

POLICING DEMOCRACY: COMMUNICATION FREEDOM IN THE AGE OF INTERNET

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Introduction

At the end of 1995, a Munich prosecutor visited the German offices of the American on-line service CompuServe to complain about certain sexually explicit material on Internet, as this was illegal under German criminal law.¹ Although CompuServe as a self-contained electronic community is only an access provider and thus not, they claim, responsible for the origination or nature of content on the Internet, the prosecutor wanted to block access to more than 200 of the about 10,000 newsgroups. Most of the two hundred were identifiable by the prefix "@sex" and ranged from pedophilia with boys and bestiality to material not illegal for (German) adults, but of such an explicit nature that it is for (German) minors. CompuServe complied, thereby not only restricting access to the German users, but to all the 500,000 members in Europe and the four million in the US and the rest of the world.

Although some on-line services have rules governing the language and materials used on their own services, the companies have no control over Internet to which they all offer access. CompuServe is working on a technology enabling restriction of access according to geography. Others, such as Microsoft and America On-line, offer parents screening software to limit children's access to sexually explicit material. In an attempt to crack down on pornography on its own service, America On-line (which started a European partnership with Bertelsmann and Deutsche Telekom) not so long ago restricted access to users who included the word "breast" in their user profile. The action, however, inadvertently affected women who had identified themselves as hav-

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ing an interest in breast cancer, and the service later dropped its ban (*San Francisco Chronicle*, Dec. 12, 1995).

These measures of self regulation have not been enough for the US House and Senate, which on February 1 passed a Communications Decency Act. This amendment to the new Telecommunications Bill requires all content on the Internet to be acceptable for distribution to young children. Distribution of pornographic material ("in terms patently offensive as measured by contemporary community standards ... regardless of whether the user of such service placed the call or initiated the communication;" sec. 502) is prohibited with a maximum penalty of two years. Although the enforcement of the Act is expected to be problematic, civil liberties groups in the US see it as censorship and a violation of the First Amendment.

The recent examples from Munich and Washington show — be it only from the moral panicking side of powerholders — two important and related issues of the new information and communication technology (ICT): the pros and cons of its anarchistic nature and emancipating potential on the one hand and the far reaching ways and means of (self-)regulatory control and other restrictions on the other. New technologies of communication have always been greeted with enthusiasm and looked at suspiciously at the same time, but there now seem to be at least three stands regarding the workings of Internet. The normatives see a world wide web of filth, a global highway lined with hookers, pedophiles and (other) dirty old men. Euphorics or utopians, on the other hand, will say that the ultimate result of the ICT will be an abundance of information, intellectual pluralism, direct democracy and personalised control over communication.

Where these optimists see a new Athens with more and more people participating on the electronic **agora**, critics of such "video-utopians" like to refer to an Orwellian state. A new reality where Big Brother (hiding himself in an ever growing information gap) not only registers what people think, but provides legitimating ideology for global capitalist enterprise. The new electronic media will extend the power and reach of large, multinational corporations and generally accelerate forces of transnationalisation. Interactivity in general and the newsgroups in particular might potentially revive a democracy troubled by political cynicism and voter drop out, but in practice, the cost of it will strengthen inequality and reaffirm political elitism.

All rhetoric aside, the Internet and new interactive media in principle can, and do provide an unregulated platform for the exchange of ideas, but at the same time, a part of its contents seem to trigger kinds of regulation which we thought had been **passé** in western democracies. Will ICT and its far reaching possibilities for freedom of expression be the panacea for, or the nightmare of, democracy? What are the needs, possibilities and limits of regulating it?

Communication Freedom and Regulation

Regulation of communication in liberal democracies is mainly based on traditional principles of freedom: freedom from state interference, that is to say, no government action to prohibit a publication before it has taken place (no censorship or, in the American legal terminology, no "prior restraint") and, the other side of the coin, the right or freedom to express oneself. Over the years, in most countries in Western Europe the "freedom to" principle has come to be safeguarded by the state as well: governments do have an obligation to enable freedom of expression and a diversity of ideas.

The idea of diversity or plurality — as both the result of freedom of expression and a prerequisite for democratic discourse — refers, firstly, to the number and variety of providers of information. Thus state support for ailing (privately owned) newspapers in order to guarantee a certain level of pluralism in the production of information has become a common feature of many a Keynesian welfare state. A concern for pluriformity might also lead governments to stimulate new entrants and thus competition in the telecommunications sector.

Another aspect is the diversity of information contents. It is defined as an obligation of many European public broadcasting corporations which are expected to provide a “reasonable ratio of information, culture, entertainment and education,” as stated in the 1967 Broadcasting Law in the Netherlands.

A third and central aspect of the freedom of expression and the plurality of information is the right of access to channels of communication, enabling reflection or representation of the prevailing differences of opinion and culture in a given society. The fundamental conditions for effective access are freedom and opportunity to speak out, and thus a sufficient number of independent and different channels, plus autonomy over media access opportunities (McQuail 1992, 145). Access to the network for all on equal terms, and a guarantee of continuity of the “universal service” performed by public telecommunications operators are typical examples.

As all these aspects of guaranteeing diversity imply some form of government action — be it prohibiting, prescribing or supporting — based on concrete decisions and an abstract notion of the “general interest,” there is by definition an inbuilt tension in the traditional idea of communication freedom. In order to improve the “freedom to,” one might well have to be a bit lenient with the “freedom from.” And there are other, more legal, limitations to the principle of freedom. To put it bluntly, freedom of the one person or group usually meets its boundary where it interferes with the freedom of the other. Communication freedom is thus legally limited in most countries by privacy laws, property rights (copyright), libel laws, a perceived threat to state security and public order, and some norms of taste and decency.

Although we are facing the beginning of a supranational regulation (e.g., the Right to Reply in the EC-Directive Television Without Frontiers), limitations on communication freedom usually differ from one country to another. Regarding taste and decency, the cultural differences between countries are most clear. What is tolerated or even appreciated in one country might be a sin in another. Especially in the area of “explicit material,” countries like the Netherlands and Denmark have a more liberal stand than, for example, the UK or the US.²

Information Services

To understand the complexity of different areas and kinds of the existing communication regulations, it is useful to distinguish between different types of information services. According to Bordewijk and Van Kaam (1982), communication patterns may be characterised in terms of two dimensions, i.e., central versus individual control of information storage and central versus individual control of timetable of distribution and choice of subject. The combination of these two dimensions results in four basic communication patterns: allocation, consultation, registration and conversation (see Table 1).

Table 1: Model of Communication Patterns

	Central information storage	Individual information storage
Centre chooses subject and timetable	<i>allocation</i>	<i>registration</i>
Individual chooses subject and timetable	<i>consultation</i>	<i>conversation</i>

Source: Bordewijk and Van Kaam 1982.

In **allocation**³ — one-to-many communication with usually little personal feedback opportunity — information is distributed from a centre that decides the timetable of communication simultaneously to many peripheral receivers. The most common example is broadcasting, where programmes are received by large numbers of scattered individuals at the same time. **Consultation** refers to a many-to-one-to-many situation in which individuals at the periphery look for information at a central storage of information, like a library, database or teletext.

Registration is in effect, the consultation pattern in reverse, in that a centre searches for information from a participant at the periphery; with the centre usually determining the content and occurrence of the communication traffic and often without the awareness of the individual. This many-to-one communication applies to all systems of surveillance and relates to a variety of services: from automatic recording at a central exchange of telephone calls to audience research (the “people-meter”) and for purposes of charging consumers.

In cases of **conversation**, individuals interact directly with each other, bypassing a centre or intermediary and choosing their partners, time, and topic of communication by themselves. It is a one-to-one pattern of communication, usually with symmetry and balance between the parties, like in an exchange of personal letters or the use of electronic mail.

Another relevant dimension in comparing these different information services or communication patterns is that between the public and private domains, areas where traditionally different fields of regulation apply: privacy and property rights more in the private domain, public order and taste and decency more in the public domain. Mass media contents, for instance, which are widely available to all without restriction are most public by their nature, while the registration and storage of data concerning people or organisations are least public. Conversation services (like the telephone) are more likely than consultation services to belong to the private sphere, although the ostentatious use of portable phones in public places seems to point to a cultural shift.

The allocation pattern, more than the other three, is associated with the “old media” of mass communication. Not that old necessarily means dying in due course — as

some say is the case with newspapers. The allocutive pattern remains important and may still grow in absolute amount of traffic. Especially consultation and conversation however, have been able to grow because of new telematics — combining telecommunications, informatics and digitalisation — and the diffusion of video and sound recording equipment. The steady increase of subscription and pay-per-view channels, as part of the explosion of cable and satellite television, will further contribute to a relative decline in allocution. At the same time, computerisation and extended telecommunication connections have favoured the growth of registration potential.

Three Regulatory Domains

New information and communication technologies are said to demonstrate three basic trends: the redistribution of information traffic from allocutory to conversational and consultative patterns; the shift of emphasis from the public to the private domain; and the convergence, overlap and interconnection of communication functions and technologies (Van Cuilenburg and Slaa 1993). In spite of these trends, many national communication systems are still regulated according to their basic technology and often for historic reasons (Pool 1983).

Thus, print media are almost entirely free from regulation or control and often protected and privileged, as they are (were) judged to be the prime vehicle for the expression of opinions and the control of decision makers in a democracy. Even with the increase of mergers, take-overs and cross-media ownership, and the threat to diversity it might have, many governments still hesitate to set rules for, and limits to, press concentration. Prohibitive interference in an imperfect market is still seen as a violation of the freedom to publish, a freedom generally regarded as co-extensive with freedom of speech.

The principle of freedom of communication got a somewhat different interpretation when, during the nineteenth century, telegraph and telephone, and later telecommunications became popular. To solve market-imperfections, these so-called “common carrier” media were often regulated as to their infrastructure, ownership and pricing, while there was no regulation of contents. They were considered a natural monopoly which should provide universal service. All over Europe, the regulatory regime of cable networks and telecommunication services has recently been shifting towards a press model, with liberalisation of the market and privatisation of (some of) the services.

Broadcasting, historically due to the physical scarcity of frequencies, has always been much more subject to regulation. In public broadcasting systems, the scarcity usually meant a semi-monopoly situation, where governments or government controlled bodies decided on who was allowed the entrance, and on what grounds. At the same time, a central collection of license fees had to be organised in order to finance programming. Together with the supposedly intrusive and at the same time distractive nature of the medium television, this prompted governments to set all kinds of norms and standards for entry and performance. Liberalisation (breaking the monopoly of the public broadcasters and allowing commercial channels) and privatisation (e.g., TF1 in France) represent a de-regulatory trend in terms of the structure of the broadcasting market; the content, however, remains an area where rules are eminent.

Although there is a hesitant trend towards convergence of these three policy domains, new information and communication technologies go beyond the separate

boundaries and, even more so, beyond those of the separate countries. This poses special problems. Does the common carrier element of much ICT ask for regulation of infrastructure and access? Should the press or broadcasting model be applied to the content? Is ICT the new battleground for deciding the "openness" of a society? All questions relate, in one way or the other, to the problem of communication freedom, especially where ICT is applied in the field of political communication, participation and democracy.

ICT in Politics: Medicine for a Mid-life Crisis

One should not forget that many ICT, and the Internet in particular, were first implemented in the area of defence and surveillance. At the moment, they are primarily treasured for their economic potential, and regulation of access and content is hardly a part of the industrial logic. The relative shift in information traffic from allocation to consultation and conversation is also largely a consequence of its economic use.

Most large enterprises in the US and more than half in the Netherlands have a site on the Internet. In taking over the "backbone" of the Internet from the National Science Foundation in 1995, the US telecommunication giants Sprint, American and Pacific Bell were more interested in the commercial than possible democratic opportunities. American and European publishers and newspapers get "on line" not because this is an extra medium to inform, but because it is a potential market and a means to avoid distribution and paper costs. They are also afraid that others might take off with their classified ads and thus with an important part of their income.⁴ The technology-push policy of the Dutch government, spending ECU 30 million on infrastructure and the development of consumer services, in order to get one million Dutch on the Internet by 1997, is particularly inspired by the social (employment) and economic potential of telematics development in Europe, and the aim to be in its forefront.

For most political decision makers, the applications in political communication have been a spin off from the industrial policy. Not so for the grass roots movements which have hailed the new medium as a means of enriching democracy. Its flat, open and unstructured organisation, its non-hierarchical and potentially bottom-up structure and the possibility to combine allocation, consultation and conversation through interaction is seen as bringing back direct democracy.

A reference is often made to the Greek city states where all citizens actively participated in political debate and opinion forming, and often were even obliged to fulfil political tasks in rotation. Many centuries later Rousseau, reminding us in passing that participation in Athens was only by male citizens and made possible because they had slaves and thus a lot of spare time, rephrased the idea of direct democracy in that **volonté général** could only be achieved by all sharing in its formation. What is often forgotten in references to the **Contrat Social** is that, according to the French philosopher, direct democracy would prosper best in small communities where citizens are relatively independent and the difference between rich and poor is small.

Rousseau's ideas about democracy paved the way for universal suffrage in the 19th and 20th century. But where he saw an obligation for the people to actively participate in politics, the earliest election studies in the US and the UK during the Second World War and shortly after it demonstrated that even voting, the minimal participation in the political process, was not common among all and interest in the po-

litical affairs was an exception. While some saw non-voting as a serious problem in a democracy, modern democratic theorists such as Joseph Schumpeter labelled notions like the "will of the people" and the "general will" a myth. He criticised the classical idea that the final goal of democracy is the emancipation of the dignity and happiness of the individual through significant participation in decision making. Schumpeter proposed instead a democratic "method" (which in fact legitimised non-participation), an "institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote" (1943, 250).

Although representative democracy is often seen as the second best solution, democracy as a method is the political form liberal democracies have taken. At the same time, the sometimes nostalgic and romantic (and selective, for that matter) references to Greece and Rousseau come from a realisation that at the *fin de siècle*, parliamentary democracy is suffering from a sort of mid-life crisis, may be even a terminal disease. Its symptoms being: a diminishing importance of political ideologies as the "cement" of society and growing fragmentation and individualisation of its population; a decline of voter turn out and extensive political cynicism towards policies, politics and politicians; citizens turning their backs on the present day bearers of the *volonté général*: political parties, in favour of single-issue social movements. All this has led to a call for a return to direct democracy as a favoured cure and ICT, readily available with its communicative possibilities, as its vehicle. It is here that political parties and grass roots movements have found each other in ideas about the role of interactive communication in the political process; *bien étonnés de se trouver ensemble*, because the former see chances for reviving contact with voters while the latter see it as a means to circumvent traditional politics.

Improving Democracy

While Internet is renowned for its global reach and lack of frontiers, it is worth noting that the more interesting, democracy related applications and experiments with ICT are taking place at the local level. Several projects and experiments show that the Netherlands, with a cable density of around 85 per cent, a PC in every four out of ten households and in 1995 around 300 thousand people (two per cent) using the Internet, is a European forerunner in interactive political uses of ICT.⁵

The so-called City Talks (**Stadsgesprekken**) in Amsterdam were a prudent attempt to combine allocution with conversation and consultation. Based on a limited form of two-way communication, the local municipality initiated from 1989 a series of live discussion programmes on "hot" issues on the local television channel "Salto." Although television is by definition an allocutory, one-way medium, this public access channel has for years facilitated minority groups to voice ideas and broadcast cultural experiments. In the "Talks" politicians and representatives of non-governmental organisations discussed a chosen topic (drugs, crime, housing), while the home audience could get extra background information via teletext and react to the opinions voiced (through telephone and later computers placed in public places like libraries and the town hall). These reactions were then included in the debate, while the viewers could also vote for certain statements or policy options.

The philosophy was "information in reverse:" citizens telling politicians what they think of certain issues instead of politicians gaining support for decisions by explain-

