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Review Article

Would John Stuart Mill Support or Reject Net Neutrality?

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Abstract

In this article, the philosophy of John Stuart Mill is applied to the notion of net neutrality. It is argued that Mill would support net neutrality, provided it does not come in conflict with the principles of capitalism. The essay posits that Mill would contend that net neutrality would be supported if it promoted the greatest good for the greatest number of people. On the other hand, Mill would be against net neutrality if it harmed others, particularly those individuals without market power. The article observed that Mill believed that the purpose of government is to ensure the welfare of the people. In general, the paper concludes that Mill would probably have supported net neutrality.

Keywords:
John Stuart Mill; Net Neutrality; Greatest Good For The Greatest Number; Capitalism; Market Power

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Introduction

This article is the second installment of an envisioned series of articles that explores net neutrality's philosophical basis and what philosophers would have argued if net neutrality had been an issue when they were alive. In the first installment, net neutrality was analyzed in depth. It was previously argued that John Rawls would support net neutrality because he would have contended that net neutrality was "both a fair and reasonable mechanism to ensure that justice is served, and the many are not sacrificed to the benefit of the few."[1] In the preceding article, the author argued that Rawls would probably change his opinions if the opponents to net neutrality presented logical and convincing reasons that maximized the benefits to the least advantaged. [2]

In this article, the theme of net neutrality is reexamined, but this time from John Stuart Mill's philosophical teachings. Here, it will be shown that Mill's position on net neutrality would depend on whether net neutrality came in conflict with his capitalist principles. It will also be shown that Mill would probably have supported net neutrality if it provided the greatest good to the greatest number of people. [3] Finally, it will be demonstrated that Mill's principle of not harming others, even the plebeians without market power, would work in favor of supporting net neutrality. [4] In other words, this essay attempts to show that Mill would be against net neutrality if such market interference promoted the good of the many. [5] It is to these ends that this article begins.

Net Neutrality

In this section, net neutrality is defined, and examples of net neutrality violations are provided to clarify what occurs when net neutrality is infringed. Finally, this section points out that in 2015, the Federal Communications Commission (FCC) reclassified the Internet from an information service to a common carrier.

What Is Net Neutrality?

According to Merriam-Webster's Dictionary, net neutrality is an "idea, principle, or requirement that Internet service providers should or must treat all Internet data as the same regardless of its kind, source, or destination."[6] The term "net neutrality" was coined in 2003 by Columbia University media law professor Tim Wu. [7] Net neutrality means that Internet service providers do not charge users differently based on application, attached equipment, content, method of communication, platform, or website. [8] Under the principle of net neutrality, Internet service providers cannot charge money, block, or slow down the transmission speed based on the website or the content that is being accessed. [9] Net neutrality regulations are also known as "common carrier" regulations, where a common carrier is a "company that offers communication services to the general public over land-wire, sea cable, mobile (cellular), point-to-point microwave, or satellite systems."[10] Net neutrality may block some customer services. For example, opt-in or opt-out services may be present on the end-users end, and filtering can be achieved locally, particularly when minors attempt to access sensitive or pornographic material. [11] Thus, the purpose of net neutrality regulations is to prevent misuse.

Examples of Net Neutrality Violations

An example of a net neutrality violation occurred when Comcast slowed down peer-to-peer file sharing uploads by employing fraudulent packets. [12] Comcast did not stop the blockage until the FCC legally ordered Comcast to cease. [13] Another example of a violation of net neutrality occurred in 2004 when Madison River Communications Corp. paid a $15,000 fine to the FCC for limiting access to Vonage by its customers. [14]

Third, AT&T was apprehended restricting user access to FaceTime by insisting electronically that only paid customers of AT&T shared data plans were able to use the product. [15] Finally, when users observed that Netflix and YouTube were playing slower than usual, Verizon Wireless conveniently remarked that it was testing its network, consistent with network neutrality rules and reasonable network management practices. [16]

Change of Status

In March 2015, the FCC reclassified Internet access as common carrier communication conducted by a public utility in its Open Internet Order. [17] Previously, Internet access was categorized as an information service. In December 2017, the FCC repealed in some measure the 2015 Open Internet Order, reclassifying Internet access for the second time as an information service. [18]

Types of Internet Discrimination

The following are the different types of discrimination that may occur when net neutrality is abolished: [19]

- Discrimination by Internet protocol;
- Discrimination by Internet protocol address;
- Discrimination favoring private networks;
- Discrimination favoring peering; and
- Discrimination favoring fast-loading websites.

Discrimination by Internet Protocol

Discrimination by Internet protocol (IP) is the act of promoting or obstructing Internet data packets based on the communication protocol being employed. [20] Today's dominant protocol is Internet protocol version 4 (IPv4) that is applied when accessing websites. [21] Because of the sheer volume of sites currently existing, Internet protocol version 6 (IPv6) was created to expand the number of available Internet protocol addresses. [22] A third Internet protocol used by videos transmitted over the Internet is the User Datagram protocol (UDP). [23] In contrast to IPv4 and IPv6, the UDP packets need not be received in the exact order in which they were sent. [24] A fourth protocol is the File Transfer protocol (FTP) that is used when sending and receiving files over the Internet. [25] If the FCC permits discrimination by Internet protocol, the Internet service providers can charge different transmission rates depending on which protocol is being employed.

The FCC sued Comcast for illegally preventing customers from employing BitTorrent, a popular file-sharing program. [26], [27] Although Comcast did not admit any wrongdoing, the company settled for $16 million. [28] A U.S. Court of Appeals overturned the District Court decision, ruling for Comcast. [29] Incredibly, in October 2011, *Measurement Lab* confirmed that Comcast had effectively immobilized the BitTorrent throttling procedures. [30]

Discrimination by IP Address

Each website on the Internet either has a unique IP address or is temporarily assigned by a router. [31] A router acts as a Dynamic Host Configuration Protocol (DHCP) server that assigns IP, Data Name Server (DNS), and default gateway addresses to all computers connected to the machine. [32] Some IP addresses are permanently assigned to specific websites. [33] For example, the IP address of ABCNews.com is 199.181.132.248. It is a fixed IP address. [34]

Suppose an Internet service provider was to discriminate based on IP address. What would be accomplished is that a user would pay a higher fee for accessing one IP address or website than the user would pay if he or she accessed another IP address or website. [35] The ease of billing IP addresses or websites would probably be classified based on the Internet service provider criteria. For example, non-profit educational institutions could be one category of IP addresses or websites. Online news websites such as ABC News or Reuters could be another category.

IP address discrimination occurs when Internet service providers want to promote their Internet services rather than their competition's Internet services. [36] For example, suppose the Internet service provider owned Fox News, and it desired to promote its conservative political perspective. In that case, it could charge its customers more money if they accessed MS NBC or the Huffington Post websites, both of which have a noticeably politically liberal or progressive persuasion. The problem with IP address discrimination is that it probably violates the Sherman Anti-Trust Act as amended because such behavior by an Internet service provider could be construed to be an example of predatory pricing and unfair

trade practices, both of which are illegal. [37], [38] These examples are only a few of the IP address discrimination possibilities. There are many more and depend only on human creativity.

Discrimination Favoring Private Networks

Discrimination favoring private networks occurs when Internet service providers discriminate based on what kinds of data are counted when calculating bandwidth caps. [39] For example, Comcast and Microsoft agreed users could television programs through the Xfinity application on their Xbox 360 box without hitting their bandwidth limit. [40] However, Comcast did not provide the same courtesy to Netflix, HBO Go, or Hulu because Comcast runs Xfinity for Xbox as a private Internet protocol network. [41] When one looks back at history, this is the same behavior that John D. Rockefeller (Oil Baron) used, with Cornelius Vanderbilt's help (Railroad Baron) to starve out his competition and create the Standard Oil Trust of the late 19th Century. [42]

Discrimination Favoring Peering

There is some disagreement regarding whether "peering" is a net neutrality issue. [43] Peering is a voluntary interconnection whose function is to exchange data between separate networks. In what is known as "settlement-free peering," "bill-and-keep," or "sender-keeps-all" peering, one party does not pay another party but generates revenue from only its customers. [44]

In 2014, Netflix signed an agreement with Comcast to improve its service quality by increasing transmission speeds. [45] In 2013, Netflix users experienced a 25 percent drop in their connection speeds. [46] After the contract was signed, Netflix users observed a 66 percent increase in performance. [47] Although Netflix came to a similar arrangement with Verizon, in 2014, the connection speed for DSL users connected to Netflix dropped to less than one megabit per second [48]. Netflix then displayed a message on its website indicating that users accessing Netflix via Verizon might experience prolonged connection speeds. [49] Verizon obtained a cease order against Netflix. A senior executive in Verizon probably had no objections to breaching the company's contract with Netflix. [50]

Discrimination Favoring Fast-Loading Websites

Because users have little or no tolerance for slow-loading websites, many individuals close the window in frustration when a site does not appear promptly. [51] Performance is the name of the game. In 2009, *Foster Research* discovered that online shoppers want the website to appear instantaneously. [52] Another study reported that a one-second delay in loading a site results in a 16 percent decline in customer satisfaction, 11 percent fewer hits, and a seven percent conversion loss. [53] For innovative startups who are introducing new technologies, a slow-loading website results in unnecessary market failure. [54] Consequently, large, more established organizations have a competitive advantage because of Internet performance rather than because the products and services are better. [55] The outcome is that large market shares are protected by collateral market forces, leaving the entrepreneur little opportunity to succeed. [56]

Utilitarianism and John Stuart Mill

In 1859, John Stuart Mill, an English philosopher, published *On Liberty*. [57] In this text, Mill formulated the relationship between liberty and authority. [58] Mill stressed the importance of individuality, which he thought formed the basis for higher happiness. [59] According to Mill, there are three fundamental liberties of individuals: legitimate objections to government interference and two maxims or principles that connect individuals to society. [60]

Liberties, Objections, and Maxims

According to Mill, the fundamental freedoms of individuals are: [61]

- The freedom to think and to emote, including the freedom of speech;
- The freedom to follow one's tastes (including immoral ones), provided no harm comes to others; and
- The freedom to unite with other people, presuming that the individuals are adults, there is no compulsion, and no harm comes to others.

Mill further wrote that the legitimate objections to government intrusion include: [62]

- When individuals act better than the government;
- When individuals benefit from a response even though the government is more qualified than the individual agents; and
- When government control overreaches or when government control ensures that individuals become dependent on government actions.

From Mill's perspective, the two principles that connect individuals to society are: [63]

- An individual is not accountable to society for his or her actions when this action only concerns himself or herself; and
- When the acts of an individual prejudice the interests of others, then and only then is an individual accountable to others, being subject to legal or social penalties.

Strengths and Weaknesses

The advantage of Mill's philosophy is his apparent disgust for tyranny, either in the form of the tyranny of government or worse, the "tyranny of the majority."[64] For Mill, the tyranny of government occurs through turbulent conditions of adversity and conflict, where a tyrannical government needs people to survive. [65] However, as civilization progressed and people were able to rule themselves, the tyranny of the majority came into the limelight. [66]

In Mill's opinion, the tyranny of the majority is worse than the tyranny of government because the oppression is not limited to the political arena. [67] Mill believed that the majority's opinions were the basis for societal rules or laws and are its only foundation. [68] The problem with a majority is that it may not be the correct opinion. [69] In contrast, Mill posited that the only reason why a government can rightfully restrict a person's liberty is to prevent others from being harmed. [70] An individual's right, either physical or moral, is insufficient. [71] A person is sovereign only over his mind and body. [72] This standard is predicated on utility, and when it is not useful, it can be disregarded. [73]

The strength of Mill's utilitarian position, also known as the "greatest happiness principle," lies in its applications. [74], [75] In economics, Mill believed that free markets were preferred to command markets or markets controlled by a government because markets run by governments are typically despotic. [76] Regarding preventing harm, Mill opined that a person should take steps to avoid injury rather than waiting for it to happen. [77] Mill was against taxation to deter personal actions because an increased cost is a prohibitive deed. [78] Mill took the position that first-time offenders of the law should be punished more harshly than repeat offenders because repeat offenders should be restricted from engaging in offensive behavior [79]. Mill believed that suicide was not permissible because an individual does not have the right to forfeit his or her freedom. [80] Finally, Mill was against public education because it has the potential to destroy the diversity of opinion [81].

John Stuart Mill and Net Neutrality

Mill believed in laissez-faire capitalism. [82] To put it succinctly, Mill would agree with the proposition that a government that governs least governs best. [83] The only caveat to this proposition is that a government should not harm, or achieve the least amount of harm, to its citizenry. [84] Regarding net neutrality, one could argue that Mill would propose that net neutrality is a problem best left to the market to decide. [85] With this blanket conclusion, Mill nuanced his libertarian leanings by pointing out that one should not harm others. [86]

One of the distinct features of laissez-faire capitalism is that there is the freedom to succeed, but there is also the freedom to prevent others from achieving. [87] This dialectical contradiction in capitalism leads one to frame the capitalist economic system as one giant *Monopoly* game by Parker Brothers, Inc., where the purpose of the game is to own all of the property on the board and bankrupt the competition. [88] In *Monopoly*, if one wants to call it a government, the government puts a player in jail if he or she lands on the first corner square after the square entitled, "Go." [89] The placement of the "Jail" square on the board is critical. It is conveniently placed to trap players at the beginning of their movement

around the board, or in real life, at the start of their economic climb to success. [90] Mill would probably wholeheartedly approve of the game of *Monopoly*. [91]

Even so, Mill's opinion of net neutrality could be nuanced by the five ways that it could be violated, as listed above. [92] It is possible that Mill could favor discrimination based on one type of discriminatory behavior, whereas he could be adamantly against a different kind of inequitable conduct. [93] This means that it is imperative that each prejudicial possibility should be analyzed in turn to determine Mill's position on this hotly contested issue. [94]

A Very Short Economic Aside

In economics, the law of supply and demand determines the price and the quantity of a good sold by a capitalist. [95] The supply curve is posited to be an upward-sloping curve. [96] whereas the demand curve is a downward-sloping curve. The intersection of the two curves is known as the equilibrium point. [97] If a line that is parallel to the vertical price axis is drawn down from the equilibrium point to the horizontal quantity axis, the equilibrium quantity is found. [98] If a line that is parallel to the horizontal quantity axis is drawn from the equilibrium point across to the vertical price axis, the equilibrium price is established. [99]

Economic and legal theory both allow for prices to change depending on the amount of quantity of a good that is purchased. [100] According to the law of demand, the more of a purchased commodity, the lower the price per unit. [101] This means that price and quantity discrimination based on market forces is perfectly acceptable, provided that the economic actors strictly follow the laws of supply and demand and do not use their market power to injure others. [102] Mill would more than likely embrace this proposition. [103]

Discrimination by Internet Protocol

Discrimination by internet protocol is the promoting or obstructing of Internet data packets depending on the communication protocol being used. Because an Internet service provider is a monopsonist (i.e., a supply-side monopolist), Mill would probably agree that the Internet service provider could garner monopoly profits by charging its customers higher prices depending on the Internet protocol employed. [104] However, Mill would probably be against such an action because the good of the few cannot supersede the good of the many. [105] For example, one price could be charged based on accessing a text-only website using IPv4 or IPv6. If a user wanted to see a YouTube video, he or she could be charged a different price because videos use the UDP protocol. A third price could be charged if a user downloaded or uploaded files using the FTP protocol. Finally, if a user were not actively accessing the Internet, a base price would be entirely appropriate. These scenarios work because individual users have no market power when it comes to dealing with large Internet service providers.

There is competition among Internet service providers, but most customers are individuals who possess little or no market power. [106] They are loath to change ISPs unless there is a compelling reason to do so. [107] Furthermore, users have no control over the Internet protocol being used when they access the Internet. [108] A user is concerned with employing a particular application, not with the innards of how Internet communication takes place. [109] Thus, Mill would probably be in favor of discrimination based on internet protocol.

Discrimination by IP Address

Discrimination by IP address is discrimination against website owners. [110] Some of these owners have bottomless pockets and would sue an Internet service provider that discriminated against them. [111] Hence, Mill would be against an Internet service provider that discriminated by the IP address. The reason is that such discrimination causes harm to another person. [112] In this case, the person at issue is not a natural person, but a legal person, or for a corporation, a legal construct. [113] However, if the harm was insignificant, say just a few pennies or a few dollars over the equilibrium price for an individual, it is hard to see how Mill would object, mainly if the price difference could be attributed to experiential differences in market conditions. [114]

Discrimination Favoring Private Networks

Mill could ascribe discrimination based on favoring private networks to technological limitations. [115], [116] In the Microsoft and Comcast example described above, the bandwidth caps were caused by bandwidth bounds that were established to ensure that utility was maximized for all Internet users. [117] In other words, the good of the many outweighed the good of the few. Mill might see that this bias should disappear with this form of discrimination as technology advances and removes the barrier. [118] Mill would probably be irritated if the technology eliminated the barrier. The company imposing the barrier conveniently forgot to eradicate the discrimination because the barrier's continued presence would harm an Internet service provider's customers. [119]

Discrimination Favoring Peering

The problem with discrimination via peering is similar to discrimination favoring private networks. [120] In both cases, individuals can be harmed by one party when it generates revenue from its customers and the customers of others. [121] In other words, Mill would be against this form of discrimination because of the harm experienced by others. [122] The Netflix and Verizon example is instructive, particularly when one party breaches a valid expressed contract. [123] As a laissez-faire capitalist who held the freedom to contract as sacrosanct, Mill would probably stand by Netflix's side, urging them to seek the justice that they seem to rightly deserve. [124]

Discrimination Favoring Fast-Loading Websites

Mill would probably approve of discrimination favoring fast-loading websites, provided that the bias resulted in lower consumer prices. [125] However, it should be remembered that an Internet service provider is a monopsonist and might be tempted to reap monopoly profits from swiftly loading websites. [126], [127] All a consumer knows is that a site loaded quickly on his or her computer. Suppose the monopoly premium charged by the Internet service provider was not detailed in a monthly bill to a consumer. In that case, the overcharge could be safely hidden in summary billing statements. [128] The only time that Mill would probably object is if a whistleblower revealed the overcharge to the public. [129] Otherwise, Mill, like any other consumer, would probably ignore the issue. [130]

Conclusion

In conclusion, Mill would be for some forms of discrimination and against others. [131] The structure of the discrimination and the circumstances surrounding the discrimination would determine Mill's position. [132] Overall, as a pre-libertarian and a laissez-faire capitalist, Mill would be against net neutrality when it butted heads with his capitalistic principles. [133] Mill would likely argue that capitalism provides the highest good for the greatest number of people. [134] The inherent problem with Mill's position is that the philosopher was a patrician who may not have understood that the purpose of a government is to ensure the welfare of the people. [135] According to Mill, the principle of not harming others is a principle that should be consistently applied to a wide variety of circumstances, even for the benefit of the plebeians without market power. [136] In Mill's fondest dreams, he might very well favor government intervention, provided that the market interference is to promote the good of the many, regardless of who the many are. [137] It is the way that Mill may want it to be. [138]

Competing Interests

The authors have declared that no competing interests exist.

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