

We are IntechOpen, the world's leading publisher of Open Access books Built by scientists, for scientists

6,900

Open access books available

186,000

International authors and editors

200M

Downloads

Our authors are among the

154

Countries delivered to

TOP 1%

most cited scientists

12.2%

Contributors from top 500 universities



WEB OF SCIENCE™

Selection of our books indexed in the Book Citation Index
in Web of Science™ Core Collection (BKCI)

Interested in publishing with us?
Contact book.department@intechopen.com

Numbers displayed above are based on latest data collected.
For more information visit www.intechopen.com



Digital Media and the Challenges for Fundamental Rights

José Julio Fernández Rodríguez and Jackeline Argüello Lemus

Abstract

The digital world has created new media within the framework of the information society. This new media affects a wide range of fundamental rights. In this paper, we first analyze the changes in freedom of speech and information provoked by advertising companies. Then, we outline some insights regarding the privacy of users' data. Finally, we connect these topics to the debate over the Internet control and its impact on the democratic system (participation, pluralism, and public opinion formation). The current situation is an ongoing process and shows contradictions, which demand scholars to continue developing the intellectual frontiers.

Keywords: information society, freedom of speech, freedom of information, communications privacy, democracy

1. Introduction

Communication conveys meanings linked to culture and generates a context where human interaction takes place. This process determines socialization to a large extent [1]. Communication accompanies human beings from the very beginning of their existence and determines their knowledge, culture, and communities. It has evolved from oral to written, and with this evolution the formats have changed as well. Handwriting gave way to printing (the Gutenberg Galaxy according to the well-known formula described by MacLuhan [2] which involved a huge qualitative shift with deep effects on the advancement of knowledge and culture). In the nineteenth century, visual communications meant a great breakthrough with the discovery of photography. In the next century, the radio, film, and television industries were further developed. This brings us to the communication that uses digital formats as a medium. The Internet is an example of such mutations.

The evolution of communication, briefly described in the former paragraph, is one of the most significant transformations in the history of humanity. Human natural capabilities increase thanks to these technical achievements. Nowadays we find ourselves immersed in a new scenario which raises questions we have not addressed satisfactorily yet.

In the middle of this process, fundamental rights impose a series of demands that must be met in a democratic society [3, 4]. This is essential if we want to maintain the rule of law and democracy. Fundamental rights are connected to human dignity and are translated in different capacities [5, 6]. Their safeguarding ensures a fair, ordered coexistence. We use the term “fundamental rights” which is common to constitutionalism instead of “human rights” (more used in international law) [7]. However, both concepts are understood as synonyms in this paper.

In this paper we will approach some of the most relevant elements that explain the convergence between new forms of communication and fundamental rights. We have no intention to exhaust the subject but to offer some possible answers, the most important answers.

2. The stage of the digital world

As we know, we live in a new world, the digital world, in a new society, society of information, even in a new stadium of humanity, the *infolitic* stage. The Internet, the network that connects all computers in the whole world, is the emblem of this transformation. Since the point of view of communication, the Internet is one more step in this evolutionary process that we have introduced in the previous lines. In the cyberspace, we do not work with atoms anymore but with intangible realities that are in the virtual space.

The principal feature of digital communication lies in the possibility to convert data into a series of zeros and ones (bits, binary digit); it reduces the storage volume and renders the possibilities to deliver and process information less difficult (and less expensive). In any case, the Internet is a new world of communication, which leads Castells to talk about the “Internet Galaxy” [8].

This digital technology is like the Jano God; on the one hand, it has a nice and positive face, and on the other, there is a negative face, which shows us contradictions and ambiguity in the current stage. This certainly makes it difficult to analyze. In this way, among the positive elements, we have the opening of new channels and ways of communication, the leisure alternatives, the direction of citizen education and training, or the possibility of renewing democracy. Among the negative elements, we can find the technical determinism, the quantitative preponderance, and the criminal spaces of deep web, even dysfunctional chaos. Be that as it may, we must consider the digital gap phenomenon, that is to say, the territorial, generational, and cultural differences in technological issues that prevent a truly generalization of the beneficial elements that the Internet has to offer. We have condemned previously this inequality in other papers because of the dialectics between poverty and wealth in matters of information [1].

The advent of disruptive technologies has opened a second phase of information society. Particularly, we refer to the Internet of Things (IoT), cloud computing, big data, artificial intelligence (AI), blockchain, drones, and robots. In fact, these phenomena coexist, so we cannot consider them separate issues. Next evolution of these technologies will bring relevant social changes, making real what we know as the fourth industrial revolution.

The information society has also propitiated interdependent processes that we know as globalization (perhaps hyperglobalization) [9–11]. This shapes the scenario where current communications are articulated. Despite the preponderance of economic issues in this globalization path, it is necessary to consider that communication phenomena entail relevant cultural and ideological implications. This point really has more structural and semantic consequences. In this way, the globalizing process transcends the economic field and jumps to other theoretical frameworks where scholars are still looking for explanations. Traditional strands of thought are no longer valid in these virtual spaces (e.g., historical materialism lacks the necessary analytical tools).

In the previous century, the film industry anticipated a cultural globalization, since Hollywood Studios achieved an overwhelming success which announced a single cultural perspective to the whole world. Also, news flows were dominated by a small group of agencies during the nineteenth century, first by the British Reuters

and the French agency Havas, replaced by the Agence France-Presse. After the First World War, the American Associated Press (AP) and United Press International (UPI) grew powerfully.

However, it is with the information society when this process has become truly global, through the Internet and social networks, which in contrast provide ideological and cultural plurality. From a critical point of view, users all over the world denounce the imposition of cultural products by the great powers which threaten to destroy national cultures. Such critics (sometimes exaggerated) are expressed by opponents to occidentalization. This has led public powers to take over promoting their own cultural functions to avoid big scale risks.

Last ideas show us the impact on the issue of communication: the globalization phenomenon has brought parallelly a local effort. The “glocalization” concept emerges because of the global and local dynamic [12]. The aphorism “think global, do local” lies next to such process. As Mattelart points out, new approaches on the links that are established between the global and the local have arisen, which break with the previous idea of the fatality of monoculture [13].

In this sense, it is important to review how mass media sets out an agenda that responds to this idea. It is a proven fact that global information flows gain more visibility if at the same time local issues are served. This implies to decentralize information that allows a more active citizen participation. This scenario unleashes a coexistence between powerful medium and unequal micromedia that are favored by the possibilities of technology (this would be an example of the subversive factor of technology). Again, there are two contradictory faces that act in unison: on the one hand, unification and at the same time, the reinforcement of particularisms.

It is convenient to remember the existence of different convergence processes, promoted by globalization. Economical concerns encourage the confluence of interests in broader frames. In that way, a convergence of mass media, informatics, and telecommunications has been propitiated. At the same time, it is possible to find another technical conjunction among the Internet, telephone, and television which is still pending of settlement.

Analysis must go beyond pure technical issues and should focus on cultural and content aspects, as we have said. They determine the axiological basis of these processes and explain the legal regulations regulating them. In this order of ideas, Wolton alludes to an epistemological duty which should not confuse technique, culture, and society [14]. That is, we must reject technical determinism, by recognizing that while the technique affects the social structure and cultural construction, the cultural scheme in individual and collective terms is projected in the technique, which is born, precisely, of this cultural scheme [1].

In the same way, it is important to consider the differences between public and private spheres, because of the blur of lines that give rise to the neopublic space, as we have called it. This kind of space connects many people in a non-face way, with plenty of people interconnected but without masses [1]. Neopublic space-time has cultural and social implications for the citizenship of the digital world.

3. The public communication

To expose clearly the central ideas of this paper, it is necessary to distinguish the communication processes that are public and pretend to reach many citizens, among those which are meant to remain private. The law should be able to offer different legal stipulations for each one.

3.1 Freedom of speech and information

In the field of fundamental rights, the public communication that is meant to be public develops under the umbrella of freedom of speech and information, which is at the same time agglutinated in the broader freedom of communication. Rosenfeld mentions three bases for these freedoms [15]: the need of democratic self-government, the public responsibility to seek for the truth (the marketplace of ideas pointed out by Stuart Mill), and the individual right to express the personality. The first one of these assertions is directly connected to freedom of information and the last one to the freedom expression.¹

The current legal recognition of these freedoms is produced in a parallel way within different constitutional and international regulations. As examples we have the Article 20 of Spanish Constitution, the Article 21 of the Italian Constitution, the Article 5 of the German Constitution, or the First Amendment to the United States Constitution and at the international level, Article 20 of the Universal Declaration of Human rights, Article 10 of the European Convention on Human Rights, or the Article 20 of the International Covenant on Civil and Political rights.

Indeed, freedom of speech and information of freedom are two different rights. The former allows people to express their own ideas and opinions and value judgments by different channels. The latter is the guarantee of communication and reception of facts or events that will become news. To inform about transcendent public facts is necessary to ensure the participation of citizenship in the collective life [17].

Both liberties have a double dimension: individual and institutional. They are subjective faculties of the people, and they are basic elements of public opinion. Internet does not suppose changes in this double dimension since constitutional guarantees must not decrease depending on the vehicle used.

As a simple approach, it is possible to assert that the digital world has opened new possibilities for both kinds of freedom from a quantitative and a qualitative point of view. We will discuss this issue in the next section.

3.2 Quantitative changes

Nowadays the reality of digital world is more than evident. The Internet has a lot of influence in the ways we communicate.

As a matter of fact, we have noticed a substantial increase in the *ways of communication*. The e-mail², social networks, or web pages have been added. This triumvirate offers lots of opportunities to come in the communication horizon.

¹ Historically, the precedent of current legal stipulations can be seen in the freedom of the press. Enlightened thinking inserts at the origin of liberal constitutionalism that it is necessary to form a free public opinion that serves to control power. To do so, publicity is necessary, especially the freedom of press. Art. 11 of the *Déclaration des droits de l'homme et du Citoyen* (1789) stated that “la libre communication des pensées et des opinons est. un des droits les plus précieux de l'homme” so that every citizen can “parler, écrire, imprimer librement, sauf à répondre de l'abus de cette liberté dans les cas déterminés para la loi.”

In the Virginia Declaration of Rights (1776) it is stated that “the freedom of the press is one of the great bulwarks of liberty and can never be restrained but by despotic governments” (Section 12). In Spain the issue was relevant in Cadiz Courts as the Spanish Constitution of 1812 recognized the freedom of all Spaniards to “write, print and publish their political ideas without licensing” (Art. 371). The difficulties of the practical application of this freedom gave rise to allegations in the defense of the free exchange of ideas. As an example, we can cite the utilitarian vision of John Stuart Mill [16] and the realist vision of Oliver Wendell Holmes.

² Although the e-mail does not have as a main goal the public communication, we refer it to highlight the importance of the changes in communication technologies. Also, social networks can be used with privacy standards (profile access can be restrictive or public). However, we mention them now because of their systematic use in the media.

At the same time, the now-existing formats have gone digital such as the television, the telephone, and the radio.

All these forms of communication are spread all over the planet. It is notwithstanding the fast colonization of social networks. Besides their communicative spectrum, they have become a cultural and social phenomenon that we would have never foreseen in the past. Social networks have a fragmented use according to the user's needs (friendship, business, academics, leisure) which is a characteristic of the information society.

Traditional channels of communication can be either private or massive. The private ones have a bidirectional character as the mail post, the telephone, or the fax. The massive ones as the press, radio, or television have a unidirectional character depending of the main emission center, and there is a multitude of passive recipients. However, digital technology offers ways of communication that combine individual systems with the logic of massive communication. The key is the idea of interactivity, a technical characteristic that makes a change transferring the control to the user. This feature turns her into recipient-user-publisher-sender as we will see in the next section. The logic of international regulation that restricts mass media and assigns limited space (as radioelectric space) does not fit well with this idea we have described.

When it comes to *communication formats and supports*, there is an expansion as well. Satellites, Hertzian waves (radioelectric support), and terrestrial communication systems are used simultaneously. Among terrestrial systems, there are other types such as optical fiber that replaces copper wires. Its attribute is to transmit the signals with high quality, reducing interference frequencies.

It can be considered that optical fiber changes the world of communications. Its wires are compound of pure and narrow glass filaments, which are guided by luminous impulses (unlike other wires, which transmit electromagnetic waves). That is, optical fiber carries optical signals instead of electrical ones.

Thus, the quantitative options of expression and information spread up, while new formats appear. Such possibilities to obtain, communicate, and disseminate information give rise to think about the Internet as an important instrument for promoting and protecting human rights [18]. From this quantitative point of view, the valuation is thus positive.

3.3 Qualitative changes

Beside quantitative changes, we have witnessed qualitative changes linked to new ways of communication that also have consequences for fundamental rights. This is relevant in matters of philosophical issues which makes the analysis even more complex. In the following lines, we will deepen the line of argument previously established by elaborating on some aspects [17].

First, digital technology increases the quality of communication, while it offers information systems that combine texts, images, and sounds. As a result, the partial additions of these characteristics create a synergy which improves the human being's options in the communicative dimension. Mass media of the digital world takes advantage of quality changes given their space universality, immediacy, temporality, and specialization or segmentation.

Second, multidirectionality turns into a matter at hand for understanding this current stage. This point lets the network users assume an active and intelligent position instead of a passive one regarding the traditional mass media. The Internet shows itself as a multidirectional media because it lets users perform as creators and recipients at the same time. The communication sender, publisher, producer or author, and the recipient converge in a figure that expresses itself in the form of a profile in the cyberspace. As Smith affirms, in the Internet, anyone is a publisher [19].

This gives rise to a new concept: the *prosumer*, which is the consumer who produces its own content, opinions, and elements that increase the value of the product [20, 21].

Third, public and private are contested realms, and so are their legal attributes. As we know the clash between freedom of information and the right to privacy has a specific procedural treatment depending on the public or private character of an individual. On the Internet, it is difficult to distinguish between public and private because of the ambivalent position of the subjects in the network. Llaneza identifies the fourth basic characteristics of the Internet communication based on the Supreme Court of the United States and remarks this ambivalent position: the existence of minimum access barriers for communicating is the same for senders and recipients; every content is potentially accessible for any user, and the access is significative for those who want to express themselves [22].

In fourth place, the *construction of reality* is complex. Reality never has been unique but multiple. However, with the digital world, this feature is enhanced. We used to have the “real” reality, the published reality, and the well-known reality. Now, the Internet provides completely unknown segmentations, plenty of solutions are made fit, and everything is personalized which subjectifies the content. In that sense, the political-social reality of the constitutional state starts up a new stage with uncertain consequences (as we will see in the Part 6 of this paper).

Fifth, the classic difference between expressing and informing gets blurred. Based on this distinction, as we saw above, the objectives of freedom of speech and freedom of information are different. The first falls on intellectual conceptions, such as opinions, the second on what is considered as the news. The diligence of the informant (especially of the journalist) to collect such facts gives them truthfulness, thus entering in the scene the protection typical of the freedom of information. In the Internet information gets mixed up with opinions, values, and data, which renders it difficult to differentiate one liberty from another. In the same line, it must be pointed out that the requirement of the veracity of the information is shown particularly blurred and difficult to specify in the cluster of the contents of the network, which anyone can enter, alter, or manipulate. The new realities of the *post-truth* and the *fake news* intensify this confusion.

Finally, the new technological realities impact directly on the construction of public opinion as the basis for a democratic system. This construction is both rich and complex, full of contradictions, and varied sources. Castells points out that there is a double sense process of interaction among media and audience related to the real impact of messages. These are distorted, readapted, and occasionally subverted by the audience [23].

Along this way, something we have called the imbalance between supply-demand arises: the products of content creators that are supplied through the Internet respond to their own logic away from the hypothetical wishes of consumers, whose demands go through other ways. Also, there is a confusion between the supply and demand because of multidirection and active positions on the citizenship of the society of information. The ones who supply at the same time are demanding. Again, we have this prosumer (producer and consumer) adding value.

As a result, it is precise to revisit the expression and information rights to adapt their object and content in this stage we have explained previously. The jurist must be capable to make these new interpretations of the international and constitutional regulations that come from the analogic world. The objective is to maintain the efficiency and operability of fundamental rights.

4. The private communication

The right to *secrecy in communications* is the legal response to protect private information from third parties. Even though this is an autonomous right, historically it is linked to privacy rights, and for that reason they present some common assertions³.

This type of right protects all the communications that occur through a close channel, which leads participants to keep certain expectations regarding privacy. If the channel is open, then the right loses its possible application (as we find ourselves in the realm of public communication). This secrecy in communications has its origins in the postal service but maintains its formal dimension (the message is protected apart from its content). Now, the secrecy protects both the interception and the content of the message.

It is necessary that the right to secrecy covers all the Internet communications through closed channels as mails, chats, video conferences, phone calls, or SMS. In this way, Article 5.1 Directive 2002/58/EC⁴ stipulates: "Member States shall ensure the confidentiality of communications and the related traffic data by means of a public communications network and publicly available electronic communications services, through national legislation. Particularly, they shall prohibit listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data by persons other than users, without the consent of the users concerned, except when legally authorized."

As we said, the issue of the secrecy of communications is linked to a privacy dilemma. Both rights are in a fragile scenario: one of the obvious problems of the Internet's security. The issue is relevant because in recent years we have witnessed the emergence of new aggressions to privacy or the reformulation of aggressions that already existed in the analogue world. As examples we can state the following scenarios: entering a hard disk of a computer without the holder's consent; the creation of fake profiles; intercepting e-mail messages; identity theft (phishing); electronic harassment (spam); misuse of directories and users' lists on the network; the accumulation, registration, and/or transfer of data without consent; alteration or destruction of information; and blocking access to information or to an administrator's account. These aggressions overlap each other and are produced with specific mechanisms and newborn techniques, for example, sniffers, Trojan horses, worms, virus, or logic bombs. They are several expressions of malware.

Besides these mechanisms, technology offers solutions as firewalls, antivirus, passwords, and cryptography. We can observe Jano God again, showing us positive and negative elements at the same time. This aggression and protection mechanisms respond to the geopolitical conditions; they are strategically used by the governments. Every day, we witness international attacks under the political demands.

To face these dangers, the European Union has promoted a new regulation of data protection (an autonomous right but connected to the previous ones) through regulation 2016/679, of the European Parliament and the Council. The objective of this rule is to strengthen the control and legal certainty facing data use on an unprecedented scale and at a global level. In this way, a system of data processing

³ The historical antecedent of this fundamental right is found in the French revolutionary period. Thus, the decree of the National Assembly of August 10, 1790, affirmed that "Le secret des lettres est. inviolable." Today it is established in Art. 18.3 of the Spanish Constitution, 15 of the Italian Constitution, 34.1 of the Portuguese Constitution, 10 of the German Constitution, or indirectly through the IV USA Amendment [24] and also in Art. 8 of the European Convention on Human Rights, 12 of the Universal Declaration of Human Rights, or 17 of the International Covenant on Civil and Political rights.

⁴ Directive 2002/58/EC of the European Parliament and of the Council of July 12, 2002, concerning the processing of personal data and the protection of privacy in the electronic communications sector.

is imposed based on the accountability, lawfulness, fairness and transparency, data minimization, accuracy, or the needs of security. These requirements of security's treatment must allow, in relation to the personal data, to guarantee confidentiality, integrity, and availability. A regulation of the European Union is a standard of direct application in all the member states (unlike a directive which in principle applies only if there is national law of transposition). Since May 25, 2018, the European Data Protection Regulation applies. The processing controllers of personal data have new obligations: information, implementation of appropriate technical and organizational measures, records of processing activities, cooperation with the supervisory authority, notification of a personal data breach to the supervisory authority, data protection impact assessment, and designation of the data protection officer.

In conclusion, we can affirm that the digital communications that want to remain out of the knowledge of third parties find themselves in a difficult situation due to the differences in interpretation. Civil law tries to react with different legal dispositions, which are partially effective. What is clear is that legal interpretation of rights should be updated or it should include legal dispositions such as deeming the home address and the electronic address comparable, to extend the guarantee scheme.

5. The problem of content control and regulation

A specific issue is the problem of content control in the Internet. This issue affects different clauses relative to the fundamental rights such as limits to freedom of speech, censure, hypothetical legal procedures, or to remove publications.

The Internet should not be a space without control [25–27], although it is more difficult to exercise it due to the peculiarities of the network. Therefore, the traditional legal idea of responsibility must also be present. An activity sanctioned by the legal system must be prosecuted regardless of whether we are in the analogue or digital world. This is especially important in the current context, with a deep web full of criminals and radicals that use the Internet as a strategic tool (e.g., DAESH or organized crime)⁵. This requires international coordination actions and continuous intelligence supervision.

However, it is also necessary to bear in mind that the sanctioning regime must be the same in the analogical and digital world; the technical differences do not justify a change of legal regime in this sense. And at the same time, alongside these control efforts, we must try to promote freedom while guaranteeing fundamental rights. In this way, measures that play in favor of equal access and the use of digital technology must be considered, measures that face the digital divide.

In the information that flows through the Internet, different subjects intervene, ranging from the providers of access to content providers to the users in a multidirectional position. It does not seem possible to apply the usual regime of cascade responsibility of the analog world. The decentralization of services and the possibility that an actor may exercise various or cumulatively various functions make it difficult, as Féral-Schuhl points out, to determine the respective responsibility of the different people involved in the process [28]. It would be necessary to look for a more nuanced formula, concentered in the real participation of each actor in the action or harmful content. Therefore, legislation on fundamental rights should always be applied. In the case of civil and trade law, there is the need to formulate specific regulations in order to address different contexts.

⁵ It is only in a framework of reasonable security context that fundamental rights can be exercised. Despite of DAESH ending of territorial control in Syria and Irak, terrorist advertisements cross borders in the cyberspace, and now they have been adapted to the new interconnected world.

Likewise, the difference between illicit content and harmful content must be considered. Illicit acts are contrary to the legal system of reference, among which, logically, those of a criminal nature stand out. In contrast, harmful content is legal but harmful (from a social, ethical, or moral point of view) for a certain sector of the population, such as teenagers or children.

The illicit contents must activate the reaction of the security forces to proceed with their persecution, which will find in many cases the stumbling block of the supraterritoriality, which must be overcome with bilateral or multilateral international collaboration. In addition, it can also happen that what is criminal in one country may not be in another, which may be a more important obstacle.

To deal with harmful content, the options must be different from mere criminal prosecution and declarations of illegality. Cultural differences introduce many nuances in this matter. This makes it difficult to speak of a commonly accepted universal culture of reference (we cannot speak of a global democratic culture). In this sense, it is not appropriate to introduce new restrictions and limitations for freedom on the Internet. The underlying idea is not to prohibit on the Internet what is allowed in other media (such as pornography). This is the line that has already been followed, for example, by the US Supreme Court when the organ confirmed on June 26, 1997, the unconstitutionality of the decency act in the Communications Decency Act of 1996. This act declared the transmission of indecent or obscene material to be illegal. Lower instances had already rendered this measure unconstitutional since it was considered contrary to the First Amendment of the Constitution⁶. The solution will not come with the criminalization of the network. Other more reasonable options to solve the problem of harmful content are filters and self-regulation. With content filters the user can control Internet access, which can be used by parents to supervise the navigation of their children. There are several options in the filters, such as whitelists (only allow access to those addresses), blacklists (do not allow access to the pages of the list), tagging of websites, and detection of suspicious words or copies of the accessed pages. In turn, self-regulation will overcome a large part of the inadequacies of the typical unilateral coercive regulation of the state. Self-regulation aims for suppliers to establish codes of conduct that serve both themselves and their customers.

The importance of self-regulation reveals the difficulties of applying technical and traditional regulations to the Internet. Therefore, it is imperative to look for new international arrangements that include *soft law* elements and the already mentioned self-regulations. Also, the network control, because of international security risks we have mentioned before, must respond to the proportionality principle (the general sweep of communications made by the United States through systems such as the Echelon network is not acceptable). It is possible to fight successfully against terrorism from the rule of law.

6. Communication and democracy

Democracy is a continuous process of power control that is articulated through different forms, which in any case are related to citizen participation.

Traditionally, the nucleus of democracy revolved around the representative electoral system, built upon the fundamental right of suffrage (active or passive). However, for a long time, there has been a sense of a crisis of representative democracy, with the consequent need for its renewal. The ideas of deliberative democracy or participatory democracy respond to this situation [29, 30]. In this sense, the

⁶ *Reno v. American Civil Liberties Union*, 521 U. S. 844.

digital world, in theory, enables pluralism and participation, through the new forms of communication and qualitative changes that arise, as we have mentioned before. Democracy now is also electronic and digital. Options increase. However, nowadays we are facing new challenges to our democracies such as new types of risks.

One of the most common concerns about the liaison between digital life and the protection of fundamental rights revolves around the topic of democracy. The millennium was born along with new spaces for the political arena—digital activism, the spread of news through social media, and a space for civil society to interact encourage participation beyond voting. At the same time, there are some challenges that governments and societies need to address such as the Cambridge Analytica scandal that involved the collection of personally identifiable information of over 87 million Facebook users [31]. The borders between freedom and protection thus become unclear. In addition, there is considerable concern among scholars on how political agendas are shaped through the digital spectrum.

One of the issues that immediately arise has to do with censorship and free speech. As a global society, we are facing the traditional threats to democracy but now with a renewed skin under the scope of cyberspace. The militarization of the digital world is one of these menaces.

As Robert J. Deiner points out:

“The Internet has long been seen as providing a technological fortification for free speech. Citizens can publish their views to a worldwide audience, communicate in an unrestricted fashion with other citizens, and create new communities of interest. Social forces have emerged, however, that have begun to chip away at that technological fortification. The most direct assault comes from increasingly sophisticated forms of state content filtering [...] A more unlikely source comes from intensifying pressures to regulate intellectual property and copyright” [32].

The lines between security and filtering get blurred, and this affects democracy. On one hand, states have to guarantee a secure environment for the economy. According to an estimate calculated during the Obama administration, “60% of small firms that are hacked go broke, and billions of dollars worth of intellectual property have been stolen from industry, including military blueprints from leading defence contractors” [33].

However, the situation goes beyond the protection of intellectual property. Ever since the 9/11 attack, governments have understood the importance of the Internet as a suitable vehicle that terrorist employ in order to achieve their goals. Nevertheless, this is only one side of the debate. Some scholars question the expansion and adoption of offensive information warfare capabilities by states. “The military use of cyberspace operates on a new terrain, presenting many thorny legal and moral questions concerning the targeting of civilian infrastructures, and the boundaries between an armed assault, a probe, collection of information, and the dissemination of propaganda.” [32]. As a result, we find ourselves in dilemma: we want a strong Leviathan capable of protecting users’ data from hackers, but at the same time, we remain suspicious. What if states use their faculties not only against hackers but also against civil society? The allegedly Russian meddling in American elections in 2016 is one example of how thin the lines between protection and intervention are.

The militarization of cyberspace is not the only concern regarding democracy and the digital world. A strong democracy needs reliable information, so citizens can make their choices. An informed population should be able to decide what the most important matters are. However, Castells contended that “what does not exist in the media does not exist in the public mind” [34]. Therefore, a legitimate question arises: who determines what exists in the media?

Jessica Feezel recently tested whether being exposed to political information through Facebook yields an agenda-setting effect by raising participants' perceived importance of certain policy issues. She found that "participants exposed to political information on Facebook exhibit increased levels of issue salience consistent with the issues shared compared with participants who were not shown political information" [35]. To claim that mainstream media influence and shape agenda setting is a common place. Nevertheless, this apparently self-evident assertion becomes more complex when we think about *fake news* and how easily they can be spread in the digital media posing a challenge for democracy. States are not the only actors that can benefit from users' data. The Facebook and Cambridge Analytica scandal showed that social media is more than just a vehicle for communication.

According to a parliamentary committee, the United Kingdom faces a "democratic crisis" with voters being targeted with "pernicious views" and data being manipulated [36]. Governments are now acknowledging that democracy will have to face serious threats unless social media companies face tougher regulation or a new tax. Despite these issues, it is undeniable that social media allow an activism never seen before and that society benefits from it. According to the Pew Research Center "Certain groups of social media users—most notably, those who are black or Hispanic—view these platforms as an especially important tool for their own political engagement. For example, roughly half of black social media users say these platforms are at least somewhat personally important to them as a venue for expressing their political views or for getting involved with issues that are important to them. Those shares fall to around a third among white social media users" [37].

According to the expressed above, the digital arena opens both the opportunity to robust democracy via the fundamental right to participation, but at the same time, it challenges democratic practices as well.

7. Conclusions

The new communicative environment of the information society poses several challenges for fundamental rights, which must be addressed in order to maintain the quality of our democracy. As we have seen, freedom of information, freedom of expression, secrecy of communications, privacy, or rights linked to political participation are affected. In a final verdict, it seems clear that the digital world has been beneficial for freedom of expression and information, which finds options and possibilities previously unknown, allowing citizens to reposition themselves at the center of their own history. However, regarding the secrecy of communications and matters relating to privacy, the verdict must be negative, because on the Internet it is very difficult to achieve true security to protect these rights. In another related right, such as data protection, the European Union is committed to a very relevant regulation that tries to mitigate threats. Time will tell if they manage to deactivate such dangers.

About political participation in particular and democracy in general, it is much more complex to make a conclusive final assessment. In theory, participatory options have increased with new forms of communication, but in practice the imbalances and problems are continuous, and manipulation and populism are real threats that diminish the stability of coexistence. The current situation is still under construction and shows contradictions, which exemplify again that ambivalent character of technology, with positive and negative elements.

Be that as it may, the key is to keep the guarantees of rights operative, regardless of the support that is used for their exercise. This requires legal operators and the legislator to update their work and the diverse regulations so that technical progress does not render legal regulations obsolete. We hope that we are up to these demands and offer

the public renewed public systems. New forms of digital communication, correctly used, can help us. Let's take advantage of their strengths and mitigate their weaknesses.

Acknowledgements

This paper is carried out within the framework of the project DER2017-83436-C2-1-R: "Responses in a Rule of Law to Security Challenges: Democratic Strengthening, Fundamental Rights and Duties of Citizenship," funded by the Ministry of Economy, Science and Competitiveness of the Kingdom of Spain.

Conflict of interest

Authors declare that they do not have conflict of interest related to this paper.

Author details

José Julio Fernández Rodríguez¹ and Jackeline Argüello Lemus^{2*}

¹ University of Santiago de Compostela, Spain

² National Autonomous University of Mexico, Mexico

*Address all correspondence to: jarle09@hotmail.com

IntechOpen

© 2019 The Author(s). Licensee IntechOpen. This chapter is distributed under the terms of the Creative Commons Attribution License (<http://creativecommons.org/licenses/by/3.0>), which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited. 

References

- [1] Fernández Rodríguez JJ. Lo público y lo privado en [Internet]. Intimidad y libertad de expresión en la Red. Mexico City: University Autonomous National of Mexico; 2004. 238 p. Retrieved from: <https://biblio.juridicas.unam.mx/bjv/detalle-libro/1167-lo-publico-y-lo-privado-en-internet-intimidad-y-libertad-de-expresion-en-la-red> [Accessed: August 15, 2018]
- [2] McLuhan M. The Gutenberg Galaxy: The Making of Typographic Man. Toronto: University of Toronto Press; 1962
- [3] European Parliament. Human Rights and Democracy. Brussels: European Parliament; 2018. Retrieved from: [http://www.europarl.europa.eu/RegData/etudes/PERI/2017/600413/IPOL_PERI\(2017\)600413_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/PERI/2017/600413/IPOL_PERI(2017)600413_EN.pdf) [Accessed: October 22, 2018]
- [4] Gill-Pedro E. Eu Law, Fundamental Rights and National Democracy. London: Routledge; 2018
- [5] Gutiérrez Gutiérrez I. Dignidad de la persona y derechos fundamentales. Madrid: Marcial Pons; 2005
- [6] Fernández Segado F. Dignidad de la persona, derechos fundamentales, justicia constitucional y otros estudios de Derecho Público. Madrid: Dykinson; 2008
- [7] Rubio Llorente F. Derechos fundamentales, derechos humanos y Estado de Derecho. Fundamentos. Cuadernos monográficos de Teoría del Estado, Derecho Público e Historia Constitucional. 2006;4:203-233
- [8] Castells M. The Galaxy Internet. Oxford: Oxford University Press; 2001
- [9] Weinstein M, editor. Globalization. What's new? New York: Columbia University Press; 2005
- [10] Subramanian A, Kessler M. The Hyperglobalization of Trade and its Future. Working Paper. Washington: Peterson Institute for International Economics; 2013. Retrieved from: <https://piie.com/sites/default/files/publications/wp/wp13-6.pdf> [Accessed: October 20, 2018]
- [11] Márquez de la Rubia F. De la antiglobalización a la nueva gobernanza. Madrid: Instituto Español de Estudios Estratégicos; 2017. Retrieved from: <https://dialnet.unirioja.es/servlet/articulo?codigo=6231816> [Accessed: October 20, 2018]
- [12] Roudometof V. Glocalization. A Critical Introduction. London: Routledge; 2016
- [13] Mattelart A. La mundialización de la comunicación. Barcelona: Paidós; 1998
- [14] Wolton D. Internet ¿y después? Barcelona: Gedisa; 2000
- [15] Rosenfeld M. El nacimiento y la evolución de los derechos humanos en Estados Unidos. Cuadernos Constitucionales de la Cátedra Fadrique Furió Ceriol.1997. pp. 18-19
- [16] Mill JS. On Libert. London: John Parker and Sohn; 1859
- [17] Fernández Rodríguez JJ. Reflexiones sobre Internet y los derechos fundamentales. In: Bagni S, Pegoraro L, editors. Internet, decentramento, diritti. Bologna: CLUEB; 2006
- [18] Hick S, Halpin EF, Hoskins E, editors. Human Rights and the Internet. London: MacMillan; 2000
- [19] Smith G. Content on the Internet. Law, Regulation, Convergence and Human Rights. International Law and the Hague's 750th Anniversary. Barcelona: Gedisa; 1999

- [20] O'Neil M, Frayssé O, editors. Digital Labour and Prosumer Capitalism: The US Matrix. Basingstoke: Palgrave MacMillan; 2015
- [21] Jordán Correa D, Arias Valladolid C, Samaniego Rivas G. La participación del prosumidor en la nueva era de la comunicación. *INNOVA Research Journal*. 2017;**11**:179-185. Retrieved from: <http://www.journaluidegye.com/magazine/index.php/innova/article/view/556> [Accessed: October 25, 2018]
- [22] Llaneza González P. Internet y comunicaciones digitales. Barcelona: Bosch; 2000
- [23] Castells M. La era de la información. Vol. 2. El poder de la identidad. Madrid: Alianza; 1998
- [24] Fernández Rodríguez JJ. Secreto e intervención de las comunicaciones en Internet. Madrid: Thomson-Civitas; 2004
- [25] Pollicino O, Romeo G. The Internet and Constitutional Law. London: Routledge; 2016
- [26] Jewkes Y, Yar M. Handbook of Internet Crime. London: Routledge; 2011
- [27] Kumar AP. Cyber Law. A View to Social Security. Create Space Independent Publishing Platform; 2009
- [28] Féral-Schuhl C. Cyberdroit. 2nd ed. Paris: Dalloz; 2000
- [29] Habermas J. Theorie Des Kommunikativen Handelns. Frankfurt: Suhrkamp; 1981
- [30] Luppigini R, Baard R. Digital Media Integration for Participatory Democracy. Hershey: IGI Global; 2017
- [31] Hern A. Cambridge Analytica: How did it turn clicks into votes? The Guardian. 2018. Retrieved from <https://www.theguardian.com/news/2018/may/06/cambridge-analytica-how-turn-clicks-into-votes-christopher-wylie> [Accessed: August 24, 2018]
- [32] Deibert R. Black code redux: Censorship, surveillance, and the militarization of cyberspace. In: Boler M, editor. Digital Media and Democracy. Tactics in Hard Times. Cambridge: MIT Press; 2008
- [33] Hopkins N. Militarisation of cyberspace: How the global power struggle moved online. The Guardian. Retrieved from: <https://www.theguardian.com/technology/2012/apr/16/militarisation-of-cyberspace-power-struggle> [Accessed: August 24, 2018]
- [34] Castells M. Communication, power and counter-power in the network society. *International Journal of Communication*. 2007;**1**:238-266. Retrieved from: <https://ijoc.org/index.php/ijoc/article/viewFile/46/35> [Accessed: August 25, 2018]
- [35] Feezell JT. Agenda setting through social media: The importance of incidental news exposure and social filtering in the digital era. *Political Research Quarterly*. 2017;**71**:482. DOI: 10.1177/1065912917744895
- [36] BBC. Fake news a democratic Crisis for UK, MPS warn. Retrieved from: https://www.bbc.com/news/technology-44967650?intlink_from_url=https://www.bbc.com/news/topics/c81zyn0888lt/facebook-cambridge-analytica-data-scandal&link_location=live-reporting-story [Accessed: August 26, 2018]
- [37] Pew Research Center. Activism in the Social Media Age. Retrieved from: <http://www.pewinternet.org/2018/07/11/activism-in-the-social-media-age/> [Accessed: September 13, 2018]