

Privatization of Government Information as Primitive Accumulation

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ABSTRACT: This essay examines privatization of government publishing through the lens of capital accumulation by dispossession, an updated and expanded version of Marx's account of primitive accumulation. It argues that the program of privatizing government information dissemination activities, which began as part of the Reagan administration's pursuit of neoliberal policies, continues today albeit in altered form due to the advent of electronic publishing.

Keywords: Primitive accumulation, accumulation by dispossession, privatization, government publishing, government information, Federal Depository Library Program



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During his presidency, Ronald Reagan conducted an aggressive campaign to transfer many of the functions of government to private business, including the publication of government documents. Although discussions of privatization have largely dropped out of the library literature following the withdrawal of some of the Reagan era's most controversial policies, I argue that privatization of government information continues to be a pressing issue to the current day. One reason that it is largely overlooked in the contemporary literature is the tendency to view privatization as an issue only when it implicates the value of access to information. In lieu of this narrow focus on information access and restriction, this essay will present an analysis of privatized information that places it in the broader context of capital accumulation. It does so by articulating the privatization of government information as an instance of accumulation by dispossession, a contemporary adaptation of Marx's account of primitive accumulation introduced by geographer David Harvey. Taken in this context, it is possible to formulate a broader critique of recent government policy directed at transferring to capital the ability to control the flow of information in order to serve the goal of accumulation, even though restriction of public access to information is only one possible outcome of this process.

Government Information as Commodity

Ronald Reagan and his policy advisors were deeply impressed by the idea derived from the work of Harvard sociologist Daniel Bell that information was “a commodity capable of fueling a dramatic economic recovery in America.”¹ The passage of the Paperwork Reduction Act of 1980² and the creation of the Office of Administrative and Regulatory Affairs gave the executive branch Office of Management and Budget (OMB) power to put this idea into practice by setting information policy.³ In its articulation of information policy, the information-as-commodity view was an integral part of the administration's ideological commitment to a more general program of empowering capital by easing regulatory restrictions, suppressing the power of organized labor and, of particular relevance here, transferring various government functions to the private sector.⁴

1 MICHAEL A. HARRIS, STAN A. HANNAH, AND PAMELA C. HARRIS, *INTO THE FUTURE: THE FOUNDATION OF LIBRARY AND INFORMATION SERVICES IN THE POST-INDUSTRIAL ERA* 61 (2nd ed. 1998).

2 Pub. L. No. 96-511, 94 Stat. 21812 (1980).

3 Henry T. Blanke, *Libraries and the Commercialization of Information: Towards a Critical Discourse of Librarianship* 2 *PROGRESSIVE LIBRARIAN* 9, 11 (1991), <http://www.progressivelibrariansguild.org/PL/PL02/009.pdf>.

4 See Harris, Hannah & Harris, *supra* note 1, at 61.

Supporters of privatization often invoked populist rhetoric, claiming on behalf of “the American people” that federal programs were too intrusive, inefficient, and expensive;⁵ and that transferring the operation of a whole range of government activities to business would both reduce costs of and enhance their effectiveness.⁶ The mechanisms through which the agenda could be furthered were diverse, but could be accomplished through a combination of measures including the use of vouchers, private sector outsourcing, and sales of public assets.⁷

Where government publishing was concerned, the goal of privatization was furthered by establishing strong preferences for reducing the overall number of government publications and for using private sector publishers whenever possible. An April 1981 Presidential moratorium on the production of any new audiovisual aids and publications set the tone for the new administration’s information policy.⁸ A series of OMB policies followed, requiring agency heads to carefully review their information dissemination practices with a particular eye towards information services that might be either eliminated or better provided by the private sector.⁹ In addition, agencies were encouraged through a combination of budget cuts and OMB policy to raise or institute fees for publications.¹⁰ OMB circular A-130 is widely regarded as the fullest statement of these principles. Reiterating the view that information is a commodity, it established a requirement that agencies review their information collection and dissemination practices to avoid publishing information already being disseminated by another organization, public *or* private; that agencies institute “cost recovery” or user charges for those publications; and that agencies place “maximum feasible reliance” on the private sector for their publication needs.¹¹

In this atmosphere, the activities of the Government Printing Office (GPO, now Government Publishing Office) were newly politicized. Reagan found a sympathetic appointee to head the GPO in Danford Sawyer, his nominee for Public Printer. Sawyer was the owner of a Florida advertising agency and publishing company with no government experience who professed

5 DAVID F. LINOWES, *PRIVATIZATION: TOWARD MORE EFFECTIVE GOVERNMENT: REPORT OF THE PRESIDENT’S COMMISSION ON PRIVATIZATION*, xi (1988), <https://babel.hathitrust.org/cgi/pt?id=mdp.39015017633325&view=1up&seq=5>.

6 *Id.* at 1.

7 *Id.* at 1-2.

8 *Statement on Federal Audiovisual Aids and Publications*, Jan. 20 to Dec. 31, 1981 PUB. PAPERS 364 (April 20, 1981), <https://www.govinfo.gov/app/details/PPP-1981-book1>.

9 *Id.*

10 *Id.* at 3.

11 50 Fed. Reg. 52,736 (Dec. 24, 1985), <https://www.govinfo.gov/content/pkg/FR-1985-12-24/pdf/FR-1985-12-24.pdf#page=1>.

an interest in increasing the “efficiency” of the agency.¹² Nonetheless, the existence of the agency itself continued to present an obstacle in the administration’s attempts to remove federal publishing activities to the private sector. Per the longstanding requirements of Title 44, federal publications were required to be submitted to the GPO¹³ and were required to be made available to libraries participating in the Federal Depository Library Program (FDLP) free of charge.¹⁴ The Reagan-era GPO evinced its willingness to play along with industry prerogatives, such as appointing industry members to serve on the Depository Library Council, the advisory body which guides the GPO’s Director and Superintendent of Documents on depository library issues.¹⁵ However, the pre-existing institutional and legal structure of the GPO and the FDLP meant that it would to some extent stand in the way of many efforts at privatization.

The Reagan-era Justice Department did its part to discourage an expansive view of the scope of the GPO’s mandate through its interpretation of separation of powers doctrine. In two 1984 memoranda, Assistant Attorney General Theodore B. Olson argued that following the Supreme Court’s decision in *INS v. Chadha* 103 S. Ct. 2764 (1983), separation of powers prevented Congress from requiring executive branch agencies to seek approval from the Joint Committee on Printing before going outside of the GPO for publication.¹⁶ In combination with developing OMB policy, this interpretation served to free agencies from the commitment to the GPO as publisher and, indeed, the need to publish in the first place.

Although the Reagan administration’s efforts at privatization received sustained scrutiny from the library community, the practice of privatization continued well beyond the 1980s. A 1998 *Library Journal* article, published by then-recently retired Superintendent of Documents Wayne Kelley, noted that the acquisition of government publications by private publishers continued on an ad hoc basis throughout the 1990s.¹⁷ Nonetheless, by the turn of the century it was clear that the government’s growing reliance on electronic publishing for information dissemination was becoming the most pressing issue regarding public

12 *Nomination of Danford L. Sawyer, Jr., to be Public Printer: Hearing before the Committee on Rules and Administration, United States Senate, 97th Cong.* (Jul. 13, 1981).

13 44 U.S.C. § 1710.

14 44 U.S.C. § 1902.

15 Diane Smith, *The Commercialization and Privatization of Government Information*, 12 GOV’T PUBLICATIONS REV. 44, 61 (1985), [https://doi.org/10.1016/0277-9390\(85\)90068-8](https://doi.org/10.1016/0277-9390(85)90068-8).

16 James Bolner, *The Reagan Administration vs. the Joint Committee on Printing: Constitutional Reflections*, 12 GOV’T PUBLICATIONS REV. 97, 107-108 (1985), [https://doi.org/10.1016/0277-9390\(85\)90081-0](https://doi.org/10.1016/0277-9390(85)90081-0).

17 Wayne P. Kelley, *Keeping Public Information Public*, LIBR. J., May 1998, at 34–37.

information. In one of the later installments of its series on privatization and restriction of government information, *Less Access to Less Information by and About the US Government*, the American Library Association's (ALA) Washington Office noted:

Another development, with major implications for public access, is the growing tendency of federal agencies to use computer and telecommunications technologies for data collection, storage, retrieval, and dissemination. This trend has resulted in the increased emergence of contractual arrangements with commercial firms to disseminate information collected at taxpayer expense, higher user charges for government information, and the proliferation of government information available in electronic format only. This trend toward electronic dissemination is occurring in all three branches of government. While automation clearly offers promises of savings, will public access to government information be further restricted for people who cannot afford computers or pay for computer time?¹⁸

The consequences of the move to electronic publishing has channeled much of the contemporary debate over access to government information into increasingly technical discussions of the problem of preservation, or access over time, as presented by electronic media, although recent actions of the Trump administration have again raised the specter of overt content-based censorship of information produced by government agencies.¹⁹ This changing focus, along with some apparently positive developments regarding public access such as the anti-fee stance taken by the Paperwork Reduction Act of 1995,²⁰ has served to obscure what is perhaps an even larger issue regarding privatization of information over the last three decades in the wholesale push to transition government records and publications to electronic formats in the 1990s. The Clinton administration's plan to build the "National

18 AMERICAN LIBRARY ASSOCIATION, WASHINGTON OFFICE, *LESS ACCESS TO LESS INFORMATION BY AND ABOUT THE U.S. GOVERNMENT*, XXXI A 1998 CHRONOLOGY JUNE-DECEMBER, 4 (1998), <https://archive.org/details/lessaccesstoless31amer>.

19 In the tradition of the ALA's *Less Access to Less Information Series*, the blog *Free Government Information* has documented a number of recent cases of removal of federal information about politically charged issues such as climate change and immigration. *Less Access to Less Information by and about the U.S. Government*, FREE GOV'T INFO., https://freegovinfo.info/less_access. See, e.g., James R. Jacobs, *EPA Greenwashes Its Fracking Site*, Nov. 19, 2018, <https://freegovinfo.info/node/13144>; James R. Jacobs, *EPA Eliminates Its Climate Change Websites*, Nov. 9, 2018, <https://freegovinfo.info/node/13134>; James R. Jacobs, *U.S. Historians are Fighting to Stop ICE from Erasing Records of Agency's Treatment of Immigrants*, Jul. 31, 2018, <https://freegovinfo.info/node/13027>; James A. Jacobs, *EPA Removes and Changes Climate Information from Its Website*, Feb. 7, 2017, <https://freegovinfo.info/node/11710>.

20 Pub. L. No. 104-13, 109 Stat. 163 (1995). Susan McMullen, *U.S. Government Information: Selected Current Issues in Public Access vs. Private Competition*, 27 J. GOV'T INFO. 581 (2000), <https://docs.rwu.edu/cgi/viewcontent.cgi?article=1001&context=librarypub>.

Information Infrastructure,” which would deliver, among other things, government information and services, emphasized the investment in and development of the privately owned utilities that would constitute the information “superhighway.”²¹ This plan was put into practice through a combination of government subsidies and deregulation of cable and telecommunications companies, cementing the long-term dependence of the public sector on private business for its information dissemination activities.²²

Privatization as accumulation by dispossession

The privatization policies pursued by the Reagan government and its successors are widely regarded as part of the global process of neoliberalization. David Harvey has argued that this process be viewed as a deliberate project engaged in by economic elites to reassert their dominance as a class.²³ The expansion of the welfare state in the post-war era imposed limitations on capital accumulation through its combination of redistributive policies, business regulation, and empowerment of organized labor.²⁴ Neoliberalization had the aim of throwing off these restrictions on elite class power even as it converted the public goods produced by the welfare state into new avenues for accumulation.²⁵

Harvey’s account of neoliberalism expands upon Marxist theories of primitive accumulation into what he calls “accumulation by dispossession.”²⁶ Marx devoted several chapters of *Capital* to an explanation of what he referred to as “so-called” primitive accumulation and the question of how the capitalist relations of production involving the division between owners and non-owners of the means of production came to be.²⁷ Unlike liberal theorists who attempted to explain primitive accumulation as a function of the thrift and virtue of the bourgeoisie, Marx emphasized the element of force required for the transition to capitalism.²⁸ Marx argued that the emergent capitalist class seized land and other resources

21 THE WHITE HOUSE, THE NATIONAL INFORMATION INFRASTRUCTURE: AGENDA FOR ACTION (1993), <https://babel.hathitrust.org/cgi/pt?id=umn.31951d00296397c&view=1up&seq=3>.

22 See NICK DYER-WITHEFORD, CYBER-MARX: CYCLES AND CIRCUITS OF STRUGGLE IN HIGH-TECHNOLOGY CAPITALISM 33 (1999); See also Jane Bortnick Griffith & Marcia S. Smith, *The Information Superhighway and the National Information Infrastructure (NII)*, 20 J. ACAD. LIBRARIANSHIP 93 (1994).

23 DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM 19 (2005).

24 David Harvey, *Neoliberalism as Creative Destruction*, 88 GEOGRAFISKA ANNALER 145, 148 (2006), <http://www.anthrocvone.org/development/wp-content/uploads/2015/07/David-Harvey.pdf>.

25 See *id.* at 153.

26 DAVID HARVEY, THE NEW IMPERIALISM 137-182 (2003).

27 ALEX LAW, KEY CONCEPTS IN CLASSICAL SOCIAL THEORY, (2011), <https://doi.org/10.4135/9781446251485>.

28 KARL MARX, *Capital*, Vol. 1, in THE MARX-ENGELS READER 191, 311 (Robert C. Tucker ed., 1972),

through often-violent imperialist struggles abroad. It also used its influence to affect the “enclosures of the commons” domestically, which both removed the peasant class from an independent means of subsistence and handed formerly public lands over to private ownership. Although there is some question of whether Marx regarded primitive accumulation as a distinctly precapitalist historical phase, later theorists have emphasized that primitive accumulation continues even under a late phase of capitalist development.²⁹

Privatization is a central aspect of Harvey’s expanded notion of primitive accumulation. Through the administrations of President Reagan and British Prime Minister Margaret Thatcher, and their commitments to neoliberal theory, “the whole orientation of state activity [was turned] away from the welfare state and towards active support for the ‘supply side’ conditions for capital accumulation.”³⁰ The result of this newfound commitment to market liberalization “was to make a new round of ‘enclosure of the commons’ into an objective of state policies” with “assets held by the state or in common [being] released into the market where overaccumulating capital could invest in them, upgrade them, and speculate in them.”³¹ As Jim Glassman has summarized the idea, privatization has proved to be “one of the crucial ways in which capitalists have been able to ‘actively manufacture’ new realms for proletarianization and private appropriation of public property, even within the global core,” enabling a range of activities from “educational institutions to public utilities, health care, social housing, and a whole range of state enterprises involved in commodity production” to be turned over to the private sector for profit making.³²

If supporters of privatization argue it as a win-win situation—i.e., resulting in a reduced burden on “the taxpayer” and better services to the public in need—the long-term benefits of the process have in fact accrued to the people in a position to speculate in the newly liberalized markets for formerly public goods. Harvey points to the example of Thatcher’s release of public housing to the private market:

At first blush this appeared to be a gift to the lower classes, who could now convert from rental to ownership at a relatively low cost, gain control over a valuable asset, and augment

<https://www.marxists.org/archive/marx/works/1867-c1/ch26.htm>.

29 Jim Glassman, *Primitive Accumulation, Accumulation by Dispossession, and Accumulation by ‘Extra-Economic’ Means*, 30 *PROGRESS IN HUMAN GEOGRAPHY* 608, 613 (2006), <https://doi.org/10.1177/0309132506070172>.

30 HARVEY, *NEW IMPERIALISM*, *supra* note 23, at 157.

31 *Id.* at 158.

32 Glassman, *supra* note 26, at 620 (citations omitted).

their wealth. But once the transfer was accomplished housing speculation took over, particularly in prime central locations, eventually bribing, cajoling, or forcing low-income populations out into the periphery in cities like London, and turning erstwhile working-class housing estates into centres of intense gentrification.³³

Focusing on privatization as a mode of enabling capital accumulation provides an instructive framework for viewing neoliberalism's relationship to the welfare state. Contemporary libertarians often profess an extreme and uncompromising anti-statism, a polemical stance that many trace back to neoliberal progenitor F.A. Hayek, who associated the Keynesian welfare state with tyranny and totalitarianism for its attempts to plan the economy.³⁴ The actual relationship between historically instantiated neoliberalism and the welfare state is more complex. Although in the US, modern business-friendly conservatism was galvanized by opposition to the New Deal (and to some extent, the Great Society programs of the 1960s), it has done little to decrease the size of the "big government" it claims to find objectionable—in part because "big government" spending has long accrued to the benefit of the owners of capital.³⁵ From this perspective, it is not actually the size or complexity of the government that is problematic to capital. Instead, it is government's propensity to stand in the way of accumulation by, for example, requiring the upper classes to pay taxes to subsidize social programs for the general welfare or requiring corporations to pay the costs of remediating negative externalities produced by their activities.

As a result, neoliberal "rollback" of the welfare state has not been simply a matter of repealing New Deal or Great Society programs, but of subtly transferring the public goods generated by government programs to private ownership. While the GPO and the FDLP long pre-date the New Deal, the explosion of state building in the early 20th century was the source of much of the modern administrative state and its information collection, research, and development activities.³⁶ The claim by GPO supporters that these items come within the Title 44 definition of government publications, and must therefore be submitted to the public printer for dissemination to libraries free of charge, interfered with the ability to affect a

33 HARVEY, *NEW IMPERIALISM*, *supra* note 23, at 158.

34 F.A. HAYEK, *The Road to Serfdom*, 2 COLLECTED WORKS OF F.A. HAYEK 157 and passim (Bruce Caldwell, ed. 2007).

35 See LISA MCGIRR, *SUBURBAN WARRIORS: THE ORIGINS OF THE NEW AMERICAN RIGHT* (2003); see also JAMIE PECK, *CONSTRUCTIONS OF NEOLIBERAL REASON* 23 (2010) (discussing how neoliberal "roll-back" of social welfare programs is often followed up with "roll-out" of government subsidized privatized services).

36 See Harold C. Relyea, *Paperwork Reduction Act Reauthorization and Government Information Management Issues*, 17 GOV'T. INFO. Q. 367, 368 (2000), [https://doi.org/10.1016/S0740-624X\(00\)00048-4](https://doi.org/10.1016/S0740-624X(00)00048-4).

transfer of these goods to private ownership. As a “free good” that is not consumed when it is used, information must be made artificially scarce to secure its status as a commodity subject to private ownership, through intellectual property law, technological mechanisms such as digital rights management software, or by some other means.³⁷ Private publishers could avail themselves of this free good by trying to make a profit from repackaging and reselling it, but the existence of a public printer that distributes copies of these publications for free or at cost has functioned as a stopgap on the profitability of such ventures.

In the 1980s, the information industry’s lobbyists and the OMB converged on the position that it was inappropriate for the government to “compete” in this way with the private publishers in the dissemination of information.³⁸ Likewise, the Reagan Justice Department’s theory that separation of powers prevented the GPO from making demands on executive agencies to submit their products for dissemination may be understood as a way of both protecting the agencies’ prerogatives to form contracts with private publishers, effecting the conversion to privately owned commodity directly, as well as preventing GPO from diluting the value of these publications to the private sector by making the information too generally available.

Many of these early attempts to limit government “competition”—introduction of fees for government run databases and increasing the sales cost of GPO publications—proved too ham-fisted to be politically feasible and were therefore short lived.³⁹ Total commodification of public information, such as the formation of contracts which transfer copyright to private publishers, has remained much more of a problem at the state level, where there are no uniform legal requirements to keep this information in the public domain or distribute information through public channels. However, in the end, the development of new information technology and the lack of established norms regarding public access to electronic data has generated new possibilities and strategies for private appropriation of information collected and generated at public expense. With the rise of network technologies, private sector resale of tangible products has taken a backseat to growing business in data analytics. Although the industry’s tune has not changed with respect to the

37 See Smith, *supra* note 13 at 46; see also Jonathan Cope, *Neoliberalism and Library & Information Science: Using Karl Polanyi’s Fictitious Commodity as an Alternative to Neoliberal Conceptions of Information*, PROGRESSIVE LIBR., Winter 2014/2015, at 67, 74, <http://www.progressivelibrariansguild.org/PL/PL43/067.pdf>.

38 Smith, *supra* note 13, at 12; James P. Love, *The Marketplace and Electronic Government Information*, 19 GOV’T PUBLICATIONS REV. 397, 399 (1992), [https://doi.org/10.1016/0277-9390\(92\)90031-6](https://doi.org/10.1016/0277-9390(92)90031-6).

39 See J. Timothy Sprehe, *The New Heresy: Librarians in Support of User Fees*, 19 GOV’T PUBLICATIONS REV. 119, 120 (1992), [https://doi.org/10.1016/0277-9390\(92\)90084-0](https://doi.org/10.1016/0277-9390(92)90084-0).

demand that the government not “compete” with the private sector, it has thrown its support behind open government data programs such as the one created by President Obama early in his administration.⁴⁰ Despite the rhetoric of transparency and democratic values invoked by proponents of open government data, the core proposition of the open data movement is that government must prioritize the provision of data in raw machine-readable formats that are essentially unusable to individual consumers.⁴¹ The fact that these data are being made available free of charge have effect permitted information industry to have it both ways—to coopt the language of openness and freedom of information long used in opposition to privatization to create a relationship of dependency for information dissemination that accrues to the benefit of the private sector.

The Limits of the Liberal Conception of Access to Government Information

Derived from its view of information as commodity, the Reaganite program of privatization of government information generated controversy within the library profession. The ALA, American Association of Law Libraries, and various practitioners and academics were largely united in their denunciation of privatization and commodification of government information and resisted the narrow vision of public access to information articulated in policies such as OMB circular A-130 that restricted the idea of public access to on-demand inspection rather than widespread dissemination to the public. To their credit, librarians and professional library associations have argued for a more robust definition of access that requires the government to make important information available to the public by publishing and distributing it widely, as well as make provision for the retention of information over time as has long been part of the mission of the FDLP.

These criticisms derived from a conception of information as a public good. However, the scope of the critique has been limited by its entanglement with classical liberalism and the narrow interpretation of democracy derived from it. Classical liberalism maintains a strict separation between the public sphere of state activity and a private sphere that includes the

40 See SOFTWARE AND INFORMATION INDUSTRY ASSOCIATION, *Data Driven Innovation: A Guide for Policymakers: Understanding and Enabling the Economic and Social Value of Data* 25 (2013), <http://www.siiia.net/Portals/0/ppt/Policy/Data%20Driven%20Innovation/data-driven-innovation.pdf?ver=2013-07-08-135946-000>; see also Letter from Ken Wasch, President, Software & Information Industry Association, to John P. Holdren, Director, Office of Science and Technology Policy (June 19, 2009), http://www.siiia.net/Portals/0/pdf/siiia_opengovcomments_061909.pdf?ver=2009-06-23-134243-000.

41 See Rebecca Kunkel, *The U.S. Government Manual in XML: A Case Study of A Data.gov Open Data Set*, 35 LEGAL. REF. SERVICES Q. 256, 264 (2016).

realm of market activity.⁴² It is intently focused on “negative” freedom, or freedom from coercion by the state, but maintains that, with a few limited exceptions, private economic activity is essentially free and uncoerced.⁴³ The idea of democracy that emerges from classical liberalism is largely confined to keeping government from overreaching into the private realm as opposed to, for example, focusing on the right of workers to determine for themselves the conditions under which they labor.

As John Buschman noted in 2007, most discussions of democracy in LIS scholarship have continued to rehearse the same pieties about the importance of access to information to democracy derived from the classical liberal tradition—in particular the writing of Jefferson and Madison—without really attempting to articulate the connection.⁴⁴ The result has been a kind of magical thinking, that simply by providing access to information, libraries are furthering democracy.⁴⁵ In so doing, LIS scholarship has tended to reinforce a formalist/proceduralist idea of equality. Formal equality, or “equality of opportunity,” in this case with regard to the ability to access information, has long been the preferred formulation of the idea of equality to which supporters of the “free” market—neoliberals and their classical liberal forbears—have aspired.⁴⁶

To the extent that the liberal tradition regards the problem of information privatization as an issue implicating egalitarian concerns, it is by worrying over access restrictions such as user fees creating unequal access and a resulting division between the “information-rich” and “information-poor,” or, in an updated version of this, a “digital divide.”⁴⁷ Since its coinage during the Clinton administration, the digital divide has been leveraged by tech

42 See Duncan Kennedy, *The Stages of the Decline of the Public/Private Distinction*, 130 U.PENN. L. REV. 1349 (1982). https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=4675&context=penn_law_review; Morton J. Horwitz, *The History of the Public/Private Distinction*, 130 U.PENN L. REV. 1423 (1982), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=4677&context=penn_law_review.

43 Robert L. Hale, *Coercion and Distribution in a Supposedly Non-Coercive State*, 38 POL. SCI. Q. 470 (1923) DOI: 10.2307/2142367; Cass R. Sunstein, *Lochner’s Legacy*, 87 COLUM. L. REV. 873 (1987), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=12354&context=journal_articles; see also Morton J. Horwitz, *Conceptualizing the Right of Access to Technology*, 79 WASH. L. REV. 105 (2004), <https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=4449&context=wlr>.

44 John Buschman, *Democratic Theory in Information Science: Toward an Emendation*, 58 J. AMER. SOC. INFO. SCI. AND TECH. 1483 (2007), https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1066&context=lib_pub

45 See *id.* at 1492.

46 Morton J. Horwitz, *The Legacy of 1776 in Legal and Economic Thought*, 19 J. L. & ECON. 621 (1976), <https://doi.org/10.1086/466890>.

47 See Siobhan Stevenson, *Digital Divide: A Discursive Move Away from the Real Inequities*, 25 INFO. SOC’Y 1 (2009), <https://doi.org/10.1080/01972240802587539>.

entrepreneurs such as Microsoft's Bill Gates to generate good PR while simultaneously expanding a captive consumer base for their products.⁴⁸ However, the notion of information poverty places far too much emphasis on the role of information as a cause of substantive inequality between classes. It implies that, like other limited interventions in market conditions permitted by economic liberalism, by fixing inequalities in the provision of access to information (or education, or jobs, or justice, etc.), one can "fix" what is in fact a structural feature of capitalist class formation. This is an idea that has at best served as a distraction from analysis of the relationship between the state, information policy, and the reproduction of class inequality. This failure to engage seriously with class analysis has in turn left the defenders of free access to government information open to the conservative charge that supporters of the FDLP are hypocritically defending their own interests and those of the few privileged individuals such as academics who actually make use of depository collections.⁴⁹

Focusing on formal equality of access to information has also occluded some of the more pressing issues that have emerged in the age of electronic publishing. As noted above, the transition to electronic formats has subtly shifted the mechanism for access to information to one that necessarily utilizes privately held utilities, software products, and maintenance services. This transition has created an ongoing relationship of dependency known as "vendor lock-in" which gives rise to a continuing commitment to the transfer of public wealth to the private sector.⁵⁰ The electronic environment has also created new models for profiteering off information utilizing new modes of exploitation. When profits are extracted from more traditional arrangements, such as subscriptions and other user charges, the critique of capitalist practices and the liberal concern with equal access happen to converge. However, in what is emerging as the dominant mode of e-commerce, information is made available to the end user free of charge in exchange for the extraction of personal data about the user that is in turn sold to marketers.⁵¹ Open government data provide a free source of raw materials for companies that operate on this model.⁵² The transition from government

48 Lily Geismer, *Let Them Eat Tech*, DISSENT MAG., Fall 2019, <https://www.dissentmagazine.org/article/let-them-eat-tech>.

49 Bruce Morton, *Perceptions of Power, the People, and Future Access to U.S. Government Information*, 7 DttP: DOCUMENTS TO THE PEOPLE, Mar. 1989, at 7, 9.

50 Gabor Laszlo, *Issues and Aspects of Open Source Software Usage and Adoption in the Public Sector*, in SOFTWARE APPLICATIONS: CONCEPTS, METHODOLOGIES, TOOLS, AND APPLICATIONS, 1577, 1591 (Pierre F. Tiako ed., 2009).

51 See Ishmael Burdeau, *The Last Great Enclosure: The Crisis of the General Intellect*, 18 WORKINGUSA 649, 657-58 (2015), <https://doi.org/10.1111/wusa.12217>.

52 To name one example, Cronometer.com, which encourages users to enter information about their dietary

publications to government data channels users seeking information into such arrangements, which amount to the extraction of value from unpaid labor on the part of the user.⁵³ This is an aspect of the emerging model of open government data that has not been clearly understood due to its invisibility from a liberal perspective focused on access to information.

Conclusion

Welfare states attempted to partially rectify the private tyranny of capitalist exploitation while leaving the basic capitalist relations of production intact. They achieved this in part by mitigating private accumulation through taxation and using this wealth to build public institutions. The resurgence of capitalist class power in the neoliberal era is not simply a question of the widening gap between the rich and poor, but a new attempt to turn the “pigmy property of the many,”⁵⁴ built up during the post-war years, over to private control by the upper classes. As Faith Agostine-Wilson neatly summarizes this most recent round of enclosures, “capitalism has managed to refashion the role of government into a giant publically-funded product development arm—the government makes the initial investments into large projects, then business watches to see what might pan out, and finally swoops in to privatize and make money from the collective work of others, all while fighting to abolish corporate taxation and minimize regulations.”⁵⁵ The privatization and restriction of government information is not always or even primarily about preventing public access but should be viewed as part of the larger project of effecting this transfer.

habits into an app which generates a profile of the nutritional information about the foods they are eating pulled from various sources, including the USDA. This user activity generates an enormous amount of valuable information for marketers. According to the privacy policy that grants near total discretion to the company on the use of information that users enter into the app, Cronometer promises “not transfer your Personal Information,” except to unspecified “business partners” who “agree to comply with legally required privacy standards and who will use the information only for the purposes disclosed at the time of collection or for a use consistent with that purpose,” Chronometer.com, *Privacy Policy* (Feb. 4th 2018), <https://cronometer.com/privacy>.

53 Burdeau, *supra* note 46, at 658.

54 KARL MARX, *Capital, Vol. 1*, in THE MARX-ENGELS READER 191, 316 (Robert C. Tucker ed., 1972), <https://www.marxists.org/archive/marx/works/1867-c1/ch32.htm>.

55 Faith Agostinone-Wilson, *A Critical Overview of Knowledge Commons from a Marxist Perspective*, 4 KNOWLEDGE CULTURES 176, 203 (2016).

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