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The Changing Information Environment



When *Four Theories* was written, many U.S. newspapers carried ads for segregated housing, it was still legal in a number of states for a husband to divorce his wife for being a bad housekeeper, and no one had ever seen what the earth looked like from outer space.

A lot has changed since the days when Elvis Presley could be an iconoclast. We touched on some of these changes earlier—the civil rights movement, the collapse of the Soviet Union, the rise of intelligent broadband digitized networks that carry television, film, telephone, and computer data at the same time. Of course these changes are momentous. Perhaps they are in fact epochal and will transform our notions of normative theory. Perhaps not—liberalism survived the industrial revolution, in spite of the challenge posed by Marxism and other leftist critiques. The industrial revolution so transformed Western societies that earlier languages of natural rights and the easy equation of liberty and equality seemed archaic, but a notion of a free and lively arena of public discussion remained the center of normative press theory. Liberalism became neoliberalism but remained liberal after all. Is there reason to think that current changes will produce a more fundamental shift?

One way to approach this question is to focus on the key terms of thinking about the press in the modern West. For our purposes, the most important terms are the nation-state, the public sphere, civil society, and the press. Since the eighteenth century, these concepts have structured liberal thinking about communications in a particular way. The most compelling analysis of this history has been offered by Jürgen Habermas ([1963] 1989; Calhoun 1992).

Habermas argued that a particular notion of the public sphere arose in eighteenth-century France, England, Germany, and the United States. The key driving force in this development was the rise of bourgeois capitalism. The economic changes associated with the rise of capitalism produced a particular configuration of "civil society," a term that has been used in many ways but that to Habermas includes the marketplace, religion, and domestic life—in other words, all of the areas of life that liberals sought to protect from state control. The great bourgeois revolutions of the eighteenth century then might be understood as building a wall of separation between government and civil society.

This split between state and civil society is often understood as a split between the private and the public. Private and public have meant many things to many people, of course, but in Habermas's analysis "private" means not just having to do with intimate things but also having to do with anything that involves a private or personal interest—hence his inclusion of economic life. Many people think of the marketplace as a public place and it is in some ways, but to Habermas, inasmuch as the marketplace is the place where individuals pursue self-interest, it is part of the private or of civil society. So where is public space?

Habermas argued that the public sphere is the space between civil society and the state. This space allows citizens to address the state but demands that they leave their individual interests behind when they do so. The citizen must frame all arguments in the public sphere according to two complementary rules:

personal negation and universal supervision. Negation means that the citizen must hide personal interests behind a veil, as it were—something similar to the concept of the veil of ignorance that John Rawls discussed (1971). Universal supervision means that we must assume that everyone in a society (actually or virtually) observes every action in the public sphere. With these rules in mind, eighteenth-century thinkers (e.g., Jefferson, discussed earlier) could assume that citizens were free and equal in public, even if they were altogether unequal in private—different in terms of wealth and status, age and religion, region and class. With private considerations hidden behind a veil and with the powerful under the virtual scrutiny of the entire citizenry, public discussion would necessarily be rational and public deliberations would necessarily be directed toward the common good.

The public sphere is a space only in a hypothetical sense, of course. You cannot point to a particular place and say, “There is the public sphere.” But you can find places that give some concrete substance to the public sphere. To mention the most obvious, there are legislatures, elections, and assemblies of various sorts, all of which are considered legitimate only if they allow for universal access and do not discriminate on the basis of “private” matters. Then there are the media.

We tend to think of the media themselves as the public sphere. Conceptually, the media are not the public sphere, though at certain times in history they may have seemed like it. But at any time in modern history the media have been important places for public discussion and, even when they have not themselves constituted public forums, they have been important as sources of raw material for public discussion in other forums. In Western societies, the rules governing the public sphere have always been understood as rules for the media, too, though the relationship between the media and the public sphere has changed radically over time.

We can understand the changing relationship between the media and the public sphere by thinking about the different

terms we use to describe the media. We might argue that different relationships are implied in the terms "the press," "journalism," and "the media." When the First Amendment to the U.S. Constitution was written, during the very coming-to-power of the bourgeois state, the media were thought of as "the press." In chapter 1, we argued that the press in this case was understood mainly as the printing press, not as the newspaper press, so that freedom of the press was thought of in the same terms as freedom of speech. The relationship of the media—that is, the press—to the public sphere was thus a very simple one: the press was a tool that citizens used to speak and some of this speech was public. The press was a good tool for that because, theoretically, any citizen had access to one, any citizen could make an argument that was anonymous (simply by using a pseudonym, a common practice at the time) and therefore meet the rule of negation, and any printed argument could be produced in such quantity that anyone could be thought to have access to it, thereby meeting the rule of universal supervision. None of these characteristics were entirely true, but they were true enough for practical purposes.

The press subsequently came to mean something else, that is the newspaper press. Rather than meaning the printing press, the term press came to refer collectively to newspapers and then to news media generally (and was often used as a plural—"the press are . . ."). This is still the prevalent meaning of the term, of course. The press in this sense has a different relationship to the public sphere. Rather than being the largely passive tool by which people communicate in public, it was supposed to function as a way of (actively) representing public discourse. In the nineteenth-century United States, the press did this mostly by amplifying the other arenas that embodied the public sphere—by printing verbatim speeches and debates from the legislature, relaying partisan information and exhortation to voters, and publishing legislation and judicial decisions. The nineteenth-century press was still dependent on other public bodies for both

content and income—legislatures and parties produced the discourse and subsidized the newspapers in various ways. Partisan editors editorialized, of course, but did so generally as partisan functionaries and not as independent moral critics.

This press was not engaged in journalism as we understand the term. By journalism we generally mean the active collection and rendition into reports of matters of public interest. Journalism is something that reporters do, and reporters are creatures of the industrial revolution, part of the mass production of news that accompanied the industrialization of the newspaper. Journalism has a different relationship to the public and the public sphere than the press. Whereas citizens used the printing press to speak in public and the newspaper press spread the messages of the public organizations that sought to speak for citizens, journalists try to speak to citizens as if they, the journalists, were public information itself. Journalists, as we discussed in chapter 3, view themselves as expert public servants—though employed by private companies—and seek to acquire the autonomy and independence of professionals. Needless to say, the notion of freedom of the press changed when journalism colonized the press.

The industrial revolution also saw the creation of mass media besides the press. The end of the nineteenth and the beginning of the twentieth centuries in the United States and elsewhere witnessed the successful introduction of dime novels, mass circulation magazines, motion pictures, and radio. Some of these media might be called “the press” in the sense that they used printing presses, but others were not and were denied the rights granted the press in the First Amendment. Likewise, some of these media might be called public in the classic sense, but mostly they shunned the typical subject matter and etiquette of the public sphere.

Meanwhile, the citizenry was changing. Women and members of minority groups were enfranchised, and less privileged groups, often faced with crises of diminishing expectations and

downward mobility, began to use politics—the one earthly arena where theoretically the poor and the rich were equal—to demand services from the government. These demands coincided with the demands of the middle and upper classes for benign institutions of social control (such as schools) to create what is called the bureaucratic welfare state, a development solidified through the world wars and depression of the first half of the twentieth century.

These developments altered the traditional calculus of the public sphere. The distance between civil society and the state disappeared as the state became more and more involved in “the private”; the press became less a forum and more a source of news; the media, in contrast to the press, were less and less committed to the public sphere as classically conceived. All of these shifts are implied in the shift from classical liberalism to neoliberalism.

In the late twentieth century (and presumably in the early twenty-first) qualitatively different changes will pose new challenges to the normative concepts we associate with the public sphere. Journalism will change, just as the media and the state are changing and just as the public has changed. Already we have seen attacks on the bureaucratic welfare state, as well as challenges to state sovereignty by transnational corporations. Moreover, developments in media technology seem geared toward replacing broad audiences with increasingly narrow ones; the media that we have traditionally associated with universal audiences, including daily newspapers and network television, the dominant organs of journalism, are increasingly challenged. The public is represented less often by journalism and more often by polling. And the public sphere is more than ever permeated by the private.

At the horizon of current developments, we might stop talking about “the press” and “journalism” and “the media” and start talking about “information.” The older terms, after all, seem to exclude many of the most interesting capacities of the new technologies, especially computers. They also exclude many of the

more important features of older systems, including copyright and patent law. Shifting the term to information means, among other things, expanding the domain of law and regulation pertinent to communications theorists beyond the First Amendment (Braman 1988). At that point, the distinction between public and private will be entirely different from the “bourgeois” conceptions that Habermas has outlined and that have animated liberalism.

These developments are not confusing to Marxists. They amount to the erosion of the myths of bourgeois ideology in the face of the global development of capitalism. But to defenders of liberalism—whether neo- or classical—they seem like the end of the world as we know it. This is one story behind the panic about the decline of a common culture and of the liberal allergy to feminism, multiculturalism, and poststructuralism, all of which attack in theory the private/public distinction that has become so questionable in practice.

This chapter will examine current trends in light of these observations. We will begin with developments in the state, journalism, and the information infrastructure and conclude with a cursory look at some of the movements in thinking that have implications for normative theory.

Globalization and the Decline of the Nation-State

Four Theories made a series of assumptions that must be questioned. The authors assumed (1) that the nation-state determines the relationship between communications systems and the state, (2) that journalism plays the central role among communication media and genres in determining the relationship between the state and the policy, and (3) that the information/communication infrastructure is such that structural control over communicative practices is possible. Changes in the nature of the state, in the assignation of functions and roles within evolving communications systems, and in the nature of the information

infrastructure require each of these assumptions to be reexamined. We will begin with the nation-state.

Four historic trends contribute to the need to reconceptualize the state today. First, the form of the state that had dominated much of the developed world throughout most of the twentieth century—called the bureaucratic welfare state because it was characterized by the multiplication of federal agencies and a more extensive bureaucratic involvement in citizens' lives—began to be dismantled during the 1980s. This geopolitical change both resulted from and contributed to a questioning of the basic postulates of classical liberal thought. Second, the transformation of the information infrastructure and emergence of the “net”—the telecommunications network—as the dominant medium has led to a wide variety of frustrations for nation-states as they attempt to exercise traditional modes of power, such as control over either financial or information flows across their borders (the “vulnerabilities of the state”). Third, transnational corporations have come to rival and sometimes outweigh nation-states in the exercise of a variety of forms of power. Fourth, new conceptions of the state have become visible as a wide variety of states, including those of the newly industrialized countries, finds successful niches in today's global environment, as surviving concepts of the nation-state adapt to changed conditions and as new theories of the state are developed.

The press itself has become globalized. It is no longer only the nation-state out of which the press operates that most significantly determines journalistic practice. Globalization is evident in several dimensions.

The *subject matter* of journalism has become globalized. The social, political, economic, cultural, and ecological phenomena and processes that are the subject matter of journalism are no longer bound by national borders. Significant decision-making processes that affect domestic affairs take place now in the international arena or within private sector transnational corporations that are for many purposes locationless in nature. The

actors about whom journalists report, therefore, are now global. Events of journalistic significance—environmental degradation, war, economic trends—have global, not local, impact.

Similarly, the *constituency* of journalism has become globalized. The “constituency” of journalists for *Four Theories* was the “citizenry” of individual and discrete nation-states. The citizenry, however, are also members of “civil society,” that is, society as it has interests separate from (and sometimes against) those of the state. In much of the world this concept is newly of interest as societies struggle to conceptualize and organize themselves under shifting geopolitical conditions. Speaking of civil society emphasizes people’s relationships with each other as their primary civic identity, as opposed to their relationship with the state indicated in the concept of citizenship.

Once the state is removed as the primary lens for civic identity, global influences upon identity in today’s environment become more visible. We are beginning to see more and more expressions of a sense of being members of a global civil society, sharing concerns as much with those beyond nation-state borders as with those within. “Nongovernmental organization” (NGO) is the legal designation for organizations that represent global interests of civil society vis-à-vis nation-states and international organizations. The number of these and their relative influence in international and national decision-making arenas is growing.

Recognition of environmental problems has been a particular stimulus to discussion of shared global concerns. Another influence has been the increasing globalization of governmental surveillance systems, in which citizens and noncitizens alike are subjects of surveillance. In a third important area of activity that quite self-consciously has stimulated a sense of shared global concerns, the emergence of “new security theory” aims to generate a sense of a shared security blanket East and West. And last, of course, shared cultural elements—Coca Cola, jeans, and Madonna—have created global age cohorts on the cultural front.

News *institutions* are intimately intertwined in the global processes that are driving industries generally toward oligopolies comprised of larger and larger transnational corporations—fewer and fewer news organizations now provide information to the world. The result is a demonstrable reduction in the diversity and number of news sources available through the mass media. We expect this trend to increase.

Along with the globalization of news organizations, those elements that comprise the sociology of journalism, journalistic *procedure*, have also become globalized. Thus the “beat,” or geographically defined terrain of a reporter’s domain for coverage (the courthouse, Washington, Latin America), has become global. What Gaye Tuchman called the “bureaucratic phase structure” (1978), or the time-defined terrain of a reporter’s domain for coverage (decisions of the U.S. Supreme Court, the passing of a budget by Congress, etc., all refer to pegging news to the passing of stages of procedures internal to other institutions), has also become globalized with the globalization of significant actors. As the number of news organizations communicating news globally has declined, the role of the gatekeeper or editor within each surviving news organization takes on a global character (e.g., editors at CNN).

Regulation of communication practices is also increasingly moving to the international arena, following the globalization of the infrastructure and of the social interactions associated with communications. Thus, decisions of the ITU, UNESCO, GATT, World Intellectual Property Organization (WIPO), and other organizations have as much to do with determining the environment within which journalists operate as does the nation-state.

The Decline of the Press

Liberal theory supposed an intimate relationship between the nation-state, the national public, and the press. By the middle

of the twentieth century, the press was thought to play a role in the development of the nation-state in four ways:

- The press provided the primary conduit for information flows between the government and the people.
- The press provided a public space in which members of civil society could discuss matters of public concern.
- The press served as the arbiter of facticity and therefore as the site for debates over facticity.
- It was through the press that the emerging nation-state could find its rhetorical expression.

Today's media environment challenges each of these roles.

The press was supposed to be an information conduit adequate to fulfill all of the basic functions of a communications system required for a functioning democracy. Governmental and legal matters are still published in newspapers as a matter of official—often law-required—policy. Less formally, the *New York Times* still claims to present all relevant news of U.S. politics, though it now contends with CNN for national and global agenda-setting. More indirectly, politicians and others use journalists in a variety of ways to communicate with the public and with each other.

Just as the press was supposed to represent the government to the people, so was it supposed to represent the people to the government. Editorials and opinion pages in print and public access broadcasting in radio and television are considered important ways for the public to communicate with the government. Public opinion polls are often both conducted by and reported in the press.

These roles have been systematically critiqued. Sociologists describe ways in which the mutual interdependence between reporters and sources—and thus between the institutions of journalism and those of government—systematically constrain the types of information that will actually flow through journalism as a conduit, and the ways in which it is shaped (Eric-

son, Baranek, and Chan 1989; Tuchman 1978). In the other direction, it is obvious that communications from the public to the government via the press are so few as to be meaningless in all but the most elite publications. Public opinion polls, too, are no longer considered neutral conduits (Herbst 1993). The press only partially and largely unidirectionally fulfills the role of information conduit between government and citizens.

Thinking of the press as a conduit seems to run counter to the tradition of journalism. One motif in communications law that treats the press as a conduit is "neutral reportage." This doctrine emerged within libel law to protect the news media when they reported on negative comments made in public settings; as long as it had merely served as a "neutral conduit" in disseminating the comment, the medium itself was protected from libel charges. As the doctrine has developed, however, it has become a means by which the courts can specifically dictate reporting and editing procedures; down this path the journalist becomes a mere piece of production equipment with no independent intelligence and judgment.

Other types of information conduits between government and citizens are now available. These conduits are charged with transmitting three categories of information: (1) information the dissemination of which is promoted by the government (discussed above), (2) information about the government, and (3) information the creation of which is demanded or promoted by the government. Each of these presents its own problems and patterns.

Information disseminated by the government proliferated throughout the past century. The growth of the bureaucratic welfare state multiplied the number of conduits for information flows from the government to citizens. Governments send information they choose through media such as school systems, rural extension services, and health systems.

It is worth noting that the U.S. government has *not* seen public broadcasting as a medium through which the elements of a

shared national culture might be communicated. While this perspective allegedly derives from a commitment—hard fought—not to permit the government to shape the content of public television and radio, in more than a few other societies public television has been understood to play a role much like that of public education and so came under heavy government control. In Western Europe, discussion about continuing the commitment to a shared national culture via broadcasting and determining just what that culture should be (should it include minorities? should it represent only “high” culture?) dominates debates as their systems become deregulated and governmental involvement becomes more negotiable, at times negligible. In all societies this is an important issue as channels for information multiply and audiences fragment.

Information about the government is one area in which fables about new information technologies might become real. Within the United States, dozens of counties and municipalities have already put governmental information on-line with provisions for interactivity with citizens through a variety of means, including facilitating conversations of citizens with each other on matters of governmental concern. An early goal of the Clinton/Gore administration was to bring the federal government if not exactly “on-line” at least accessible via electronic mail. The possibilities are alluring. A recent trial in Santa Monica, California, showed that public libraries’ provision of free access to on-line services such as these did in fact extend participation in governmental affairs to socioeconomic classes for whom access is not otherwise available. Not only did the homeless and others—most of whom had access to computerized data bases and electronic mail for the first time through the libraries—participate in public discussions on matters concerning their affairs but they were also able to use services accessed electronically to otherwise empower themselves and improve their personal situations.

It does seem possible—*logistically*, at least—to use the infor-

mation infrastructure to extend democratic participation in and knowledge of governmental affairs and in the process to further empower individual citizens. Logistical solutions do not, however, touch the problems of *political will* that continue to color and often impede efforts to extend democratization through this means, as we mentioned in chapter 3. A genuine commitment to do so requires universal access in every dimension—educational, technological, logistical, economic, and cultural. Simply giving citizens access to government information will not automatically empower them in civil society. In a world where transnational corporations operate beyond the reach of the nation-state, other kinds of access or empowerment are clearly called for.

There have already been radical shifts in the communications environment, and these shifts have meant changes in law and regulation. Ithiel de Sola Pool (1983) has warned that we might lose significant freedoms as the law adapts to new technologies. While classical liberalism emerged in an environment dominated by print, we now live within a global electronic network. Some features of the emerging information infrastructure are especially salient to policy makers (Braman 1993).

First, the infrastructure is now truly ubiquitous globally. Individual travelers have always carried information from place to place, and the electronic network has been genuinely international since its beginnings with the telegraph in the middle of the nineteenth century (Headrick 1990), but we are now experiencing the qualitatively different process of globalization (Featherstone 1990; Robertson 1992). In a globalized environment, our policy making must consider additional actors besides "the government" and "citizens," as well as relationships with other systems (nation-states, organizations, and societies) and their constituencies.

Second, the infrastructure is far more highly articulated, with intelligent nodes in the hands of individual users. The kinds of control against which communications policy was constructed are

changing and, in many cases, no longer pertinent. Federal efforts to control encryption programs, for example, are useless against free distribution of such programs via the net. Habitual focusing on obsolete forms of control can distract from identifying and pursuing actual forms of control in the electronic environment.

Thus, for example, specific protection of the right to *process information* appears to have become necessary. It is striking to note that while the FCC was going through the tortures of the *Computer Inquiries*, in which the agency attempted to distinguish between “basic” and “enhanced” information transmission for the purposes of distinguishing between the telecommunications services that would remain regulated and those that would not, the courts were dealing with the question of whether or not the government should be permitted to prevent (via prior restraint, which is anathema in the United States) the magazine *The Progressive* from publishing plans for how to build a hydrogen bomb. Here the government’s argument was directed against the *processing* of information. While it was not denied that all of the information from which the author drew was in the public domain, it *was* claimed that processing that information—thinking about it, in other words—was not permitted! That is, while the government could not restrict access to information in the public domain, it attempted to justify restricting speech by forbidding the processing of information leading up to that speech.

These two examples show the limits of traditional First Amendment law in the new environment. In the *Computer Inquiries*, the FCC sought to distinguish between types of information processing for the purposes of differential regulation; in the *Progressive* case the government sought to restrict communicative rights by forbidding information processing. In neither case was First Amendment analysis prepared to deal with attacks on communicative rights that used the tactic of defining them as other, more easily regulable types of activities or by distinguishing between stages of an information production chain for the purposes of differential legal or regulatory treatment.¹

Third, the capacity of the infrastructure has become vast, virtually nullifying scarcity as a grounds for regulation of communications institutions, facilities, and processes. Any restrictions on information creation, processing, flows, and use must be based on other grounds. Scarcity was extremely important in the justification of broadcasting regulation in the United States, for much of that regulation runs counter to consensually accepted interpretations of the First Amendment (Douglas 1987; Horwitz 1991; McChesney 1993).

Fourth, the emerging system is "geodesic" and "fractal." Rather than a few channels going to mass audiences, use of the net connects an indefinite number of points with each other in ways that permit multiple routes. Peter Huber (1987), addressing the U.S. Department of Justice as it struggled with yet more consequences of the divestiture of AT&T, identified the fractal nature of the infrastructure as significant for communications policy because it meant that decisions about whether or not to centralize or decentralize control over communications need no longer be made once for the entire system but could be made over and over again as they involved particular types of communications in specific locales in ever-repeating fractal patterns of complexity.

Fifth, this environment is turbulent, at times chaotic, and much of its turbulent nature is a consequence of the use of new information technologies. Complexity, turbulence, and chaos are both problematic characteristics of the environment with which policy must deal and potential effects of policies being considered. Any model of a communications system that drives policy must be dynamic, not static, in order to accommodate chaos within its conceptual terms.

Just how the emerging communications environment will affect the flow of information about the government to the people will depend on other factors. In the United States, under Bill Clinton and Al Gore, we are currently undergoing an enormous change of position on this point. The Ronald Reagan and

George Bush administrations clearly distinguished two classes of informational citizens: those within government, who have the right to know, and those outside of government, who have the right to know only what those in government think they should know. This led to a policy that, whether dealing with the Freedom of Information Act, the information classification system, or with office management systems within federal agencies, sought to restrict access to governmental information. In many cases, the Reagan and Bush administrations were able to utilize legislation that actually came into effect under Jimmy Carter, as with the notorious Paperwork Reduction Act that so empowered the Office of Management and Budget (OMB) to dictate federal agency practices and as in other areas of communications policy, such as the deregulatory strand. Clearly, Clinton and Gore are committed to reversing this policy.

It remains to be seen whether this overall policy shift will enhance the government's role in explaining complicated policies and procedures to affected citizens. It is also yet to be seen if the Clinton and Gore focus on information policy will reach this area of the law, a First Amendment issue from the point of view of those who argue that the First Amendment includes, among other things, a right to receive information. This leads to the next type of information flow between governments and people: information creation mandated/sponsored by the government.

National governments are involved in a variety of types of information creation. Constitutional provisions mandating government collection of information include most often and importantly those calling for a census but also, occasionally, provisions that call for government collection of information about some element of the natural environment (the weather, ocean, atmosphere). A number of national governments are also given constitutional authority to collect information about financial matters, anything related to taxation, and for a variety of other purposes. As elaborated by the bureaucratic welfare state, these powers are increasingly contestable and contested in the 1990s.

Support for research and development is another area of governmental information that is growing in importance but generally generated by statutory, not constitutional law. Through a variety of tools that outline and support industrial policy, governments directly and indirectly sponsor and encourage research of particular kinds. The results of this work can be considered governmental information in two ways. It is government-*triggered* information—information that in many cases may not have come into being without government direction and funding. It is also, as a consequence of funding involvement, government-*owned* information, for in the United States the federal government has property rights in the results of any research toward which it contributed support.

Issues involving governmental property rights in this type of information will become more important as intellectual property rights move to the center of the legal battleground over access to resources. The debate over encryption provides a vivid current example. The U.S. government has long recognized the importance of encrypting information for business purposes; as the electronic storage and transmission of such information has become more common, the need for encryption has grown. Yet at the same time, the government feels a need to be able to eavesdrop on electronic information flows. In the early 1990s, the irony of the government's position became obvious when it moved to prevent the marketing of encryption systems that would make it impossible to "wiretap" transmissions and instead proposed to make its own system, the "Clipper chip," mandatory. The effects of government-triggered information are experienced by us all as the information moves out of the "research" phase and into the "development" of products.

So the new information environment promises significant changes in information flows from governments to people. What about the other direction? There were always alternatives to the press as conduits for the thoughts of citizens to flow to the government. Direct petition and the right to call for referenda fre-

quently appear as constitutional provisions. Federal support for a national information infrastructure—a postal system—is generally justified by the need to ensure that representatives of the people can communicate with their constituents in a two-way process.

The bureaucratic welfare state multiplied, often through regulatory or administrative law, the means of communication with the government for citizens, though the rules are generally directed toward narrow categories of speech on particular issues. It is a fundamental assumption of most notions of procedure that there must be a means through which the individual can communicate with the decision-making body.

Enthusiasts expect much more from new technologies. Ross Perot has repopularized an old element of the utopian notion of the information society as one in which, via what some have called “teledemocracy,” we are able to do away with representative government and bring everything to a vote before the people. With today’s technologies, this presumably would mean “educating” the public about issues via television and then taking a national plebiscite, as can be done even with touch-tone phones. Research, however, has shown that those whose primary source of news is print are able to articulate arguments for their positions on issues and choices of candidates, while those whose primary source of news is broadcast may have positions and candidates but will not be able to articulate why. And as James Carey (1989) has pointed out, in the notion of participatory democracy that drove early U.S. history, the town hall discussion significantly included the community talking an issue over among its citizens before voting, not just the act of voting. This kind of discussion is not possible electronically and not, therefore, even possible as a part of what is idealistically termed “teledemocracy,” for a significant element of the democratic process, the conversation, is not there.

Group discussion via radio and television talk shows cannot substitute, nor can computerized bulletin board virtual commu-

nities, for each of these is "thin" in terms of the range of social interactions with which they are engaged. Each will be focused on a particular issue that may be explored in depth by a group of people who either come together by chance or whose personal interests lead them to pursue a particular set of issues—but who have no other necessary connections with each other.

This is important because it is precisely the characteristic of a community that it must live with itself—that disagreements aired in the town hall in a political discussion one day must be lived with in the local marketplace, on the docks, or in the coffeehouse the next day. It is this need to live with each other in the thickness, the richness of the multiple types of human interactions that historically led to the notion of *civitas*, of the civilization centered on the city. Multiplication of interactions revolving around particular needs or interests might satisfy those specific needs or interests—but it might not contribute to the formation of the whole necessary for the self as well as for the community. And it clearly will not replace community-wide discussion about public issues in what is still romantically referred to as the public sphere.

In discussions about the nature of journalism and its role vis-à-vis civil society, the notion of the public sphere has come to dominate discussions in Western, Central, and Eastern Europe and the former Soviet Union (Dahlgren and Sparks 1991). In the previous section, when communication was characterized as information flows, we inevitably emphasized what James Carey (1989) has called the transmission model of communication. To focus on the public sphere is to deal with a "ritual" model of communication in which the "product" is not a message or a commodity but a community.

The concept of the public sphere is often criticized for being very difficult to operationalize—just where *is* the public sphere? Colin Sparks and Anna Reading (1993) argue that there is no civil society in some of the Central and Eastern European countries or in the former Soviet Union—and therefore the

notion of the public sphere loses its content. Karol Jakubowicz (1990) identifies three different public spheres in Poland as that state began to reformulate itself. Bruce Robbins and his colleagues (1993) argue that the public sphere is altogether phantom in an electronic environment.

One of the most common ways of operationalizing the concept is to think of the press as the public sphere. While this is conceptually incorrect, there have been times and places when the multitude of daily newspapers represented an active public discussion among quite distinct perspectives, so that it operated like a simulacrum of the public sphere. This is not true of most places today. In an environment in which there are fewer and fewer media voices out of larger and larger conglomerates (it is the irony of CNN's ubiquitous global success that in the United States, at least, we now have less diversity of sources about international news than ever before) the press no longer provides anything like a public sphere.

Electronic bulletin boards are a closer fit. Often anonymous, generally inexpensive to access, often appealing to those who are otherwise marginal socially, they are providing a new venue for public discussion the particular characteristics of which are not yet well understood. It has already been demonstrated, however, that local elections can be won by campaigns run only via electronic bulletin boards and that alternative political groups can find their global organizing tasks greatly facilitated by using electronic mail through networks such as PeaceNet and EcoNet.

Traditional mechanisms for public discussion survive, of course. Assembly and public speech are often used by citizens as a means of addressing the government. Marches, demonstrations, and riots are all efforts to give voice in such a manner that it will be heard by those in power.

Still, the question of where there is really room for public discussion outside the confines of the state, unconstrained by conditions established by the nation-state, is difficult to answer. While electronic communication provides a new venue, it is not

accessible to all, nor is it likely to be a venue in which discussions are conducted in privacy—that is, without surveillance by the government and other parties whose activities may well be the very subject of the discussions being watched. Journalism clearly does not provide a genuine public sphere in any meaningful sense of the term. As tensions heighten within universities and colleges, higher education less and less provides a venue for open discussion. At times it seems as if, while the number of *channels* of communication may have multiplied and our capacity grown vastly, the amount of actual communication taking place has decreased.

So far we have dealt with two of the traditional roles of the press in terms of the changing information environment. We have argued that, despite their limitations, new media are replacing the press as conduits for information flows from governments to people and from people to governments. In similar fashion, the press is losing its privileged role as a definer of facticity.

Several hundred years ago, fact and fiction became distinguished out of the undifferentiated narrative matrix of the medieval period (Davis 1983). The press's role was on the front lines, so to speak, of facticity—the first ones to collect the “facts” to be subsequently sifted through by historians and analysts of various kinds. The sense of being involved in a factual enterprise fundamentally distinct from fictions of any sort has been central to the journalist's identity in modern liberal societies. It is also a presupposition of the notion of objectivity. For this reason, attacks upon the integrity of “objective journalism” from the 1960s on were particularly painful to those who saw their role as soldiers in the war to build meaning, find history, identify the stuff about which our stories would be told.

Attacks on objectivity have come from several sources. Studies of the sociology of journalistic processes and institutions demonstrate the ways in which selective collection, perception, and transmission of facts shape stories to parallel the worldview of dominant institutions. Meanwhile, literary theory has empha-

sized the fictive aspects of every kind of text, including “non-fiction” such as history and news. In a rebellion that took note of these scholarly criticisms, “New Journalists” argued that a truer story is told by admitting human biases and reporting what one actually sees as an individual, not as dictated by major institutions. While the two approaches to journalism—“old” and “new”—retain a dichotomy, in practice over the last few decades journalists in both camps have come to share each others’ practices as required by specific stories or encouraged by specific institutional resources or needs.

This “blurring of genre” (Geertz 1983) is of course not unique to the practice of journalism but is one of the characteristics of the postmodern condition. By now the claim to facticity of all narratives has been questioned at the most profound level. Self-reflexivity has come to be the first requirement for the legitimacy of a text. Questioning the role of journalism as the definer of facticity thus echoes more general analyses of social trends and developments of social theory. Today, we can all but visibly see institutions competing with each other as definers of facticity, using a variety of communicative means, but among them journalism no longer appears to play the decisive role. Indeed, the credibility of journalists relative to other definers of fact appears to be in a sliding decline.

The one historic role that the press continues to play in ways most like traditional forms is as a rhetorical site for the nation-state. The press has always been a place in which the key symbols and rhetorical devices that drive the nation-state have been worked through. Since Reagan, American presidents have learned to appeal to the public via the mass media without going through the institutional gatekeepers that have historically controlled the news—via cable television, often using satellite transmission, or videotape. Still, the mainstream news media continue to play a role in our political life.

The press no longer performs the same functions in the same ways that it did when *Four Theories* was conceived. As a conduit of information the press is overwhelmed by contending ser-

vices. As a model public sphere it is said to exist no longer. As a definer of facticity it is on the decline, and the notion of facticity itself is quite diminished. The press has retained some of its role as a voice of the nation-state, but that voice itself is now often confused and to listeners is only one voice among many. In sum, the press can no longer be identified as uniquely important to the functioning of a democracy.

The Changing Relationship between the Press and the State

Classical liberalism—tightly linked to the development of the nation-state—assumed a focal and necessary interdependence between the press and the nation-state. Freedom of the press is justified because it serves the governmental form (democracy) of the nation-state; it is the job of the press in essence to serve as an additional arm of the government, a “fourth estate,” and to play the role of “watchdog” of the nation-state; governmental requirements for communicating with the public specify publication in newspapers as well as posting in public places. The assumptions are that the nation-state is the primary concern of the press and that the constraints on communications activities are most likely to come from the nation-state.

The emerging environment challenges this traditional relationship. With the decline of the nation-state and the rise of extra-governmental actors (largely transnational corporations) often equal to or greater than nation-states in their resources and power, the linkage between the press and the nation-state no longer seems so integral to the definition of the role of the press relative to civil society. It is likely that this process will continue to accelerate.

In this environment, concerns about communicative rights must be as attentive to threats from the private sector as they classically have been to threats from governments. Policy makers must correspondingly expand their conceptualization of the

forms of power with which declarations, laws, and regulations are concerned. Concerns about the right to communicate must deal with constraints that may come from factors such as the hegemonic force of the spread of specific types of organizational forms as carried out by transnational corporate actors, as well as more traditional restraints upon communicative rights exercised by the state. (One of the great weaknesses of First Amendment law, for example, is that it is directed only toward state action—actions on the part of the government—and therefore has decreasing relevance in our privatizing environment.)

A similar expansion is appropriate in the global context. Unfortunately, all of the significant international arenas that have historically influenced communications policy are under attack: UNESCO is riven over budgetary and ideological matters; the ITU has become ever more politicized over the past decade, threatening its continued effectiveness; and international trade mechanisms are increasingly troubled. While there is talk of replacing these arenas with new ones, new legal developments are occurring primarily in contract law, beyond the gaze of both policy makers and the public.

The novel problems of the emerging information environment provide additional justification for detailing the communicative rights to be specifically protected. For example, since freedom to process information is under threat, there is reason to specify it as a right. So ought we also to protect the other stages of the information production chain. Such rights are implied by but not specified in traditional protections of the right to free expression.

Public and Private

Whatever the changing information infrastructure brings, we can expect continuing modifications in the demarcation between private and public. It is characteristic of late twentieth-century Western societies that public and private have become more in-

tertwined, because of both the continuing penetration of both the state and even more dramatically the marketplace into the "intimate" sphere, and also because of the countervailing pressing of "intimate" issues into the realm of politics. These trends are most visible in issues regarding gender and are most forcefully analyzed by feminists.

Feminists are, of course, a diverse group, covering a wide social, political, and intellectual spectrum. In simple terms, this diversity is usually resolved into a dichotomy between liberal and radical feminists. This dichotomy serves well in discussing positions regarding the public/private split.

Liberal feminists embrace liberal individualism. They focus on issues of procedural equality (equality under the law) and equal rights, arguing that the goal of feminism is to eliminate gender discrimination. Liberal feminists preserve the public/private split. They do criticize the historical fact that the public sphere well into the twentieth century was gendered male—women could not vote and were expected to devote themselves to domestic matters. To liberals, however, the gender bias of the public sphere can be redressed without demolishing the whole construct.

To radical feminists, such hopes are naive. In fact, they argue, the concept of the bourgeois public sphere depends in its origins and its persistence on male domination (Benhabib 1987; Fraser 1992; Pateman 1989). Male equality in public is based on male dominance in private; men can be civic equals only because they are domestic sovereigns. So it is not accidental that the line between public and private corresponds so exactly to the line between the traditionally male and the traditionally female. In fact, this opportune designation is one of the chief devices of patriarchy.

There is no question that seventeenth- and eighteenth-century liberal thinkers—Locke, Rousseau, Jefferson—excluded women. It went without saying that the dictum "all men are created equal" applied only to males; women who tried to remedy this flaw in liberal theory, such as Mary Wollstonecraft, were

generally ignored. But isn't the problem solved by just counting in women?

Radical feminists argue, on the contrary, that this only makes the exclusion more elusive. Eliminating gender bias in the public realm is only cosmetic, because inequality in the private realm persists. Since women's oppression, unlike that of racial and ethnic minorities, occurs most tellingly in the intimate sphere, then the apparatus that declares intimate matters unsuitable for public discussion will necessarily reinforce this oppression.

Liberal feminists counter by emphasizing the historical importance of procedural rights. Just as a wall of separation protects religion from the state, so should a veil be drawn over gender and sexuality. Groups that have successfully achieved acceptance and empowerment have done so by claiming their rights as individuals and consigning their group characteristics—skin color, language, income—to the realm of the private, the place where religion had already gone. This means that no person's domestic situation (e.g., single motherhood) can be used to discriminate; it does not mean that the interests of single mothers cannot be addressed in public. It is as fair for a woman to promote women's interests in public as it is for a factory-owner to promote manufacturers' interests or a farmer to promote agricultural interests.

The disagreement between liberal and radical feminism enters into the realm of media and communications most notably in the area of pornography. To one group of radical feminists, best exemplified by Catharine MacKinnon (1993), pornography is the penultimate expression of male domination. Pornography presents male domination in intimate settings in such a way as to make it seem natural; in doing so, it silences women, who simply will not be heard if they must share a stage with *Deep Throat*. MacKinnon therefore rejects arguments against regulating pornography on the basis of the right to privacy. The pretense that pornography is of only private concern ignores its main function, which is to continually reinforce patriarchy and disempower women.

The workings of pornography are mystified by appeals to free-

dom of expression, MacKinnon argues. Pornography is not really about expression—it is about power. And unlike expression, which is usually thought of as unlimitedly shareable, power is a zero-sum game. One person or group can have power only at the expense of another person or group.

Conclusion

Here we might broaden the discussion again. There is a persistent notion that the emerging “information society” will be different from previous societies because its chief resource (information) is infinitely renewable: it is not depleted by its consumption; it can be used without being used up. This is true only in the abstract. In concrete situations, information acquires its value not from being shared but from being treated like any other commodity—being used by its owner to guarantee profit. The “information society” is a big, bright cliché, and it is easy to see why people are attracted to it, but the hopes reposed in it are doomed to be disappointed. The information society will not eliminate informational inequalities unless some way is found to overcome preexisting social inequalities—whether based on money or race or sex. Information in its present configuration (like pornography?) is about power, not expression.

Note

1. The fact that First Amendment analysis has not yet coped with these two problems does not mean that distinctions between stages of the information production chain aren't already significant to a number of areas of information law, defined broadly as that law which pertains to any stage of the information production chain. A study of all such decisions by the U.S. Supreme Court from 1980 to 1986 revealed a great, albeit unconscious, sensitivity to distinctions between types of information processing and stages of an information production chain (Braman 1988).