No Mods, No Masters: The Cyber-Libertarian Dream and the Inevitability of Content-Moderation Bureaucracy

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Cyberlibertarians, from the cypherpunks to the Crypto Punks, have dreamed of creating a digital world that escapes not just from state authority but from all forms of human control. Increasingly, they have identified content moderation, and the bureaucratic organizations that carry out content moderation at scale, as the Leviathan they seek to subvert or slay—often by replacing human moderators' discretion with digital rules that protect freedom by embodying the relevant rules in immutable code.

We argue that this dream is a mirage. Content moderation is not for the most part an alien system imposed on digital communities from the outside. Instead, content moderation is the visible face of online dispute resolution, and as these communities grow, the only institutions capable of performing dispute resolution at scale are bureaucracies. Anywhere and everywhere that human societies have engaged in mass adjudication, they have converged on similar bureaucratic forms, from the clerks of Chancery to insurance claim processing departments. Online communities have developed content-moderation systems that imitate offline legal systems because any institution capable of doing the work they need to do will have the shape of a bureaucracy. Just as numerous life forms tend to evolve towards a crab-like body plan, all online communities over a moderate threshold of size tend to evolve a content-moderation bureaucracy.

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Introduction

Part I identifies the discrete intellectual currents that have influenced cyberlibertarianism. We distinguish its libertarian currents from its anarchist currents. The former imagined cyberspace as a place to reassert individual civil and economic liberties. The latter aspired to eliminate top-down governance in favor either of egalitarian, communalist stewardship; or in favor of an emergent order that springs from unrestrained, uncoordinated individualism. We identify the common ground in these philosophies that characterizes cyberlibertarianism: an opposition to centralized bureaucracy. Cyberlibertarianism takes up not just an opposition to bureaucracy, but also a commitment to obviating it through technology.

Part II offers examples of cyberlibertarianism's core ambition: *exit* from bureaucratic state governance. We cover attempts at exit via physical schemes as well as via information technology. We show that these schemes are generally united by an ambition to engineer politics out of governance. And we also show that these exit attempts faced pressures to adopt precisely the bureaucratic governance mechanisms they sought to eschew, in order to address precisely the internal political difficulties they sought to repudiate.

Part III connects these experiments in governance to the evolution of the English common law. It notes a trajectory towards standardization and bureaucratization and away from *ad hoc* personalist decisionmaking. *[N.B.: This section of the paper is undeveloped.]*

Finally, **Part IV** distills what cyberlibertarian exit fantasies can teach us about the project of governance. We suggest that projects committed to ordering human affairs cannot engineer politics out of the equation: governance, in other words, is inevitable. Governance, in turn, requires a mechanism of some kind or another. And while bureaucracy is far from governance's inevitable mechanism, it consistently emerges as a common and capable one. Natural pressures pushed many unrelated creatures to evolve crab-like bodies. Bureaucracy is the crab of human governance: an ungainly but effective morphology that emerges in response to recurring evolutionary pressures.

I. Intellectual Currents

What we identify as "cyberlibertarianism" emerged from the strange cultural ferment of the mid-twentieth century. World War II demonstrated the fearsome power of the American military, of the country's technology and industrial sectors, and of bureaucratic administration.[1] In the decades that followed, countercultural movements protested how the United States had wielded this power and repudiated hierarchical, bureaucratic technocracy in favor of what they viewed as a more humane social order. The 1960s movement known as the New Left looked to political organizing to tear down this old order and to promote free speech and civil rights.[2] In 1964, the activist Mario Savio called for his fellow Berkeley students to "put your bodies upon the gears and upon the wheels, upon the levers, upon all the apparatus" of an impersonal, "bureaucratized" university "machine" that served the interests of the Cold War military-industrial complex.[3] At the same time as the New Left sought political solutions to social unrest, a counterculture movement pushed for change at the level of individual consciousness.[4] The counterculture challenged strait-laced social mores by popularizing rock 'n' roll, psychedelia, spiritual mysticism, sexual liberation, and communal living.[5]

1. Cf. Turner 28
2. Turner 38
3. https://www.americanrhetoric.com/speeches/mariosaviosproulhallsitin.htm; Turner 12
4. Turner 31-32
5. Turner 31-32

In parallel, and in response to different Cold-War anxieties, other movements repudiated American bureaucracy not from the left, but from the right. Libertarians like Ayn Rand saw bureaucracy as a force for totalitarianism and thought the only power capable of checking it was unbridled *laissez-faire* capitalism.[6] Anarchocapitalists like Murray Rothbard took Rand's logic further; Rothbard saw *Rand's* position as totalitarian[7] and maintained that the existence of any state whatsoever improperly impinged upon personal liberty.[8] These economic libertarians sought refuge from state overreach through gold specie and alternate currency schemes[9] and offshore taxation- and regulation-avoidance schemes.[10] In the 1960's and 1970's, the bureaucrat became the enemy of the free-market entrepreneur and the socially conscious left-winger alike.

As distinct social movements challenged bureaucracy for their own distinct reasons, postwar technological innovation continued apace. The logic of computation became more central to administration and enterprise, and attempts to theorize organisms and society in terms of "information processing" gained traction.[11] An interesting fusion emerged: despite computation's development in state and corporate bureaucracies, the technology began to strike some counterculture exponents as a route to breakthroughs in individual consciousness and self-fulfillment.[12]

The counterculturalists who saw consciousness as a route to social change are what communications scholar Fred Turner calls the New Communalists.[13] Unlike their counterparts in the New Left, who focused on *political* activity as a route to change, the New Communalists' theory of change centered on individual consciousness-raising .[14] "For the New Communalists,"

6. CHECK DATE BUT INTERNET SUGGESTS THIS WAS WRITTEN IN 1974: The Ayn Rand Letter, "From My 'Future File,'" The Ayn Rand Letter, III, 26, 5, `https://aynrandlexicon.com/lexicon/businessmen_vs_bureaucrats.html` ("A bureaucrat's success depends on his political pull. A businessman cannot force you to buy his product; if he makes a mistake, *he* suffers the consequences; if he fails, *he* takes the loss. A bureaucrat forces you to obey his decisions, whether you agree with him or not—and the more advanced the stage of a country's statism, the wider and more discretionary the powers wielded by a bureaucrat.")

7. Quoted in Craib and Radicals for Capitalism, make sure to check exact wording

8. See infra placeholder

9. See, e.g., Brunton on Liberty Dollars, Brunton 172-75

10. See, e.g., Craib on Minerva

11. Mahoney, Michael S. "The History of Computing in the History of Technology." *Annals of the History of Computing* 10, no. 2 (April 1988): 113–25. https://doi.org/10.1109/MAHC.1988.10011. at 113

12. Turner cyberculture 108

13. Turner 33

14. Turner 38

Turner writes, "the key to social change was not politics, but mind."[15] Many New Communalists saw technology, in turn, as a route to deeper individual consciousness. Through outlets like the *Whole Earth Catalog*, they peddled an back-to-the-land ethic and encouraged countercultural readers to adapt industrial-engineering trappings into "tools" for transcendental, communal living.[16]

In the 1990s, the anti-governance techno-optimism of the New Communalists melded with the deregulatory agenda of Silicon Valley technology entrepreneurs. What resulted was "cyberlibertarianism," a term that Langdon Winner coined in 1994 to describe "a collection of ideas that links ecstatic enthusiasm for electronically mediated forms of living with radical, right wing libertarian ideas about the proper definition of freedom, social life, economics, and politics."[17] The ideology defines Silicon Valley. At the heart of cyberlibertarianism is the belief that networking technologies will help humans achieve what Winner calls "ecstatic self-fulfillment" by transforming how they live, play, communicate, and organize their affairs.[18]

The self-fulfillment that cyberlibertarianism envisions combines the distinct cultural ideals that converged and intermingled in the Bay Area during the late 20th century: "the free-wheeling spirit of the hippies and the entrepreneurial zeal" of Silicon Valley's high-tech industry.[19] Of course, hippie self-actualization and capitalistic individualism posit different–perhaps irreconcilable–visions of fulfillment. But what unites them is a commitment to resisting coercive authority. The 1960s Bay-Area counterculture sensibility bristles at moral orthodoxy's interference with social life, while the Silicon Valley entrepreneur resents government regulation of commercial enterprise.[20]

In other words, a common denominator for cyberlibertarianism is an unwillingness to be governed. But cyberlibertarianism, and the ideologies that influenced it, posit within themselves various forms of freedom from governance that are directed to varying ends. The ideologies that shaped cyberlibertarianism differed as to the substance of freedom: was it everyone-for-themselves individualism, or kumbaya consensus communalism? Priorities also varied when it came to the ends to be pursued: should this freedom from coercion primarily serve unencumbered enterprise, or transcendental consciousness-raising and cultural autonomy? But disparate as they may

15. Turner 36.
16. *Cf.* Turner 91, 94
17. Winner 14, Golumbia 3
18. Winner 15
19. Barbrook and Cameron 364
20. Barbrook Cameron 365, 372

have been, the strands of thought that most influenced cyberlibertarianism shared an ambition of achieving *post-political* order.

As a result of its schizophrenic ambitions, cyberlibertarianism's philosophical principles are not all necessarily reconcilable with one another.[21] For this reason, we draw out the libertarian and the anarchist strains of thought that inform cyberlibertarianism in separate subsections.

A. Libertarianism

By "libertarianism," we refer to a political philosophy, influenced by Lockean natural-rights theory,[22] that gives primacy to individual rights and advocates for a government no larger and no more intrusive than necessary to guarantee these individual liberties.[23] Chief among those values are the protection of private property and free private contracting. Chief among the means of protecting those things is the operation of a *laissez-faire* marketplace.[24]

A foundational cyberlibertarian text–and one that illuminates its *libertarian* side–is "Cyberspace and the American Dream: A Magna Carta for the Knowledge Age," a short document coauthored by Esther Dyson, George Gilder, George Keyworth, and Alvin Toffler.[25] The manifesto, published in 1994 by the Progress and Freedom Foundation, calls for a "redefin[ition]" of core social concepts–"freedom, structures of self-government, definition of property, nature of competition, conditions for cooperation, sense of community, and nature of progress"–to meet the demands of revolutionary change

21. Golumbia xxi, 11

22. Jacob T. Levy, Toward a Non-Lockean Libertarianism, in Routledge Handbook of Libertarianism, at 22

23. Nozick, Anarchy, State, and Utopia at ix ("Our main conclusions about the state are that a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; that any more extensive state will violate persons' rights not to be forced to do certain things, and is unjustified; and that the minimal state is inspiring as well as right.")

24. *See, e.g.*, Richard Arneson, Democracy versus Libertarianism, in The Routledge Handbook of Libertarianism at 53 ("Very roughly, according to libertarian and classical liberal thinking, what ought to be prized and defended above all is individual liberty, understood as inseparable from the respect for private ownership of property."); Samuel Freeman, Liberal and Illiberal Libertarianism, in The Routledge Handbook of Libertarianism at 117 ("The orthodox libertarian ideal of absolute property pushes to the limit the classical liberal laissez-faire view: All rights are in effect property rights, including rights to basic liberty, opportunity, and human rights to the integrity of the person")

25. Dyson. See also Langdon Winner, Cyberlibertarian Myths and the Prospects for Community, 27 SIGCAS Comput. Soc. 14, 14 (1997) ("As a political ideology, the cyberlibertarian vision is perhaps most clearly enunciated in a publication first released by the Progress and Freedom Foundation in the summer of 1994, a manifesto entitled "Cyberspace and the American Dream: A Magna Carta for the Knowledge Age").

ushered in by digital technologies.[26] The document's orientation is rather entrepreneurial: its discussion of "the role of government" focuses on economic rights, rather than civil liberties, and it includes sections dedicated to antitrust law, accounting standards, and the definition and protection of property rights. Its ideology is individualistic: Dyson et al celebrate individual freedom over the standardized, institutional bureaucracy that (they say) characterized the previous era of mechanical industrialization.[27] The Magna Carta's vision of freedom is freedom from burdensome regulation. As abridgments of individual freedom, it cites such government activities as surveillance, supervision of communication channels and markets, restrictions on market entry, and regulatory limitations on the speech that may be transmitted.[28] The Magna Carta signals its commitments as overtly libertarian. In their discussion of the proper scope of property rights in the information age, the authors quote Ayn Rand at length, and they endorse Rand's view that the role of the state is to define and protect clear property entitlements that vindicate private ownership rights in cyberspace.[29] And like Rand, they also acknowledge that the limited government they propose is not necessarily a weak government.[30] Even the aesthetic is individualistic rather than collective: the authors venerate cultural nonconformity and geographic dispersal, and they suggest that "mass" culture is a relic of the industrial age.[31]

Another touchstone cyberlibertarian document, and an informative complement to the Magna Carta, is John Perry Barlow's "A Declaration of the Independence of Cyberspace."[32] Barlow's 1996 manifesto–written in response to the passage of the Telecommunications Reform Act, a United States law that, among other things, sought to criminalize the distribution of obscene material to minors via the Internet[33]–decries the "tyrannies" that "[g]overnments of the Industrial World" threaten to impose on cyberspace. The Declaration repudiates nation-states' claims of sovereignty over online affairs and predicts that "from ethics, enlightened self-interest, and the commonweal, our governance will emerge."[34] The freedoms it emphasizes are individual civil

26. Dyson et al 296.
27. Id. at 301.
28. Id.
29. Id. at 306.
30. Magna Carta at 303, need Ayn Rand cite for this point.
31. Dyson 307-08.
32. https://www.eff.org/cyberspace-independence
33. TELECOMMUNICATIONS ACT OF 1996, PL 104-104, February 8, 1996, 110 Stat 56. Held unconstitutional in relevant part by Reno v. Am. C.L. Union, 521 U.S. 844, 885 (1997).
34. Barlow

liberties, such as an individual's right to "express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity."[35]

Barlow's Declaration is libertarian in the sense that it venerates individual liberties and minimal government. But the government Barlow envisions is far more minimal than what the Magna Carta for the Knowledge Age contemplates: in Cyberspace, he writes, the only operative law is the Golden Rule. Barlow's Declaration is not, in other words, libertarian in precisely the same fashion as the Magna Carta. The latter's priorities are firmly economic, and it posits a Randian view of a state as a strong guardian of private property rights online and off. The Declaration, on the other hand, insinuates a different view of both culture and the state. The liberties it emphasizes are primarily cultural rather than entrepreneurial, and the role of state governance that it envisions is far more limited. Indeed, Barlow characterizes social order as an emergent, organic property of Cyberspace instead of a product of any sort of governance. "We have no elected government, nor are we likely to have one," he writes; rather, "governance" is something that "will arise according to the conditions of our world."[36] Cyberspace "is an act of nature and it grows itself through our collective actions."[37]

In brief, cyberlibertarianism's *libertarian* vanguard saw cyberspace as an opportunity to assert laissez-faire economic policy and individual civil liberties. For those fed up with what they perceived as governmental coercion, cyberspace offered an exit opportunity. Barlow's Declaration–like the United States' Declaration of Independence–is expressly an exit manifesto. It declares a new sovereign territory "naturally independent" from conventional nation-state governance, and it asserts that this jurisdiction will better protect individual autonomy from coercive authority. And although the Magna Carta for the Knowledge Age is a reformist document, its title establishes exit as an implicit premise–the original Magna Carta, after all, issued amidst a threat of civil war.[38]

B. Anarchism

A distinct ideological current that informs cyberlibertarianism is anarchism. Anarchism is a more indeterminate ideology than libertarianism. Indeed, some scholars argue that "anarchism takes so many different forms—right, left, communist, capitalist-libertarian, feminist, ecological, violent, non-violent, etc.—that it is difficult to the point of impossibility to characterize and an-

35. Declaration
36. Barlow Declaration
37. Id.
38. *See, e.g.*, `https://www.britannica.com/topic/Magna-Carta`

alyze it as a single ideology."[39] Anarchism's core premise, however, is that government is *per se* illegitimate because it entails an immoral exercise of power over individuals.[40] In fact, anarchism opposes not just government, but compulsory authority of any kind.[41] Anarchism's opposition to coercion resembles libertarianism's.[42] But libertarian commitments to (for example) strong property rights demand a state capable of protecting those rights; anarchism, meanwhile, rejects such a state as impermissibly coercive.[43]

We can situate anarchism on a spectrum from *communalist* to *individualist*. The more communalist the anarchism, the less it resembles libertarianism.[44] Communalists repudiate state governance in favor of direct governance by community members.[45] A communalist group might, for ex-

39. Ball, T., Dagger, R., O'Neill, D.I., & Kirkpatrick, J. (2024). Political Ideologies and the Democratic Ideal (12th ed.). Routledge. https://doi-org.proxy.library.nyu.edu/10.4324/9781003263609. *See also, e.g.,* Ruth Kinna, *Anarchism*, *in* Encyclopedia of Modern Political Thought 31 (2013), https://sk-sagepub-com.proxy.library.nyu.edu/ency/edvol/encyclopedia-of-modern-political-thought/chpt/anarchism (last visited Mar 24, 2025) ("One of the hallmarks of anarchism is . . . the reluctance on the part of many (though not all) to define its theoretical principles")

40. *See id.* ("All anarchists agree . . . that the state is an evil to be abolished in favor of a system of voluntary cooperation."); The Palgrave Handbook of Anarchism, (Carl Levy & Matthew S. Adams eds., 2019), https://link.springer.com/10.1007/978-3-319-75620-2 (last visited Mar 24, 2025) at 30, 34. Nozick, for example, characterizes anarchism as the attitude that any state is "intrinsically immoral" because its monopoly on coercive force necessarily violates individual right. Nozick, Anarchy State Utopia 51

41. *See, e.g.*, Bakunin, What is Authority, https://www.marxists.org/reference/archive/bakunin/works/various/authrty.htm ("The Liberty of man consists solely in this: that he obeys natural laws because he has himself recognised them as such, and not because they have been externally imposed upon him by any extrinsic will whatsoever, divine or human, collective or individual.").

42. Indeed, in some lexicons *libertarian* and *anarchist* are synonyms. *See* David Graeber, *Neoliberalism, or The Bureaucratization of the World*, *in* The Insecure American: How We Got Here and What We Should Do About It (2009), https://www.degruyter.com/document/doi/10.1525/9780520945081/html (last visited Mar 21, 2025) at 80.

43. *Compare, e.g.*, Nozick, Anarchy State and Utopia 26 (discussing "night-watchman state of classical liberal theory") *with* Proudhon, What is Property? ("Property is incompatible with political and civil equality; then property is impossible.")

44. *See* Ball, T., Dagger, R., O'Neill, D.I., & Kirkpatrick, J. (2024). Political Ideologies and the Democratic Ideal (12th ed.). Routledge. https://doi-org.proxy.library.nyu.edu/10.4324/9781003263609

45. *Id.*

ample, require decisionmaking by consensus.[46] (Communalist-anarchist approaches to organization may be unworkable in larger groups.)[47]

The Bay-Area counterculture that influenced cyberlibertarianism included aspects of genuine communalist anarchism.[48] But the line between hippie communitarianism and individualistic homesteading can be blurry, and many influential cyberlibertarian forebears fell on the latter side. Stewart Brand's *Whole Earth Catalog*, for instance, curated tools for a back-to-the-land lifestyle that valorized *individual* self-discovery. Issues begin with the preface,

> So far, remotely done power and glory—as via government, big business, formal education, church—has succeeded to the point where gross defects obscure actual gains. In response to this dilemma and to these gains a realm of intimate, personal power is developing—power of the individual to conduct his own education, find his own inspiration, shape his own environment, and share his adventure with whoever [sic] is interested. Tools that aid this process are sought and promoted by the WHOLE EARTH CATALOG.[49]

Brand embodied what Fred Turner calls "New Communalism," an offshoot of 1960s counterculture that continued its opposition to governance and bureaucracy, but which venerated individual psychic awakening above collective politics.[50] New Communalist ideology jettisoned overt political activity in favor of consciousness-liberation, in order "to free its adherents from the psychological and social rigidity of bureaucracy."[51] As Turner notes, "the

46. *See, e.g.*, https://theanarchistlibrary.org/library/seeds-for-change-consensus-decision-making; David Graeber, *The New Anarchists*, New Left Rev 61 (2002) (describing consensus mechanisms).

47. *See* https://theanarchistlibrary.org/library/seeds-for-change-consensus-decision-making (identifying "[t]he group [being] too large" as a "[c]ommon problem" in consensus decisionmaking)

48. Take, for example, the Diggers, an "anarchist guerrilla street theater group" that distributed free food in Golden Gate Park."https://www.diggers.org/overview.htm; Wren Awry, *This 1960s Anarchist Group Believed Food Should Be Free*, Atlas Obscura (400AD), http://www.atlasobscura.com/articles/diggers-san-francisco (last visited Mar 25, 2025). *Cf. also* Columbia 60 (describing "[a]relatively natural divide [in 1960s countercultural movements]. . . according to which some figures . . . clearly aligned themselves with left politics, whereas others (e.g., many of the most famous exponents of 1960s culture like Leary, Ken Kesey, Stewart Brand, the Merry Pranksters, the Grateful Dead, Jerry Rubin, the be-ins)—advocated a pro-business, anti-communist, anti-left politics whose public face focused on lifestyle as opposed to actual politics").

49. WEC fall 1968, `https://wholeearth.info/p/whole-earth-catalog-fall-1968?format=spreads&index=1`

50. Turner http://problemata.org/en/articles/645

51. *Id.*

turn to consciousness as a basis for social organization had the effect of stripping many communes of the tools they needed to negotiate the equitable distribution of money, labor, time, and other resources."[52] New Communalist projects, Turner observes, "tended to collapse within a year or two of their founding and often sooner."[53]

On the other hand, the more individualistic the anarchism, the more it starts to resemble libertarianism. Illustrative of the overlap between libertarianism and right-wing anarchism is the *anarchocapitalist* movement. The term was first coined by Murray Rothbard,[54] who in the 1950s began to assemble a group of "right-wing anarchists" or "voluntaryists."[55] Rothbard's libertarianism was so extreme that it delivered him to the anarchists' axiom: he viewed a state *per se* as a violation of property rights.[56] It led him to positions that defied typical Left-Right classifications; he aligned with 1960's left-wingers on opposition to conscription[57] and also espoused an absolutist, capitalist view that traditional state functions ought to be left to private ordering.[58] Rothbard's anarchocapitalists split from Randian libertarians because the latter believed it was appropriate for a state to exist in order to protect private property rights.[59],[60]

Both communalist and individualist anarchisms oppose the imposition of order through coercive authority. But both acknowledge that *some* order will emerge under the social conditions they envision. A major distinction between the two anarchisms is how, and whence, they anticipate that such an order will emerge. For communalist anarchists, the social order takes perpetual, intentional effort. Zapatista[61] communities, for example, have developed a panoply of apparatuses for operationalizing government by popular consensus.[62] As one anthropologist observes, communalist "anarchism in practice is, well, boring. . . . [I]t mostly takes the form of an extremely slow-

52. *Id.*
53. *Id.*
54. https://www.britannica.com/money/anarcho-capitalism
55. Doherty Raidcals for Capitalism 248
56. Rothbard, For a New Liberty, 27-30; Craib 23
57. Rothbard Reader at 43
58. See, e.g., Rothbard For A New Liberty at 98 (raising an army), *id.* at 110 (jury service)
59. Doherty, Radicals for Capitalism, 248, 360-61; *see, e.g.*, Rand, Man's Rights, https://ari.aynrand.org/issues/government-and-business/individual-rights
60. The term "minarchist" later emerged to denote libertarians who supported the existence of a state no larger than that required to protect private property rights. Doherty Raidcals for Capitalism 248.
61. Worth noting debate about whether Zapatistas are "anarchist"?
62. *See, e.g.*, `https://anarchyinaction.org/index.php?title=Zapatista-run_Chiapas;https://enlacezapatista.ezln.org.mx/2023/11/13/ninth-part-the-new-structure-of-zapastista-autonomy/`

moving and highly rule-bound process of collective deliberation. Anarchy, paradoxically, means more rules, not fewer, and more collective responsibility, not less."[63]

Individualist anarchists, on the other hand, favor the social order that emerges spontaneously from liberated life. This is an order that *can't* be planned. Anarchocapitalist progenitors like the Austrian-school economists, for example, believed in an almost mystical social progress that would result organically from the operation of a laissez-faire market. Hayek's *Road to Serfdom* denounces centralization and praises the "automatic coordination" that emerges under a decentralized market-pricing scheme.[64]

Communalist-anarchist approaches to social ordering can be time-intensive and difficult to scale, but individualist-anarchist approaches have their own shortcomings. Turner observes that by eschewing collective organization techniques in favor of individual consciousness-raising, New Communalist projects often kneecapped their ability to respond to social challenges and instead ended up recapitulating traditional racial and gender hierarchies.[65] He writes, "Brand's former wife Lois recalls that when they visited communes with their Catalog, Stewart and the men would gather to make important decisions, while she and the other women tended to the children and 'put the Clorox in the water to keep everyone from getting sick.' Gender relations on rural communes closely resembled those in the 1950s Maryland suburb where she had grown up . . . ."[66]

In cyberlibertarianism's high-technology milieu, individualist anarchism is probably more influential than communalist anarchism.[67] Its clearest embodiment is the "cypherpunk" movement[68] of the late 1980's and early 1990's, which, in Golumbia's words, "promote[d] strong cryptography as an ineliminable human right."[69] A key cypherpunk document, the Cryptonomicon, identifies several "core values: privacy, technological solutions over legal solutions, avoiding taxation, bypassing laws, etc."[70] The cypherpunks stumped for "crypto anarchy," arguing that encryption technology would inevitably "provid[e] the ability for individuals and groups to communicate and interact

63. `https://www.sapiens.org/culture/anarchism-democracy/`

64. Road to Serfdom 59

65. http://problemata.org/en/articles/645

66. http://problemata.org/en/articles/645

67. Cf., e.g., Cyphernomicon 16.3.3 (observing that vocal cypherpunks seem to be "libertarian" as opposed to "socialist" or "communitarian"); Golumbia 110-11

68. A document associated with the cypherpunks disclaims, "we're just a mailing list, a loose association of folks interested in similar things." Cyphernomicon 2.4.11

69. Golumbia 109

70. cyphernomicon

with each other in a totally anonymous manner."[71] Timothy May, a prominent cypherpunk, prognosticated that this capability would "fundamentally alter the nature of corporations and of government interference in economic transactions" and "create a liquid market for any and all material which can be put into words and pictures": state secrets, intellectual property, even contract killings.[72] If this vision sounds anarcho-capitalist, that's because it is: the Cyphernomicon describes crypto anarchy as "a form of anarcho-capitalist market system."[73] (Indeed, the anarchocapitalist Murray Rothbard reportedly inspired Ross Ulbricht's Silk Road website, an illicit crypto-anarchist marketplace.)[74] As befits an anarchist movement, however, cypherpunks subscribed to varying ideologies. The Cyphernomicon cautions, "People should not expect a uniform ideology on this list. Some of us are anarcho-capitalist radicals (or "crypto anarchists"), others of us are staid Republicans, and still others are Wobblies and other assored leftists."[75]

C. The Cyberlibertarian Synthesis: Antistatism and Technological Determinism

Cyberlibertarianism's libertarian and anarchist influences converge in opposition to centralized, bureaucratic authority. Barbrook and Cameron call this stance "antistatism," and they explain that it "provides the means to reconcile radical and reactionary ideas about technological progress."[76] Antistatism is, obviously, a first principle of anarchism,[77] and an anti-state posture serves both the cultural and economic priorities associated with cyberlibertarianism. Those with individualistic, countercultural commitments oppose the state's role in propping up civil orthodoxies that they reject; those with laissez-faire economic commitments oppose the state's interference in private enterprise.[78] Whether their primary motivations are cultural, economic, individ-

71. Timothy C. May, The Crypto Anarchist Manifesto, *in* Crypto Anarchy, Cyberstates, and Pirate Utopias 61-63 (Peter Ludlow, ed., 2001).

72. Timothy C. May, The Crypto Anarchist Manifesto, *in* Crypto Anarchy, Cyberstates, and Pirate Utopias 61-63 (Peter Ludlow, ed., 2001).

73. https://cdn.nakamotoinstitute.org/docs/cyphernomicon.txt

74. Brunton 123.

75. https://cdn.nakamotoinstitute.org/docs/cyphernomicon.txt

76. Barbrook and Cameron at 372.

77. *See, e.g.*, The Palgrave Handbook of Anarchism, (Carl Levy & Matthew S. Adams eds., 2019), https://link.springer.com/10.1007/978-3-319-75620-2 (last visited Mar 24, 2025) at 28-29 ("From a purely historical vantage, there is no question that anti-statism—in the sense of actively endorsing, encouraging, and seeking to bring about the abolition of the state, rather than merely condemning or disapproving it—has been and continues to be a central element of anarchism.")

78. Barbrook and Cameron 365, 372-73.

ualistic, or communalistic, cyberlibertarians' common ground is opposition to state authority.

What supplants the state in the cyberlibertarian vision is technology. Computing technology was a route to various sorts of cultural and economic autonomy that appealed to both the countercultural and free-market perspectives that converged in cyberlibertarism. Barlow and the cypherpunks, for example, saw networking technology and strong cryptography as bulwarks of individual civil liberties. Some members of the Bay Area counterculture saw computing as a means of realizing liberated, collectivist egalitarianism.[79] And when it comes to economic liberties, cyberlibertarians see computing technology as a means of transcending the sclerotic bureaucracy of state regulation. The technology investor Balaji Srinivasan predicts that technologies like telepresence, 3D printing, and cryptocurrency will enable large-scale opt-out from government regulation, because in tandem they will thwart immigration regimes, product regulation, and financial controls.[80]

Cyberlibertarians' trust in technology to replace the state owes to their "nearly universal belief in technological determinism."[81] Although the particulars of this belief vary, at bottom it consists of faith that a desired social order will emerge organically under the right technological conditions. Recall that Barlow's Declaration describes Cyberspace as "an act of nature" and asserts that offline regulatory concepts simply "do not apply" there.[82] The cypherpunks presented the proliferation of strong encryption–and the anarchocapitalist system it would engender–as inevitabilities. More recently, the venture capitalist Marc Andreessen described free-market entrepreneurship as a "techno-capital machine" that harnesses a "natural selection" mechanism to promote material progress.[83] Andreessen singles out some "enemies" of this natural process, among them "statism, authoritarianism, collectivism, central planning, socialism," and "bureaucracy."[84] The cyberlibertarian is committed to the notion that untrammeled technological development will realize salutary social transformation.

The cyberlibertarians' technological and market determinism recapitulates earlier anarchocapitalists' zealous faith in the pre-digital market. This, too, is a faith that repudiates any form of state planning. Market forces will spur unimaginable grown, the thinking goes–but this promise of abundance is not one we can realize through deliberate coordination. As Finn Brunton

79. Barbrook Cameron 366
80. Balaji, Silicon Valley's Ultimate Exit
81. Barbrook Cameron 367.
82. Barlow
83. techno-optimist manifesto
84. Id.

explains, the anarchocapitalist position is that "planning, centralized control, resource allocation, the whole toolkit of human decision making will fail to deliver us to that inevitable transhuman event, because that future exceeds our mediocre, bureaucratic, institutional intelligence. It can only emerge from the operation of a frictionless market."[85] Just as anarchism postulates the spontaneous emergence of order from anarchy, anarchocapitalism and its digital-age successors posit that a superabundant social order will result, unpredictably and almost mystically, from the undisturbed operation of a high-technology, laissez-faire marketplace.

Cyberlibertarianism's faith in spontaneous technological ordering and its skepticism of consolidated bureaucracy lead it to value decentralized technological infrastructure.[86] Indeed, cyberlibertarians see this infrastructure as capable of supplanting law itself. Barlow writes, "The 'terrain' itself––the architecture of the Net––may come to serve many of the purposes which could only be maintained in the past by legal imposition. For example, it may be unnecessary to constitutionally assure freedom of expression in an environment which, in the words of my fellow EFF co-founder John Gilmore, 'treats censorship as a malfunction' and re-routes proscribed ideas around it.'"[87] For cryptocurrency optimists, a decentralized financial scheme that promotes self-help through rigid technical rules can obviate financial regulation.[88]

The cyberlibertarian ambition, then, is not so much to alter humans' social failings as to transcend them through technological ingenuity and the dissolution of state coercion. As Barlow declares, "[w]e believe that from ethics, enlightened self-interest, and the commonweal, our governance will emerge."[89] Similarly, Andreessen's *Techno-Optimist Manifesto* pledges "adheren[ce]" to Thomas Sowell's Constrained Vision, which stipulates "[t]he moral limitations of man in general, and his egocentricity in particular."[90] The Constrained Vision of human nature holds that "[t]he fundamental moral and social challenge was to make the best of the possibilities which existed within that constraint, rather than dissipate energies in an attempt to change human nature . . . ."[91] By contrast, Andreessen's avowed "enemy" is what Sowell terms the Unconstrained Vision.[92] The Unconstrained Vision of human nature is one "in which man was capable of directly feeling other peo-

85. Brunton, Digital Cash, 132.
86. See, e.g., Golumbia 283.
87. Barlow Wine Without Bottles at 25
88. *See, e.g.*, *infra* discussing The DAO
89. Barlow Declaration
90. Thomas Sowell, A Conflict of Visions: Ideological Origins of Political Struggles 12 (2002).
91. *Id.*
92. Andreessen, Techno-Optimist Manifesto.

ple's needs as more important than his own, and therefore of consistently acting impartially, even when his own interests or those of his family were involved."[93] What the *Techno-Optimist Manifesto* effectively sets forth is an *unconstrained vision* of technology paired with a constrained vision of human nature. "We believe," Andreessen explains, "that there is no material problem – whether created by nature or by technology – that cannot be solved with more technology."[94] Social problems, in other words, are something that governance exacerbates and technology remediates.

Cyberlibertarianism fits into, and recapitulates, a tradition of libertarian aspirations of exit from coercive governance. The premise of each of these exit schemes has been that opting out of governance can remedy the social problems that coercive governance breeds. But, as our discussion shows, each of these projects has itself been an experiment in governance–and, as such, has faced strong pressures to adopt precisely the structures of bureaucratic governance that prompted the exit strategy in the first place.

II. Examples

Cylibertarianism's most durable theme is *exit*. The term–an allusion to Albert Hirschman's *Exit, Voice, and Loyalty*[95]–denotes departure from a particular governance or organizational scheme. This section describes a variety of libertarian and cyberlibertarian schemes to exit from conventional state governance. Some involve exit in the physical sense: the establishment of new territorial jurisdictions more consistent with libertarian values. Others involve virtual exit enabled by digital media, networking technology, and strong cryptography.

A. Micronations, Seasteads, Autonomous Zones, Lunar Clone Colonies, etc.

Cyberlibertarians' pre-digital progenitors sought to exit from state governance regimes by establishing their own sovereign territory. Because they lay outside national borders, structures on the high seas were a favorite place to stake claims. The mid-20th century saw various attempts at territorial exit, from reinforced reefs in the South Pacific and the Caribbean to a pirate radio broadcaster's putative establishment of a "Principality of Sealand" atop a World War II-era antiaircraft platform in the North Sea (more on Sealand

93. Sowell 15.

94.

95. Hirschman. *See also, e.g.*, Balaji Srinivasan, Silicon Valley's Ultimate Exit, `https://www.youtube.com/watch?v=cOubCHLXT6A`

later).[96] As an illustrative territorial-exit project, take the libertarian utopia Minverva. In the 1960's and 70's, a libertarian activist named Michael Oliver sought to establish a "Republic of Minerva" on by installing permanent infrastructure on a reef in the South Pacific. Minerva was an exit experiment: Oliver sought "to give everyone the maximum amount of freedom."[97] Minerva was to achieve this goal by sharply limiting the functions its government could perform. Its government would lack authority to levy taxes, and Minervans would buy services from the government.[98] Raymond Craib writes that in Minerva, "Everything, including the legal and police systems, would be offered as market services for purchase."[99] Entry was limited to potential immigrants with "[c]apability of self-support" or "sufficient assets."[100]

Oliver's Minerva project was a radical departure from tax-supported government, but even it restricted citizens' non-fiscal freedoms. "Naturally," he wrote, "we will not knowingly accept collectivists in our new country. Nor do we want criminals, nihilists, or anarchists."[101] In Oliver's words, "Although neither the Corporation, nor the government which is to come after it shall in any way have authority to interfere with peoples' beliefs, the Corporation shall reserve the right to refuse entry to newcomers on the basis of collectivistic ideas held by the applicant, or for any other valid reason."[102]

Minervan society never got off the ground; the project collapsed when Tonga claimed the reef as its territory and seized it by force.[103] Territorial exit projects, however, have continued apace. A more recent example is seasteading: libertarians confronted with the finitude of unclaimed landmass have sought simply to build sovereign territory themselves. The Seasteading Institute–an organization founded by Milton Friedman's grandson, Patri Friedman, and funded initially by Peter Thiel[104]–explains that "[s]easteading means building startup communities that float on the ocean with any measure of political autonomy."[105] Seasteads rest on the same essential premise as other attempts to exit from sovereign territory: "We will give people the freedom to choose the government they want," Friedman explains, "instead of being

96. *See generally* Grimmelmann Sealand.
97. https://reason.com/1972/12/01/designing-a-free-country/.
98. Craib 68-69.
99. Craib 69.
100. Oliver, quoted in Craib 70.
101. Oliver, quoted in Craib 70.
102. Oliver, quoted in Craib 70.
103. needs cite to Craib
104. https://www.theguardian.com/environment/2020/jun/24/seasteading-a-vanity-project-for-the-rich-or-the-future-of-humanity
105. https://www.seasteading.org/about/

stuck with the government they get."[106] Thiel himself has touted seasteads as a way to achieve technological progress unimpeded by state regulation, with an emphasis on novel biomedical technology.[107]

Thiel is direct about his ambitions: he voiced support for seasteading as a means of realizing a society without politics. "In our time," he wrote in 2009, "the great task for libertarians is to find an escape from politics in all its forms."[108] In the same essay, Thiel suggested seasteading as a "new technolog[y] that may create a new space for freedom." (For its part, the Seasteading Institute claims that it is not "just a bunch of libertarians trying to avoid paying taxes," but rather a "meta-political" project: "Seasteading is not a *plan* for society but a *technology* for anybody to try their own plans for societies."[109])

However, politics intervened to scuttle what was perhaps seasteading's most ambitious venture.[110] In 2017, the Seasteading Institute signed a memorandum of understanding (MOU) with the government of French Polynesia, in which the parties agreed "to pool their efforts for the implementation of a pilot project for floating islands in French Polynesia" and to "prepar[e] . . . [a] special governing framework allowing the creation of the Floating Island Project located in an innovative special economic zone."[111] The Seasteading Institute wrote that the initiative "will provide environmental resiliency to the millions of people threatened by rising sea levels, provide economic opportunities to people in remote and economically deprived environments, and provide humanity with new opportunities for organizing societies and governments" and suggested that its project would help Polynesians avoid being displaced from their islands by rising sea levels.[112] Local Polynesians protested the Seasteading Institute's proposed arrangement. One likened his

106. https://www.theguardian.com/environment/2020/jun/24/seasteading-a-vanity-project-for-the-rich-or-the-future-of-humanity

107. https://www.youtube.com/watch?v=h10kXgTdhNU at 1:48:00 ("The specific thing that I hope would come out of [seasteading] would be more scientific and technological progress that's too heavily regulated by the heavy hand of our existing state. . . . [T]here are all these things we can't do, so there's all sorts of things of governance that might be better. You might have, you know, a different penal system or, you know, have, you know, millions of people who are incarcerated there, all sorts of things one might do very differently. The specific one that I, that I'm probably most attracted to is this is this question of whether we can do new biomedical things."

108. https://www.cato-unbound.org/2009/04/13/peter-thiel/education-libertarian/

109. https://www.seasteading.org/faq/

110. See generally Craib 201-08.

111. MOU

112. https://www.seasteading.org/2017-year-seasteading-begins/; https://www.seasteading.org/government-french-polynesia-signs-agreement-seasteaders-floating-island-project/; see also craib 202

community to the "innocent Ewoks" of Star Wars, whom the sinister Galactic Empire rooks into facilitating its plan to build the Death Star.[113] A petition against the project–written in French, Polynesian, and English–gathered nearly 1,750 signatures.[114] Local fisherman staged a protest, fearful that the seastead would threaten their rights to fish in a lagoon that was a proposed construction site.[115] Isabelle Simpson writes that the seasteaders' rhetoric showed that they viewed "the territorial waters of French Polynesia as an empty space"–in their own words, "our own backyard"–while the Polynesian locals thought of the lagoon as their "pantry."[116] The interested parties disagreed about precisely what was the lagoon was, and that disagreement exacerbated dissensus about their respective entitlements to use it. Amidst the discontent, the MOU expired and the project halted.[117] The Floating Island Project's attempted exit from political society collapsed, and a flagship seastead foundered, because its boosters miscalculated how far "political society" extended.

B. "Crypto" as in "Cryptography"

Advances in computing and networking expanded the territorial possibilities for exit. For the cypherpunks, exit from coercive governance was to take place not so much in physical space as in encrypted bits. Their Cyphernomicon observes that proliferation of digital technology facilitated invasive, state-sponsored surveillance. It forecasts a stark tradeoff: "free speech and privacy" on one hand, law enforcement on the other.[118] To avoid invasive surveillance–as well as "runaway taxation"–the cypherpunks would exit cryptographically.[119] Timothy May prognosticated in 1992 that the pro-

113. https://www.businessinsider.com/french-polynesia-ends-agreement-with-peter-thiel-seastead op=1; https://www.theguardian.com/technology/2017/jan/02/seasteading-peter-thiel-french-polynesia

114. https://secure-avaaz-org.translate.goog/community_petitions/fr/Contre_le_projet_diles_flottantes_du_gouvernement_de_la_Polynesie_PARURU_IA_ATIMAONO_1/?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en-US&_x_tr_pto=wapp; Elizabeth Bennett, *Selling seasteading: rhetoric, accumulation, and appropriation of space in French Polynesia*, 12 Territory, Politics, Governance 112, 119 (2024).

115. Bennett 119; Isabelle Simpson, *'A Brilliant Future of Floating Islands': Sea Level Rise as New Profit Frontier*, *in* Coastal Urbanities: Mobilities, Meanings, Manoeuvrings 202, 216-17 (2022), https://brill.com/display/title/61910 (last visited Mar 14, 2025)..

116. Simpson 217

117. Bennett 119

118. cyphernomicon

119. Cyphernomicon 16.29.3

liferation of strong encryption technology would enable circumvention of legal restrictions on access to or disclosure of information, as well as "coerced transactions" such as the collection of taxes, giving rise to crypto anarchy.[120] The result would be an encrypted, "anarcho-capitalist market system" that would render coercive governance intractable.[121] Under crypto anarchy, May wrote, "Transactions can only be *voluntary*, since the parties are untraceable and unknown and can withdraw at any time."[122]

May cast his vision as inevitable, notwithstanding that"[t]e State will of course try to slow or halt the spread of this technology."[123] And he acknowledged that attempts to curb strong cryptography's proliferation may even arise from "valid" concerns.[124] "Crypto anarchy," May concedes, "will allow national secrets to be traded freely and will allow illicit and stolen materials to be traded," not to mention facilitating "abhorrent markets for assassinations and extortion."[125] Equally, May cast his vision as transformative: encryption technology would "fundamentally alter the nature of corporations and of government interference in economic transactions," reshaping society in a manner comparable to the printing press or the enclosure movement.[126]

For the cypherpunks, cryptographic technology presented (a) an essentially predetermined social transformation, and (b) a viable and preferable substitute for law and politics. Recall the Cyphernomicon's admonition: privilege "technological solutions over legal solutions." Crypto anarchy did not, however, obviate governance entirely. Even the cypherpunks recognized that technology for sending anonymous communications, decipherable only by their addressees, could be abused, and they identified spam and denial-of-service attacks as canonical cases of abuse.[127] The community also acknowledged the possibility that more pedestrian social disputes could disturb the group. May counseled list members,

> Avoid ranting and raving on unrelated topics, such as abortion (pro or con), guns (pro or con), etc. The usual topics that usually generate a lot of heat and not much light. (Yes, most of us have strong views on these and other topics, and, yes, we some-

120. ludlow red book 75-77.
121. id 69-70; Cyphernomicon
122. Cyphernomicon
123. see generally Cryptonomicon (ctrl-f "inevitable"); Crypto Anarchy manifesto
124. crypto anarchist manifesto
125. ludlow high noon 238.
126. id 238-39.
127. Cyphernomicon 8.6.10

> times let our views creep into discussions. There's no denying that certain resonances exist. I'm just urging caution.)[128]

May even contemplated that social disputes might warrant some form of top-down intervention: the Cyphernomicon acknowledges that an administrator of the email list could, [i]n an extreme situation of abuse or neverending ranting, . . . kick someone off the list and block them from resubscribing."[129] But, the document disclaims, such an event has yet to occur, and "[a]s to who sets policy, there is no policy!"[130]

C. Data Havens

[[TODO insert summary of James Grimmelmann, *Sealand, Havenco, and the Rule of Law*, 2012 U. Ill. L. Rev. 405 (2012).]]

In the 1990s and 2000s, territorial-exit projects got a digital-age update. Instead of founding a physical jurisdiction to protect physical occupants or citizens from undesired regulation, entrepreneurs looked for jurisdictions to protect resident *bits* from undesired regulation. They looked, in other words, for "Data Havens"–services that, like tax havens, would store risky or sensitive data on permissive terms.[131] The short-lived company HavenCo was such a Data Haven.

D. "Crypto" as in "Cryptocurrencies"

Yet another iteration of cyberlibertarian exit came in the form of cryptocurrency. Cryptocurrency was the apotheosis of cryptography's promise for financial autonomy. In 1998, the computer engineer Wei Dai sent to the cypherpunk list a proposal for an early cryptocurrency called b-money. "I am fascinated by Tim May's crypto-anarchy," he wrote:

> Unlike the communities traditionally associated with the word "anarchy", in a crypto-anarchy the government is not temporarily destroyed but permanently forbidden and permanently unnecessary. It's a community where the threat of violence is impotent because violence is impossible, and violence is impossible because its participants cannot be linked to their true names or physical locations.[132]

128. Cyphernomicon 2.4.3
129. Cyphernomicon
130. id.
131. Grimmelmann Sealand at 445.
132. http://www.weidai.com/bmoney.txt

Dai's proposal sought to create the technical conditions for crypto-anarchy by using cryptography to obscure the identities and locations of participants in financial transactions.[133] Specifically, he envisioned a decentralized ledger that tracked ownership of money, combined with a means of "creat[ing] money by broadcasting the solution to a previously unsolved computational problem" and a mechanism for cryptographically authenticating transfers of funds.[134] Years later, Satoshi Nakamoto–the enigmatic and pseudonymous originator of Bitcoin–wrote to Dai, "I was very interested to read your b-money page. I'm getting ready to release a paper that expands on your ideas into a complete working system."[135] Of this system–Bitcoin–Nakamoto later wrote to Dai, "I think it achieves nearly all the goals you set out to solve in your b-money paper."[136] Nakamoto's Bitcoin included a mechanism, "proof-of-work," that signified the completion of a computationally intensive process, thus buttressing the verifiable authority of the Bitcoin ledger.[137]

Cryptocurrences like Bitcoin were an appealing exit vehicle because they offered a store of value and medium of exchange that sidestepped libertarian preoccupations about state-issued "fiat" currency.[138] Paper money was vulnerable to government chicanery: the state could devalue it or decouple it from a precious-metal backstop.[139] Accordingly, pre-digital libertarians fixated on gold: Rand described it as "an objective value, an equivalent of wealth produced."[140] Meanwhile, she wrote, "Paper is a mortgage on wealth that does not exist, backed by a gun aimed at those who are expected to produce it. Paper is a check drawn by legal looters upon an account which is not theirs: upon the virtue of the victims."[141] Cryptocurrencies like Bitcoin appealed to distrustful cyberlibertarians because the currency was self-verifying: one could determine how much was in circulation and which wallets possessed it, and this knowledge–rather than promises from a nation-state–could inform the currency's value.[142]

But the cryptocurrency sector experiences pressures to centralize, too. Decentralization can place technical and transactional demands on end users

133. *Id.*; *see also* Brunton 115-17.
134. *Id.*
135. Brunton 117
136. *Id.*
137. Bitcoin whitepaper, `https://bitcoin.org/bitcoin.pdf`, at 3
138. See Brunton 178-79
139. *See id.*
140. *Id.* at 179-80; `https://www.goodreads.com/quotes/1010790-do-you-wish-to-know-whether-that-day-is-coming`
141. Rand Atlas Shrugged, `https://www.goodreads.com/quotes/1010790-do-you-wish-to-know-whether-that-day-is-coming`
142. Brunton 194-99.

that centralization alleviates. Self-custody of a cryptocurrency wallet, for example, requires more technical expertise than using an exchange. Centralized cryptocurrency exchanges can diminish buyers' and sellers' search costs and increase liquidity.[143] Indeed, scholars have documented that the crypto sector, despite being designed for decentralization, quickly became relatively centralized.[144]

The neatest illustration of the governance pressures on cryptocurrency endeavors is the DAO hack of 2016. The DAO–short for "decentralized autonomous organization"–raised tens of millions of dollars from backers to function as "a kind of democratic online venture-capital fund."[145] Its premise was that investments would be handled by automated "smart contracts" that would execute in accordance with stakeholders' votes.[146] Investors would allocate tokens towards project proposals, and those allocations would entitle the investors to downstream voting power in the decisions undertaken by a funded project, in accordance with the smart contracts governing that project.[147] The DAO project posited governance by code: the whitepaper proposing it called it a "decentralized autonomous organization to automate governance."[148] It promulgated an "Explanation of Terms and Disclaimer" written in legal language, but the document specified that it did not "modify

143. Yesha Yadav, *Toward Crypto-Exchange Oversight*, (2022) at 18, hrefhttps://papers.ssrn.com/abstract=4241062https://papers.ssrn.com/abstract=4241062 (last visited Mar 19, 2025); Yesha Yadav, *The Centralization Paradox in Cryptocurrency Markets Regulating Upheavals in the Securities Markets and Boardrooms*, 100 Wash. U. L. Rev. 1725, 1728 (2022).

144. Yesha Yadav, *The Centralization Paradox in Cryptocurrency Markets Regulating Upheavals in the Securities Markets and Boardrooms*, 100 Wash. U. L. Rev. 1725, 1727 (2022); Douglas W. Arner et al., *The Financialization of Crypto: Lessons from FTX and the Crypto Winter of 2022-2023*, 2-3 (2023), https://papers.ssrn.com/abstract=4372516https://papers.ssrn.com/abstract=4372516 (last visited Mar 19, 2025).

145. https://www.cnbc.com/2016/05/17/automated-company-raises-equivalent-of-120-million-in-digital-currency.html; Grimmelmann *All Smart Contracts* 17-18

146. Quinn DuPont, *Experiments in Algorithmic Governance: A History and Ethnography of "The DAO," a Failed Decentralized Autonomous Organization*, *in* Bitcoin and Beyond (2017) at 158; https://www.cnbc.com/2016/05/17/automated-company-raises-equivalent-of-120-million-in-digital-currency.html (quoting DAO founder Simon Jentzsch)

147. DuPont 160.

148. Jentzsch whitepaper, DECENTRALIZED AUTONOMOUS ORGANIZATION TO AUTOMATE GOVERNANCE. One scholar calls this position, "the code is the contract." Adam J. Kolber, *Not-So-Smart Blockchain Contracts and Artificial Responsibility*, 21 Stan. Tech. L. Rev. 198 (2018); https://qz.com/730004/everything-you-need-to-know-about-the-ethereum-hard-fork ("the DAO had an ambitious goal—to build a humanless venture capital firm that would allow the investors to make all the decisions

or add any additional obligations or guarantees beyond those set forth in The DAO's code."[149]

Shortly after the DAO's debut, however, an unknown party exploited a bug in its code and managed to siphon away tens of millions of dollars in Ether to a contract under the attacker's control.[150] Was this maneuver a natural and appropriate exercise in governance-by-code? Or was it theft that demanded redress? In the aftermath of the exploit, participants in Ethereum-related communities took both sides.[151] As the hack unfolded, influential Ethereum developers met in a chat to decide what to do, and they successfully pressured exchanges to halt Ethereum trading.[152] Ultimately, the Ethereum blockchain was *forked* into two different chains: one that unwound the DAO hack, and another ("Ethereum Classic") that did not.[153] A majority of the Ethereum community has chosen to adhere to the version of the blockchain that unwound the hack.[154]

The DAO hack illustrates that even in the most technologically constrained environments, the authority of a given remains a social fact rather than a bare technological truth. When the Ethereum community disagreed about the effect of a technically permissible transaction, *social* governance mechanisms–rather than purely technological rules–took over to determine the extent to which the different possible interpretations of the DAO hack would govern future ordering. Put another way, the Ethereum fork illustrates that cyberlibertarian exit projects always *themselves* admit of the possibility of exit. And exit remains a political process–even if the system from which exit is sought was designed to be post-political.

E. Free Culture

Cyberlibertarians also sought exit from an intellectual property regime that they viewed as increasingly censorial and ill-suited to the digital age. An early-1990s Barlow polemic, *Selling Wine Without Bottles: The Economy of*

through smart contracts. There would be no leaders, no authorities. Only rules coded by humans, and executed by computer protocols.")

149.

150. grimmelmann all smart contracts at 18; https://qz.com/730004/everything-you-need-to-know-about-the-ethereum-hard-fork.

151. Kolber 202 ("Even though some purists themselves stood to lose much of their investment in TheDAO, they were so committed to the autonomy of machines running smart contracts that they preferred to lose their money than violate what they took to be a core principle of the Ethereum platform"); DuPont 164

152. DuPont 164.

153. Grimmelmann, *All Smart Contracts Are Ambiguous*, at 18-19.

154. *Id.*

Mind on the Global Net, characterizes copyright law as both a practical impossibility and a normative ill in an age of a World Wide Web. Barlow's practical argument is that copyright protects *physical* manifestations of intellectual effort: "Copyright worked well because, Gutenberg notwithstanding, it was hard to make a book," and books themselves were hard to reproduce once manufactured.[155] But digital expression cannot be regulated in the same way because it transcends the materiality of books and CDs and instead "exist[s] either as pure thought or something very much like thought."[156] Copyright is intractable, the thinking goes, because networking technology has made reproduction and retransmission trivially easy and thus undermined the tangibility that held the property system together.[157]

Barlow's practical argument against copyright slides subtly into a more important normative argument against it. Because expressive works no longer need to be tangible, he says, post-digital copyright is in effect an impermissible claim to own pure ideas[158]–and an institution of idea ownership is a threat to free thought. "The greatest constraint on your future liberties," Barlow writes, "may come not from government but from corporate legal departments laboring to protect by force what can no longer be protected by practical efficiency or general social consent."[159] The normative argument against copyright is that in the digital era, it amounts to a protectionist censorship regime with no legitimate mandate.

The free-culture position came to be a tentpole of cyberlibertarianism. Influential commentators like Cory Doctorow and Larry Lessig (among many, many others) advocated against copyright expansion, and prominent advocacy groups like the Electronic Frontier Foundation adopted the same position. Disparate constituencies united in opposition to strong IP rights. In 2012, for example, grassroots advocates, nonprofits like Wikipedia, and tech companies like Twitter, Facebook, and Google all joined forces to oppose anti-piracy legislation that was pending in Congress under the acronym SOPA/PIPA (for the Protect IP Act and the Stop Online Piracy Act).[160]. Indeed, of the examples we discuss in this essay, the "free culture" movement has been perhaps the clearest synthesis of both communalism and individualism in the cyberlibertarian community. Communalists play a far larger role in the free-culture movement than they do in, say, the seasteading or crypto communities. A linchpin of free culture is Wikipedia, which is premised on a commit-

155. Barlow 9-10.
156. Barlow Selling Wine without Bottles at 10
157. See id. at 10-13
158. Barlow 13
159. Barlow 11-12.
160. *See, e.g.*, Golumbia 32-36

ment to materials unencumbered by copyright and to a moderation structure that–at least in theory[161]–allows all community members to contribute to editorial work. At the same time, the general tenets of free culture–at least, insofar as they repudiate private rights to control information–are also what underlie anarchocapitalist information markets like Timothy May's hypothetical BlackNet.

In the past, the free-culture position could unite those with entrepreneurial-libertarian tendencies and those with democratic-communalist tendencies. As the SOPA/PIPA fracas illustrated, the two camps could agree on hot-button issues of the early 2000s. For instance, copyright law threatened both YouTube's viability as a business and its users' ability to consume and create the broadest possible range of expressive content. A free-culture position limiting YouTube's liability for infringing content could thus please technology entrepreneurs and communal-creativity advocates alike. As of this writing, however, the cyberlibertarian free-culture coalition is losing cohesion. Those who view IP as an impediment to free enterprise are peeling away from those who view it as an impediment to semiotic democracy. The tech-entrepreneur position on generative AI, for example, is hostile to any copyright entitlements that might restrict the training of AI models.[162] By contrast, communalist spaces–even ones open to the public–may be far warier of generative AI training. When StackOverflow announced a partnership with OpenAI, contributors to the site attempted to delete their posts to prevent their use as training data without the attribution or compensation they believed were due.[163] Increasingly, too, individualistic cyber-entrepreneurs are bristling at the democracy that free-culture communities have realized online. Cyberlibertarian capitalists have taken to maligning Wikipedia. In a tweet from late 2024, Elon Musk quoted a conservative X account's report of Wikipedia's DEI spending and wrote, "Stop donating to Wokepedia until they restore balance to their editing authority."[164]

Much like experiments in territorial exit, experiments in free culture are not immune from governance challenges. Wikipedia in particular illustrates the pressures that large organizations face to bureaucratize. Wikipedia was founded on an ethic of openness and democracy, and its freewheeling early

161. cite sources on wikipedia moderation problems

162. e.g. andreessen horowitz comments to copyright office

163. *See, e.g.*, https://meta.stackexchange.com/questions/399619/our-partnership-with-openai; https://www.wired.com/story/stack-overflow-users-openai-revolt/ ;https://www.tomshardware.com/tech-industry/artificial-intelligence/stack-overflow-bans-users-en-masse-for-rebelling-against-openai-partnership-users-banned

164. https://x.com/elonmusk/status/1871443771424116954

years were relatively democratic and anarchic.[165] Scholars have observed, however, that Wikipedia has become a sprawling, hierarchical bureaucracy; at least one article calls it a "self-organizing bureaucracy."[166] And in recent years, Wikipedia's bureaucracy has been a target of critics. Detractors from the right argue that the site's moderation bureaucracy institutionalizes an improper liberal bias.[167] Detractors from the left argue that the site's hierarchical structure and moderating customs exclude marginalized contributors.[168]

The growth of Wikipedia neatly illustrates the divergence of the cultural influences that converged at the birth of cyberlibertarianism. Up through Wikipedia's adolescence, the "free culture" mantra could unite both hippie communalists and Silicon Valley industrialists. Developments since then, however, have eroded common ground on the concepts of "free" and of "culture." Organizational freedom–at least in the sense of organizational freewheelingness–diminished as Wikipedia's communalism tended towards bureaucracy. Moreover, interested parties disagree sharply about what "free" means. For the entrepreneurial-libertarian side of the spectrum, the focus is on *gratis* use of Wikipedia's corpus to train commercial AI. On the communalist side of the spectrum, the focus is more on discursive freedom than on free enterprise, and some interested parties worry that training AI on the Wikipedia corpus will undermine the community's sustainability[169] and/or contravene the attribution norms built into the platform.[170] There is similar disagreement about "culture": the substantive editorial content that Wikipedia's editors have composed is, increasingly, condemned by prominent cyberlibertarian tech entrepreneurs.

Similarly, cyberlibertarian attitudes on intellectual property in general may now be coming unglued. The anarchists, presumably, continue to view intellectual property as inappropriate coercion and to favor cypherpunk informational anarchy. But the libertarians have identified the type of property rights they depend on, and have come out in favor of their aggressive protection. Dominant AI firms, for example, seek the same sort of exit from the *copyright* regime that Barlow and his disciples touted. But they are not all-in

165. needs more cites, should be quotation. *See also generally* Omer Benjakob & Stephen Harrison, *From Anarchy to Wikiality, Glaring Bias to Good Cop: Press Coverage of Wikipedia's First Two Decades* (2020), https://direct.mit.edu/books/book/4956/chapter/1879815/From-Anarchy-to-Wikiality-Glaring-Bias-to-Good-Cop (last visited Mar 30, 2025).

166. Emiel Rijshouwer, Uitermark ,Justus & Willem and de Koster, *Wikipedia: A Self-Organizing Bureaucracy*, 26 Information, Communication & Society 1285 (2023).

167. needs cite

168. needs cite

169. NEEDS CITE

170. NEEDS CITE

on cypherpunk information anarchy. Today's AI firms embrace intellectual property law when it comes to protecting their trade secrets, and they complain when competitors allegedly extract proprietary information from their models to develop competing products.[171] The AI firms' position here does not, in fact, depart much from their libertarian forebears'. Ayn Rand, for example, was a staunch proponent of copyright protection, notwithstanding its status as a state-imposed restraint on freedom.[172]

F. The Network State

A contemporary fusion of nearly all of the principles and techniques discussed above is the "Network State," the venture capitalist Balaji Srinivasan's idea for a sovereign "social network with a moral innovation, a sense of national consciousness, a recognized founder, a capacity for collective action, an in-person level of civility, an integrated cryptocurrency, a consensual government limited by a social smart contract, an archipelago of crowdfunded physical territories, a virtual capital, and an on-chain census that proves a large enough population, income, and real-estate footprint to attain a measure of diplomatic recognition."[173] The basis for the Network State is the paramount importance that Srinivasan attaches to exit. In an influential 2013 speech, "Silicon Valley's Ultimate Exit," Srinivasan presented exit as foundational to both the United States and the success of its high-technology industry. Through exit, he explained, citizens of "economic basket case[]" countries were able to pursue opportunities in the United States.[174] Similarly, exit enabled enterprising technology founders to secede from large, sluggish firms and market more successful products. (The example Srinivasan cites is the "Traitorous Eight," who founded Fairchild Semiconductor.)[175] Exit represents "alternatives. It's a meta-concept that subsumes competition, forking, founding, and physical emigration."[176]

For Srinivasan, exit is simultaneously apolitical and politically indispensable. Exit "means giving people tools to reduce influence of bad policies on their lives *without getting involved in politics*: the tools to peacefully opt out."[177] Yet in the same speech, Srinivasan asserted that "a crucial additional feature for democracy is to reduce the barrier to exit, to make democratic

171. deepseek

172. *See, e.g.*, Ayn Rand, *Capitalism: The Unknown Ideal* 130-132, excerpted at `https://aynrandlexicon.com/lexicon/patents_and_copyrights.html`.

173. Balaji Network State

174. cite

175. cite

176. cite

177. cite (emphasis added)

voice more powerful, more successful."[178] On Srinivasan's framing, exit is dynamic policymaking free from politics. Certain policy regimes gain adoption not because people effectuate those regimes politically, but because self-interested actors pledge to adhere to those policies for some interval of time.

It is technology, not politics, that will permit networked rivals to nation-state governance to emerge. Writes Srinivasan, "Bitcoin, web3, the metaverse, remote work, mobile, and the internet allow people to exit legacy arrangements and form new groups more easily than at any time in the recent past."[179] His vision is that new technologies will allow governance to depend not on physical location within national boundaries, but rather on one's choice to opt into, or out of, networked governance arrangements. In Srinivasan's Network State, the citizenry is "at-will": constituents are constituents because they have chosen to be. Srivinvasan touts the Network State as "far more democratic than the coercive governance structures of the legacy system, because they're all opt-in. 100% of members of a network union or network state have chosen to be there, rather than 51% imposing their will on a reluctant 49%. Network states are models for 100% democracy, not merely 51% democracy."[180]

The premise, in turn, of an "at-will" citizenry is technology that enables at-will exit from a given governance arrangement. Like the cypherpunks, Srinivasan asserts that strong "[e]ncryption . . . limits governments in a way no legislation can" because it constrains nation-states' ability to coerce behavior and to monitor communications and transactions.[181] Cryptocurrency does the same: it offers "money the State can't easily freeze, seize, ban, or print."[182] Peer-to-peer communications infrastructure allows affinity, rather than geographical proximity, to structure association, and remote-work and virtual-reality technologies make presence in any particular place less important.[183]

For Srinivasan, "bureaucracy" represents the "degenerat[e]" stage of a state.[184] The on-demand exit that Network States promise is to produce competitive regulatory innovation in the same way that an entrepreneur might exit from a creaky, bureaucratic firm.[185] A "network state understands that in the absence of innovation, its at-will citizens will leave for more advanced

178. cite
179. Srinivasan 205.
180. Srinivasan 252.
181. Srinivasan 51-52.
182. Srinivasan 52.
183. Srinivasan 53.
184. Srinivasan 222.
185. needs cite to Network State

jurisdictions in the same way people left Blockbuster for Netflix."[186] Srinivasan does posit that the Network State could help "political progressives" opt into additional regulations that they like.[187] But the real draw of the Network State is letting people opt *out* of regulation that they don't like. A recurring example of burdensome or counterproductive regulation is the FDA.[188] The FDA, Srinivasan asserts, has "caused many more deaths" than it has prevented.[189] The regulatory successes–the Thalidomides denied approval–are outweighed, he argues, by the paralysis that has delayed or prevented lifesaving drugs' arrival on the market.[190]

A Network State could establish an "FDA-free zone" more solicitous of what Srinivasan calls "personal medical sovereignty."[191] With "diplomatic recognition, [a Network State] could . . . take the existing American codebase and add one crucial new feature: the absolute right for anyone to buy or sell any medical product without third party interference."[192] Medical technologies are a particular preoccupation for Srinivasan (as they seemed to be for Thiel when it came to seasteading[193]): "for certain kinds of technologies – particularly transformative biotech like life extension – we need new jurisdictions with fundamentally different levels of risk tolerance, and clear-eyed consent by all who opt in."[194]

Would-be Network States are beginning to crop up. "Startup cities" and "special economic zones" with names like Próspera[195], Zuzalu[196], and Praxis[197] advertise themselves as pro-business regulatory havens in the argot of Srinivasan's Network State monograph. Some of these projects have a foothold in real, physical space–one of Srinivasan's desiderata for a mature Network State.[198] These outposts resemble "Charter Cities," a scheme proposed by the economist Paul Romer whereby zones of uninhabited land would incorporate under site-specific, commerce-friendly rules to attract investment.[199] When it comes to the success of Network States, the jury is still out. But the

186. Srinivasan 253.
187. Srinivasan 251-52.
188. Srinivasan 41.
189. Srinivasan 41.
190. Srinivasan 21, 41.
191. Srinivasan 140.
192. Srinivasan 140.
193. Cross-ref to Thiel quote about new medical treatments, *supra*
194. Srinivasan 240.
195. https://www.prospera.co/en
196. `https://www.palladiummag.com/2023/10/06/why-i-built-zuzalu`
197. `https://www.praxisnation.com`
198.
199. https://www.youtube.com/watch?v=mSHBma0Ithk

lineage of exit projects that precedes them suggests that they may not be an antidote to governance. Romer's enthusiasm for Charter Cities waned, and he later observed,

> I suspect that people who say that they want to get rid of government know that you can't. What some of these people seem to be saying is that "I want to set up a new government in which I get to be dictator." Or my friends and I get to be the aristocracy.[200]

Indeed, some proponents of more extreme cyberlibertarian exit schemes overtly acknowledge the creation of an aristocracy as the *point* of their endeavors.[201] And as with other aristocracies, these undertakings will have to speedrun governance-based dispute resolution if they ever reach a maturity that demands it.

III. Actual Legal History

This section will discuss how the English legal system evolved from personalist decisionmaking to bureaucratic legalism, and how this evolutoion parallels the development of governance structures on Internet platforms.

IV. Governance

The vignettes above showed a number of libertarian attempts to exit from statist, bureaucratic governance. Their success varied. None of the projects, however, has yet achieved the level of exit that its proponents aspired, or still aspire, to realize. In this section, we suggest a reason why: libertarian exit projects fall short because they face strong pressures to adopt precisely the bureaucratic structures of governance that they seek to eliminate. Despite their opposition to dominant state-governance paradigms, libertarian projects are still in some sense *governance* projects. And governance projects face evolutionary pressure to adopt bureaucratic structures, or else risk death.

Our argument requires defining two terms at the outset. First, by "governance," we refer to "mechanisms that structure participation in a community to facilitate cooperation and prevent abuse."[202] Second, by "bureaucracy," we refer to a mode of governance characterized by "a hierarchy of professional

200. `https://paulromer.net/interview-on-urbanization-charter-cities-and-growth-threory/`; *see also* Craib 232

201. *Cf., e.g.*, Yarvin.

202. Grimmelmann, Virtues of Moderation, 47. NB that the quoted text appears in a definition of "moderation" rather than governance.

administrators following clearly defined procedures in a routine and organized manner."[203] Not all governance is bureaucratic. A cult leader or warlord, for example, might govern without respect for bureaucracy's routinized procedures.[204] A self-governing anarchist community, meanwhile, might eschew the specialized, administrative hierarchy that characterizes bureaucracy and instead govern by absolute consensus.[205].

The touchstone reference in any discussion of bureaucratic governance is the German sociologist Max Weber, who set out an exhaustive theory of bureaucracy in the early 20th century. Weber studied what he called "domination," a word that he would use interchangeably with "authority" and which denotes "the probability that a command with a given specific content will be obeyed by a given group of persons."[206] Domination isn't just raw power; the concept "implies a minimum of voluntary compliance" that could derive from anything from sheer habit to rational self-interest.[207] Weber's concept of "domination" or "authority" encompasses what we call "governance."[208] Weber identifies three ideal types of authority: (1) legal authority, which rests on rationalism and "a belief in the legality of enacted rules and the right of those elevated to authority under such rules to issue commands"; (2) traditional authority, which derives from "belief in the sanctity of immemorial traditions and the legitimacy of those exercising authority under them"; and (3) charismatic authority, which follows from belief in the authority of an "exceptional . . . individual person" and "the normative patterns or order revealed or ordained by him."[209]

Weber equates the proliferation of bureaucracy with "[t]he development of modern forms of organizations in all fields," from organized religion, to the state, to private enterprise, and even to social clubs.[210] This he attributes to bureaucracy's inherent superiority as an administrative mode. Bureaucracy,

203. Oxford English Dictionary, s.v. "bureaucracy (n.), sense 3," December 2024, https://doi.org/10.1093/OED/2579500088.

204. But a despot might rely on bureaucracy. *See* Henry Jacoby, The Bureaucratization of the World, discussing French monarch and Richelieu.

205. *See, e.g.*, David Flood, https://www.sapiens.org/culture/anarchism-democracy/

206. Economy and Society 53

207. Economy and Society 212

208. Other scholarship similarly invokes "governance" in a sense that tracks Weber's definition of domination and his proviso concerning voluntary compliance. *See, e.g.*, Anne Mette Kjaer, Governance (2004) at 12 ("We have defined governance broadly as the setting, application and enforcement of the rules of the game. Such rules need to be legitimated if they are to be stable. If rules are upheld through the use of raw force or arbitrary power, individuals are likely to resist, either through exit or through violent action.")

209. Economy and Society 215

210. Economy and Society 223

he asserts, is "from a purely technical point of view, capable of attaining the highest degree of efficiency and is in this sense formally the most rational known means of exercising authority over human beings."* Weber links the formality of a system of domination to the type of authority that dominates the system. Personalist systems, he notes, "have usually created a nonformal type of law."[211] Bureaucracies, by contrast, are formalistic.[212] Similarly, Weber notes that bureaucratization and legalism go hand in hand: bureaucracy is a feature of the exercise of legal authority.[213] [214]

Each of the libertarian exit projects that we surveyed is or was in some form anti-bureaucratic. The governance challenges they faced illustrate the practical pressures to bureaucratize.

A. Governance is Inevitable

Cyberlibertarianism married the hostility to bureaucratic hierarchy that both New Communalist counterculture and laissez-faire economic libertarianism shared. The cyberlibertarian exit schemes surveyed above were designed to escape bureaucratic management. And yet, in spite of exit schemes' ambitions, bureaucratic governance structures threatened to appear when human society needed ordering and human disputes needed resolution.

In 1916, the zoologist Lancelot Alexander Borradaile identified a phenomenon that he called "carcinization": the recurrent evolutionary process by which an "animal assumes the general habit of body of a crab."[215] Indeed, more recent research suggests that the evolutionary record contains at least five independent instances of crustaceans evolving crab-like morphology.[216]

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211. Economy and Scoiety 811

212. Economy and Societ 226

213. Weber Economy and Society 220

214. Max Weber, Max Weber: Selections in Translation (Walter Garrison Runciman ed., Reprinted ed. 1995) at 352 ("In the Middle Ages, the acceptance of Roman Law went together with the bureaucratization of the administration of justice: the gradual introduction of rationally trained specialists to replace the earlier procedures tied to tradition or irrational preconceptions."). But note that Weber says English law was relatively *unbureaucratic* at least in contrast with German.

215. Borradaile, L A. "PART II.-PORCELLANOPAGURUS: AN INSTANCE OF CARCINIZATION," n.d. 121, *available at* `https://research.nhm.org/pdfs/31940/31940.pdf`; see also `https://www.npr.org/2024/09/18/1200121022/crab-evolution-science-history`

216. `https://www.scientificamerican.com/article/why-do-animals-keep-evolving-into-crabs/`; `https://www.scientificamerican.com/article/why-do-animals-keep-evolving-into-crabs/`; Wolfe, Joanna M., Javier Luque, and Heather D. Bracken-Grissom. "How to Become a Crab: Phenotypic

Different species' independent convergence on these traits suggests that the constitutive characteristics of crabbiness—like a flat shell and a tucked-in tail—confer serious survival benefits (biologists posit advantages in locomotion and predator-avoidance, for instance).[217] In other words, across different circumstances, evolutionary pressures have encouraged the development of crab-like traits.

The history of content moderation suggests that a process like carcinization is at work. In numerous independent instances, platforms develop similar content-moderation apparatuses to contend with the pressures of networked communication. What's more, these content-moderation apparatuses bear a striking resemblance to the affordances that earlier social projects also developed in order to mediate interpersonal disputes: they bear the hallmarks of bureaucratic legalism.

Weber remarked, "the purely bureaucratic type of administrative organization . . . is, from a purely technical point of view, capable of attaining the highest degree of efficiency and is in this sense formally the most rational known means of exercising authority over human beings. It is superior to any other form in precision, in stability, in the stringency of its discipline, and in its reliability."[218] We offer a slight twist on Weber's observation: bureaucracy is to human social institutions what the crab is to organismic morphology. Just as evolutionary pressures led many different organisms to converge on the crab-like form, so too have evolutionary pressures led human institutions to converge on bureaucratic legalism. It may or may not be what peak performance looks like. It certainly isn't glamorous. But bureaucracy is a durable and resilient organizational mode for dealing with the human disputes that recur under governance regimes of all varieties. It may be possible to eschew bureaucracy—as many past and present exit schemes endeavor to do—but attempts to do so will face strong pressures to adopt precisely the organizational structures they seek to repudiate.

As an example, consider social media. The evolution of social-media platforms has tended to follow what Mike Masnick terms the "Content-Moderation Learning Curve." Early on, a given platform or community might not view content moderation as a particularly difficult problem, or it might oppose moderation on principle. But as Masnick explains, the community learns

Constraints on a Recurring Body Plan." *BioEssays* 43, no. 5 (2021): 2100020. https://doi.org/10.1002/bies.202100020.

217. Wolfe, Joanna M., Javier Luque, and Heather D. Bracken-Grissom. "How to Become a Crab: Phenotypic Constraints on a Recurring Body Plan." *BioEssays* 43, no. 5 (2021): 2100020. https://doi.org/10.1002/bies.202100020.

218. Max Weber, Economy and Society: Two Volume Set, with a New Foreword by Guenther Roth (Guenther Roth & Claus Wittich eds., 2013) at 223.

sooner or later that, "There is no such thing as not moderating content."[219] For one, domestic and foreign law will require some forms of content moderation – and, more fundamentally, "without content moderation, your site gets filled with junk, spam, and abuse."[220]

Governance techniques emerge even in digital spaces defined by their hostility to governance.[221] As platforms purporting to dispense with oppressive or tendentious content-moderation practices have emerged, Masnick has tracked their adoption of the procedures they fundamentally oppose. Take Parler, a social network that became popular in 2020 with conservative and libertarian users who disagreed with with larger platforms' approaches to content moderation.[222] According to its CEO, Parler's premise was "no censorship,"[223] and conservative politicians promoted it as an alternative to mainstream social networks that "do[es]n't censor or shadow ban."[224] One of Parler's backers explained that the site was established to address the "ever increasing tyranny and hubris of our tech overlords" by "provid[ing] a neutral platform for free speech, as our founders intended."[225] Parler's "stated mission was to create an online platform where content is governed by the principles of the First Amendment."[226]

Yet, as Masnick chronicles, Parler soon came to regard hosting all speech lawful under the First Amendment as unappealing or untenable. After being overrun by users who sought to test (or mock) its free-speech commitments, Parler began moderating posts that were vulgar, pornographic, rude, and/or disparaging towards the Parler service–notwithstanding that as a general matter, the First Amendment protects such expression.[227] Masnick has documented similar moves towards moderation at other social-media startups ostensibly committed to unfettered speech, from Gab to Gettr to Truth Social.[228] Commitments not to censor speech quickly bend to permit restric-

219. `https://www.techdirt.com/2020/06/26/just-like-every-other-platform-parler-will-take-down-`
220. `https://www.techdirt.com/2020/06/26/just-like-every-other-platform-parler-will-take-down-`
221. *See, e.g.*, Parler, https://www.parler.com/ ("Parler is a social media platform built to champion free speech and protect user privacy. With minimal content moderation, Parler fosters an open environment where users can freely express their views.").
222. https://www.wsj.com/articles/parler-backed-by-mercer-family-makes-play-for-conservatives-mad-at-facebook-twitter-11605382430
223. https://www.cnbc.com/2020/06/27/parler-ceo-wants-liberal-to-join-the-pro-trump-crowd-on-the-app.html
224. `https://x.com/Jim_Jordan/status/1276606238491643909`
225. id.
226. https://www.wired.com/story/parler-bans-new-chapter-free-speech-wars/
227. https://www.techdirt.com/2020/07/01/parler-speedruns-content-moderation-learning-curve-goes-we-allow-everything-to-were-good-censors-days/
228. https://www.techdirt.com/2022/08/03/study-says-trumps-truth-social-is-much-more-aggressive-and-much-more-arbitrary-in-moderating-content/. Similarly, a

tions on speech that is unlawful domestically or internationally, or that renders the platform less usable due to harassment or spam, and so on. [229] And as moderation's remit increases, needs for staffing and policy guidance correspondingly increase.[230]

The vertiginous content-moderation learning curve that recent anti-censorship startups have faced is in fact a "speedrun"[231] of lessons in content moderation that more established social media platforms learned over years. In *The New Governors*, Kate Klonick explains that dominant social media platforms had both "economic[] and normative[] motivat[ion] to reflect the democratic culture and free speech expectations of their users," and that they accordingly developed governance procedures to assert those norms.[232] Klonick describes how, over time, those policies evolved from broad standards to reticulated rules.[233] In their early days, platforms like Facebook and YouTube had little user-facing documentation about moderation policies and minimal guidance for content moderators themselves. One early Facebook employee whom Klonick interviewed described the early moderation ethic as, "if it makes you feel bad in your gut, then go ahead and take it down."[234]

Over time, Facebook and YouTube's policies grew from open-ended standards into particularized rules.[235] Concomitantly, the teams of personnel tasked with enforcing those rules expanded and diversified: what had been a team of "homogenous college students" in Palo Alto was, in 2009, outsourced to teams in Hyderabad.[236] (In 2024, Facebook's parent company, Meta, reported a "team working on safety and security . . . of around 40,000 peo-

study comparing so-called "alt-tech" platforms Parler and Bitchute to Twitter and YouTube found that the four platforms' terms shared several "core sections: content restrictions (fraud, inauthentic behaviour, violence, and incitement to violence); enforcement actions (account and post removals, suppression, strike allotments, and content labels), and methods of moderation (paid content moderators)." https://foredialogue.pubpub.org/pub/bsh5uhll/release/1?from=21420&to=21687

229. https://www.techdirt.com/2022/11/02/hey-elon-let-me-help-you-speed-run-the-content-moderation-learning-curve/

230. Cf. id.

231. A "speedrun" refers to "the act of playing a video game, or section of a video game, with the goal of completing it as fast as possible." https://en.wikipedia.org/wiki/Speedrunning. Cf. also https://www.techdirt.com/2022/11/02/hey-elon-let-me-help-you-speed-run-the-content-moderation-learning-curve/

232. Klonick 1603.

233. Klonick.

234. Klonick 1631

235. Klonick 1630-35.

236. Klonick 1633-35.

ple, "[a]bout 15,000" of whom are "content reviewers.")[237] The rules themselves expanded, too: long, precise codifications displaced gut-feeling takedown policy.* Even Twitter, the self-proclaimed "free speech wing of the free speech party"*, ultimately developed more hands-on approaches to content moderation.[238]

Klonick documents that content-moderation policies became systematized not only to meet the demands of an expanding and increasingly globalized user base, but also because of the platforms' "increased reliance on teams of human moderators with diverse backgrounds."[239] Growth and diversification in the user base occasioned growth and diversification in the moderation team. Larger teams, in turn, needed formal, bureaucratized structures to carry out their mission.

Klonick's account suggests that even if, or perhaps especially if, one's motivations are strictly economic, the optimal level of content moderation is not zero. While too much content moderation can limit users' engagement with a site, too little moderation drives communities away.* And, in order to meet the demands of content moderation at scale, online platforms adopt increasingly bureaucratic moderation structures.

B. Governance is Bureaucracy

Like it or not, governance tends to evolve towards the bureaucratic form. Weber casts bureaucracy as *inherently* superior to other forms of organized governance. "Experience tends universally to show," he writes,

> that the purely bureaucratic type of administrative organization . . . is, from a purely technical point of view, capable of attaining the highest degree of efficiency and is in this sense formally the most rational known means of exercising authority over human beings. It is superior to any other form in precision, in stability, in the stringency of its discipline, and in its reliability. It thus makes possible a particularly high degree of calculability of results for the heads of the organization and for those acting in relation to it. It is finally superior both in intensive efficiency and in the scope of its operations, and is formally capable of application to all kinds of administrative tasks.[240]

237. https://transparency.meta.com/sr/dsa-transparency-report-apr2024-facebook at 22

238. Klonick 1626-27.

239. Klonick 1635

240. Max Weber, Economy and Society: Two Volume Set, with a New Foreword by Guenther Roth (Guenther Roth & Claus Wittich eds., 2013) at 223.

Weber may or may not be right; our argument doesn't require us to adopt a claim as strong as his. Instead, we suggest merely that bureaucracy *tends to emerge* as a product of the governance pressures that human organizations commonly face. Whether or not the crab (or the bureaucracy) *really is* the fittest form out there, there sure seem to be many cases of carcinization (and bureaucratization).

Weber also theorized how bureaucracies emerge. We offer the outline of this theory below and note parallels to the lifecycle of certain cyberlibertarian projects.

1. Personalism and Charismatic Authority

Weber identified a common process by which bureaucracies emerge, which he termed "the routinization of charisma."[241] By this, Weber refers to *charismatic* leadership, a form of organization distinct from both patriarchal and bureaucratic organization.[242] Charismatic leadership lacks formal structures of power or organization; it is the polar opposite of bureaucracy.[243] Charismatic authority revolves around a charismatic leader. In its pure form, it has "no established administrative organs," only "agents who have been provided with charismatic authority by their chief or who process charisma of their own."[244] Equally importantly, decisionmaking in a charismatic organization is *personalist* and *informal*: under charismatic authority, "[t]here is no system of formal rules, of abstract legal principles, and hence no process of rational judicial decision oriented to them. But equally there is no legal wisdom oriented to judicial precedent. Formally concrete judgments are newly created from case to case and are originally regarded as divine judgments and revelations."[245],[246],[247],[248]

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241. NEEDS CITE

242. Weber [[]]

243. Weber selections 227; *see also* Economy and Society 244 ("[C]harismatic authority is sharply opposed to rational, and particularly bureaucratic, authority . . . .").

244. Economy and Society 243

245. Economy and Society 243

246. Kadijustice (Weber) an important reference point here. Weber notes that "kadi-justice," used to denote actual Islamic jurisprudence, is historically inaccurate. Weber, Selections in Translation, at 230. See also Intisar Rabb on Kadijustice.

247. Cf. Frankfurter, upset that SCOTUS was (in his view) violating waiver and party-presentation rules by deciding a case on a ground not argued in proceedings below or to SCOTUS: "We do not sit like a kadi under a tree dispensing justice according to considerations of individual expediency." Terminiello v. Chicago, 337 U.S. 1, 11 (1949) (Frankfurter, J., dissenting)

248. Meier Dan-Cohen notes the continuum from arbitration (mediation of disputes between discrete persons based on past events) to regulation (structuring behavior and

A number of prominent online platforms began as personalist enterprises under leaders who possessed varying levels of charisma. Much like how early English jurisprudence vested the king with decisionmaking responsibility, the early days of Facebook and YouTube saw key executives making everyday decisions about content moderation.[249] Even as these platforms developed more formalized moderation mechanisms, charismatic leaders would occasionally reassert themselves to veto particular decisions.[250]

The recent shock of Twitter's sudden reversion to charismatic personalism illustrates the extent to which professionalized, bureaucratic content moderation had become the norm on major platforms. Elon Musk–whom scholars before us have identified as a charismatic leader in the Weberian sense[251]–took control of the site formerly known as Twitter in large part because he objected to bureaucratized content moderation.[252] Under his leadership, the platform veered towards personalism. The journalists Kate Conger and Ryan Mac write, "Musk reigned like a king. He wanted to make all the decisions, no matter how small, and delegated only to the handful of loyalists who could translate his sometimes vague demands into action."* It was not uncommon for Musk personally to override the content-moderation decisions of established, specialized teams. For instance, Musk overrode the platform's brand safety team concerning the conservative *Daily Wire*'s advertisements for a documentary about gender, which Twitter employees had blocked on the ground that it "violated the company's hateful conduct policies because of issues around misgendering."[253] Conger and Mac write that after learning of the decision,

> Musk pulled an about-face. With right-wing accounts ramping up the pressure and shattering his image as a free speech hero, he declared that the ruling had been 'a mistake by many people at Twitter' and added that the video was 'definitely allowed.'

expectations of society, looking forward). Meir Dan-Cohen, *Bureaucratic Organizations and the Theory of Adjudication*, 85 Colum. L. Rev. 1 (1985).

249. NEEDS CITE, maybe youtube v. viacom record?

250. NEEDS EXAMPLES

251. See, e.g., Dominik Zelinsky, *'To the Moon!': Elon Musk, Dogecoin, and the Political Economy of Charismatic Leadership*, 17 Journal of Cultural Economy 297 (2024); Sverre Spoelstra, *How Valuable Is Elon Musk's 'Charismatic' Leadership? That's the 56 Billion Dollar Question*, The Conversation (2024), http://theconversation.com/how-valuable-is-elon-musks-charismatic-leadership-thats-the-56-billion-dollar-question-220914 (last visited Mar 21, 2025).

252. NEEDS CITES

253. Mac Conger 408-09; see also `https://www.nbcnews.com/tech/social-media/ella-irwin-twitter-elon-musk-x-trust-safety-rcna120294`.

> 'Whether or not you agree with using someone's preferred pronouns, not doing so is at most rude and certainly breaks no laws,' Musk tweeted.[254]

Twitter's head of trust and safety, its head of brand safety, and other trust-and-safety employees "quit in protest" of Musk's personalist override.[255] No less an example of Musk's personalist rule at Twitter was his insistence upon boosting engagement with his own tweets. Conger and Mac relate that "Musk became obsessed with the falling engagement on his tweets"and called a meeting to address his decreasing engagement on the platform.[256] When an engineer suggested that the decreased engagement might owe not to a problem with the Twitter algorithm but rather to diminished interest in Musk, Musk fired the engineer.[257] Engineers ended up hard-coding Twitter's algorithm to promote Musk's tweets specifically, a change that was rolled back when, to Musk's apparent displeasure, it became publicly known.[258]

Note that recent headlines suggest that Musk's personalism is being routinized through technology: reporting indicates that X's Grok AI model "check[s]Elon Musk's views before answering" users' queries.[259]

2. The Routinization of Charisma: from Personalism to Bureaucracy

Weber notes that charismatic authority "cannot remain stable, but becomes either traditionalized or rationalized, or a combination of both."[260] This trajectory captures the development of the English common law surveyed above: hands-on, personalist administration by a charismatic leader evolved into legalistic bureaucracy, a system that incorporates both the rationalism of legal argumentation and the traditionalism of precedent-based jurisprudence.[261]

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254. Mac Conger 408-09; see also `https://www.nbcnews.com/tech/social-media/ella-irwin-twitter-elon-musk-x-trust-safety-rcna120294`.

255. Mac Conger 408-09; see also `https://www.nbcnews.com/tech/social-media/ella-irwin-twitter-elon-musk-x-trust-safety-rcna120294`.

256. Mac Conger 394-95

257. conger mac 395

258. `https://www.businessinsider.com/elon-musk-comments-name-found-twitter-source-code-republi`

259. https://arstechnica.com/information-technology/2025/07/new-grok-ai-model-surprises-experts-by-checking-elon-musks-views-before-answering/

260. Economy and Society 246

261. Indeed, Weber mentions this general phenomenon. Economy and Society 809 ("The more rational the administrative machinery of the princes or hierarchs became, that is, the greater the extent to which administrative 'officials' were used in the exercise of the power, the greater was the likelihood that the legal procedure would also become 'rational' both in form and substance. To the extent to which the rationality of the organization of authority increased, irrational forms of procedure were eliminated and

The instability of charismatic leadership is not limited to state governance, either. Personalism tends towards bureaucracy in business as it does in public administration. [262] And attempts to exit corporate bureaucracy under a charismatic startup founder are themselves liable to degenerate into bureaucracies. Weber observes, "[w]hen those subject to bureaucratic control seek to escape the influence of the existing bureaucratic apparatus, this is normally possible only by creating an organization of their own *which is equally subject to bureaucratization*."[263]

In this regard, Weber's analysis of enterprise bears a surprising resemblance to that of none other than Balaji Srinivasan. Although their substantive attitudes about bureaucracy differ dramatically, they describe the same governance patterns. Srinivasan posits a "libertarian cycle," which begins when a "a libertarian(ish) founder leaves the stifling bureaucracy of a big company to start their own."[264] If the company succeeds, the founder has to invest in stability over agility, and what emerges is "a bureaucracy that impersonalizes the company and turns every employee into an interchangeable part."[265] This impersonal bureaucracy attracts "parasites," uncommitted employees whose "entitlement . . . eventually causes collapse of the company's business model."[266] Then, when a "stifled employee" of the once-scrappy company "decides to exit the stultifying bureaucracy and become a libertarian(ish) founder," the cycle restarts.[267] Weber–though far more sanguine about bureaucracy as a managerial system–also praises "the capitalist entrepreneur" in terms that sound almost like Silicon Valley VC-speak: "superior to bureaucracy in the knowledge of techniques and facts is only the capitalist entrepreneur, within his own sphere of interest."[268]

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the substantive law was systematized, i.e., the law as a whole was rationalized."). *See also* Economy and Society 263 (noting that belief in legal authority depends in part upon tradition, as belief in legality "comes to be established and habitual")

262. Markoff identifies different explanations for this phenomenon: that the administrative system had "a *need* which may be satisfied by one or another aspect of bureaucratization"; that bureaucratization was the product of a power struggle wherein an elite sought to gain or preserve power through bureacratic organization; and that certain social structures are conducive to bureaucratization. John Markoff, *Governmental Bureaucratization: General Processes and an Anomalous Case*, 17 Comparative Studies in Society and History 479, 480 (1975).

263. Economy and Society 224 (emphasis added).

264. Srinivasan 113.

265. Srinivasan 114.

266. id.

267. id.

268. Economy and Society 225

C. Technological Determinism Meets Deterministic Technology

Just as the evolutionary pressures of survival have produced a panoply of crab-like creatures, the evolutionary pressures of governance have produced a lot of bureaucracies. If we believe Weber, this may owe to bureaucracy's intrinsic superiority to other forms of organization. But even if we don't accept bureaucracy as inherently superior or teleologically prefigured–any more than the crab is–the prominence of bureaucratization nevertheless suggests that the bureaucratic form offers some effective responses to recurring governance challenges. If that's true, then bureaucracy is itself a technology that, while not *determined*, is perhaps *encouraged* by the emergence of a familiar suite of problems in interpersonal, intragroup, and intergroup relations.

A larger view of the phenomenon of cyberlibertarian exit fantasies, then, is that they represent a collision of technological determinist views with the *deterministic technology* of bureaucracy. Exit fantasies postulate that technical innovations will vitiate the need for intrusive governance. But governance is itself a technology that responds to the ineluctable pressures of interpersonal/intergroup relations.[269] The fantasy is that particular technological arrangements will do away with the need for governance constraints. To invoke Marc Andreessen's invocation of Thomas Sowell, it is an Unconstrained Vision of *technology*'s ability to "perfect" humankind.[270] But even the most deterministic technologies run up against the constraints of the humans they're meant to serve, and when that chafing happens, humans face the same pressures that have caused them to develop governance bureaucracies in analogous contexts.

Conclusion

TK CONCLUSION

269. Even Sowell's Constrained Vision seems to acknowledge this - add cite and cross-ref to Andreessen

270. *see* Andreessen, *The Techno-Optimist Manifesto*, `https://a16z.com/the-techno-optimist-manifesto/`