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Abstract

The following essay examines the effects that neo-liberal policies have had on the democratic landscape in the context of the information age. It is argued that there is an inherent conflict of interest, where the infrastructure by which information necessary to the democratic process is increasingly controlled by for-profit corporations. The paper concludes that the introduction of a new group of information rights is necessary, in order to protect the individual liberties of citizens and to maintain a healthy public sphere.

KEYWORDS: Information rights, individual liberties, information society, digital divide, neoliberalism, re-regulation, telecommunication policy, free speech, digitalization, internet diffusion, public sphere, democracy, re-regulation, deregulation

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Citizenship is traditionally situated within the context of civil, political and social rights. Each set of rights corresponds to a particular social backdrop in which their development occurred. Civil rights began to develop in the 17th and 18th centuries allowing increasing numbers of individuals to secure their personal economic liberties in lieu of autocratic monarchies. The establishment of political rights accompanied the development of industrialization, urbanization and increased migration during the 19th century. Finally, during the 20th century social rights began to be recognized and entrenched constitutionally. Manuel Castells notes that the social backdrop is yet again in the midst of change, as North America shifts from an industrialized society to an informational one. The *digital revolution* as it is commonly referred to, is not unlike previous revolutions in its ability to realign social, economic and political structures of society. Jürgen Habermas has drawn attention to the essential relation between the structure of the public sphere and the cultural, social and political constitution of society. Given that the foundations of society have been irrevocably altered by the digitalization of information, it becomes necessary to rethink the dominant interpretations of what rights a citizen possesses. Thus, this paper will demonstrate the necessity for a new group of citizenry rights known as information rights.

One of the core values of liberal democracy is the significance placed upon freedom of speech. As Jack Balkin notes, “democratic culture is a culture in which individuals have a fair opportunity to participate in the forms of meaning making that constitute them as individuals” (Balkin, 2004:3). Traditionally, speech or communication between the citizenry occurred free of a mediator. However, with the digital revolution a new paradigm has evolved in which a growing number of communicative circumstances now take place outside of traditional modes of communication. In the work-place it is common to communicate with co-workers through instant messaging software and virtual meeting rooms. In the home, the computer, cell phone and a plethora of portable hand held devices are just some of the commercial products penetrating and absorbing the traditional modes of communication. These examples are indicative of the growing trend toward daily communication becoming digitalized. The distribution of such digital information is consequently becoming a key source of wealth in the commercial sector. It thus becomes apparent that the digital age has the potential to both enhance and destroy liberal democratic culture. Technological infrastructure can greatly expand the ability for an individual to participate in the realization of a truly democratic culture. Conversely the same technologies can impose methods of control by which democratic culture is destroyed (Balkin, 2004:5). Media companies, for instance, have fought government regulation of digital networks repeatedly in order to retain the ability to cultivate public opinion.

It is important to include a simulative component in defining what is meant by the term information society. Every society deals with information in some way. What differentiates the information society, when compared to the agrarian or industrial one is that information has become the main commodity and arbiter of value. In other words, the true power in the information society is no

longer held by the landed gentry, engineers or industrialists, but by management gurus, media barons or the owner of Microsoft (Bovens, 2002:319). The social significance of this particular power shift should not be readily dismissed. Consider the control of Internet Service Providers (ISPs) and their role in structuring an individual's online experience. ISPs such as AOL, often market the myth of the internet being nothing more than a chaotic jungle comprised of pornography, spam email and unbridled voyeurism. In this way the ISP markets the network to the consumer as a global product while paradoxically intruding on the user's online experience through structuration and customization (Patelis, 2002:97). Thus the Microsoft slogan of "Where do you want to go today?" is not simply a benign question. Rather, it is the false appearance of choice, which allows corporate entities to appropriate an individual citizen's interests in the pursuit of profit. In this way, the imagined exponential of digitalization actually empowers corporate interests over those of the individual, all the while speaking directly to the individual.

Digitalization with respect to media poses the threat of allowing a small number of individuals to shape public discourse and debate. One particular threat is that the concerns of the masses are ultimately ignored in favour of promoting the concerns of the wealthy (Balkin, 2004:28). Through the process of gate-keeping only select information, which is beneficial to media barons, is allowed to flow to the public. Finally, there is also the threat of the media oversimplifying and essentially transforming public debate into forms of entertainment and spectacle. As Balkin notes, "this demobilizes the public, leaving them less and less interested in focusing on important public issues of the day" (Balkin, 2004:29).

Having provided a contextual basis for the importance of information to liberal democracy this paper will now proceed with a justification for information rights. Immanuel Kant notes that for democracy to be considered valid there must exist a fully public communicative process unconstrained by unequal and distorted social and economic forces (Venturelli, 1998:52). In this view, information must be made increasingly public in terms of participatory access for citizens. In short, this view holds that monopolies of knowledge held by commercial entities serve to disenfranchise the citizen and social groups by limiting the real potential for knowledge growth.

The information society thus presents a problem for the legitimization of liberal democracy. The principles of democracy such as universal voting rights, majority rules, freedom of the press, assembly and opinion are guarantees of liberty. Yet increasingly the institutionalization of these rights are "biased in the direction of proprietary social interests" (Venturelli, 1998:53). Free speech and the protection of it only become valued as a function of increasing consumption. Balkin echoes this sentiment suggesting that, "[d]igital communications networks are held in private hands, increasingly by large media conglomerates who also hold interests in digital content production and who wish to sell their own goods and services and advertise the goods and services of others" (Venturelli, 1998:21). Rather than enhance democracy and the public sphere, the information society appears to produce counterproductive tendencies toward the legitimization of liberal democracy.

Consequently, the foundation upon which the citizen is viewed must be rethought if society wishes to reaffirm the ideals of liberal democracy. The traditional tenet on which classic, democratic citizenship is based in Western countries is the constitutional enshrinement of access to public information (Bovens, 2002:324). Typically, the process of voting is glorified when discussing democracy. However, the right to vote is ultimately nullified if the information available for public consumption is in some way manipulated to promote the interests of certain citizens or groups of citizens over those of others. It can be said that, prior to digitalization, not diffusing public information on a widespread basis could be justified in economic terms: making public documents available to the citizenry was simply too costly and inefficient. However, if modern technology can be utilized in a constructive manner rather than in a consumptive one, citizens could find themselves more empowered than ever. Theoretically, citizens could decide for themselves what information is relevant

and be able to input their views into a public forum for policy debate. This would allow for clear communication between elected representatives further empowering the citizenry and reducing the reliance on technocrat input.

Technological innovation on its own will not guarantee a universal network that promotes human rights, cultural expression and an unimpeded exchange of information. Furthermore, technological advancement in the absence of active government regulation seems to favour the growth of commercial expression (Venturelli, 1998:58). What becomes clear is that society cannot return to the static comfort of the pre-microchip years. The absence of political will to regulate the technological revolution ultimately means that the public become subject to the interests of the private sector; otherwise known as *reregulation*. Dwayne Winseck seconds this idea arguing “[w]hat needs to be seen is that the state plays a crucial role in constructing the ‘new’ political economy and is certainly not a neutral arbiter among competing interests” (Winseck, 1998:235). The hands off or *laissez-faire* approach to the protection of information conduits has a paradoxical relationship to the ideals of liberal democracy. Re-regulation is an inherently illiberal idea which threatens the autonomy of cultural self-determination and free speech. In other words, the development of e-commerce over the concerns of an informed citizenry did not just spontaneously occur. Korinna Patelis encapsulates the absurdity of deregulation (*reregulation*) with respect to the growth of the Internet with this apt analogy: “The Internet is like a tree out of whose trunk branches keep growing all the time. The way this tree grows is not accidental; it is dictated by international economic-political structures” (Patelis, 2002:93).

In other words, the tree branches that Patelis refers to are cultivated in order to favour certain interests. The deployment of the internet in an environment free of regulation has cost the citizen the right to be viewed as anything other than a consumer. Furthermore, if one is to examine the structure of informational exchange it is revealed that many lines of communication either pass through or conclude in the [United States] (Castells, 2000:413).

This demonstrates the inherent flaw in failing to take measures to regulate the technological revolution and the necessity of information rights. Traditional boundaries, including issues of national sovereignty and citizenry privacy rights, are in the process of being eroded with the US serving as the apex of the commercial information society. It thus becomes apparent that information channels, services and products are crucial social and economic goods in an information society on both a micro and macro level. Access to information in this way becomes the oxygen by which liberal democratic culture exists. Not only is the free exchange of information between public officials and the citizenry a necessity, but information channels between citizens must also exist. It is clear that those without access to information and information channels generally possess very little political, social or economic influence. Castells notes:

[d]ifferential timing in access to the power of technology for people, countries and regions is a critical source of inequality in our society. The switched off areas are culturally and spatially discontinuous: they are in the American inner cities or in the French banlieues, as much as the shanty towns of Africa or in the developed rural areas of China or India (Castells, 2000:33).

At a very basic level the disconnected individual runs a great risk of social marginalization. The dependence on digitalized modes of communication is demonstrated in Canada by the statistic that indicates that an average family unit spends “[...] 1.2% of their family income on basic telecom services, an amount similar to what they spend on electricity bills, education, health care and recreational pursuits” (Winseck, 1998:246).

Access to information thus becomes a question of social justice. This places the onus on public officials to come up with solutions to the issue of large groups of the population being structurally

incapable of gaining access to such facilities. A commonly used phrase that has entered public discourse is that of the *digital divide*. The term denotes the difference between information rich and information poor sections of the citizenry in the information society (Castells, 2000:135). According to the US Department of Commerce, the wealthy side of the gap is typified by two parent families having tertiary education levels, usually in the high income category and residing in urban communities, while the impoverished side of the gap is characterized by single parent families, the rural population and minorities (Oct 2000). According to the Digital Divide Network, there are 429 million people online globally, which represents 6% of the world's population, but of that number 41% reside in North America (2001). The digital divide can be viewed as a catalyst toward the further exacerbation of socioeconomic contrasts. The statistics presented above form a counterargument against continuing to adhere to a neo-liberal style of hands-off policy making with respect to new technologies such as interactive broadband mediums. Government can be said to have a first hand role in, "[...] inducing regressive tendencies by parceling out the public realm to concentrated proprietary governance" (Venturelli, 1998:65). By abstaining from protecting information conduits necessary to the operation of a healthy public realm, the rights of private capital are unduly benefited. With limited areas with which to express their views, the citizenry lose power to corporate interests.

Here the case can be made for the entrenchment of primary information rights. Balkin stipulates that what makes a culture democratic is not democratic rule but democratic participation. He states:

A democratic culture is valuable because it gives ordinary people a fair opportunity to participate in the creation and evolution of the process of meaning-making that shape them and become a part of them; a democratic culture is valuable because it gives ordinary people a say in the progress and development of the cultural forces that in turn produce them (Balkin, 2004:33).

Thus in theory these rights would allow citizens a direct claim on the government for concrete information in order to increase participatory rights. Not all snippets of governmental information need be recorded and made public. In the interests of privacy and defense only that information which is deemed crucial to the social functioning of the citizens need be made public. From the perspective of the state this could entail all information relevant to establishing the legal position of citizens. Policy rules, case law, zoning and results from public inquiries could all be examples of information that could be helpful in establishing the legal position of citizens. Furthermore, this could also extend to the policy drafting realm of government so that citizens could have a greater participatory role in policy rather than simply a reactionary one.

For obvious reasons the right of access to government information is not indefinite. There are clear limitations to what should and should not be accessible to the public. The government must be able to retain authority on what information is disseminated so as to maintain the legitimacy of the state. For example, rights to privacy dictate that governments curb access to certain details that could ultimately harm a citizen. Citizens and corporate interests must be able to rely on the state to not release certain types of information that would otherwise be damaging (Bhalla, 2003:327). In addition issues of national security would require protection as would certain types of economic information, such as pre-determined decisions to raise national interest rates.

In the ongoing move toward digitalization of information, it no longer becomes necessary to have physical possession of the information in order for it to be utilized. In other words, laws which were traditionally accessible by going down to city hall and requesting copies should now be easily accessible by dissemination over a digital medium. This would serve to counteract the problems involved with the physical accessibility of many countries' Freedom of Information Acts. In the United States, for example, information has haphazardly been made available, only after lengthy legal proceedings in which one demonstrates what the state considers to be a legitimate need for the in-

formation (US Dept. of Justice, 2003). Consequently there are often issues involving backlogs of requests in order to obtain the necessary documents. Privacy advocates argue that the placing such documents online will threaten individual privacy. However, this argument rests on the misleading assumption that having to actually go to the physical place of record will somehow act as a deterrent to those who wish to misuse such information (Campbell, 2003:36).

What becomes apparent in the aforementioned example is that access to information also involves a financial component. If the dissemination of information is provided on the basis of jurisprudence this inevitably adds a financial component to the accessibility of information. Ultimately this reduces the accessibility of information to a large portion of the population: the economically disadvantaged. In effect this produces a second class citizenry which inherently contradicts the ideals of liberal democracy. Ideally digitalization now presents opportunities to overcome previous constraints of previous time periods in which the accessibility of information was limited by the inefficiency of the medium in which the information was stored. Access to information should be available throughout the country and not necessarily centered in urban information-rich areas. The state must, in this regard, become an active player choosing to ensure the accessibility of digitalized information to the information impoverished, rather than choosing forbearance. This means that the state has a responsibility to ensuring just and reasonable rates of pricing. Furthermore, it means ensuring that access to necessary technological infrastructure is available to the citizen. Leaving the private sector to regulate public discourse will only further exacerbate information cleavages between citizens. Winseck echoes this sentiment suggesting:

[...] governments neither sit idly by as ‘night watchmen’ overseeing ‘free markets,’ nor do they single-handedly regulate the flow of historical events. In equal parts, states approve new constellations of power, while attempting to regulate excessive abuses of power (Winseck, 1998:322).

The democratic value of freedom of speech must be protected given that there has been a shift in the dominant modes of communication.

Additionally, access to information entails an educative responsibility on the state. The state must ensure that citizens possess the necessary skills needed to make use of information channels. General literacy as a core value of education must be reaffirmed in addition to the teaching of basic computing skills. These values are paramount to the protection of liberal democracy. As Balkin notes, “[a] healthy and well-functioning system of free expression depends on technologies of communication and a public ready and able to use those technologies to participate in the growth and development of culture” (Balkin, 2004:48).

Freedom of speech is constitutionally enshrined in Canada. However, the avenues of public discourse have been transferred from traditional modes of communication to digitalized ones. These new modes of communication are subject to commercial ideals first and foremost. The Internet encapsulates this idea as an orbiting network of communication which revolves around e-commerce. Freedom of speech, the centre-piece of liberal democracy is threatened by neo-liberal policies of forbearance. The right of freedom of speech is ultimately nullified if the apparatus used to support it are flawed. The liberty to speak will become increasingly less valuable if the technologies involving digital communication are increasingly biased against widespread individual participation (Balkin, 2004:48). Thus not only must the government seek to protect the avenues of communication from subjugation to corporate interest, but it must promote the values of free expression, popular participation and interactivity.

The social backdrop for the practice of liberal democracy has been irrevocably altered with the arrival of the digital age. The arrival of new technologies which transfer avenues of communication into digitalized formats present vast opportunities for the enhancement of liberal democracy. Con-

versely these same technologies present inherent risks. The policy of forbearance ultimately threatens to allow corporate interests to refeudalize the public sphere. Formal recognition of information rights can help to reclaim this public sphere from the private sector and legitimate the state in the digital age. Such protections would allow for greater citizen input into policy formation which would ultimately realign values with the public ideal, rather than the ideal of the technocrat. Constitutional recognition of information rights in the digital age can help to ensure that the information age does not produce a society in which access to information is a privilege reserved for a particular social class.

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