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PEER-REVIEWED JOURNAL ON THE INTERNET

Aligning the ideals of free software and free knowledge with the South African Freedom Charter
by Bob Jolliffe

Abstract

When Amartya Sen visited South Africa in 2004 he made the observation that Nelson Mandela's long walk to freedom began on African soil. He implicitly recognised that we have in South Africa a long tradition of interpreting, articulating and striving for an ideal of freedom, which reflects the aspiration of the broad masses of our people. The clearest articulation of this struggle was the Freedom Charter, adopted by the congress of the people in Kliptown in 1955.

The free software movement (and related efforts in the fields of science and culture) draws upon a tradition of freedom rooted in an American libertarian tradition. In this short paper, I underline the importance of aligning efforts to promote free software and free culture with the rich existing tradition embodied in the South African Freedom Charter. Doing so may require a reinterpretation, re–imagining and even perhaps a re–vocabularising of the digital commons if it is to succeed as as a social, technical and political project in South Africa.

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Background

I was introduced to free software by way of an Yggdrasil Linux CD–ROM in 1993. I think it was version 0.99. At the time I was based in Harare, Zimbabwe. The armed struggle was drawing to a close, following a unilateral suspension of activities in August 1990. Those of us who had been involved in this freedom struggle — for that is what it was — were now almost in a position to start to contemplate a new life for ourselves, a normal life, a free life. The process leading up to the eventual inauguration of Nelson Mandela on 10 May 1994 was a difficult one, as a range of forces attempted to derail the negotiations. Nevertheless history ran its course, driven by an unwavering and principled commitment to freedom, coupled with willingness to compromise, by the large majority of South Africans.

I mention these events to illustrate the context in which I came across free software. Like many of us at the time, I was deeply engaged in understanding what freedom meant, or could mean. I was intrigued by the manifesto of the Free Software Foundation (FSF) as expressed in the GNU General Public Licence (see http://www.gnu.org/copyleft/gpl.html). It seemed quite disconnected from our own struggle (which had little to do with access to source code) and yet, by holding up the banner of freedom, it was making a point about software which went beyond mere "stuff" and talked about the social relations surrounding its use, exchange and development.

Much has been written about the "freedom debate", specifically the debate between the FSF and the Open Source movement. Indeed much of that debate has been carried out through the issues of *First Monday*. For example, most recently Mathias Klang [1] gave a thoughtful critique of the philosophical approaches and limitations of the two movements. In many developing countries, South Africa included, there has been a tendency to keep some distance from this debate and instead focus more on the developmental, transformative potential of the software as a vehicle to "bridge the digital divide", stimulate local software production, leap–frog innovation into the "digital age" etc. The combined term FOSS (Free Open Source Software) is commonly used, for example by the Free Open Source Software Foundation for Africa (FOSSFA). Whereas the "free" aspect is thus acknowledged, most of the justificatory narrative for promoting FOSS

in developing countries has emphasised the instrumental benefits of the Open Source aspect, at least at the level of policy–makers, governments and development agencies. This downplaying of the freedom aspect of FOSS was also apparent in the deliberations of the WSIS conference in Tunis. The Tunis commitment mentions FOSS in paragraph 29 [2] as follows:

> *Our conviction* is that governments, the private sector, civil society, the scientific and academic community, and users can utilize various technologies and licensing models, including those developed under proprietary schemes and those developed under open–source and free modalities, in accordance with their interests and with the need to have reliable services and implement effective programmes for their people. Taking into account the importance of proprietary software in the markets of the countries, *we reiterate* the need to encourage and foster collaborative development, interoperative platforms and free and open–source software, in ways that reflect the possibilities of different software models, notably for education, science and digital inclusion programmes. [emphasis in original]

Whereas it was conceived that FOSS might have a role in delivering reliable and effective systems, particularly in non–commercial sectors, clearly the proprietary corporations represented at the WSIS had no interest in playing up the freedom aspect of FOSS.

Perhaps one reason for former colonies themselves not embracing the freedom aspect of FOSS in Africa might be attributed to a general suspicion of doctrines of freedom emanating from Europe and the United States. This was most strongly articulated by the influential West Indian writer, Franz Fanon, in his conclusion to the "The wretched of the Earth" [3]:

> That same Europe where they were never done talking of Man, and where they never stopped proclaiming that they were only anxious for the welfare of Man: today we know with what sufferings humanity has paid for every one of their triumphs of the mind.

Whether what amounts to Fanon's total rejection of the European libertarian project is justified is another debate. It has some appeal and we see recurrent echoes of his thinking in, for example, Shiv Visvanathan's scathing critique [4] of Castells' celebration of the Information Society.

It is reasonable for all of us to examine ideas which come along with this "freedom" tag attached and determine whether it is the kind of freedom which can really make us free.

At the very least there is a sense that we should be cautious. We see the dominant forces in the U.S. today actively promoting the spread of "freedom" around the globe — whether in the corridors of power of the World Trade Organisation, through bilateral "free" trade agreements, or the direct imposition of "freedom" through regime change, for example in Iraq. It is reasonable for all of us to examine ideas which come along with this "freedom" tag attached and determine whether it is the kind of freedom which can really make us free.

I referred to Amartya Sen in the abstract because Sen has argued forcibly for the expansion of individual freedoms and capabilities as both an instrumental means of achieving human development as well as an end of human development itself [5]. If we are to apply the logic of Sen in the context of FOSS advocacy — and I believe there is some merit in doing this — we are surely obliged to revisit the freedom aspect of FOSS. And crucially, in light of Sen's remarks in South Africa [6], we are invited to do so by looking at our own experience and articulation of freedom.

The South African Freedom Charter and its legacy

The National Action Council (NAC) was formed in 1954 with the task of organising a "congress of the people" to take place the following the year. The NAC was composed of representatives of the organisations which made up the Congress Alliance (the African National Congress, South African Congress of Trade Unions, Congress of Democrats, Indian Congress and the Coloured People's Congress). A leaflet issued by the NAC entitled "Call to the Congress of the People" [7] began with the following words

> We call the people of South Africa, black and white — Let us speak together of Freedom.

This began the process of gathering input from around the country leading to the drafting of the Freedom Charter. It was

adopted by the Congress of the People at Kliptown in June 1955. The Charter projected a vision of freedom in a post–Apartheid South Africa. It became, and to a certain extent remains, a guiding document of the ANC and its alliance partners.

The Freedom Charter [8] outlined a series of demands and principles under the following headings:

1. The People shall govern;
2. All national groups shall have equal rights;
3. The people shall share in the countries wealth;
4. The land shall be shared among those who who work it;
5. All shall be equal before the law;
6. All shall enjoy human rights;
7. There shall be work and security;
8. The doors of learning and culture shall be opened;
9. There shall be housing, security and comfort; and,
10. There shall be peace and friendship.

For the following 50 years, when people in South Africa spoke of freedom, it was this Freedom Charter which most articulated the vision. Whereas there is a strong defence of individual liberties in the document, looking at it in terms of Berlin's [9] positive and negative freedoms, we see that there is also a strong emphasis on positive freedoms, *i.e.* creating enabling factors which develop capacities. This emphasis reflects what was a strong socialist influence within the congress alliance. Not surprisingly then, it is most apparent in its dealing with the limitations of private property rights. The burning contemporary questions of "intellectual property" were not on the agenda in 1955, but the clauses on sharing of wealth and land, the right to work and the opening of doors to learning and culture provide a strong motivation for supporting the development and promotion of FOSS and other forms of common cultural wealth.

During the constitutional negotiations of the early 1990's the tradition of the Freedom Charter was behind the negotiating position of the ANC and its allies as the final terms of the SA Constitution were hammered out. It has been noted that the single biggest point of contention in the negotiations concerned the property clause in the Bill of Rights [10]. Whereas a classic liberal formulation would have taken the right to private property to be a fundamental and inalienable right, in the South African negotiations such a simple formulation was problematic. To put in place a constitution which simply legitimised the existing, highly skewed, racially distributed property regime would have been unacceptable to the ANC negotiators. What emerged was a compromise. Whereas the right to protection of private property is enshrined, provision is made for a process of redistribution (which favours compensation over expropriation) to redress inequities of the past. It is also interesting, and perhaps relevant to note, that the Bill of Rights also specifically makes provision for common ownership and makes clear that the property provisions do not apply only to land. Whereas the common ownership provision was directed at the recognition and restoration of communal land rights (traditional and otherwise) it raises interesting possibilities for the constitutional protection of common rights in intangible property.

The constitutional protection of private intellectual property rights, where such protection falls into conflict with other provisions of the constitution, has already been contested in the well–cited action [11] by pharmaceutical companies against the Minister of Health. In this case the pharmaceutical companies challenged the provisions of the Medicines Act. These provisions aimed at making essential patented drugs available at an affordable price, particularly to people living with HIV/AIDS. At virtually the same time as the action was brought, the United States Trade Representative put South Africa on the Special 301 Watch list in May 1998, acting in terms of the United States Trade Act of 1974 [12]. This was a clear warning that defending the freedoms articulated in the Freedom Charter and the Constitution (in this case access to health care) was going to be increasingly difficult in the face of increasing globalisation of "intellectual property" interests.

In May 2006 we celebrated the tenth anniversary of the adoption of the South African Constitution [13]. That constitution, like the Freedom Charter before it, provides a transformational platform for South African society. It is both an expression of the freedom that was achieved in 1994, and a tool to achieve greater freedom and social transformation. As I will argue below, to attempt to promote the ideas of freedom in the context of free software in South Africa, without reference to the history and tools by which our freedom is articulated, is to sell ourselves short of its potential.

Free software — Free as in what exactly?

Microsoft sponsored the lunch at an O'Reilly Open Source conference (OSCON) in 2003. In what was a particularly inspired piece of witty marketing they placed a sign over the cafeteria which read "Free as in lunch :-)" [14]. They were of course poking fun at the "free as in speech" rather than "free as in beer" analogy used by the Free Software Foundation (FSF) to explain the term "free" as applied to free software.

As I referred above, the freedom debate has been given fairly exhaustive treatment elsewhere and it is not my intention to go over all that ground again here. The conclusions reached by Mathias Klang are fairly typical. In summary Klang concludes that the freedom proposed by the FSF is not "truly free" because of the limitations imposed by the GNU General Public Licence (GPL). The approach of the Open Source movement also falls short by abandoning the rhetoric of freedom altogether. It seems to be an impasse from which there has been little movement for quite a number of years. It has simply become an easy target for parody as illustrated by Microsoft's attempt at humour.

From the perspective of so–called developing countries it is critical that we don't lose sight of the freedom rationale behind free software. If we take Sen's approach of development as freedom, then we are obliged to find ways of placing freedom at the centre of our development efforts, including those efforts which refer to software and other information and knowledge structures.

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In my view Klang's conclusions above are largely correct, but I think he may be wrong to base his concerns about the GPL on an absolute criteria of "true" freedom. He argues that "true freedom would allow all to do as they pleased" which is in the end a very limited and abstract view of freedom. It is not useful to consider freedom in this way. Freedom, like institutions of marriage, property and politics, is essentially a socially constructed set of capabilities and limitations reflecting our aspirations and yearnings to build a better life. Its conceptualisations are rooted in our histories and experiences.

For this reason I don't believe that it is so important to accept the FSF philosophy of freedom in its entirety in order to derive benefit from its underlying message, to swallow it whole as it were [15]. What is important to learn from the FSF is that when Richard Stallman puts the issue of freedom stubbornly on the table and refuses to take it off, he is right. Whether we choose to agree fully, partially or even not at all with his conception of freedom is quite another issue. The important thing that Stallman recognised is that there are important issues relating to freedom in the production, use and distribution of software. And as software has begun to touch all of our lives on a scale that was probably even unimaginable at the time that the first version of the GPL was drafted, those issues have become more important.

Taking forward the freedom debate in South Africa

If the freedom debate has reached a bit of an impasse and we are convinced that freedom is important (particularly in the context of development) then the challenge becomes how to reinvigorate that debate so that it might move us further on a trajectory of expanding freedom in South Africa.

One rather obvious problem with the terms free software and free culture is that software (and culture) cannot be free, at least not in the sense of freedom. Only people can be free. Indeed there is very little about software itself which would necessarily distinguish it from proprietary equivalents. Free software licences demarcate various freedoms and limitations. If we acknowledge that the important thing about free software (and I can include open source in this) is not that the software is free, but rather that it in some ways allows people to be more free, then we can start to explore this emancipatory potential in a sensible way.

One rather obvious problem with the terms free software and free culture is that software (and culture) cannot be free, at least not in the sense of freedom. Only people can be free.

An important question in the context of a country like South Africa, where only a minority ever accesses a computer, relates to which people enjoy these freedoms. Mobilising simply around the rights and freedoms of what is effectively a tiny group of computer programmers has a limited potential. But this is not to say that this group is not critically important — the case must be made that in expanding the freedoms of this group we are expanding our national capacities and development potential in general. Whereas current policy documents on FOSS from government and other agencies (*e.g.* the WSIS Tunis commitment) recognize free software they say little about freedom of people. I would argue that more emphasis should be placed on expanding and encouraging the freedoms of programmers, particularly mobilising around the Freedom Charter clause that "the doors of learning and culture shall be open".

Another important aspect of our freedom (which is not part of the classic "freedom debate") is freedom in the sense of national self–determination (or anti–imperialism if you will). Again, in the words of the Freedom Charter, "the people shall govern". This aspect of the potential of FOSS is becoming increasingly important as the global arrangements of intellectual property governance start to settle into a pattern of one–way flows of capital, reinforced by multilateral agreements such as TRIPS as well as bilateral free trade agreements. Whereas governments may be enticed into generous agreements with the multinational software vendors at present, by ignoring the lack of freedom in such agreements, they fail to take into account the effects of the longer–term bondage. Will we be paying rent for the next 50, 100 or 200 years? Avoiding such bondage scenarios is not simply a matter of short–term economic advantage, or effectiveness and reliability of systems. It is also profoundly related to our freedom.

The threat to national self–determination can be clearly be seen in the filing of patents in African countries. The WIPO annual report for 2001 [16] reveals some quite staggering activity. For example, of the 150 000 patent applications filed into each of the offices of Lesotho, Malawi and Mozambique, only one was by a Lesotho resident, two by Malawi residents and one by a Mozambican. Armed with a self–proclaimed belief that intellectual property rights are absolute, and supported by a barrage of tools of coercion, developed countries are claiming property rights across Africa at a staggering rate. And what we have seen in South Africa is that, regardless of what laws a country has (excluding computer programs and business methods from patentability, for example), the tide of patent applications is growing. James Boyle [17] makes a compelling analogy with the enclosure movement of seventeenth century Europe — in our case the intellectual land grab is more aptly compared with colonial land appropriation. That these patents have a stifling effect on our ability to develop our own capacities, for example in terms of FOSS development, is fundamentally a question of freedom. That governments are seemingly powerless to resist, rides roughshod over the first demand of the Freedom Charter: the people shall govern.

In conclusion, I reiterate that, contrary to much that has been said about free software, free culture, free science and open access and its applicability to developing countries, the rationale of freedom is as important, if not more so, in our context as the rationales of low cost, efficiency and security. But the terms in which we articulate this freedom must go beyond and escape the narrow impasse of the "freedom debate" as it currently stands in the FOSS world, and also embed itself in our broader historical narrative of freedom as articulated in the Freedom Charter. Each year we celebrate Freedom Day in South Africa, the anniversary of our liberation. Each year we also celebrate Software Freedom Day. The two events make no reference to one another. One or other, or both, groups of celebrants is missing the boat.

About the author

Bob is a senior lecturer in computer science at the University of South Africa.
E–mail: jollirm [at] unisa [dot] ac [dot] za

Notes

1. Mathias Klang, 2005. "Free software and open source: The freedom debate and its consequences," *First Monday*, volume 10, number 3 (March), at http://www.firstmonday.org/issues/issue10_3/klang/, accessed 7 July 2006.

2. World Summit on the Information Society (WSIS), 2005. "Tunis commitment" (document WSIS–05/TUNIS/DOC/7–E), at http://www.itu.int/wsis/docs2/tunis/off/7.html, accessed 7 July 2006.

3. Frantz Fanon, 1961. "The wretched of the Earth", at http://www.marxists.org/subject/africa/fanon/conclusion.htm, accessed 7 July 2006.

4. Shiv Visvanathan, 2001. "Knowledge and information in the network society," at http://www.india-seminar.com/2001/503/503%20shiv%20visvanathan.htm, accessed 7 July 2006.

5. Amartya Sen, 1999. *Development as freedom*. Oxford: Oxford University Press.

6. Amartya Sen, 2004. "Graduation address, Rhodes University" (30 July), at http://www.sarpn.org.za/documents/d0000888/P1004-Amartya_Sen2004.pdf, accessed 7 July 2006.

7. Julie Frederikse, 1990. *The unbreakable thread: Non–racialism in South Africa*. Johannesburg: Ravan Press.

8. "The Freedom Charter," at http://www.anc.org.za/ancdocs/history/charter.html, accessed 7 July 2006.

9. Isaiah Berlin, 1969. "Two concepts of liberty," In: Isaiah Berlin. *Four essays on liberty*. London: Oxford University Press. Reissued in 2002 as *Liberty: Incorporating four essays on liberty*. Oxford : Oxford University Press.

10. D.L. Carey Miller with Anne Pope, 2000, *Land title in South Africa*. Kenwyn: Juta & Co.

11. Canadian HIV/AIDS Legal Network, "Victory in South Africa, but the struggle continues," at http://www.aidslaw.ca/Maincontent/issues/cts/updateSA.htm, accessed 7 July 2006.

12. See, for example, "Briefing document: Defending the Medicines Control Amendment Act," at http://www.afrol.com/Countries/South_Africa/documents/defend_medicine_act.htm, accessed 7 July 2006.

13. "Constitution of the Republic of South Africa 1996," at http://www.polity.org.za/html/govdocs/constitution/saconst.html?rebookmark=1, accessed 7 July 2006.

14. Robert Kaye, 2003. "OSCON: Microsoft lunch humor," at http://www.oreillynet.com/digitalmedia/blog/2003/07/oscon_microsoft_lunch_humor.html, accessed 7 July 2006.

15. The idea that prompted this paper came from my reaction to a group who were installing free software in computer labs for schools in South Africa. A condition of the donation was that the recipients accept the "philosophy" of free software. I believe this is wrong.

16. Available at http://www.wipo.int/about-wipo/en/report.html, accessed 7 July 2006.

17. James Boyle, 2003. "The second enclosure movement and the construction of the public domain," at http://www.law.duke.edu/journals/66LCPBoyle, accessed 7 July 2006.

Editorial history

Paper received 27 June 2006; accepted 7 July 2006.

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