire space of internet search—go unmentioned and even tacitly accepted (Lowery 2013). Like much else in digital culture, discussions about OA can be extremely divisive, with advocates sometimes writing as if there are no reasonable issues OA raises that deserve thorough discussion (see e.g. the story related in Anderson 2013, and some of the comments there, and elsewhere; also see Horne 2015 for a personal account of interaction with the OA community). OA advocates frequently do not construe the OA issue as one that should be open for reasoned debate, but instead disparage their opponents and dismiss their positions as outrageous and selfish, and as if they are deliberately constructed to deny access to those most entitled to a product or service.

In culture at large, this dynamic is most evident in the practice of corporatist actors like the community at Techdirt, whose members frequently write as if the producers of the movies and television programs commit a serious moral offense by attempting to ensure that those who view the program pay for it (see, e.g., Masnick 2007a, 2007b, 2011). When Masnick (2007a) writes that “Saying You Can’t Compete With Free Is Saying You Can’t Compete Period,” he writes as if the stripping of compensation from the sphere of cultural production will result not in the cessation of that production, but instead in creators working, as they apparently *should*, for free. Never mind that creators like Masnick clearly do not do this; in fact, this increases the sense of servitude, in that one class of creators are simply required to do work without compensation, either in the present or the future, while others enjoy the fruits of that labor.

In the academic context these arguments take on a particular, and particularly revealing character. The arguments are rarely about whether OA is something individual academics or even academic groups might choose to do; indeed any gesture at choice—something that one might easily construe as fundamental to a particularly cherished value among US academics, namely academic freedom—is typically rejected in the harshest terms. For example, when in 2013 the American Historical Association attempted to protect the labor of PhD students, among the most precarious members of the profession, by asking universities to allow students to have the choice to embargo their PhD dissertations—a category of work that is far different from the academic journal publications OA often claims as its exclusive focus—OA advocates in the humanities met that request with remarkable anger, hostility, and misunderstanding, in which the very idea that academics are workers and that their labor should be valued and compensated was frequently mocked by academics themselves (Anderson 2013 provides a dispassionate account). The arguments are instead about *mandates*, *force*, and *obligation*. They insist that academics should be forced by mandate to publish only in venues that give their materials away for free; that universities should accept only OA publications as research product when determining promotions and tenure (e.g., Manjoo 2013, in which a non-academic asserts without support that MIT could “require all of its faculty, grad students, and other affiliated researchers to submit their work only to open-access journals”); that academics should sacrifice the right to control republication and alteration of their work; and that any attempt by academics to earn income from their intellectual property is abhorrent not to academic ideals but to an obligation academics have to the public or the commons, an obligation that has never before been articulated.

At the center of such arguments is an especially curious and pernicious set of assertions about the funding of academic labor in the US, sometimes asserted by those who must know the assertions are incorrect. Peter Suber, a philosopher who has become the leading OA advocate in the US and perhaps worldwide, and who works, critically, at the private Harvard University, characteristically writes:

One of the most compelling arguments for legislated OA policies is that governments should assure public access to the results of publicly funded research. This argument is widely effective because it aims to accelerate the research we’ve already decided to fund with public money, increase the return on the public’s large investment in research, and improve fairness to taxpayers. There’s no downside for the public interest, only an incomplete upside. There is more public funding for scientific research than for humanities research. Far more. Call this a dry climate for the humanities. (2014, ix)

Suber writes this paragraph in his preface to one of the few books to directly address the humanities separately from other academic fields, a volume by the comparatively cautious humanities OA advocate Martin Paul Eve called *Open Access and the Humanities* (2014). Note that Suber’s argument proceeds not from consideration of labor or academic freedom but from *obligation*: that professors are obligated (that is, not free to choose) to give their work product away for free because it is government-funded. This argument is repeated frequently both by OA advocates themselves (e.g. Eisen 2012) and journalists covering the topic (Mechanic 2013), often in a manner that obscures the very large differences between direct Federal funding of research projects (for example, through the National Institutes of Health), and other forms of academic research, and no less between scientific research reports and the huge variety of other work performed by academics that gets caught by the public-funding argument.

The public-funding argument itself is a very strange one to make when we consider the actual funding of academic research in the US. After all, the very university at which Suber works, Harvard, is private. That is to say that none of its operating budget comes directly from public dollars—none at all. As of 2011, the most recent year for which official statistics have been published, there were 2937 private institutions of higher education in the US, nearly twice as many as the 1652 public ones.⁷ The 2937 private institutions by definition receive *no* public operating dollars—so nearly 2/3 of universities, including Suber’s, should not be subject to the public-funding mandate. Further, as Suber also must know (but, as far as I have been able to tell, like other advocates of this position, nowhere acknowledges in his work), the Federal government in the US does not directly provide operating dollars to *any* colleges and universities; to the degree it exists (which is at this point much less than many in the public believe) such funding comes from *state* governments. So even if we accept the public funding argument on its own terms, the rewards of that obligation would attach *only to residents of the states* who have funded the research, not the country or the world. That is to say, even if this argument were correct, residents of Virginia would have a claim to the work product of professors who teach at Virginia state-funded universities, but more distant obligations to the US as a whole, much less the world, would not follow. The situation is even worse than that though, for as Suber must know, even “public” universities in the US receive little-to-no taxpayer funding; even the most lavishly-funded universities today a small percentage of their operating budgets from taxpayers (for detail on the funding of higher education in the US, see The Pew Charitable Trusts 2015).

The principles advocated here to support OA are not clear at all, despite the bluntness with which Suber and others state them, but it is particularly unclear why taxpayers of one locality should be obligated to provide what they have funded to residents of other localities, especially absent formal declaration of that obligation via legislation. That is, despite the explicit content of Suber’s argument, he demands that academic work product be made available not to the US residents whom he alleges “paid for them” (despite the fact that they literally did not) but to *everyone* worldwide. Surely if this argument is valid—that is, if any taxpayer funding for a good obligates governments to give that good away to everyone in the world without charge—then the US would be no less obligated to provide its research product to the world at large than it is to provide free Medicare, free military protection, free use of national parks, free worldwide regulation by FDA, EPA, and other agencies: after all, these are all directly and *fully* Federal taxpayer-funded services. Whether or not such a principle would be advisable or even feasible, there is absolutely no hint of it being mooted, let alone enforced, anywhere at all, with the possible exception of the creative work performed by academic laborers—ironically, even when we are not public employees. To the extent I have been able to determine both through my own investigation and through careful reading of the OA literature and also existing US statutes and judicial proceeding, there are no laws, regulations, or even statements of ethical principle by Federal or State governments in the US that suggest that government funding prevents or even impacts additional fees or property interests. This is obviously true when one considers the wide range of fully government-funded entities: for example, the Smithsonian Museums, US Federal government institutions, retain ownership interests in the artworks they hold, and routinely charge admission to various exhibits. At the level of personal conduct, the US Department of Justice’s Ethics Handbook contains not just formal laws and regulations but general principles of ethics that govern all direct employees of the Federal government.⁸ It contains many provisions about conflicts of interest, accepting gifts in kind, “use of public office for private gain,” and so on, but there is not one word suggesting that employees of the government are required to relinquish their own property rights in the work they do for themselves (I know of no case law or that work by professors constitutes “use of public office for private gain” in the DoJ terms, and given the relatively long-standing nature of this standard, it surely would have been the target of significant lawsuits by this point). OA advocates thus routinely present the public-funding argument as if it proceeds uncontroversially from established principles of public service, but fail even to attempt to demonstrate those principles exist at all. This should be no surprise, because there is no such principle. The ability to advocate for it with urgency and emotion as it is obvious is, to me, a sign that ideology is at work.

The public-funding argument literally suggests that a single dollar paid by any government anywhere to the operating budget of an institution automatically requires the products of the workers of that institution—whatever their particular status with regard to the intellectual property they generate as part of their work—to distribute their work product for free. It builds that argument by insisting that what it calls “public workers”—a category OA makes no effort to build in a rigorous fashion, since there are many direct governmental employees (whose salaries are 100% paid by governments) to whom the OA logic is never applied—*owe* their work to everyone else for free. It provides no way of distinguishing at a conceptual level between creative labor and other forms of work, in no small part because it denies the validity of the category of intellectual property (a stance discussed as “information exceptionalism” in the next section); it offers no discussion of how if at all the putative “public” compensation should account for the nature of the specific labor performed by the individual. If the public funding argument is taken literally, it is hard to understand what the basis can be for public universities to charge tuition and fees to students, to charge ticket prices for performances by artists and musicians employed at universities, and on and on. The argument is logically equivalent to saying that governments can either fully fund a given activity in some initial payment (whose nature itself has never been defined), or else not offer the activity at all. This is a very strange and, I think, unprecedented rewriting of many economic and governmental principles, one which we would be hard-pressed to find in the history or theory of governance. It also entails that poorer countries, should they choose to fund publicly an activity, automatically must give the fruits of that activity away to the world, which is to say the least a strange argument and a strange way to support the growth and consolidation of developing countries and their citizens.

The argument is also deeply biased against a specific category of what it calls “public employee,” despite the fact that “public university” employees in the US have very little of their salaries paid by the public. Depending on how we categorize the work and work product of both university and private sector employees—that is, if we accept some of the more extreme characterizations of “public funding” used by some OA advocates, for example that institutional tax breaks constitute public funding. Here is a site where OA as ideology begins to show through most clearly, as its advocates now develop entirely new and ad-hoc definitions of public funding. Peter Ludlow (2013a), writes that “tuition of students and the donations of alumni” should be considered part of the “government support” that, Ludlow argues, entails that all work by professors “belong[s] in the public domain.” Peter Suber goes even further:

Public and private funding agencies are essentially public and private charities, funding research they regard as useful or beneficial. Universities have a public purpose as well, *even when they are private institutions*. We support the public institutions with public funds, and we support the private ones with tax exemptions for their property and tax deductions for their donors. (Suber 2012, 14; emphasis added)

Following reasoning like this it becomes hard to see how *any institution at all* can be characterized as private. Google, pharmaceutical companies, magazine publishers, commercial book publishers, and for that matter private universities receive huge amounts of this kind of second-order public funding. If we take it at face value, the public-funding argument insists that *all* of the services and products provided by these institutions must be made available without charge not just to the residents of the US but to the entire world. And yet despite this obvious and direct consequence of the literal argument made by OA advocates, they never to my knowledge make it: they constrain their reasoning to that part of their labor that academics have the strongest claim to own, and specifically and exclusively deny them that ownership right. The conceptual illegitimacy of this target is part of what makes OA look more like ideology than a proposal that can be taken at face value: it marshals an argument that captures hundreds of cases, but then focuses exclusively on a single one, one that is even arguably weaker than some of the cases that the logic directly entails. For example, sitting US Congress members frequently earn significant income from the sale of books they have authored that are at least tangentially, and often directly, related to their current service (Burr 2014). To my knowledge the OA and Free Culture movements have never

suggested mandating that this work be released for free and with weakened copyright protections, despite the clear sense in which that work has been *entirely* funded by US taxpayers at the Federal level.

Further, the interest here is entirely, and oddly, focused on the public: what Suber calls a “dry climate for the humanities” might, if viewed from the perspective of capital available to academic laborers, be seen in just the opposite way. Humanities and arts professors and students, not at all uniquely but perhaps with particular emphasis, frequently earn money in the commercial sector directly via their ownership of their intellectual property. Perhaps it is closer to unique that these IP interests are, for many humanities scholars and arts professionals, their *only* source of value vested in their labor outside of salaries (unlike, say, scientists and engineers, but for those well-known figures like Stephen Hawking, Brian Greene, Lisa Randall, E.O. Wilson, Stephen Jay Gould, and as this list suggest, many others). One need only think of the large percentage of fiction and non-fiction writers in the US who write bestselling books but also teach at colleges and universities to see this, or the many painters and sculptors who teach in Art departments. Suber is suggesting that there is a “dry climate” for such workers, but what he is advocating is cutting off the only ability those workers have to receive direct compensation for their work, beyond the salaries they are paid by their employers. Obviously direct statistics are difficult to come by, but it seems reasonable to suspect that figures like Toni Morrison, Nobel Prize-winning novelist and critic and for many years a Humanities Professor at Princeton University; Henry Louis Gates, Jr., Professor of English and African-American Studies at Harvard and author of many bestselling nonfiction books and host of an award-winning PBS series about Americans’ genetic heritage; and Jill LePore, History Professor at Harvard University as well as a staff writer for the *New Yorker* and author of several bestselling nonfiction books, do not consider the current climate to be “dry” for their work, but if they were to learn that a condition of their continued employment—if, that is, they worked at public universities, which they do not—was that they had to agree to give away their works for free, or only to work for venues that distribute work without charge or copyright, then they would consider that a dry climate indeed. Further, the logical consequence of Suber and other OA advocates’ stated views is that in fact, Morrison, Gates and LePore could be paid for their work because they work at private universities, but that if *public* institutions of higher education—as fundamental to the idea of American democracy as an institution can be—tried to hire scholars like these, or continue to employ the many scholars who work there, a condition of their employment would be that they sacrifice their ownership interests in the products of their labor. While I use LePore, Gates and Morrison as examples of humanities scholars whose work may be widely known outside of academia, in fact it can be quite startling to examine the faculty lists of humanities departments at any research-focused institution and to discover how many of them actively publish works for which they receive substantial income—income which is particularly substantial given the low overall wages paid to humanities and arts scholars.

There is no way to construe Suber’s argument so as to exclude work like this. While this is often not well understood outside the halls of university administration, all of this work is considered “research” in the official terms of university employment; all of it is listed on annual reports, all of it goes into considerations for promotion and tenure, all of it is listed on the official website biographies for these professors and many others like them. If the argument is that these professors are somehow paid through “public funding” and that therefore all work they produce is owed without charge to the public, then that argument captures everything they produce that is in any way related to their work as scholars, not simply the articles they publish in academic journals.

In the face of objections like these, an ancillary argument is typically developed, namely that academic journal publications have always been published without compensation to the author and that the author typically signs over some (but critically, rarely all) of the property interests in that publication to the journal publisher. OA advocates never, as far as I know, investigate how this situation came to pass; they certainly overlook the fact that, at least in the humanities, copyrights rarely, if ever, prevent authors from reusing their own work in their own publications or require payment of some sort to go back to the academic journal. Humanities (and other) academics frequently publish books that partly or entirely

collect journal articles (on the odd role of the edited collection, whether by one or more authors, see Vincent 2013). Ironically, the major stumbling block for these works is not copyright but the question of how much of it has been made available before: except for very famous academics and particular works, it is typically very hard to get publishers interested in volumes that collect work that has been otherwise been made available, providing at least some evidence that OA demand that everything be given away for free will damage the laborer's property interest in her own work.

Be that as it may, it must be noted that this is an entirely different argument from the other ones used to support OA. It should also be noted that the most fervent OA advocates, especially Suber, repeatedly gesture at kinds of publication beyond traditional academic journal articles as desirable targets for OA. If the argument is restricted to what has traditionally been given away for free, and if it required no more or less than the copyright policy already in place in that arrangement, we really would not need to be having the OA discussion. On the surface, without knowing the reason (which so far as I have been able to tell is lost to history) that scholars are not paid for their work—and frequently, in the sciences and engineering, at least, must themselves pay to have their work published—it is hard to argue that this part of a scholar's labor is not included in her salary. But note that this policy would capture only a single kind of publication, and only a single aspect of that publication. If OA advocacy were entirely limited to this argument—that is, if it said that only academic journal articles should be made freely available by one means or another, and that authors and publishers (with the author's approval) must retain the exclusive ability to republish that material in their own venue of choice—it would be much less an object of concern along the lines discussed here than it is in its current form. Yet the OA movement shows very few signs of proceeding this way, using the far more inaccurate and ultimately destructive public-funding argument and frequently suggesting and at times insisting that OA applies to kinds of works that have typically either not been formally published (e.g. theses and dissertations) and been published *with* direct payment to the author (especially but not only books).

These considerations are rarely if ever taken seriously in the OA literature. They are occasionally raised by writers skeptical of OA as a general proposition (see especially Allington 2013, Brienza 2012, Mirowski 2014b, Mossoff 2015, Osborne 2013, Pasquinelli 2008), but the discussion between OA advocates and skeptics typically fails to rise to the level of a civil conversation; the scorn directed at skeptics is part of what makes OA seem consonant with anti-intellectual and anti-academic ideologies that are so prevalent today. Occasionally scholars skeptical about the global claims of OA, especially when framed in terms of mandate, have raised questions about its compatibility with principles of academic freedom (Anderson 2015, Grayson 2013, Norwegian Ministry of Education and Research 2013); these concerns are typically reframed so as to make them appear less serious than they are (e.g. Shieber 2009, who takes the objection to be about Harvard's institutional repository); less frequently they are taken at least somewhat seriously by OA advocates (Rice 2013). Though framed in terms of research ethics, at bottom these too are labor concerns because they speak to the relationship of the creator to his or her work product. Mandates, in their most pointed form, prevent the faculty member from deciding where and how to publish his or her work.

In a manner consistent with much of the OA advocacy discussed here, Michael Eisen (2015) weighed in on the controversy over Rick Anderson's thoughtful essay (2015) about how Creative Commons licenses intersect with academic freedom. Remarkably, for such a prominent figure for many years in changing very significant elements of the scholar's relation to their research product, Eisen writes in late 2015 that "I didn't really understand what the term 'academic freedom' actually means." Despite having admittedly only started exploring the topic right then, Eisen dismisses the definition of academic freedom in the American Association of University Professors (AAUP) "1940 Statement of Principles on Academic Freedom and Tenure": "while this document provides a definition of academic freedom that has been fairly widely accepted, it is not in any way legally binding nor, more importantly, does it reflect a universal consensus about what academic freedom is."⁹ Eisen apparently did not think it important enough to research the AAUP's role in the US system of higher education. The AAUP is a standards-setting body,

and many individual faculty members and scholarly societies belong to or endorse its work. The AAUP's principles are not meant to express a "consensus": they are very literally the operant definition of academic freedom in the US and represent a century of hard-won work for the rights of scholars to be free to pursue their work.¹⁰ Many universities in the US incorporate the AAUP's 1940 Statement and its later emendations into their Faculty Handbooks. Further, Eisen works at UC-Berkeley, and the entire system of faculty unions (called "faculty associations") has a formal partnership with the AAUP.¹¹ The AAUP's Statement of Principles does have "legally binding" force: in fact this definition is the one routinely referred to in legal proceedings when professors allege that their employer has violated their academic freedom (the AAUP also has a longstanding position on copyright issues for faculty, e.g., as expressed in Springer 2005, where it is stated that copyright is a "federally protected ownership right," and that it is a "fundamental ownership question" as well as an "academic freedom question," and making it clear that faculty control over their IP is vital to the ongoing health of the scholarly enterprise). Despite this history, Eisen develops his own, completely novel, definition of academic freedom, in which the fact that "scientists are expected to publish in certain journals and other academics are expected to publish books with certain publishers" infringes academic freedom, not appearing to realize that the alternative is to have an academic publishing system without any sense of preference or quality that is nowhere evident in the extensive historical work on academic freedom. Further, Eisen even in this piece recommends various forms of mandate regarding OA in the academic publishing system, thus directly suggesting that it is part of academic freedom for institutions to actively determine where and how scholars publish (which is particularly noxious since OA presents itself as a political movement, so the logical entailment of this reasoning is that institutions can determine for political reasons where and how professors publish, which is almost literally the opposite of the core principle embodied by academic freedom). These contradictions and ad-hoc redefinitions do not matter from the perspective of OA-as-ideology, which, consistent with its grounding in cyberlibertarian practice, expresses contempt for existing practices and procedures that appear to get in the way of its own specialized notion of "freedom"—even when that notion of freedom directly contradicts what others have been struggling to maintain for many decades.

iv.

One searches OA literature in vain for discussions of the labor issues that should be at the base of any movement that purports to be about improving the lives of laborers, intellectual or otherwise. For that, the best we have are some discussions in the FLOSS and Free Culture movements. Despite deriving its inspiration very obviously from these movements, considerations of the political economics of FLOSS and Free Culture are difficult to come by in the OA movement. The "open" of OA is much more akin to the "free" of Free Software than it is to the "open" of Open Source, since the putative "free as in freedom" advertised by Free Software originator Richard Stallman and the Free Software Foundation focuses much more on the noncommercial availability of intellectual property than does the Open Source movement, which was actually developed specifically as a commercializable alternative to the Free Software movement.¹²

There are just a few attempts to subject the claims of the FLOSS and Free Culture movements to rigorous analysis based either in any careful consideration of labor and value. It is probably no accident that both of them come from a Marxist perspective. The best-known of these is Dmytri Kleiner's discussion of copyright, "copyleft," and what Kleiner calls "copyfarleft" in his *Telekommunist Manifesto* (2010). As a rough estimate of the kinds of concerns of those involved in these movements, the word "labor" occurs 67 times in Kleiner's 58-page *Manifesto*, nearly always in context of the connection between labor, economics, and emancipation; on the other hand, the word "labor" occurs exactly five times in arguably the most central collection of works in the Free Software movement, Stallman's 230-page *Free Software, Free Society* (Stallman 2010), twice in material written by people other than Stallman, twice in quotations from a Supreme Court ruling (to which Stallman responds by saying that "we are not required to agree with the Constitution or the Supreme Court" because "at one time, they both condoned slavery" [134], thus implicitly making a disturbing but not altogether atypical comparison between copyright policies and

chattel slavery, and here siding against the interests of laborers in owning their own work) and once in noting that “human labor is too expensive” (140) to pay humans to watch over copyright violations in software so that robots must be used for the task instead. This fact itself must give pause to those who blithely take FLOSS and Free Culture, and therefore OA, to be in some way allied with Marxist or socialist goals: their advocates certainly do not share the concerns that are otherwise taken to characterize these politics (Söderberg 2002 offers a related but less detailed argument).

As Kleiner points out in some detail, where he follows Stallman in using the term “copyleft” to describe the general approach to intellectual property that underlies FLOSS:

producers of free software must still sell their labor to provide for their material subsistence. Copyleft is thus not able to ‘make society better’ in any material sense, as the majority of the exchange value created by producers of free software is captured by owners of material property who are able to provide for their subsistence. As copyleft cannot allow workers to accumulate wealth beyond customary subsistence, copyleft alone cannot change the distribution of productive assets or their output. Therefore copyleft has no direct impact on the distribution of wealth and power. (Kleiner 2010, 38)

While the term “copyleft” *implies* that there is a leftist base to the politics of the Free Software movement, Kleiner is surely correct to note how unlike it is compared to what we usually think of as the left: political-economic perspectives that *start* from questions of labor and its relation to value. It has to be a concern for any remotely Marxist perspective that the effect of such “copyleft” policies is very directly to make value available to the largest concentrations of capital and to separate it, rather than bind it, to those who create with their labor.

Going into even more detail than does Kleiner, Lancaster University PhD student J. Martin Pedersen wrote a dissertation specifically on the value and labor issues raised by Free Software in particular, a version of which was published in 2010 as “Property, Commoning, and the Politics of Free Software.” Pedersen carefully read through the entirety of the Free Software literature looking for accounts of labor and of the differences between the relations that constitute intellectual property as against physical property, and found that the “philosophical and political principles underlying the Free Software and the wider Free Culture movements fail to address the threat of enclosure at the most fundamental level, namely in the material realm” (Pedersen 2010, 5). The problem with the FLOSS analysis of intellectual property lies in the fact that anti-IP advocates mistakenly assume that the property *relation* between the owner and his material property is somehow physical, so that the physical property relation is qualitatively different from the intellectual property relation. Yet it takes very little reflection, to say nothing of philosophical and empirical research, to see that *all* property relations are equally “fictitious,” or at least that the question of whether the property itself is physical has no bearing on the nature of that relation (after all, not even the most hardened anti-IP activist suggests that money cannot be owned, yet money today is almost never physical). The belief that IP is somehow different from other forms of property emerges out of what Pedersen rightly calls “information exceptionalism,” a position that misconstrues the nature of *physical* property so as to characterize intellectual property as anomalous. Pedersen writes:

Essentially, the Free Culture and Free Software movements reject the concept of property and instead choose to frame issues pertaining to ideas, information, and knowledge—or the intangible realm—in terms of freedom, liberty, human rights, policy, intervention, and regulation. Anything but property, but preferably ‘policy.’ (93)

Yet as Pedersen goes on, “property is a form of policy—or it is a manifestation of policy” (95). Quoting legal scholar Adam Mossoff, Pedersen notes: “If it is true—as it must be—that copyright is policy, then it is equally true that all property rights are policy” (Mossoff 2005, 33). Despite the clarity with which Mossoff, in particular, outlines both the historical and legal arguments in support of this point, OA and Free Culture advocates continue to assert that there is something physical about the physical property relation that is lacking in IP.¹³

Pedersen notes that neither the Free Software nor the Free Culture movements “address the threat of enclosure.” From the perspective of property and its relation to labor, this is the central question a Marxist analysis must ask of OA. As readers of *Capital* will know, a key part of Marx’s thought emerges just from consideration of the process by which public goods (in this case, land) were expropriated from workers by those who already held capital (see Marx 1867, Chapter 27, “The Expropriation of the Agricultural Population from the Land,” 877-895). It should, but appears not to, be startling for left-leaning OA advocates to reflect on this process of expropriation, which Marx argues was a key factor in proletarianizing small landowning farmers: “The Parliamentary form of the robbery [of land from farmers] is that of ‘Bills for Inclosure of Commons,’ in other words decrees by which the landowners grant themselves the people’s land as private property, decrees of expropriation of the people” (885). It is only if we subscribe to the “information exceptionalism” described by Pedersen that we can fail to see the parallel between the enclosure of land and the potential for enclosure of the commons that OA insists on, especially through mandates. While on the surface what is supposed to be sacrificed is “property rights,” in practice what is sacrificed is the small bit of ownership interest academic laborers may have in their work, to be lent to the de facto possession of the web at large, which means in particular Google and other companies like it.

It is the presence of Google, Facebook, and other miners of free content, to say nothing of for-profit medical, scientific, and engineering companies, whose role in the information environment OA advocates systematically avoid discussing. While they frequently mischaracterize all academic labor as somehow being publicly funded, they have little or nothing to say about commercial research, much of which itself emerges at least in part from public funding, often at much higher rates than do professors’ salaries, but which can then be repurposed for profit by commercial entities. Even the best case example for OA—the quick publication of potentially life-saving medical research—suffers on this score, as medical companies are not subject to OA demands, and can and do make use of the freely-published OA research for their own purposes, a problem that besets the FLOSS community as well, as Pedersen argues at length. Once we venture outside of that case, matters become even worse. Google, Facebook and other internet mega-corporations are well-understood to be engaged in a massive campaign to proletarianize all creative and intellectual labor over which capital does not have current control (and some over which it does have that control). Google, Facebook and others profit directly from their ability to access information, and that profit often is precisely what would have previously gone to both the creator and the publisher or distributor of that labor. As Pedersen wisely explains, this problem is endemic to the Free Culture movement, and it is notable how strongly Google and others back that movement, despite the rhetoric suggesting that the movement is anti-corporate or anti-capitalist. To them, the movement represents perhaps their primary source of a profit that fully earns the label “extractive.” Google’s own profits are in direct competition with those of the creators and owners of works (see, e.g., Lowery 2013). While to some extent it can work to maximize the profits of each, as it did when it acquired YouTube, it has also fought that vigorously at every step of the way, and continues to oppose intellectual property for those whose contents it profits from, while steadfastly protecting its own IP rights (see, e.g., Lowery 2014, Telford 2013). Further, the domain in which OA continually intrudes that concerns me most here is exactly the sphere of cultural production in which meaningful ownership rights have until now attached to creators. If advocates like Suber, Ludlow, Eisen and others clearly and distinctly confined their advocacy to the one part of creativity that does not function this way, academic journal publishing, the issue would be somewhat less pointed, though it would not go away.

Enclosure and labor are intimately connected, especially on Marx’s analysis but in fact on any account that takes seriously the claims of laborers. To make all labor in a category unproductive is to deprive it of just the relationship that most labor advocates recommend; to do this when concentrations of capital exist that can take advantage of exactly the properties the laborer sacrifices is to work against, not for, Marxist politics. Perhaps laws and mandates forcing *all* of those who profit from intellectual labor to sacrifice those profits would fit into a Marxist worldview, but it is nearly impossible to imagine such laws in today’s world. Yet anything less than this becomes a mandate essentially to work for companies like

Google without compensation. Only ideology in the most classic sense can explain the phenomenon of laborers arguing, stridently and vociferously, that Google has a right to profit from work whose value the laborer explicitly sacrifices. But until we deal with the problem of concentrated capital, OA, like the Free Culture movement, does very little but sacrifice what little power laborers do have to those whose intent to enclose that value is overt. Thus it should be no surprise to anyone to learn how strongly corporate actors like Google and Facebook and right-wing figures like Jimmy Wales promote OA as the only acceptable mode of distribution for knowledge; what should be a surprise is the degree to which laborers themselves serve as advocates for this perspective.

When OA is an option for laborers, especially for work that would not otherwise present the possibility of income earned for the product of that labor, it may fit into some aspects of Marxist political economy. When, on the other hand, OA is *mandated*, when it is configured so as to force academics to deposit their work in repositories maintained by the institutions for which they work, when it requires academics to use “free culture” licenses such as the CC-BY license promulgated by the Creative Commons project that allows people other than the author to reuse, “remix,” and “transform” the material in any fashion possible with only credit, but not revenue, paid to the original creator (see Anderson 2015 for a survey of recent demands that OA use the CC-BY license; for an example of an OA advocate insisting on CC-BY, see Suber 2012, 69; even the explicitly Marxist analysis in Fuchs and Sandoval 2013, while nodding briefly toward the labor of editorial workers, never takes academic labor itself as a serious category, and demands that humanities academics relinquish all rights to be compensated for their research), we enter an entirely different realm.¹⁴ We enter a realm where the likely effect of these policies, whether these are fully understood by advocates or not, is to disempower and precaritize laborers who are already very far from the economic centers of contemporary life. When this policy is promoted by academics, it seems possible only to understand this as a mark of the most characteristic form of ideology: when workers are encouraged to argue against their own self-interest in the (often unwitting) service of those who already have much more political and economic power than they do.

v.

The perspective on intellectual property favored in OA emerges not from actual economic research, let alone thought about labor. Instead, it emerges directly from the cyberlibertarian commitments of OA advocates. This feature of OA advocacy has not been widely remarked-upon by its minority of critics, but it is striking how much OA advocacy turns for its foundations to cyberlibertarian platitudes that deserve far more scrutiny as a whole than they have received. Steven Harnad, a cognitive scientist and one of the founders of the PLoS (Public Library of Science) OA project—a project to which the critique offered here poses very few objections—is a very vocal promoter of cyberlibertarian dogma. Like most dogmatists of this stripe, he demands we see specific changes entailed by digital technology as completely outside human control—as “inevitable” (a point of view aptly critiqued by Michael Sacasas [2013] as the “Borg Complex”). As early as 2001, Harnad (2003) was writing that the following configuration of all academic research is “inevitable”:

- The entire full-text refereed corpus online
- On every researcher's desktop, everywhere
- 24 hours a day
- All papers citation-interlinked
- Fully searchable, navigable, retrievable, impact-rankable
- For free, for all, forever

“All of this will come to pass,” Harnad writes, “the only real question is ‘how soon’?”

Similarly, Peter Suber's comprehensive (2012) book on OA continuously opens with cyberlibertarian talking points that resonate with the work of digital evangelists like Clay Shirky and David Weinberger, but are actively resisted in left-critical work on digital culture:

Shifting from ink on paper to digital text suddenly allows us to make perfect copies of our work. Shifting from isolated computers to a globe-spanning network of connected computers suddenly allows us to share perfect copies of our work with a worldwide audience at essentially no cost. About thirty years ago this kind of free global sharing became something new under the sun. Before that, it would have sounded like a quixotic dream. Digital technologies have created more than one revolution. Let's call this one the access revolution. (1)

Both Suber and Harnad follow cyberlibertarian and "Borg Complex" practices in not even admitting the *possibility* of disagreement with the propositions their analyses depend on. But they are nothing more than propositions and so must be subjects of debate and investigation. Even if true, they deserve close scrutiny, given what a momentous change is being proposed—for example, is it the case that instantaneous perfect copies of digital documents can actually be made at "virtually no cost" and that this leads to "free global sharing" (for contrary views see Levine 2012, Ruen 2012, Taylor 2015)? Some would say yes, but some others would say no, or at least add many qualifications to the proposition. But one searches in vain in the work of OA advocates for any acknowledgement that these propositions might be open for debate: instead, failure to accept them can only be a product of "misunderstanding" based on "lack of familiarity" (Suber 2012, x).

Suber's *Open Access* (2012) actually appears, on the surface, to address some of the issues I raise here. Early in that book, when he attributes failure to support OA solely to "misunderstanding," he offers a series of 11 propositions intended to correct those misunderstandings titled "what OA is not" (Suber 2012, 20). Several of these propositions read remarkably when cast against many other sources of OA advocacy, or even against Suber's own position: "OA isn't an attempt to reduce authors' rights over their work" (22) he writes, despite the definition of OA he offers specifically entailing that authors "agree" to severely weakened rights; "OA isn't an attempt to reform, violate, or abolish copyright" (21), despite its engagement with several plans such as the Creative Commons and copyleft that at the very least entail "reform" of copyright, and very arguably entail its abolishment; and so on. Most important for this discussion are his statements about royalties. His third proposition reads in its entirety:

OA isn't an attempt to deprive royalty-earning authors of income. The OA movement focuses on research articles precisely because they don't pay royalties. In any case, inside and outside that focus, OA for copyrighted work depends on copyright-holder consent. Hence, royalty-earning authors have nothing to fear but persuasion that the benefits of OA might outweigh the risks to royalties. (More in section 5.3 on OA for books.) (21)

Were this in fact true, it might well obviate most of the arguments I have made here. Yet it most certainly is not true within the OA movement as a whole, given its repeated attacks on all sorts of commercial publishing enterprises.

In fact as a hallmark of the book's starkly ideological character, a careful reader will have remembered that just pages prior Suber has indicated that royalty-earning authors certainly *do* have something to fear from his own OA advocacy:

Because any content can be digital, and any digital content can be OA, OA needn't be limited to royalty-free literature like research articles. Research articles are just ripe examples of low-hanging fruit. OA could extend to royalty-producing work like monographs, textbooks, novels, news, music, and movies. But as soon as we cross the line into OA for royalty-producing work, authors will either lose revenue or fear that they will lose revenue. Either way, they'll be harder to persuade. But instead of concluding that royalty-producing work is off limits to OA, we should

merely conclude that it's higher-hanging fruit. In many cases we can still persuade royalty-earning authors to consent to OA. (Suber 2012, 17)

So while telling OA skeptics that it is a pure “misunderstanding” to think that OA is hostile to scholars being paid for their work, Suber himself indicates that the movement certainly does target those royalties—and not just the royalties, but the intellectual property interest authors and other creators have in their work.

Even in the opening pages of *Open Access*, Suber writes with palpable contempt toward his colleagues who earn royalties:

Why don't more authors take advantage of the access revolution to reach more readers? The answer is pretty clear. Authors who share their works in this way aren't selling them, and even authors with purposes higher than money depend on sales to make a living. Or at least they appreciate sales.

Let's sharpen the question, then, by putting to one side authors who want to sell their work. We can even acknowledge that we're putting aside the vast majority of authors.

Imagine a tribe of authors who write serious and useful work, and who follow a centuries-old custom of giving it away without charge. I don't mean a group of rich authors who don't need money. I mean a group of authors defined by their topics, genres, purposes, incentives, and institutional circumstances, not by their wealth. In fact, very few are wealthy. For now, it doesn't matter who these authors are, how rare they are, what they write, or why they follow this peculiar custom. It's enough to know that their employers pay them salaries, freeing them to give away their work, that they write for impact rather than money, and that they score career points when they make the kind of impact they hoped to make. Suppose that selling their work would actually harm their interests by shrinking their audience, reducing their impact, and distorting their professional goals by steering them toward popular topics and away from the specialized questions on which they are experts.

If authors like that exist, at least they should take advantage of the access revolution. The dream of global free access can be a reality for them, even if most other authors hope to earn royalties and feel obliged to sit out this particular revolution. (1-2)

In the space of this short passage Suber changes tack several times, from acknowledging that OA policies should not touch “the vast majority of authors” to disparaging attempts to make money as a low goal (consider the number of creative professionals who are included in that statement, who have been told that having “impact” and earning money from their work are mutually exclusive goals) making the purely dogmatic and characteristically cyberlibertarian argument that “selling their work would actually harm their interests by shrinking their audience.”

These attacks on money-earning (which, recall, Suber has claimed it is a “misunderstanding” to see as fundamental to OA) continue through the volume. Suber particularly relies on the proposition that commercial sales prevent the distribution of work:

Creative people who live by royalties, such as novelists, musicians, and moviemakers, may consider this scholarly tradition a burden and sacrifice for scholars. We might even agree, provided we don't overlook a few facts. First, it's a sacrifice that scholars have been making for nearly 350 years. OA to research articles doesn't depend on asking royalty-earning authors to give up their royalties. Second, academics have salaries from universities, freeing them to dive deeply into their research topics and publish specialized articles without market appeal. Many musicians and moviemakers might envy that freedom to disregard sales and popular taste. Third, academics receive other, less tangible rewards from their institutions—like promotion and tenure—when their research is recognized by others, accepted, cited, applied, and built upon. (12)

All authors want to cultivate a larger audience and greater impact. Authors who work for royalties have reason to compromise and settle for the smaller audience of paying customers. (15)

The need for royalties keeps creators from reaching everyone who would enjoy their work. (20)

And in the section on monographs—works that have *never* been subject to the journal-article conditions of being given away for free—to which Suber refers his readers, he does not wall off royalty-earning work from OA, but instead portrays OA as looking for every inroad it can find into this work:

Royalties on most scholarly monographs range between zero and meager. If your royalties are better than that, congratulations. (I've earned book royalties; I'm grateful for them, and I wish all royalty-earning authors success.) The case for OA doesn't ask authors to make a new sacrifice or leave money on the table. It merely asks them to weigh the risk to their royalties against the benefit of OA, primarily the benefit of a larger audience and greater impact. For many book authors, the benefit will outweigh the risk. The benefit is large and the realistic prospect of royalties is low. (107)

In the institutional context, what makes a monograph scholarly in the context of employment is nothing more or less than that it was *produced* by a scholar. This applies not just because many professors publish books with commercial presses; many major university presses routinely have significant numbers of books on bestseller lists. Contrary to Suber's assertions, it seems clear that a sizeable number of the best-selling books worldwide both count as "scholarly" in the exact application Suber intends, and that the "realistic prospect of royalties" for these authors is very large and may be a significant incentive for them to work as scholars at all.

I have so far set aside Suber's repeated suggestion that OA work will get a "larger audience" than commercial work. This is an empirical, not a philosophical issue. It is likely more true in some contexts than in others. A significant amount of research has shown that some version of OA benefits the distribution of academic journal articles (see "Studies Showing an Open Access Citation Advantage" in Wagner 2010), although there is a persistent thread of research questioning those results (e.g. Björk and Solomon 2012). Outside of that context there is very little research and the overt empirical evidence would seem to point in the opposite direction (especially since royalty income and mass distribution are often primary goals of work placed outside of academic journals). Is it actually true in the contexts Suber uses it here, with regard to royalty-paying commercial work? What is the evidence for that claim? Do blog posts by Jill LePore actually gain a wider audience than her pieces in *The New Yorker*? Does Stephen King deliberately and knowingly restrict his audience (and, we have to presume, his income) by publishing his works commercially? Does Cory Doctorow, perhaps today's most famous pro-Free Culture author, who nevertheless has not chosen to give away all his work product without charge, and has even found that in some cases giving the work away for free impedes its distribution (since the public also tends to see the work as valueless) (Doctorow 2015c; Lowery 2014)?¹⁵ Surely at the very least we should not craft arguments about what scholars should or should not do—or worse, what they should be mandated to do—based on dogmatic assertions that are grounded in nothing more substantial than the writings of industry pundits like Clay Shirky and Jeff Jarvis.

The evidence is not on Suber's side: contrary to the assertions of the avatars of "disruptive innovation," book sales in the US have only increased since the advent of digital distribution, and continue to rise (Milliot 2016). Further, many major publications that experimented with fully open platforms in the early days of digital media have shifted ground and now charge for their publications; examples of this include such leading periodicals as *The New York Times*, the *Washington Post*, the *Los Angeles Times*, and *The New Yorker* itself. Approaches such as these were routinely derided by cyberlibertarian dogmatists because "information wants to be free," but actually testing these propositions has proven them wrong (for counterarguments against this proposition, usually but not always framed with regard to the contemporary

music business, see Kreider 2013, Levine 2012, Ruen 2012, Taylor 2015, and the writings of musician David Lowery on his The Trichordist site, including Lowery 2012, 2013, and 2014). It does not diminish distribution to charge for content: on the contrary, because that charging is often a vital part of the distribution system itself, especially including advertising and promotion, as well as editing, book production, and other factors vital to the distribution of information for hundreds of years, ultimately that money may be well spent. Even book authors who started by giving away their work for free, such as EL James, author of the Fifty Shades of Gray series (Ellis-Petersen 2015) and *The Martian* by Andrew Weir (Dickerson 2015), became far larger worldwide phenomena when their work was repackaged and promoted by commercial publishers—in fact this was clearly a goal of these authors. If art and creativity in our society are only “lowered” by being used for individual income, and noncommercial distribution is so much better than commercial, why are there so few authors and artists who have chosen to work at “day jobs” while giving away their work for free (Ruen 2012, Taylor 2015)? Why is it so hard to point at even a single well-known author, musician, artist, architect, and so on who has proven the proposition that one gets better and “purer” distribution of one’s work by eschewing commercial interests altogether? And why, of all people in our society, should scholars, whose earning potential from their intellectual property is surely in general lower than that of top authors like Stephen King and top musicians like Coldplay and Beyoncé, be uniquely required to sacrifice their interests in the fruits of their labor?

vi.

The slogans of OA advocacy do not just wrongly call all academic research “publicly-funded”; they very frequently subsume all such research into the sciences. Indeed, reading the OA literature, one would be forgiven for thinking that scientific research is the only activity in which university researchers engage. General works about OA somehow slip into accounts that only mention facts about the sciences, but then make sweeping statements about “knowledge” that capture everything produced in the university. This is destructive for several reasons: it diminishes and demeans the labor of non-scientists, and presumes that science is the “real” activity of the university and that other forms of inquiry are invalid; it contributes to the widespread hostility to humanistic inquiry promulgated by the political right today and that, through the commercialization and instrumentalization of science itself (Mirowski 2011), promulgate norms that contribute to the marginalization of disciplines that fail to meet them.

Even when they make formal nods toward disciplinary differences, OA advocates routinely shift the grounds of their arguments so as to make it appear that they cover more than they do, typically at the expense of the humanities. Thus in a recent empirical investigation of commercial academic publishers in the leading OA science journal *PLoS ONE*, three researchers title their investigation “The Oligopoly of Academic Publishers in the Digital Era” (Larivière, Haustein, and Mongeon, 2015). Yet buried to some extent within the argument, it turns out that it is not academic publishing per se, but the sciences and to an unexpected extent the social sciences in which something like an oligopoly operates: in the social sciences, “while the top five—in this case, commercial—publishers accounted for percentages between 15% and 22% of the output in 1995, these percentages increased to between 54% and 71% in 2013” (6-7). By contrast, “papers in arts and humanities are still largely dispersed amongst many smaller publishers, with the top five commercial publishers only accounting for 20% of humanities papers and 10% of arts papers in 2013, despite a small increase since the second half of the 1990s” (7). Thus despite the authors’ literal statements that *academic* publishing is an oligopoly, it turns out that the arts and the humanities are anything but. The authors even note that “the relatively low cost of journals in those disciplines—a consequence of their lower publication density—might explain the lower share of the major commercial publishers”; whether or not “lower publication density” is the explanation for their lower cost, it is remarkable how little facts like these percolate into the sweeping discussions of OA, and in which, for many of the reasons that humanities publications are not much like those in the natural and social sciences, applying OA logic can have serious negative effects on the labor conditions of academics in the humanities.

The publishing practices and institutional orientation of the sciences simply do not apply to many other parts of the contemporary university as a site of labor; further, the domination of the sciences is intimately connected to the corporatization of the university deliberately engineered by the right wing in the US (Mayer 2016; Mirowski 2011). It is the sciences whose publications have skyrocketed in cost and which has (ironically, along with the explosion in digital technology itself) made library budgets unsustainable; the humanities, in particular, cost the university very little, both in terms of labor and intellectual property costs. The official MIT report on the death of Aaron Swartz noted that “purchasing subscriptions to hundreds of journals from a commercial publisher can cost more *each year* than the *cumulative* payments made to JSTOR since 1997” (Abelson et al 2013, 116). JSTOR is focused on the humanities, social sciences, and to a lesser extent “pure” sciences like mathematics. Yet the public, and even many in the academy, seem all too eager to take this one particularly extractive industry and the labor performed for it as emblematic of—or perhaps even the only real form of—all research. In the process, critical differences between disciplines and labor and research practices become obscured. It is fields like those in the humanities whose ordinary research practices get erased, and who become the possibly unintended losers in the OA-prompted revision of university-wide research practices. For example, publishers’ subventions of academic articles have long been standard in many parts of the sciences and other technical fields, and are often included as part of the costs in grantmaking and other forms of external and internal funding in these fields. Yet thanks to the science-prompted push for OA, we now have for the first time in history seen the development of fees to publish in the humanities, where no such funding is expected. Many journals, whether entirely or partly OA, now routinely request fees of up to \$1500 in Article Processing Charges from scholars in fields where such fees have never been heard of before and in which third-party funding for such fees is unlikely if not impossible (see Allington 2013, Brienza 2012; also see Todd 2015 and Eve 2014). Yet these fields are home to some of the most fervent OA advocates, who at least in the abstract sense, if never quite directly, thus argue that the proper form for labor to take is for workers to pay to do their own work. It is only in a climate of extreme ideology that such a proposition can be taken seriously, let alone advanced as a way to promote “freedom” or “openness,” yet it is widespread throughout the academy today.

The economic historian and theorist of neoliberalism Philip Mirowski is one of the few thinkers who has dared to take on the unchallenged assumptions behind OA as both ideology and practice, connecting its rise to the worldwide shifts in science toward an entirely commercial enterprise (Mirowski 2011). In a blistering piece published in the German newspaper *FAZ*, Mirowski writes:

Science used to be the cloistered province of experts, or so the story goes: scientists conceived of their projects either in solitary meditation or in small invisible colleges, after fulfilling a period of training and apprenticeship; their choice of inspiration was largely idiosyncratic (which used to be graced as ‘genius’); their collection of data and survey of the prior written archive happened largely outside the limelight; the outlines of their cogitations only became public after it had been written up and promoted in public conferences or disciplinary journals; further commentary and evaluation was also rather rigorously stage-managed, often taking place behind closed doors. To a certain temperament, all that smacked of hermetical hubris and wanton disregard for the stakeholders who supported the researcher, a connivance against the public welfare. Some even spoke of the need for ‘democratization’ of science, which presumed the existing scheme of organization was somehow ossified in political stasis.

For this disaffected cadre, the Internet has become the vehicle of our deliverance. The spread of blogs and social media has already fostered a global conversation about everything under the sun; now, the time has come to ‘crack open the scientific process’, as the *New York Times* put it in 2012. (Mirowski 2014b)

He goes on:

The irony of the situation is that although this petrification of the scientific enterprise could largely be attributed to previous neoliberal reforms in the first instance, the remedy proposed is to redouble neoliberal policies, now under the rubric of ‘open science.’

Yet “the notion that any of these ‘Open Science’ initiatives exist to render scientific knowledge more accessible and research more responsive to the wishes of the masses is sheer diversionary tactic and irrelevant conceit.” And further,

the push for ‘Open Access’ to scientific journals has very little to do with conventional impressions of allowing the average blogger to download articles at will without paywalls. The current battles over Open Access journals are really tournaments pitching the older legacy publishing firms against the research-intensive corporations who seek to pry open journal archives to automated surveillance of research data bases. The former seek to preserve their outsized profits by shifting the cost of article production onto the authors (and away from libraries), allowing a limited general access only in the cases of subsidy; whereas the latter would rather have a unified archive system (like arXiv or Academia.com) open to internet web crawlers constructed for the surveillance and vetting of research trends. Both sides of debate would love to offload all the residual costs of ‘publication’ onto the flagging universities, if only because they have no commitment to the future of universities as bastions of research. Indeed, the only plausible prognosis is that as universities and libraries are further undermined, the entire peer review system will be displaced by some market-based evaluation of written research, carried out according to some Facebook-style like/dislike modality, combined with the eventual death of the author as lynchpin of the research enterprise.

Thus there is strong reason for “science” tout court to serve as the model for OA; science has already been at the vanguard of the effort to strip independent thinking out of the university, and to replace it with government-mandated research projects that socialize the risk of scientific inquiry while putting the benefits of it, economically speaking, in the hands of private capital.

vii.

One of the clearest sites from which to see how OA functions as an anti-academic labor politics is one that is difficult to talk about, in part just because it is so conditioned by ideology (and is so emotionally charged). This is the case of Aaron Swartz, a celebrated computer programmer and activist, frequently described as a “child prodigy,” who committed suicide in early 2013 in the midst of a Federal prosecution for allegedly stealing millions of documents from the academic distribution service JSTOR via computers at MIT. The reaction to Swartz’s death has been characteristically hyperbolic and symptomatic of the frenzied, sentimentalized politics of internet enthusiasm (from across the political spectrum).¹⁶ Swartz is frequently referred to by melancholic epithets such as “martyr to internet freedom” and was the subject of a hagiographical 2014 documentary film with the symptomatic title *The Internet’s Own Boy: The Story of Aaron Swartz*.¹⁷

Just because the subject is so emotionally charged, it is important to say that I have great sympathy with Swartz as a person. Swartz was one of the few genuinely left-wing thinkers among the hardcore cypherpunk and cyberlibertarian communities.¹⁸ It is a tragedy when anyone commits suicide, but it is neither psychologically nor biographically sound to posit direct causal linkages between Swartz’s suicide and his OA advocacy, or even the overzealous prosecution he apparently faced for his actions at MIT, despite these linkages being a frequent refrain in discussions of Swartz’s story. The tragedy of Swartz’s suicide has tended to prohibit reasoned analysis of the issues surrounding his actions at MIT, and particularly of the odd mismatch between the explicit target of his “Guerilla Open Access Manifesto” (2008), the commercial science publisher Elsevier, and JSTOR, a nonprofit project that digitized the print editions of humanities and social sciences journals. This mismatch itself hints at the overt contempt for

academic research as labor that is widespread in the OA community: the contempt looks as if it is directed at a for-profit publisher that gouges authors and customers alike, yet without difficulty it turns into an attack on an entity whose purpose is to support, not profit from, academic work.

The case for which Swartz was prosecuted rested on his bulk downloading of journal articles from JSTOR, for which the intended purposes appears to have been their eventual free distribution outside the JSTOR architecture. Swartz is widely understood to have been the primary or sole author of the “Guerilla Open Access Manifesto” (although at least one of his associates [Norton 2013] has raised questions about how much of this document Swartz wrote). The proclamations made in the Manifesto closely track with those of the OA movement in general, and subsequent reporting has suggested that Swartz wrote the Manifesto very quickly in the wake of a Spring 2008 meeting of the Electronic Information for Libraries (EIFL) organization at 800-year-old central Italian monastery (or “eremo”; the Manifesto includes a notation to indicate that this was its place of composition). The Manifesto, like many statements of OA advocacy, takes as paradigmatic the practices of the commercial academic publisher Elsevier (at the time doing business as Reed Elsevier):

The world's entire scientific and cultural heritage, published over centuries in books and journals, is increasingly being digitized and locked up by a handful of private corporations. Want to read the papers featuring the most famous results of the sciences? You'll need to send enormous amounts to publishers like Reed Elsevier.

A pause at this point is necessary. Swartz is surely correct that some parts of our “scientific and cultural heritage” are available only by paying “enormous amounts” to a “handful of private corporations” including “publishers like Reed Elsevier”—although that “enormous amount” is typically paid by institutions, not individuals, and individuals, including Swartz himself, frequently get access to those materials for no cost at all. In this context, Swartz’s objection to Elsevier can be read as supportive of academic labor.

Yet when Swartz decided to take action of just the “guerilla” sort he advocates in the Manifesto, it was against JSTOR (the name is intended as an abbreviation for “Journal STORage”), an organization that fits *not a single one* of the criteria he mentions in his Manifesto. Further, no explicit analysis of the similarities (or lack of them) between JSTOR and Elsevier is found in Swartz’s writings or those of his most vocal supporters; to the contrary, it is frequently assumed that JSTOR is either exactly like Elsevier or perhaps even part of it. Yet JSTOR is a non-profit organization, not a private corporation; a distributor, not a publisher; relatively speaking, a *very* low-cost provider compared to Elsevier; a distributor primarily of humanities and social science research, not of work in “the sciences”; and, critically, a provider who was even at the time of the incident committed to many of the OA principles recommended by Swartz.¹⁹ In fact, it seems relatively obvious that the reason Swartz chose to attempt to download the entirety of JSTOR’s database versus that of Elsevier is precisely *because* JSTOR’s commitment to open distribution of its materials meant that it had very loose security requirements at its installations, unlike those of private corporations like Elsevier. That is, Elsevier’s databases required users to be physically in a library on MIT’s campus, or logged in directly through accounts with specific download limits imposed on users; JSTOR, by contrast, allowed any users anywhere on MIT’s campus to download whatever they wanted (Abelson et al 2013, 26-27). They did this precisely because they wanted to keep access as open as possible, while respecting the copyright agreements they had made with the publishers of the articles they distribute. That is, JSTOR was interested in protecting the work of academic laborers (here including not just JSTOR authors, but the academic and quasi-academic staff of JSTOR itself). But because OA is predicated on a serious hostility toward academic research, even JSTOR’s explicit support for OA did not immunize it from attack.

Swartz’s animus toward JSTOR is odd on its face, since in print his animus was much more forcefully directed at Elsevier. He was not alone among OA advocates in appearing to think that Elsevier’s practices are the rule in academia, rather than a very extreme case. Swartz’s hostility to JSTOR appears to have

been stoked in part by the statements of OA promoter and Open Government advocate Carl Malamud and by opinions expressed at an Internet Freedom conference sponsored, it is interesting to note, by Google:

In September of 2010, only a few days before he began the JSTOR download, Swartz turned up at a Google-sponsored conference on Internet Freedom in Budapest. Though he co-led a session called ‘Online free expression and enforcing ethics & accountability for corporations & governments,’ he did not seem especially moved by the conference's formal proceedings. But one night he went out to dinner with a group of activists, including many who were involved in the journal campaign. They spoke about the outrageous sum of money it would take to free up JSTOR for public consumption.

No one at the dinner proposed a massive JSTOR download, or anything remotely like it. As at the eremo in Italy, the people in attendance were circumspect when it came to the issue of copyright. Nor did Swartz give any indication he had a specific battle plan in mind. But, then, Swartz didn't let on that he was planning to compose a manifesto either. Italy demonstrated that he was capable of moving quickly and unilaterally when the spirit moved him. Within a few days of returning to the United States, Swartz purchased a new laptop, logged into the MIT computer network, and began the liberation of JSTOR. (Scheiber 2013)

This sense of fury and mission is characteristic of the problematic ideologies of cyberlibertarianism and its (in this case, not at all ironic) disdain for earned expertise and professionalism in the name of a misplaced conception of “democratization.” Rather than exploring JSTOR’s role in the academic publishing ecosystem, rather than talking with academics and others who use JSTOR, not having any particular need to use JSTOR and *himself able to access its resources without cost* simply by visiting the campus of a university with which he was unaffiliated, Swartz took matters into his own hands.

Carl Malamud’s role in the Swartz affair is even more disturbingly colored by political ideology. In the memorial speech he gave for Swartz after his suicide, Malamud noted that it was he who originally characterized JSTOR as a “moral outrage”:

JSTOR had long come in for withering criticism from the net. Larry Lessig called JSTOR a moral outrage in a talk and I suppose I have to confess he was quoting me. We weren't the only ones fanning those flames.

Sequestering knowledge behind pay walls—making scientific journals only available to a few kids fortunate enough to be at fancy universities and charging \$20 an article for the remaining 99% of us—was a festering wound. It offended many people.

It embarrassed many who wrote those articles that their work had become somebody's profit margin, a members-only country club of knowledge. (Malamud 2013, 7)

Malamud is not an academic, and it is unclear what contact he has had or has wanted to have with JSTOR, so it is remarkable how many falsehoods this statement contains given its excess of vitriol. To begin with, the “withering criticism” JSTOR has faced had, prior to the Swartz affair, been confined largely to OA and Free Culture communities, as users closer to JSTOR itself knew that it had very little in common with commercial publishers like Elsevier. As an academic who has used JSTOR from its inception, I am aware of no protest movements directed at the project, even from within the academic part of the OA movement, and am somewhat familiar with JSTOR’s history of responding positively to requests for it to expand access to its resources in a variety of ways—unlike Elsevier itself, which certainly had been the target of “withering criticism” inside and outside the academy for many years. JSTOR is made up largely not of “scientific knowledge” but of humanities and social science scholarship. Most pointedly, Malamud’s use of the language of the Occupy movement completely turns critical facts on their head in an effort to gain rhetorical force. JSTOR is not “only available to a few kids fortunate enough to be at fancy universities”; on the contrary, it was available to virtually every college and university in the US and many worldwide, and many public libraries, without charge. That is, JSTOR was available for free to the vast majority of

people in the developed world, and had already made provision to be made available for those in the developing world, particularly Africa, for whom JSTOR had had a special access program in place since 2006.²⁰

Further, there is very little evidence of a groundswell of protest, let alone an unanswered one, for access to JSTOR that could not be met, especially through the very ordinary measure of going to the library. Finally, the idea that work in JSTOR had “become somebody’s profit margin” is a very odd allegation to make against a non-profit multi-institution service provider whose main activity was to digitize vast archives of paper journals that, in many cases, *remained available on the library shelves* where they had always been. Further, no one has alleged that JSTOR does anything with its income beyond paying to create and maintain and distribute those archives—activities which, pace the cyberlibertarian rhetoric of OA advocates, actually turn out to be quite expensive (JSTOR 2016). It can only be through the blinders of an ideology that includes severe dismissal of the work of academics and our right to have an unalienated connection to the products of our labor that anyone can allege that this service was a “moral outrage”; the alternative, that JSTOR should never have created its digital archive of paper articles—which is truly the only coherent direction in which Malamud’s argument points—would only have left those materials far less available than they became via JSTOR.

There is some evidence that Malamud is at least partly aware of the dubiousness of some of the statements he is making even as he makes them. Despite saying that JSTOR was only available “to a few kids fortunate enough to be at fancy universities” and implying that it profits from articles in the database, in another piece written at almost the same time he notes that JSTOR is “a collection of over 1,800 academic journals that have been scanned” (Malamud 2013, 15). He then repeats the sentiment that “for those not fortunate enough to be at institutions such as Harvard or Oxford, JSTOR makes articles available at an average price of \$21 per article, effectively locking the rest of the world out” (15-16). Yet on the very same page he notes that Swartz himself got access to the JSTOR database by using “a valid JSTOR guest account available on the MIT campus, which runs an open network” (16). In other words, Malamud himself acknowledges that *anyone* visiting the MIT campus, in virtue of MIT’s prior and completely uncontroversial agreement with JSTOR, could get full, free access to MIT’s JSTOR subscription, without having any sort of relationship to MIT at all (Swartz himself had no such relationship).²¹ Like most college and university campuses in the US, the MIT campus is open to anyone who visits it. JSTOR was *already* open. It was already available to anyone willing to travel not just to MIT, but to any of the thousands of libraries and universities that subscribed to it.²² It is hard to imagine what can have engendered the white-hot anger *at academics* Malamud expresses in his piece (other than a poorly-informed reaction to a small program by JSTOR to allow one-time purchases of articles), and that may have motivated Swartz.

Malamud goes even further in contradicting himself, and in exposing the real targets of his ire—academics and our work—when he admits in the same piece that he knows that JSTOR is not a publisher, though he then reiterates his inaccurate description of its business model:

JSTOR is a messenger, an intermediary, and if there is a fault here, that fault is ultimately the fault of the scholars who wrote those articles and allowed them to be locked up. It was a corruption of scholarship when the academy handed over copyright to knowledge so that it could be rationed in order to extract rents. (Malamud 2013, 17)

Remember: the bulk of the articles in JSTOR were issued on paper in journals published by non-profit university presses and scholarly societies. They were published *before anyone could have known* about the possible worldwide availability of academic journal articles via digital media. They are for the most part not used now, and never have been used, to “extract rents” from anyone. Indeed the idea that there is much rent to be extracted from them would sound very odd to those who wrote and published those articles; the presumption to the contrary was that the academic world embodied a share-and-share-alike ethos according to which universities paid money via libraries to non-profit publishers who made the

distribution of academic work possible at all, and provided services like editing and physical publishing. Yet Malamud's distinct hatred of the academic project could not be more palpable; he considers it to have been a mark of "corruption" that academics published their work *prior to the digital age* with leading journals published by nonprofit scholarly societies like the Linguistic Society of America, the Modern Language Association, and others (on the poor fit of OA rhetoric and arguments with the actual practices what are called in the UK "learned societies," particularly in the humanities, see Gardner 2013). One can only make such statements from a perspective of anti-academic animus so intense that it has obscured one from even closely looking at the facts. While the target of the ire of Malamud (and Swartz, and Lessig) appears to be the costs of academic articles (costs which, ironically, have largely been borne not by individuals but by libraries), the real target appears to be academics ourselves, and the view that the products of our work have value. One notes that there is not a hint of respect anywhere in Malamud's writing for the work of academics, other than to berate us for a largely fictionalized submission of our work to nonexistent rentiers.

In the wake of Swartz's suicide in January, 2013, MIT commissioned a detailed report on its involvement with the case, to be written after an investigation by a committee including Hal Abelson (who, among other accomplishments, was a co-founder of the Free Culture-associated Creative Commons project along with Swartz mentor Lawrence Lessig) and other long-term members of the MIT community with deep respect for and understanding of the university's and its students' reputations for independence and their "hacker culture" that is supposedly anti-institution, despite MIT itself being one of the chief conduits for privatized science, engineering, and military enterprise in the US. The resulting nearly-200-page *Report to the President: MIT and the Prosecution of Aaron Swartz* (Abelson et al, 2013), to the surprise of some observers, was even-handed and thorough in its analysis and conclusions. While the report largely deals with MIT's response to the legal proceedings in the Swartz case, it does touch repeatedly on the nature of OA. It noted, for example, that

There was also a wide range of attitudes within the MIT community toward Aaron Swartz's actions on the MIT network. Even among MIT's proponents of Open Access (and among Aaron Swartz's friends), there was a general agreement that he had done something wrong. A blanket statement opposing prosecution could have been perceived as extreme by many in the MIT community. Beyond that, a position opposed to any prosecution at all could have been interpreted by many people as saying that MIT was uninterested in respecting its contractual agreements with licensors and was not serious about maintaining the integrity of its network. (85)

Elsewhere the document makes (uncharacteristically in the OA literature) accurate assessments of the nature of JSTOR, in line with the ones offered here, the contractual relationship MIT had with JSTOR, and the open nature of MIT's network and the means through which it provided access to all guests to MIT to the entirety of its JSTOR subscription. Yet despite the independent reputations Abelson and the other authors have in the MIT and computer science community out of which Swartz sprung, and despite the fact that the report in no way endorses (nor does it even directly analyze) the Department of Justice prosecution of Swartz, the report was immediately called an "indictment of MIT culture," a "whitewash," and MIT was said to have "betrayed its hacker culture" by OA advocate Ludlow (2013b), among many others, this said by the same professor who claims that tuition payments are the same thing as government funding and that therefore all academic publications should be in the public domain (Ludlow 2013a). The fervent ideology of OA advocacy too often trumps all attempts to discuss reasonably what the role of academic research and labor is, and what it should be; instead, it licenses and encourages a raw contempt for academic labor itself.

viii.

One sign of this contempt that has wide support in the OA literature (see especially Suber 2012 and Shieber and Suber 2013) is found in the idea that the intellectual labor of salaried employees belongs in some important sense not to the individuals but to the institution itself where those individuals work. The

most common form of mandated “Green” OA includes the requirement that academics deposit their work in institutional repositories, thus at least giving the appearance that this work stems primarily from that institution rather than from the laborer, and raises deep questions that have not yet been thoroughly answered about the degree of “ownership” an institution has over work by laborers who, for example, have moved on to other institutions. On the perspective offered here such a development can only be seen as natural: the very point of OA, despite what its advocates claim, is to entirely brand the labor of intellectuals as unproductive vis-à-vis capital, and therefore to make available for exploitation that labor by everyone but the laborer.

An often-overlooked but absolutely critical issue in this regard is so-called “technology transfer.” This profound institutional change was initiated in 1980 with the passage of the Bayh-Dole Act:

In a single stroke, the Bayh-Dole Act transformed the ability of universities to commercialize faculty inventions. It gave universities ownership rights to discoveries made with federal funding, and allowed universities to grant exclusive licenses to business for use of these discoveries. To enable the movement of technology into the commercial realm, the government also urged universities to create technology transfer offices to manage the commercialization of federally-funded, university-based research. (Hamermesh, Lerner, and Andrews 2011, 4)

According to this schema, work that may result in significant returns on investment must be spun out of the university altogether, and/or yoked into the university via contract. Thus this kind of intellectual labor has been converted directly into the commercial circuit of the university as a “business”; return on this profit accrues to the university as an institution or to the private enterprise spun out from it (see Hamermesh, Lerner, and Kiron 2007 and Hamermesh, Lerner, and Andrews 2011 for overviews and histories of technology transfer in US higher education).

There is a fundamental mismatch between OA in fields for which intellectual and creative endeavors are ends in themselves, like the arts, humanities, and most social sciences, and ones in which intellectual endeavors are the precursors to other products, such as science, medicine, and engineering. In many ways this distinction constitutes a vital one for the entire OA question that is obscured in most OA discussions. To some extent the distinction, when looked at properly, is very odd: in general, scientists and engineers have many more opportunities for profiting from their work than do humanists and artists, yet it is scientists and engineers who are leading the charge to remove property interests from academic work. The key missing notions here are the distinctions between *patent* and *copyright*. Ideas cannot be copyrighted, though their expression can. New technologies and techniques can be patented; this means that there may be very little direct value, for a scientist, in the copyright of an article that describes a new technology, but there may be a great deal of value in patenting that technology. Today universities openly advertise their (relatively new, in the US) role as technology “incubators,” using technology transfer to enable scientists to set up corporate entities, in which ownership is often shared with the educational institution, in order specifically to develop profit-making bodies that can capitalize on new technologies. It is not hard to find in the technology transfer literature specific reference to OA as of real importance to the development of profit-bearing entities outside the university (see Picarra 2015 for policies recommending such transfer in the EU, Rhyne 2010 for an example of OA leading to privatization of research in the US; both recommend the practice without caution). It may be—and should be—surprising to humanists who support OA believing it is some kind of anti-capitalist program to read major OA advocates making statements like: “I am a Ph.D. engineer at a U.S. telecommunications company. Having open access to research articles greatly enhances my ability to develop new products for the worldwide market” (unattributed quotation in Picarra 2015, 3). Yet it should not. Like the Open Government and Open Data movements (Morozov 2011, Chapter 8 and 2013b; Yu and Robinson 2012), OA too easily “openwashes” (Watters 2014; Morozov 2013a offers related reasoning) a program for diverting ostensibly public work into private hands.

At least, arguably, the labor product of OA work in science, technology and medicine might plausibly remain owned to some extent by those who created it. In the arts and humanities, the copyrighted work may well be *all* of the ownership potential located in the academic's labor. The copyright he or she retains in her work may be the only means the academic has to realize interest in that work. They may be the only property he or she has should they separate for some reason from their employer. Further, OA advocacy is the only perspective I know of from which it has been suggested that the laborer should sacrifice that interest in the name of some putative "greater good," a good that is too often alleged to be in the laborer's own interest. This is especially true when we are told that it is *not* in the laborer's own interest to be able to *decide* when and how she expresses those property interests in her work. This is exactly the position OA in the humanities finds itself in: to create a two-tier system of IP, where if a technique or technology is patentable, it may well be exploited to the significant advantage of the laborer, but if the work is solely copyrighted expression, then the ownership interests in it must either be given over to the institution for which the employee worked (and then only, likely, if the institution was public to begin with), or abandoned altogether.

It is hard to see how the long-term effects of such a scheme can be anything but to altogether discourage work of this sort, especially in the public sector. It is strange that the argument sometimes leveraged against this one by those in the technology sector is that creative and intellectual work is not incentivized by profit, given that these are the very sectors and workers who are engaging in technologically creative work specifically—often exclusively—for its profit potential. On the one hand, they tell us, you should not write a book just because you hope to earn money from it; yet far be it for anyone to suggest that iPhone apps and biotechnology devices can and should be manufactured and delivered without charge. It just so happens to only those "useless" sectors of the academy that get caught in the horns of this dilemma: having sacrificed most of the routes toward productive labor available in a capitalist society in the pursuit of what we take to be relatively selfless and disinterested goals, we now find ourselves instructed, very often by those in similar fields but with far greater earning potential, that we must sacrifice our own relatively meager interests in our own work in the name of an abstract principle whose loudest proponents do not, in at least some important ways, believe it applies to them.

The OA movement is typically described as beginning with the Budapest Open Access Initiative, first issued in 2002 (see Budapest Open Access Initiative 2002) by a coalition of OA advocates including several of the major names already mentioned here. In 2012 a larger coalition reiterated and in many ways expanded on the recommendations made in 2002 (see Budapest Open Access Initiative 2012). Both the 2002 and 2012 statements are rife with the typical rhetoric of Silicon Valley creative destruction, in which "incumbent" practices are disparaged and rejected while new "insurgent" ones are championed as their obvious successors and the transition from one to the other is framed with language more familiar from the civil rights lexicon. On close reading these assessments emerge not from actual evidence supporting them, but from conjecture and extrapolation from extremely limited samples, on dismissive rejection of reasoned critiques, and on the continued and anti-intellectual insistence that only one side of a debate about fundamental issues of inquiry has any legitimacy. Most tellingly, the signatories to both the 2002 and 2012 initiatives include not a single representative of academic labor, whether in the form of a union representative or even of an academic who overtly stakes out the territory of labor as a critical and unavoidable one on that must be included in any discussion of issues that cut so directly to the heart of research practices. These concerns are implicitly and to some degree explicitly rejected. Instead, the broader institutional perspective is championed, and in several places, especially in the 2012 update, the focus is on the creation of institutional repositories of scholarly work, thus making clear the transfer of whatever capital the intellectual laborer may have had in his or her work to the institution, who thus entirely classes the academic as unproductive laborer in Marx's sense, as a servant. While the close linguistic tie between *servility* and *service* should not be overlooked—many academics do see their work as inherently a form of public service, although this determination may not emerge from consideration of who actually pays for that work—the mandatory sacrifice of all property interests in their work product

can only serve to further discourage those of us with creative energy and thought to offer from going to work in the academy.

It is worth noting in this regard that the conference at which the Budapest Open Access Initiative was drafted was sponsored by the Open Society Institute (now called the Open Society Foundations), which, while being well-known as one of the few well-funded global organizations that promotes political causes not explicitly tied to the corporatist right, nevertheless has a strong and ineradicable tie to the kinds of pro-capitalist, not socialist or communist, economic policies of its leader, George Soros. Further, Soros named the OSI explicitly after the work of his mentor, Karl Popper, one of the main early participants in the Mont Pelerin Society (see Mirowski 2014a, 70-72 on Popper's involvement), associate of Friedrich von Hayek, and arguably the patron saint of the "open" mania that possesses so much of the digital world today. As Nathaniel Tkacz (2012) has rightly pointed out, the continued insistence by "open" advocates that their politics somehow transcend left-right divides only serves to more deeply entrench some of the right's most pernicious ideas among the digital intelligentsia.

ix.

One of the unspoken and disturbing shifts of emphasis in OA discourse is that it rejects the idea that intellectual labor has value, it assigns significant value to a putative class of others, *including their labor*, without being able to articulate who these others are or why their interests surpass those of the researchers themselves. OA suggests repeatedly that there are scientists, engineers, literary critics, and other researchers not attached to universities or other professional bodies whose right to *consume* the work product of academics eclipses the rights of academics to be paid for that work product. Yet it is hard to understand who these research workers are supposed to be. In the case of current scientific inquiry, many of those researchers may well turn out to be for-profit commercial enterprises. There is very little literature explaining why it is that people who are not part of a profession—and who, in general, have just the same opportunities to join that profession as have had the people who did join it—have a significant need, let alone a right, to access without charge and even to modify the work product of members of those professions that trumps the labor interests of the professionals. The point here is not to deny the usefulness or even interest of those publications to non-professionals, but to point out that we already have any number of existing mechanisms (some free, some for costs that until now few worried much about, such as purchasing a book or magazine) through which non-professionals can get access to that information but which do not challenge the laborer's right to be paid for her work.

Absolutist OA advocacy rests on a false (though widespread) set of beliefs about the nature of intellectual property, and to a lesser but often implicit extent on a notion of "immaterial labor" that reinterprets Marx along unlikely lines, while failing to acknowledge the much more substantive line of Marx's thought according to which academic labor is best understood as "unproductive" with regard to capital, a form of labor that is always in danger of being reduced to a kind of servitude. OA reinterprets the ways that academic labor is compensated, installing an exploitative notion of a "commons" as public good to which laborers owe their labor without compensation, while evacuating the public good constituted by academic labor itself, especially when seen as a public resource; and it rests on a logic that advertises itself as targeting a small subset of academic labor, yet as a philosophical argument cannot be made to distinguish itself from the entirety of academic labor. Further, the failure to distinguish between public and private sources of academic compensation, at least in the US, fits very neatly into the neoliberal assault on higher education: *all* higher education is mischaracterized as "public," even public *tout court*, in complete contradiction with the actual facts, and almost always in a notably negative, dismissive fashion. All forms of both labor and intellectual capital involved in the academy are disparaged. Across the board, while advertising itself as a means to promote the work of academic research, when we press into the foundations, or read the voluminous online commentary surrounding OA, we find something else entirely: a movement whose contempt and disdain for higher education, particularly for the labor of academics, significantly outweighs its nominal commitment to the academy.

It may seem strange, on the surface, to be arguing that the maintenance of the profit motive within the circuit of academic labor is more in line with Marxist goals than would be the elimination of profit. Yet this strangeness only persists if we examine academic research from the perspective of the consumer, and the focus on the consumer has long been a signal feature of rightist thought that subtly but strongly shifts focus away from production. The “immaterial labor” discourse, while it has much to recommend itself especially when analyzing forms of activity that would never in the past have been thinkable as labor (such as liking posts on Facebook, retweeting, contributing search data to Google, and so on), may be misleading when it is applied to relatively straightforward contexts of production. While resistance to OA on Marxist grounds may seem jarring at first, it may be much less so if seen from the perspective of trade unionism. It is hard to imagine trade unions loudly insisting that their work product be valued at \$0. In fact, to the extent that trade unions have become involved in related debates, typically around Free Culture, they have tended to express views similar to the ones outlined here. For Marxists, the edge of the politico-ethical sword has always been aimed in defense of labor; yet in the digital age, under the implicit banner of cyberlibertarianism, it has become familiar to find political-ethical imperatives advanced as if they were Marxist ones when in fact on examination they more legibly impede rather than advance those imperatives.

In the interests of being practical, this analysis suggests the following propositions regarding future discussions of OA, particularly (but not exclusively) in the arts and humanities:

1. OA discussions should always make labor one of their primary considerations;
2. Whether or not to make research Open Access should always, or nearly always, be a decision made by the scholar, and the right to make that decision should be understood as a matter of academic freedom and labor rights;
3. Even the mandating of OA for research directly proceeding from government agency funding raises academic freedom issues that should at least be addressed by scholars and scholarly labor representatives such as the AAUP;
4. OA should in general be confined exclusively to academic journal articles and other work product that has a long history of being distributed without charge and compensation;
5. OA advocates should be much more cautious than they have been about recommending OA in sites where scholars have a history of earning income;
6. OA advocates should be much more cautious in presuming all fields and disciplines are largely the same;
7. OA advocates should refrain from making inferences from academic science publishing, largely dominated by commercial publishers, to other parts of the academy such as the arts and humanities, which are largely made up of scholarly societies and university presses;
8. OA advocates should explain in detail why they find it objectionable for scholars to be paid for their work, and if they do believe such payment is objectionable, should extend those objections to the much more extensive contemporary sites of research commercialization, especially technology transfer;
9. OA advocates should be much more attentive to the public/private higher education distinction, and take care not to develop arguments that inadvertently privilege private institutions over public ones (e.g., via the “public funding” argument);
10. OA journals are welcome (and although this is not a matter directly related to labor, the long-term persistence of such journals, especially when not associated with a publisher, should be addressed in the original plan for the journal);

11. OA “book” publishers (with “book” in quotation marks because these presses frequently publish only digital collections), on the other hand, should be approached with much more caution, particularly if they do not pay royalties to authors and/or require non-traditional copyrights;
12. OA advocates should adopt a much more inclusive stance toward their colleagues’ work, and especially be cautious about engaging in overt mockery of those who are hesitant about some aspect of OA and accusing them of “misunderstanding”;
13. OA advocates should be much more cautious about the economic and political grounding of their arguments, and examine closely where they may be (wittingly or unwittingly) adopting conclusions from cyberlibertarian discourse;
14. The copyright and intellectual property interests of scholars should be seen as vital parts of the ongoing health of scholarship and as integral to academic freedom;
15. In any field where intellectual property in and of itself can lead to significant income for academics, OA should generally be avoided;
16. The “public funding” argument should be rejected, because it is not based in an accurate analysis of the nature of government funding, or of public funding of higher education, and if it were accurate, it would capture much more activity than OA advocates appear willing to recognize and thus deprive academics of important value they create;
17. Where and how to self-archive material must be a decision made by the scholar alone, and so university policies to require self-archiving (as have been developed already at many institutions worldwide) should be re-examined;
18. Institutional archiving should be more carefully examined for the appearance it gives of “work for hire” in the academic setting, and must always be voluntary;
19. Self-archiving in other platforms, if done at the scholar’s discretion, whether commercial or not-for-profit, can also be seen as consistent with labor-protective principles;
20. The specific benefits of OA, especially to workers (both those who create content and those who make use of it) should be more clearly articulated;
21. Empirical claims about the beneficial nature of OA for creators should be made when supported by research, but not without that research.

This may seem like a long list, but the items largely emerge from some simple principles: that the labor of scholars deserves the same respect and compensation as do other forms of labor; that “information exceptionalism,” the view that intellectual property is somehow less “real” than physical property, haunts OA discourse and should be resisted; and that it should be better-understood that much of the fervor for OA is driven less by a strong relationship to the interests of scholars as workers, but instead to a series of widely-believed elements of cyberlibertarian dogma that characteristically resist critical scrutiny, including some of its overt rejection of scholarship and arts and humanities higher education.

OA is a powerful idea built on assumptions that, in a fashion very typical of today’s digital capitalism, go under-examined while being pushed with an aggressive resistance to reasoned discussion—a particularly disturbing development if we subscribe to any spirit of open inquiry on which all scholarship depends. OA advocates proclaim, prior to having any way of knowing whether this is in fact true or not, that academic research can be made more available by stripping it of its characteristics as property, or more often, by severing the property relation between the research and its creator, all too often resulting in a new relationship between the research and its creator’s employer or overarching commercial enterprises that are structurally even more exploitative than was the former relationship. Further, OA advocates characteristically build off of highly tendentious cases (the historical lack of compensation for production of journal articles, and the putative “public funding” of academic labor) toward arguments that both in

practice and in theory capture much more than the advocates acknowledge. In every case, OA proceeds by altogether ignoring at best, or actively disparaging and dismissing at worst, the labor of academics in producing what is very literally their life's work. The reasoning of fervent OA advocates like Suber, Eisen, and Harnad can only serve to further alienate the lives and work of current scholars and to make the academic profession—especially those parts of the academy that are not tied directly to commercial interests—less and less attractive. Rather than the sledgehammer it has currently used, OA should be approached gradually and thoughtfully, and always with a clear focus on what exactly are the advantages it claims to have over the systems it is displacing, and toward the conditions of labor it is creating or helping to create for researchers—not just for those of us who currently earn our wages through academic labor, but perhaps even more strongly, for future researchers and students, both of which are directly threatened by the distinctly capitalist underpinnings of a movement that too many blithely take as oppositional to capitalism. Absent a thorough and detailed account of labor conditions, and respect for an attention to those conditions, no social movement, no matter how “open” or “free,” can claim to realize the spirit of Marx’s revolutionary insights

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NOTES

¹ The two varieties of OA most often described in the literature are so-called "Green OA," where authors deposit versions of their publications—or, more frequently, pre-press versions of their publications that are not always identical with the published versions—in a variety of sites including personal websites, college and university repositories (a particular concern of this essay), not-for-profit services like the Social Science Research Network (SSRN.com, although having been recently sold to Elsevier SSRN's status regarding profits has emerged as less clear; see <https://www.elsevier.com/connect/ssrn-the-leading-social-science-and-humanities-repository-and-online-community-joins-elsevier>) and the arXiv.org preprint repository, and for-profit services like ResearchGate.net and academia.edu. In most of these cases authors decide where and how to publish their works and whether or not to deposit them and under what terms. The second variety is called "Gold OA," which refers to journals and other publications whose contents are distributed without charge from their inception (and whose contents are then often included in Green OA archives, since the Gold OA licensing typically permits it). My primary concerns in this essay are requirements that require the severing of the relationship between authors and their works, and in particular when severing is mandated and there is the appearance of institutional authority trumping the personal property interest of the creator, especially through mandates to require publication exclusively in Gold OA outlets, and/or to require depositing in specific institutional archives, giving the appearance that research has been generated not by the scholar herself but instead by the institution for which she works.

² Jeffrey Beall (2013), a vocal critic of OA and maintainer of the important "Beall's List of Predatory OA Publishers" (Beall 2016 is the latest edition), describes OA as "anti-corporatist" (Beall 2013, 589) and as a movement "born of political correctness, the dogma that unites and drives higher education" (590). I agree with much of Beall's work and many of his observations, but think that his political analysis here is off. Interestingly, most of the responses to Beall have declined to embrace the thesis that would contradict the one I am offering here, namely that OA does in fact embody an anti-corporate or socialist perspective; on the contrary, responses such as those by Eisen (2013b) and particularly Bivens-Tatum (2014), while correctly noting the right-wing grounding of Beall's paper, attempt to refute it in part by showing how *compatible* OA is with the free market. For attempts to construct explicitly Marxist support of OA see Fuchs (2013) and Fuchs and Sandoval (2013), in which Fuchs makes proposals that have much to

recommend them, but where it is notable that such a typically close reader of Marx does not attempt to draw significant connections between Marx's work, particularly on labor, and OA.

³ See Mirowski (2009, especially 422-425) for a trenchant critique of the rightist underpinnings of Wikipedia.

⁴ It is also important to note that, despite its demonized appearance throughout the OA literature, including the humanities, Elsevier has very little to do with the humanities publishing that is my primary focus here. Humanities publishing is almost entirely characterized by non-profit university presses, and by for-profit mass market book and magazine publishers who typically do pay authors, sometimes generously, for their work. (That is even more true of creative writers.) Elsevier currently publishes a total 42 journals throughout the arts and humanities combined; (see <https://www.elsevier.com/journals/subjects/arts-and-humanities/history?firstletter=all>) only two of these, for example, are in literary studies, and in the US at least, they have nowhere near the reputational value of very low-cost, university press- and scholarly society-published journals like *Critical Inquiry*, *Representations*, *Signs*, *ELH*, *PMLA*, *Shakespeare Quarterly*, *diacritics*, *Cultural Critique*, *Studies in Romanticism*, *Public Culture*, *boundary 2*, *American Literary History*, *American Literature*, or *differences*, just to name some of the most prominent US-based journals in literary studies. It is also worth noting that publication by scholarly societies and university presses was the norm until for-profit publishers got involved with scholarly publishing in the 1960s (Gardner 2013; Larivière, Haustein, and Mongeon 2015), so it is tendentious to take those practices as historically paradigmatic.

⁵ Marx's most direct accounts of the productive/unproductive labor distinction are found in Chapter 4 of *Theories of Surplus Value I* (Marx 1863, 152-304) the unpublished notes that constitute the plan for Vol. 4 of *Capital*.

⁶ See Duménil and Lévy (2011) for the productive/unproductive labor distinction in a form harmonious with the arguments offered here.

⁷ NCES (2011), "Table 248. Number of degree-granting institutions and enrollment in these institutions, by enrollment size, control, and level of institution: Fall 2010,"

http://nces.ed.gov/programs/digest/d11/tables/dt11_248.asp.

⁸ At http://origin-www.justice.gov/jmd/ethics/ethics_handbook.htm.

⁹ At [http://www.aaup.org/file/1940 Statement.pdf](http://www.aaup.org/file/1940%20Statement.pdf).

¹⁰ See the current AAUP definition of academic freedom at <https://www.aaup.org/our-work/protecting-academic-freedom>.

¹¹ See <http://cucfa.org/2014/10/aaup-and-cucfa-announce-partnership/>.

¹² See https://en.wikipedia.org/wiki/Open-source_software#History.

¹³ Mossoff extends and elaborates these arguments in Mossoff (2013), Mossoff (2012)—which strikes me as more compelling for its reading of Locke's account of property than of Marx's—and Mossoff (2015), which explicitly refutes the idea that copyright hinders the development of scholarly research.

¹⁴ For the CC-BY license and other Creative Commons licenses see

<https://creativecommons.org/licenses/by/3.0/us/>.

¹⁵ Even Doctorow makes strangely contradictory claims like "I've been giving away my books ever since my first novel came out, and boy has it ever made me a bunch of money" (Doctorow 2006)—which can only be true if Doctorow is, in fact, allowed to determine the prices for which his works sell. It is also notable that while Doctorow has recently published a book titled *Information Doesn't Want to Be Free* (Doctorow 2015c) that takes a far more conciliatory and nuanced tone with regard to non-academic

creative production, he continues to support OA for academics, including mandates (Doctorow 2015a, 2015b). It is also worth noting that Doctorow (2015b) badly misstates, in a tone derogatory to and dismissive of the IP interests of scholars, the relationship of academics to institutions of higher education, incorrectly asserting that “until a couple decades ago, virtually every university in America had work-for-hire arrangements with their faculty.” “Work for hire” is a term only applied to work in which the creator sacrifices all IP interests (such as the relationship of actors, writers, directors, and the rest of the production team to television programs), which has *never* been applied in the US for professors, even if it may have nominally been true at some institutions (that is, some policies may have read this way, but the policy was rarely if ever followed, and most professors in practice had full ownership of their IP). Springer (2005) offers a useful historical and legal summary of these issues in the US, from the perspective of the AAUP.

¹⁶ See, e.g., Goodman (2014), Jarvis (2013), Naughton (2013), and leading OA advocate Michael Eisen (2013a). For an overview and one of the very few thoughtful critical analyses of this story see Bulajewski (2013). For a sympathetic and thorough account of Swartz’s life and work that documents his work with the Free Culture and OA movements, albeit one that does not subject the claims of those movements to enough critical scrutiny and that repeats many of the false claims discussed here, see Peters (2016).

¹⁷ See http://www.imdb.com/title/tt3268458/?ref_=nv_sr_1.

¹⁸ Swartz’s political writings remain available at aaronsw.com.

¹⁹ See <http://about.jstor.org/about>.

²⁰ See <http://about.jstor.org/libraries/african-access-initiative>.

²¹ On the openness of MIT’s network and the universal access available through it to JSTOR at the time of Swartz’s actions, see Abelson et al (2013), 26-27.

²² Part of the outrage at JSTOR had to do with its offering to sell to non-subscribers individual articles for around \$21. While the complete history of this initiative is outside the scope of this paper, the fact remains that very few users of JSTOR actually need or needed to pay this fee, were they willing to explore alternative modes of access including public and local university libraries, interlibrary loan, scholarly and professional societies, and so on.