Preface

The topics in this book are dangerous to authoritarian governments. Potential authors to this book had to withdraw from this project because of fear of reprisal from their governments. Digital communications threaten governments that seek to prevent citizens from getting information, sharing information, and organizing. The Internet has made it possible to access and share information on levels unimaginable in the past. Governments that seek to maintain power by keeping their citizens ignorant and unable to communicate are fighting a losing battle. The ability to freely communicate through the Internet is fundamentally changing the way citizens and governments interact.

The relationship between states and their citizens is in constant evolution. Digital communication through the Internet has fundamentally changed how states relate to their citizens. Gone are the days when a government could ignore its citizens and hide its activities. Even the most autocratic governments are not immune from these fundamental changes in society. Although the interactions between the state and citizens have been of concern to both theorists and practitioners of power and government since ancient times, the changes happening today with the ability to access information, organize, and voice opinions is unprecedented. Existing theories have to be reexamined and changed to address this fundamental shift in information.

Just a few years ago, it would have been inconceivable for a political uprising to be organized as easily as it was during the Arab Spring. Comparing the governments’ responses to the uprisings in the Arab Spring and Tiananmen Square demonstrates how digital communications have changed the landscape. WikiLeaks and the I Am 132 Movement in Mexico are prime examples of how governments and traditional political parties no longer have complete control. With the ease of communication comes the ability to organize groups and to access information. This ability to organize groups and access information has changed the power balance between governments and citizens. Existing theories need to be recast in light of this fundamental change.

OBJECTIVES OF THE BOOK

The primary objective is to examine how communication technology and the Internet has and is changing the relationship between citizens and states around the world. The ability to communicate, access information, and organize has fundamentally altered this relationship. Governments, regardless of their level of development or recognition of individual rights, must reform their policies in light of the digital revolution.
The book is designed to provide a comprehensive reevaluation of the relationship between various governments and their citizens. By providing case studies from highly developed to least developed nations we will provide a basis for comparison of this shift ongoing in societies.

TARGET AUDIENCE

This book is appropriate as a reference book for legal professionals, activists, and government employees. It links both the technical world of digital communications with political science. Since the book has case studies from a wide range of countries, it will help provide comparative information on how various countries and citizens interact in the digital age.

HOW THE RELATIONSHIP BETWEEN CITIZENS AND STATES IS CHANGING

The idea of a constantly connected society is one that was not even fathomable prior to the Internet. Now, however, current generations are digital natives and they cannot fathom a society that is not constantly connected. As these digital natives come into power, they will continue to press governments to change to accommodate their values related to their interconnectedness. Existing laws and legal principles dating back hundreds of years will come into conflict with the values of these new digital natives.

The fundamental legal principles underlying access to information, transparency in government, the right to share information, and the right to assemble and protest are not new, but how they are being applied to the new digital landscape is new. Governments are being faced with significant challenges as citizens gain the ability to instantly communicate with and organize large numbers of people.

Digital communications and the Internet are fundamentally changing how citizens and governments interact. These changes have positive and negative ramifications for governments and society.

Increased Transparency

On the one hand, digital communications lead to increased transparency by governments. Citizens can much more easily know exactly what a government is doing. Even if a government seeks to hide this information from the public, the fact that the information exists in a digital form means that it can be leaked as has been proven by WikiLeaks and Edwards Snowden. Hacktivists will be able to liberate information governments seek to keep hidden to an extent that was impossible without current information technology. This increased transparency improves democracy and ultimately strengthens governments.

Increased Interaction between States and Citizens

Because of digital communications, governments and citizens can much more easily interact. Projects such as designing the 9/11 memorial and involving all of the stakeholders are now
possible because the various parties can easily communicate. Governments can become more responsive to the needs of citizens such as with property tax assessment disputes. This leads to increased government efficiency. Thus, governments can know more of what citizens want and need and more citizens can play a role in decision making. This improved communication between citizens and governments also acts to strengthen governments.

**Improved Steam Valve**

Just as freedom of speech prior to the Internet, free communications are important to let the public blow off steam. This venting is important so that anger has a way of being diffused rather than increasing to the point of revolution or other dangerous outcome. The improved communications means that citizens have an even stronger voice in which to express their feelings.

**Exponentially Larger Marketplace of Ideas**

Better communications mean more exchange of information. The marketplace of information exchanged by the public means that people will be exposed to more viewpoints. It is now possible to learn so much more than when citizens were limited to print newspapers and word of mouth. In essence, this exponential growth in information through improved communications exponentially improves the marketplace of ideas. This increase in ideas in society strengthens democracy.

Although there are many advantages of improved communications through the Internet, there is also a dark side to these developments. Along with great power does come great responsibility to use it wisely. Governments, threatened with such an increase in the flow of information, sometimes abuse their power.

**There is No More Privacy**

One problem with improved technology and communications is that privacy shrinks. People now find that their every word, movement, and action can be tracked. Equally, governments are being forced to share more information with the public, even things that they wish to keep secret. Along with increased transparency comes increased leaks of information governments want to keep secret. For example, Julian Assange and Edward Snowden face prosecution and both are seeking refuge from friendly (to them) governments.

**Improved Ability to Protest**

As citizens can assess more information and discuss with fellow citizens they can also organize protests at a speed and on a scale that were impossible just a decade ago. Flash mobs, large movements of people, and other ways of voicing dissent threaten governments. This has and will continue to lead to instability in states. Authoritarian regimes are especially vulnerable as are states with high populations. Large movements of people create major threats.
Technical Challenges

Governments are struggling to adapt to the new digital landscape. For example, in the United States it is no secret that the Affordable Healthcare Act, also known as Obamacare, has faced significant technical challenges as the government, for the first time, has tried to use the Internet for a new major program. There are also problems with too much information too poorly organized. People can access more information now than ever before but how can people trust the information they obtain? Google is necessary because no government has been able to organize its information.

Challenges to Fundamental Rights

Technical advancements have made it possible for governments to infringe upon rights in ways that were impossible prior to the digital revolution. A government can instantly cut off all access to information with a flip of a switch, essentially silencing everyone. Governments can also access information such as every phone call and text message by everyone. Just because governments possess the technical ability to do these things does not mean that they should. Courts should protect our most fundamental rights from these technical onslaughts.

Impacts on the Judicial System

Finally, digital communications have created new challenges on the judicial system. For example, new crimes, expanded torts such as defamation, and increases in evidence all can tax judicial systems. One rogue customer service agent can post something offensive on a company’s Twitter page and instantly open the company up to liability. Class action lawsuits can be born in milliseconds. How will courts address this potential flood of cases?

CHAPTER SUMMARIES

Chapter 1, “Interactions between the Governed and their Governments: The Democratic Paradigm,” examines the concepts, elements, and procedures related to democracy that influences the moral and practical legitimacy of contemporary politics. Democracy has become an indispensable foundation for political legitimacy, even for dictatorships, as even the most authoritarian regimes must justify their actions at least to a minimum and apparent level on democratic bases, to obtain support to their actions by their populations and foreign observers. For these reasons, the chapter presents and analyzes current theory on democratic legitimacy, policy making procedures, and processes of democratization.

Chapter 2, “Rereading John Stuart Mill’s On Liberty in the Digital Communications Age: Transparency, Participation, and the Challenges of the 21st Century,” examines how increased transparency is one of the primary areas where digital communications are affecting the rela-
tionship between citizens and the state. This chapter revisits the classic *On Liberty*, by John Stuart Mill, to provide a fresh look into classical political science theory, explaining the recent movements in the relationships between the rulers and the ruled around the world in the age of the digital revolution.

Chapter 3, “Risk Governance and the Role of Digital Communication in Policy Life-Cycle Management,” the use of information and communication technologies to process information harvested from society to aid in shaping, implementing, and monitoring the effects of public policy. The complexities of contemporary mass societies demand for increased information processing capacity to support policy makers in catering to the needs and desires of society, as well as collecting feedback and reshaping and adapting public policy in a timely and effective manner—a policy life-cycle model is thus proposed, where policy is planned, acted upon, reviewed, and corrected.

Chapter 4, “Digital Media, Secrecy, and International Lawmaking,” examines the influence of digital communications and the Internet on international law-making by international governmental agencies including the United Nations, the World Trade Organization, the Anti-Counterfeit Trade Agreement, and the failed OECD Multilateral Agreement on Investment. The author first gives a theoretical examination of the international law-making process then proceeds to case studies. The author concludes that although social media has allowed better access to information and resulted in more organized social movements around international law-making, the system of international law-making is still primarily only for nations. Digital communications in themselves absent substantive change in the international law-making process are unlikely to fix the problems with lack of transparency.

Chapter 5, “Social Media in the English Legal Context,” discusses how social media is affecting the legal system in England and Wales. The author examines how social media has created additional areas of disputes and challenges for legal professionals in areas including: employment law, family law, discovery, fundamental rights, contempt of court, and defamation. The author then discusses responses by the judiciary, the legal profession, and the legislative branch. In the conclusion, the author notes that the legal system in England and Wales has adapted to the new media landscape but in some cases, new approaches will be necessary to address the fundamental changes in society and law.

Chapter 6, “From Justice that Bites to Justice through Bytes: Towards a More Transparent and Efficient Judicial System in the Rio Negro Province of Argentina,” presents and comments on the process of informatization of Argentina’s Province of Rio Negro judicial system. The first section of the chapter presents the general lines of the endeavor: the background justification, strategic vision, and the steps that established the structural basis for advances in the field of justice informatization, especially the detailing of the geographical reorganization of Argentina’s Rio Negro province judiciary. The chapter then proceeds to present ongoing implementation measures, in order to provide a sense of the evolution of the works and expose the budgetary process behind the implementation efforts. Such efforts are of fundamental importance to the transparency and accessibility of the judiciary in one of the Argentinian peripheral provinces.

Chapter 7, “Access to Information: The Best International Practices and the Brazilian Experience,” examines the legal grounds of the right to access to information in Brazil as compared to the best international practice. As a tool of transparency, the right to access to information has
proven effective in curbing corruption, and the development of new communication technologies, especially the World Wide Web and social media, has revolutionized the manner how the public interacts with the information available impacting democratic practices. Brazil is the 89th country in the World, and the 19th in Latin America to adopt specific legislation implementing the right to access to public information. There is however, a potential conflict between rights to privacy and those whose interests are harmed or threatened by the broadcasting of information tend to make use of such rights to curb access to information. In this context, the Access to Information Law has become a legal landmark to the Brazilian civil society.

Chapter 8, “The Music that is Here to Stay: New Rules in State-Society Relations in Mexico,” examines how the Internet and social media have become a new and powerful resource for mobilization and social participation in the policy process in contemporary Mexico. In this chapter, the author reviews two recent movements in Mexico (#YoSoy132 and The Wirikuta Defense Front). The main argument is that in spite of the fact the Internet is accessible only to the middle (a still rather narrow group in Mexico) and upper classes, the use of social media for social mobilization transcends class boundaries, draws public attention, creates a valuable social capital for mobilization and influences the decision-making process. The chapter finds that social media has proven an effective tool to facilitate mobilization and modify the public agenda to reflect the desires and aspirations of the lower classes and civil society in general.

Chapter 9, “Freedom of Speech and Assembly in the Digital Age: How the United States is Struggling with the Digital Revolution,” examines how constitutional doctrines including freedom of speech and assembly apply to social media in the United States. In the first section, the author examines a case where a transportation agency was the subject of political protests. In response to the protests, the agency shut down all communications including mobile phone networks and wireless internet access. This amounted to an unconstitutional infringement on the protesters’ fundamental rights of freedom of speech and assembly. In a second case study, the author examines a case where government employees were fired for “liking” a Facebook page of a political candidate. The trial court dismissed their claims holding that a “like” on Facebook did not constitute speech. The author concludes that the US legal system is struggling to adapt centuries old constitutional doctrine to the changing landscape of digital communications.

Chapter 10, “Listening to the City: Eleven Years Later – Rebuilding the World Trade Center – New York City – ODR Helps Determine the 9/11 World Trade Center Memorial,” examines an innovative experiment in government-citizen joint decision making. On September 11, 2001, the World Trade Center was destroyed by an act of terrorism. The government needed to create a plan to rebuild the site and create an appropriate memorial. Given the emotional import to the victims’ families, the city, and the country, the planning of the rebuild was not going to be an easy process. Further, there were many diverse stakeholders with important views about the rebuilding process. The chapter is the story and the explanation of how approximately 6000 people over a period of about two and one-half weeks used facilitation, technology, and ODR (Online Dispute Resolution) methodologies to sketch the basic form and function of what should be incorporated in the rebuild. This chapter examines: 1) Can a small percentage of interested parties truly represent the opinions of the majority between 30 million and 300 million people? and 2) Can a group of people without huge access to capital or significant political power, truly influence the end results of such a tremendously large project with worldwide interest?
Chapter 11, “Online Resolution and Citizen Empowerment: Property Tax Appeals in North America,” discusses the efforts by public entities to implement online technology to improve their services. They focus their study on property tax assessment appeals. First, they examine the challenges public agencies face in using technology to interact with the public and the public’s shifting expectations. Second, they discuss how the cloud model applies to public entities. In the third section, the authors examine the property tax appeals process and discuss efforts to make the process more interactive and efficient. Finally, the authors draw conclusions from the case studies and make a set of recommendations for public entities looking to update their services with online tools.

Chapter 12, “Information Technology and Laws: The Case of Cambodia,” exposes the difficulties that a young democracy like Cambodia faces in building the institutional and functional frameworks for democracy while striving for economic development. The author discusses the growth of information technology as it relates to the adoption of laws in Cambodia. The author then explores how information technology is transforming Cambodian society and how it is affecting how the Cambodian government operates. The chapter goes on to recommend strengthening freedom of expression by ensuring that internet filters are not introduced and censorship of critical websites is not allowed. The author concludes with a recommendation for a clear legal framework that protects and promotes freedom of expression on the internet and allows limitations on online content only according to strict international human rights standards.

Chapter 13, “Social Media in China: A Double-Edged Sword,” asserts that social media in China is a double-edged sword. On one hand, it offers opportunities for the government to connect with society, gauge the opinion of citizens in the public domain, and allow citizens to voice their anger when necessary by blowing off steam. By contrast, social media also allows citizens to access information outside of China much more rapidly and efficiently and to communicate with other citizens much more quickly. This makes it so the government cannot censor or otherwise prevent access to information by its citizens. Through a series of case studies, the author examines these claims and concludes that social media helps the government pursue some of its interests at times, such as increasing nationalism and support for the government, but also has resulted in the problems for the government such as exposure of corruption and has increased public outcry. The government is now censoring speech less and increasingly trying to limit the mobilization of people.

Chapter 14, “Malaysia: Citizen Access to News,” focuses on a case study where newspapers in Malaysia engaged in anti-competitive business practices to prevent a new daily paper from entering the market. These actions were legal at the time because Malaysia had no laws prohibiting the anti-competitive actions of the newspapers. The author argues that citizens’ access to information was stifled because the government did not protect against this behavior. Without sufficient anti-competition laws, citizens can find their access to information significantly limited. Thus, when seeking to safeguard access to information, governments must protect newspapers and other sources of information from anti-competitive practices.

Chapter 15, “Electronic Voting System: The Case of Mongolia,” examines the first implementation of electronic voting in Mongolia. Prior to the implementation for the 2012 elections, there was much distrust of the voting system and of the political parties. In response to suspect
elections and public protests, the government implemented electoral reforms including the introduction of e-voting. The results indicate that the electronic voting system offered a number of benefits such as increased proportionality, higher female representation in the parliament, and efficient elections. The most significant benefit of the e-voting system was the restoration of popular trust in the electoral system. These were successes despite only having a short time to implement this entirely new system.

CONCLUSION

The book examines how digital communications have and are changing the relationship between citizens and states. No country is immune from the immense effects that an interconnected society are having on governments. The case studies highlight the difference between common law and civil law systems. The courts of common law countries are equipped to immediately apply old doctrine to the changes made possible by advances in technology. Civil law countries face larger challenges since the changes must come from the legislative branch. The courts of common law countries are becoming the laboratories where these changes and problems are first addressed.

This interconnectedness is improving and strengthening democratic institutions on one hand while also giving governments the ability to suppress and monitor the actions of people on the other. Digital communications in themselves are neither good nor bad but do present unimaginable powers to citizens and governments that were inconceivable only a decade ago.

Moore’s law observes that the number of transistors on integrated circuits double every two years. Put another way, technology is advancing at an exponential rate. This rapid pace of technological growth presents significant challenges to existing governmental institutions. Existing laws and norms have to adapt to fundamental changes in society driven by technological advances. While technology advances at an exponential rate, the political system is not so adept at change. Moreover, because of the rapid change in technology it is difficult or impossible to predict the changes ahead. How will governments react to problems and opportunities they cannot even imagine today?

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