



Importance of Freedom

Russell Mooney

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Contents

| | | |
|-----------|---|-----|
| Chapter 1 | Introduction | 1 |
| Chapter 2 | Democracy, Freedom and Truth at a Time of Digital Disruption | 27 |
| Chapter 3 | Building Democracy: National and International Factors | 79 |
| Chapter 4 | Political Freedom..... | 115 |
| Chapter 5 | Digital Media and the Challenges for Fundamental Rights | 152 |

Chapter 1

Introduction

Freedom

Freedom, generally, is having the ability to act or change without constraint. Something is "free" if it can change easily and is not constrained in its present state. In philosophy and religion, it is associated with having free will and being without undue or unjust constraints, or enslavement, and is an idea closely tied with the concept of liberty. A person has the freedom to do things that will not, in theory or in practice, be prevented by other forces. Outside of the human realm, freedom generally does not have this political or psychological dimension. A rusty lock might be oiled so that the key has the freedom to turn, undergrowth may be hacked away to give a newly planted sapling freedom to grow, or a mathematician may study an equation having many degrees of freedom. In physics or engineering, the mathematical concept may also be applied to a body or system constrained by a set of equations, whose degrees of freedom describe the number of independent motions that are allowed to it.

In political discourse, political freedom is often associated with liberty and autonomy in the sense of "giving oneself their own laws", and with having rights and the civil liberties with which to exercise them without undue interference by the state.

Importance of Freedom

Frequently discussed kinds of political freedom include freedom of assembly, freedom of association, freedom of choice, and freedom of speech.

In some circumstances, particularly when discussion is limited to political freedoms, the terms "freedom" and "liberty" tend to be used interchangeably. Elsewhere, however, subtle distinctions between freedom and liberty have been noted. John Stuart Mill, differentiated liberty from freedom in that freedom is primarily, if not exclusively, the ability to do as one wills and what one has the power to do; whereas liberty concerns the absence of arbitrary restraints and takes into account the rights of all involved. As such, the exercise of liberty is subject to capability and limited by the rights of others.

Wendy Hui Kyong Chun explains the differences in terms of their relation to institutions:

Liberty is linked to human subjectivity; freedom is not. The Declaration of Independence, for example, describes men as having liberty and the nation as being free. Free will—the quality of being free from the control of fate or necessity—may first have been attributed to human will, but Newtonian physics attributes freedom—degrees of freedom, free bodies—to objects.

Freedom differs from liberty as control differs from discipline. Liberty, like discipline, is linked to institutions and political parties, whether liberal or libertarian; freedom is not. Although

Importance of Freedom

freedom can work for or against institutions, it is not bound to them—it travels through unofficial networks. To have liberty is to be liberated from something; to be free is to be self-determining, autonomous. Freedom can or cannot exist within a state of liberty: one can be liberated yet unfree, or free yet enslaved (Orlando Patterson has argued in Freedom: Freedom in the Making of Western Culture that freedom arose from the yearnings of slaves).

Another distinction that some political theorists have deemed important is that people may aspire to have freedom *from* limiting forces (such as freedom from fear, freedom from want, and freedom from discrimination), but descriptions of freedom and liberty generally do not invoke having liberty *from* anything. To the contrary, the concept of negative liberty refers to the liberty one person may have to restrict the rights of others.

Other important fields in which freedom is an issue include economic freedom, academic freedom, intellectual freedom, scientific freedom and political freedom

Freedom of speech

Freedom of speech is a principle that supports the freedom of an individual or a community to articulate their opinions and ideas without fear of retaliation, censorship, or legal sanction. The right to **freedom of expression** has been recognized as a human right in the Universal Declaration of Human Rights and international human rights law. A lot of countries have

Importance of Freedom

constitutional law that protects free speech. Terms like *free speech*, *freedom of speech* and *freedom of expression* are used interchangeably in political discourse. However, in legal sense, the freedom of expression includes any activity of seeking, receiving, and imparting information or ideas, regardless of the medium used.

Article 19 of the UDHR states that "everyone shall have the right to hold opinions without interference" and "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." The version of Article 19 in the ICCPR later amends this by stating that the exercise of these rights carries "special duties and responsibilities" and may "therefore be subject to certain restrictions" when necessary "[f]or respect of the rights or reputation of others" or "[f]or the protection of national security or of public order (order public), or of public health or morals."

Freedom of speech and expression, therefore, may not be recognized as being absolute, and common limitations or boundaries to freedom of speech relate to libel, slander, obscenity, pornography, sedition, incitement, fighting words, classified information, copyright violation, trade secrets, food labeling, non-disclosure agreements, the right to privacy, dignity, the right to be forgotten, public security, and perjury.

Importance of Freedom

Justifications for such include the harm principle, proposed by John Stuart Mill in *On Liberty*, which suggests that "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others."

The idea of the "offense principle" is also used in the justification of speech limitations, describing the restriction on forms of expression deemed offensive to society, considering factors such as extent, duration, motives of the speaker, and ease with which it could be avoided. With the evolution of the digital age, application of freedom of speech becomes more controversial as new means of communication and restrictions arise, for example the Golden Shield Project, an initiative by Chinese government's Ministry of Public Security that filters potentially unfavourable data from foreign countries.

Freedom of speech and expression has a long history that predates modern international human rights instruments. It is thought that the ancient Athenian democratic principle of free speech may have emerged in the late 6th or early 5th century BC. The values of the Roman Republic included freedom of speech and freedom of religion.

Freedom of speech was vindicated by Erasmus and Milton. Edward Coke claimed freedom of speech as "an ancient custom of Parliament" in the 1590s, and it was affirmed in the Protestation of 1621. England's Bill of Rights 1689 legally established the

Importance of Freedom

constitutional right of freedom of speech in Parliament which is still in effect. One of the world's first freedom of the press acts was introduced in Sweden in 1766, mainly due to the classical liberal member of parliament and Ostrobothnian priest Anders Chydenius. Excepted and liable to prosecution was only vocal opposition to the King and the Church of Sweden.

The Declaration of the Rights of Man and of the Citizen, adopted during the French Revolution in 1789, specifically affirmed freedom of speech as an inalienable right. Adopted in 1791, freedom of speech is a feature of the First Amendment to the United States Constitution. The French Declaration provides for freedom of expression in Article 11, which states that:

The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.

Article 19 of the Universal Declaration of Human Rights, adopted in 1948, states that:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Today, freedom of speech, or the freedom of expression, is recognised in international and regional human rights law. The right is enshrined in Article 19 of

Importance of Freedom

the International Covenant on Civil and Political Rights, Article 10 of the European Convention on Human Rights, Article 13 of the American Convention on Human Rights and Article 9 of the African Charter on Human and Peoples' Rights. Based on John Milton's arguments, freedom of speech is understood as a multi-faceted right that includes not only the right to express, or disseminate, information and ideas, but three further distinct aspects:

- the right to seek information and ideas;
- the right to receive information and ideas;
- the right to impart information and ideas

International, regional and national standards also recognise that freedom of speech, as the freedom of expression, includes any medium, whether it be orally, in written, in print, through the Internet or through art forms. This means that the protection of freedom of speech as a right includes not only the content, but also the means of expression.

Relationship to other rights

The right to freedom of speech and expression is closely related to other rights, and may be limited when conflicting with other rights (see limitations on freedom of speech). The right to freedom of expression is also related to the right to a fair trial and court proceeding which may limit access to the search for information, or determine the opportunity and means in which

Importance of Freedom

freedom of expression is manifested within court proceedings. As a general principle freedom of expression may not limit the right to privacy, as well as the honor and reputation of others. However greater latitude is given when criticism of public figures is involved.

The right to freedom of expression is particularly important for media, which plays a special role as the bearer of the general right to freedom of expression for all. However, freedom of the press does not necessarily enable freedom of speech. Judith Lichtenberg has outlined conditions in which freedom of the press may constrain freedom of speech, for example, if all the people who control the various mediums of publication suppress information or stifle the diversity of voices inherent in freedom of speech. This limitation was famously summarized as "Freedom of the press is guaranteed only to those who own one". Lichtenberg argues that freedom of the press is simply a form of property right summed up by the principle "no money, no voice."

Freedom of speech is usually seen as a negative right. This means that the government is legally obliged to take no action against the speaker on the basis of the speaker's views, but that no one is obliged to help any speakers publish their views, and no one is required to listen to, agree with, or acknowledge the speaker or the speaker's views.

Democracy in relation to social interaction

Freedom of speech is understood to be fundamental in a democracy. The norms on limiting freedom of expression mean that public debate may not be completely suppressed even in times of emergency. One of the most notable proponents of the link between freedom of speech and democracy is Alexander Meiklejohn. He has argued that the concept of democracy is that of self-government by the people. For such a system to work, an informed electorate is necessary. In order to be appropriately knowledgeable, there must be no constraints on the free flow of information and ideas. According to Meiklejohn, democracy will not be true to its essential ideal if those in power are able to manipulate the electorate by withholding information and stifling criticism. Meiklejohn acknowledges that the desire to manipulate opinion can stem from the motive of seeking to benefit society. However, he argues, choosing manipulation negates, in its means, the democratic ideal.

Eric Barendt has called this defence of free speech on the grounds of democracy "probably the most attractive and certainly the most fashionable free speech theory in modern Western democracies.". Thomas I. Emerson expanded on this defence when he argued that freedom of speech helps to provide a balance between stability and change. Freedom of speech acts as a "safety valve" to let off steam when people might otherwise be bent on revolution. He argues that "The principle of open

Importance of Freedom

discussion is a method of achieving a more adaptable and at the same time more stable community, of maintaining the precarious balance between healthy cleavage and necessary consensus." Emerson furthermore maintains that "Opposition serves a vital social function in offsetting or ameliorating (the) normal process of bureaucratic decay."

Research undertaken by the Worldwide Governance Indicators project at the World Bank, indicates that freedom of speech, and the process of accountability that follows it, have a significant impact in the quality of governance of a country. "Voice and Accountability" within a country, defined as "the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and free media" is one of the six dimensions of governance that the Worldwide Governance Indicators measure for more than 200 countries. Against this backdrop it is important that development agencies create grounds for effective support for a free press in developing countries.

Richard Moon has developed the argument that the value of freedom of speech and freedom of expression lies with social interactions. Moon writes that "by communicating an individual forms relationships and associations with others – family, friends, co-workers, church congregation, and countrymen. By entering into discussion with others an individual participates in

the development of knowledge and in the direction of the community."

Limitations

Freedom of speech is not regarded as absolute by some with most legal systems generally setting limits on the freedom of speech, particularly when freedom of speech conflicts with other rights and protections, such as in the cases of libel, slander, pornography, obscenity, fighting words, and intellectual property.

Some limitations to freedom of speech may occur through legal sanction, and others may occur through social disapprobation.

Some views are illegal to express because it can cause harm to others. This category often includes speech that is both false and dangerous, such as falsely shouting "Fire!" in a theatre and causing a panic. Justifications for limitations to freedom of speech often reference the "harm principle" or the "offence principle."

In *On Liberty* (1859), John Stuart Mill argued that "...there ought to exist the fullest liberty of professing and discussing, as a matter of ethical conviction, any doctrine, however immoral it may be considered." Mill argues that the fullest liberty of expression is required to push arguments to their logical limits, rather than the limits of social embarrassment. In 1985, Joel Feinberg introduced what is known as the "offence principle".

Importance of Freedom

Feinberg wrote, "It is always a good reason in support of a proposed criminal prohibition that it would probably be an effective way of preventing serious offence (as opposed to injury or harm) to persons other than the actor, and that it is probably a necessary means to that end." Hence Feinberg argues that the harm principle sets the bar too high and that some forms of expression can be legitimately prohibited by law because they are very offensive. But, as offending someone is less serious than harming someone, the penalties imposed should be higher for causing harm. In contrast, Mill does not support legal penalties unless they are based on the harm principle. Because the degree to which people may take offence varies, or may be the result of unjustified prejudice, Feinberg suggests that a number of factors need to be taken into account when applying the offence principle, including: the extent, duration and social value of the speech, the ease with which it can be avoided, the motives of the speaker, the number of people offended, the intensity of the offence, and the general interest of the community at large.

Jasper Doomen argued that harm should be defined from the point of view of the individual citizen, not limiting harm to physical harm since nonphysical harm may also be involved; Feinberg's distinction between harm and offence is criticized as largely trivial.

In 1999, Bernard Harcourt wrote of the collapse of the harm principle: "Today the debate is characterized by a cacophony of

Importance of Freedom

competing harm arguments without any way to resolve them. There is no longer an argument within the structure of the debate to resolve the competing claims of harm. The original harm principle was never equipped to determine the relative importance of harms."

Interpretations of both the harm and offense limitations to freedom of speech are culturally and politically relative. For instance, in Russia, the harm and offense principles have been used to justify the Russian LGBT propaganda law restricting speech (and action) in relation to LGBT issues. A number of European countries that take pride in freedom of speech nevertheless outlaw speech that might be interpreted as Holocaust denial. These include Austria, Belgium, Canada, the Czech Republic, France, Germany, Hungary, Israel, Liechtenstein, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Russia, Slovakia, Switzerland and Romania. Armenian genocide denial is also illegal in some countries.

In some countries, blasphemy is a crime. For example, in Austria, defaming Muhammad, the prophet of Islam, is not protected as free speech. In contrast, in France, blasphemy and disparagement of Muhammad are protected under free speech law.

Certain public institutions may also enact policies restricting the freedom of speech, for example speech codes at state-operated schools. In the U.S., the standing landmark opinion on political

Importance of Freedom

speech is *Brandenburg v. Ohio* (1969), expressly overruling *Whitney v. California*. In *Brandenburg*, the U.S. Supreme Court referred to the right even to speak openly of violent action and revolution in broad terms:

[Our] decisions have fashioned the principle that the constitutional guarantees of free speech and free press do not allow a State to forbid or proscribe advocacy of the use of force or law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or cause such action.

The opinion in *Brandenburg* discarded the previous test of "clear and present danger" and made the right to freedom of (political) speech protections in the United States almost absolute. Hate speech is also protected by the First Amendment in the United States, as decided in *R.A.V. v. City of St. Paul*, (1992) in which the Supreme Court ruled that hate speech is permissible, except in the case of imminent violence. See the First Amendment to the United States Constitution for more detailed information on this decision and its historical background.

Limitations based on time, place, and manner apply to all speech, regardless of the view expressed. They are generally restrictions that are intended to balance other rights or a legitimate government interest. For example, a time, place, and manner restriction might prohibit a noisy political demonstration at a politician's home during the middle of the night, as that impinges

upon the rights of the politician's neighbors to quiet enjoyment of their own homes. An otherwise identical activity might be permitted if it happened at a different time (e.g., during the day), at a different place (e.g., at a government building or in another public forum), or in a different manner (e.g., a silent protest).

The Internet and information society

Jo Glanville, editor of the *Index on Censorship*, states that "the Internet has been a revolution for censorship as much as for free speech". International, national and regional standards recognise that freedom of speech, as one form of freedom of expression, applies to any medium, including the Internet. The Communications Decency Act (CDA) of 1996 was the first major attempt by the United States Congress to regulate pornographic material on the Internet. In 1997, in the landmark cyberlaw case of *Reno v. ACLU*, the US Supreme Court partially overturned the law. Judge Stewart R. Dalzell, one of the three federal judges who in June 1996 declared parts of the CDA unconstitutional, in his opinion stated the following:

The Internet is a far more speech-enhancing medium than print, the village green, or the mails. Because it would necessarily affect the Internet itself, the CDA would necessarily reduce the speech available for adults on the medium. This is a constitutionally intolerable result. Some of the dialogue on the Internet surely tests the limits of conventional discourse. Speech

Importance of Freedom

on the Internet can be unfiltered, unpolished, and unconventional, even emotionally charged, sexually explicit, and vulgar – in a word, "indecent" in many communities. But we should expect such speech to occur in a medium in which citizens from all walks of life have a voice. We should also protect the autonomy that such a medium confers to ordinary people as well as media magnates.[...] My analysis does not deprive the Government of all means of protecting children from the dangers of Internet communication. The Government can continue to protect children from pornography on the Internet through vigorous enforcement of existing laws criminalising obscenity and child pornography. [...] As we learned at the hearing, there is also a compelling need for public educations about the benefits and dangers of this new medium, and the Government can fill that role as well. In my view, our action today should only mean that Government's permissible supervision of Internet contents stops at the traditional line of unprotected speech. The absence of governmental regulation of Internet content has unquestionably produced a kind of chaos, but as one of the plaintiff's experts put it with such resonance at the hearing: "What achieved success was the very chaos that the Internet is. The strength of the Internet is chaos." Just as the strength of the Internet is chaos, so that strength of our liberty depends upon the chaos and cacophony of the unfettered speech the First Amendment protects. The World Summit on the Information Society (WSIS) Declaration of Principles adopted in 2003 makes specific

Importance of Freedom

reference to the importance of the right to freedom of expression for the "Information Society" in stating:

We reaffirm, as an essential foundation of the Information society, and as outlined in Article 19 of the Universal Declaration of Human Rights, that everyone has the right to freedom of opinion and expression; that this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Communication is a fundamental social process, a basic human need and the foundation of all social organisation. It is central to the Information Society. Everyone, everywhere should have the opportunity to participate and no one should be excluded from the benefits of the Information Society offers.

According to Bernt Hugenholtz and Lucie Guibault, the public domain is under pressure from the "commodification of information" as information with previously little or no economic value has acquired independent economic value in the information age. This includes factual data, personal data, genetic information and pure ideas. The commodification of information is taking place through intellectual property law, contract law, as well as broadcasting and telecommunications law.

Freedom of information is an extension of freedom of speech where the medium of expression is the Internet. Freedom of information may also refer to the right to privacy in the context

Importance of Freedom

of the Internet and information technology. As with the right to freedom of expression, the right to privacy is a recognised human right and freedom of information acts as an extension to this right. Freedom of information may also concern censorship in an information technology context, i.e. the ability to access Web content, without censorship or restrictions.

Freedom of information is also explicitly protected by acts such as the Freedom of Information and Protection of Privacy Act of Ontario, in Canada. The Access to Information Act gives Canadian citizens, permanent residents, and any person or corporation present in Canada a right to access records of government institutions that are subject to the Act.

Challenge of disinformation

Some legal scholars (such as Tim Wu of Columbia University) have argued that the traditional issues of free speech -- that "the main threat to free speech" is the censorship of "suppressive states," and that "ill-informed or malevolent speech" can and should be overcome by "more and better speech" rather than censorship -- assumes a scarcity of information. This scarcity prevailed during the 20th century, but with the arrival of the internet, information became plentiful, "but the attention of listeners" scarce. And in the words of Wu, this "cheap speech" made possible by the internet "... may be used to attack, harass, and silence as much as it is used to illuminate or debate."

Importance of Freedom

In the 21st century, the danger is not "suppressive states" that target "speakers directly", but that targets listeners or it undermines speakers indirectly. More precisely, emerging techniques of speech control depend on (1) a range of new punishments, like unleashing "troll armies" to abuse the press and other critics, and (2) "flooding" tactics (sometimes called "reverse censorship") that distort or drown out disfavored speech through the creation and dissemination of fake news, the payment of fake commentators, and the deployment of propaganda robots. As journalist Peter Pomerantsev writes, these techniques employ "information... in weaponized terms, as a tool to confuse, blackmail, demoralize, subvert and paralyze."

Before the invention of the printing press, a written work, once created, could only be physically multiplied by highly laborious and error-prone manual copying. No elaborate system of censorship and control over scribes existed, who until the 14th century were restricted to religious institutions, and their works rarely caused wider controversy. In response to the printing press, and the theological heresies it allowed to spread, the Roman Catholic Church moved to impose censorship. Printing allowed for multiple exact copies of a work, leading to a more rapid and widespread circulation of ideas and information (see print culture). The origins of copyright law in most European countries lie in efforts by the Roman Catholic Church and governments to regulate and control the output of printers.

Importance of Freedom

In 1501 Pope Alexander VI issued a Bill against the unlicensed printing of books. In 1559 Pope Paul IV promulgated the *Index Expurgatorius*, or *List of Prohibited Books*. The *Index Expurgatorius* is the most famous and long lasting example of "bad books" catalogues issued by the Roman Catholic Church, which presumed to be in authority over private thoughts and opinions, and suppressed views that went against its doctrines. The *Index Expurgatorius* was administered by the Roman Inquisition, but enforced by local government authorities, and went through 300 editions. Amongst others, it banned or censored books written by René Descartes, Giordano Bruno, Galileo Galilei, David Hume, John Locke, Daniel Defoe, Jean-Jacques Rousseau and Voltaire. While governments and church encouraged printing in many ways because it allowed for the dissemination of Bibles and government information, works of dissent and criticism could also circulate rapidly. As a consequence, governments established controls over printers across Europe, requiring them to have official licenses to trade and produce books.

The notion that the expression of dissent or subversive views should be tolerated, not censured or punished by law, developed alongside the rise of printing and the press. *Areopagitica*, published in 1644, was John Milton's response to the Parliament of England's re-introduction of government licensing of printers, hence publishers. Church authorities had previously ensured that Milton's essay on the right to divorce was refused a license

Importance of Freedom

for publication. In *Areopagitica*, published without a license, Milton made an impassioned plea for freedom of expression and toleration of falsehood, stating:

Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.

Milton's defense of freedom of expression was grounded in a Protestant worldview, and he thought that the English people had the mission to work out the truth of the Reformation, which would lead to the enlightenment of all people. But Milton also articulated the main strands of future discussions about freedom of expression. By defining the scope of freedom of expression and of "harmful" speech Milton argued against the principle of pre-censorship and in favor of tolerance for a wide range of views. Freedom of the press ceased being regulated in England in 1695 when the Licensing Order of 1643 was allowed to expire after the introduction of the Bill of Rights 1689 shortly after the Glorious Revolution. The emergence of publications like the *Tatler* (1709) and the *Spectator* (1711) are given credit for creating a 'bourgeois public sphere' in England that allowed for a free exchange of ideas and information.

As the "menace" of printing spread, more governments attempted to centralize control. The French crown repressed printing and the printer Etienne Dolet was burned at the stake in 1546. In 1557 the British Crown thought to stem the flow of seditious and heretical books by chartering the Stationers' Company. The right

Importance of Freedom

to print was limited to the members of that guild, and thirty years later the Star Chamber was chartered to curtail the "greate enormities and abuses" of "dyvers contentyous and disorderlye persons professinge the arte or mystere of pryntinge or selling of books." The right to print was restricted to two universities and to the 21 existing printers in the city of London, which had 53 printing presses. As the British crown took control of type founding in 1637 printers fled to the Netherlands. Confrontation with authority made printers radical and rebellious, with 800 authors, printers and book dealers being incarcerated in the Bastille in Paris before it was stormed in 1789.

A succession of English thinkers was at the forefront of early discussion on a right to freedom of expression, among them John Milton (1608–74) and John Locke (1632–1704). Locke established the individual as the unit of value and the bearer of rights to life, liberty, property and the pursuit of happiness. However Locke's ideas evolved primarily around the concept of the right to seek salvation for one's soul, and was thus primarily concerned with theological matters. Locke neither supported a universal toleration of peoples nor freedom of speech; according to his ideas, some groups, such as atheists, should not be allowed.

By the second half of the 17th century philosophers on the European continent like Baruch Spinoza and Pierre Bayle developed ideas encompassing a more universal aspect freedom of speech and toleration than the early English philosophers. By the

Importance of Freedom

18th century the idea of freedom of speech was being discussed by thinkers all over the Western world, especially by French philosophes like Denis Diderot, Baron d'Holbach and Claude Adrien Helvétius. The idea began to be incorporated in political theory both in theory as well as practice; the first state edict in history proclaiming complete freedom of speech was the one issued 4 December 1770 in Denmark-Norway during the regency of Johann Friedrich Struensee. However Struensee himself imposed some minor limitations to this edict on 7 October 1771, and it was even further limited after the fall of Struensee with legislation introduced in 1773, although censorship was not reintroduced.

John Stuart Mill (1806–1873) argued that without human freedom there can be no progress in science, law or politics, which according to Mill required free discussion of opinion. Mill's *On Liberty*, published in 1859 became a classic defence of the right to freedom of expression. Mill argued that truth drives out falsity, therefore the free expression of ideas, true or false, should not be feared. Truth is not stable or fixed, but evolves with time. Mill argued that much of what we once considered true has turned out false. Therefore, views should not be prohibited for their apparent falsity. Mill also argued that free discussion is necessary to prevent the "deep slumber of a decided opinion". Discussion would drive the onwards march of truth and by considering false views the basis of true views could be re-affirmed. Furthermore, Mill argued that an opinion only carries

Importance of Freedom

intrinsic value to the owner of that opinion, thus silencing the expression of that opinion is an injustice to a basic human right. For Mill, the only instance in which speech can be justifiably suppressed is in order to prevent harm from a clear and direct threat. Neither economic or moral implications, nor the speakers own well-being would justify suppression of speech.

In her biography of Voltaire, Evelyn Beatrice Hall coined the following sentence to illustrate Voltaire's beliefs: "I disapprove of what you say, but I will defend to the death your right to say it." Hall's quote is frequently cited to describe the principle of freedom of speech. In the 20th Century, Noam Chomsky stated, "If you believe in freedom of speech, you believe in freedom of speech for views you don't like. Dictators such as Stalin and Hitler, were in favor of freedom of speech for views they liked only. If you're in favor of freedom of speech, that means you're in favor of freedom of speech precisely for views you despise." Lee Bollinger argues that "the free speech principle involves a special act of carving out one area of social interaction for extraordinary self-restraint, the purpose of which is to develop and demonstrate a social capacity to control feelings evoked by a host of social encounters." Bollinger argues that tolerance is a desirable value, if not essential. However, critics argue that society should be concerned by those who directly deny or advocate, for example, genocide (see limitations above). The 1928 novel *Lady Chatterley's Lover* by D. H. Lawrence was banned for obscenity in a number of countries, including the United

Importance of Freedom

Kingdom, the United States, Australia and Canada. In the late 1950s and early 1960s, it was the subject of landmark court rulings which saw the ban for obscenity overturned. Dominic Sandbrook of *The Telegraph* in the UK wrote, "Now that public obscenity has become commonplace, it is hard to recapture the atmosphere of a society that saw fit to ban books such as *Lady Chatterley's Lover* because it was likely to 'deprave and corrupt' its readers." Fred Kaplan of *The New York Times* stated the overturning of the obscenity laws "set off an explosion of free speech" in the U.S. The 1960s also saw the Free Speech Movement, a massive long-lasting student protest on the campus of the University of California, Berkeley during the 1964–65 academic year.

In 1964 comedian Lenny Bruce was arrested in the U.S. due to complaints again pertaining to his use of various obscenities. A three-judge panel presided over his widely publicized six-month trial in which he was found guilty of obscenity in November 1964. He was sentenced on 21 December 1964, to four months in a workhouse. He was set free on bail during the appeals process and died before the appeal was decided. On 23 December 2003, thirty-seven years after Bruce's death, New York Governor George Pataki granted him a posthumous pardon for his obscenity conviction.

In the United States, the right to freedom of expression has been interpreted to include the right to take and publish photographs

Importance of Freedom

of strangers in public areas without their permission or knowledge. This is not the case worldwide.

In July 2014, the University of Chicago released the "Chicago Statement," a free speech policy statement designed to combat censorship on campus. This statement was later adopted by a number of top-ranked universities including Princeton University, Washington University in St. Louis, Johns Hopkins University, and Columbia University.

Commentators such as *Vox's* Zack Beauchamp and Chris Quintana, writing in *The Chronicle of Higher Education*, have disputed the assumption that college campuses are facing a "free-speech crisis."

Chapter 2

Democracy, Freedom and Truth at a Time of Digital Disruption

Freedom of information and freedom of expression: a conceptual and legal framework

The pattern of a knowledge-based society relies to a large extent on digital technologies and intangible outputs and generates considerable transnational financial flows and gains. These technologies also play a key role in providing free access to data and information, encouraging citizen participation in public decision-making, fostering transparency and scrutiny of government action and mobilising new players capable of identifying alternative means of civic and political participation worldwide.

At the same time, the increasing impact of online platforms in manipulating transnational public debates and the surge in extremist groups using the digital ecosystem to incite hatred, hostility and violence are warning signs that these modes of communication may be having an adverse effect on democracy and that the boundary between fact and fiction is not as clear as we may like to think. The misleading stories about the EU in 2015 following Russia's hybrid war campaign in Ukraine, the US

Importance of Freedom

presidential election campaign and the Brexit referendum in 2016, the theories about COVID-19 that have flooded the web since 2019, the terrorist attack against French teacher Samuel Paty on 16 October 2020 and the cyber-attack against Microsoft which seriously affected the European Banking Authority in March 2021 are just some examples that highlight these trends.

Considering that a significant proportion of the world's citizens now use online media as their main source of information, the proliferation of disinformation and the related threat of radicalism and extremism have led to a growing awareness of these issues at international and European Union (EU) level. What can be done to tackle the situation? How should democratic states with new forms of private power intervene in an algorithmic society? Where should the line be drawn between freedom of expression and media pluralism on the one hand, and intrusion and censorship of dissenting opinions on the other? How should information be defended as a fundamental right? Is there a moral or ethical code when it comes to information? How can we create an environment that is conducive to inclusive, pluralistic public debate? How can we equip citizens to develop a critical approach and take informed decisions? How can we balance innovation with the need to ensure transparency and fairness? Could we be witnessing a situation in which algorithms are "dissolving" democracy? Drawing on the archives of international and European multilateral organisations (UN/UNESCO, the Organisation for Economic Co-operation and

Importance of Freedom

Development, the G7 and G20, the Council of Europe, the Organisation for Security and Co-operation in Europe and the EU Union) and several public and private stakeholders worldwide (including the International Fact Checking Network, the Ethical Journalism Network, the Future Today Institute, the European Group on Ethics in Science and New Technologies and the European Regulators Group for Audiovisual Media Services), as well as an interdisciplinary interpretation of the specialist literature (especially in the fields of history, political and legal science, sociology, economics and computer studies), this chapter sets out to answer the research questions enumerated above from a threefold perspective: a) by analysing the issues and challenges raised by the proliferation of fake news, social media and algorithms and their impact on human rights, freedom and democracy; b) by highlighting the regulatory provisions implemented in this area at European and international level and identifying their strengths and weaknesses; and c) by identifying future prospects, risks and uncertainties.

Freedom of expression is a fundamental human right, recognised by the United Nations General Assembly in 1946 and by the 1948 Universal Declaration of Human Rights, whose article 19 states that [“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”]. Freedom of expression is inseparable from the principle of freedom of

Importance of Freedom

information, as enshrined in many international legal instruments, including the Constitution of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) (1945), which calls for the “promot[ion of] the free flow of ideas by word and image” the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966). Regional regulatory frameworks recognising freedom of expression have also emerged, such as the US Freedom of Information Act (FOIA) (1967), the American Convention on Human Rights (1969) and the African Charter on Human and Peoples’ Rights (1987).

On the European continent, the Council of Europe (CoE), a multilateral intergovernmental organisation founded in 1949 with the aim of “fostering and maintaining a European state of mind” was the forerunner in the defence of freedom of information and expression as an integral part of human rights. This principle was reflected in the European Convention on Human Rights (1950) and the European Court of Human Rights (ECHR), set up in 1959, whose work helped harmonise national notions of such freedoms and gradually laid the foundations for a European case law and standard in this area. In 1954, the CoE also adopted a convention to promote a European consciousness and the free movement of ideas; later, in 1961, the European Social Charter guaranteed several rights for workers, including the fundamental right to information (about working conditions, social protection, etc.).

Importance of Freedom

With the establishment of the European Coal and Steel Community (ECSC) in 1951 and the European Economic Community (EEC) and Euratom in 1957, Europe as a supranational polity was initially based around a “de facto solidarity” (to borrow Jean Monnet’s expression) and interests related to economic integration; the question of human rights was not directly addressed. Nevertheless, the four fundamental freedoms of the internal market – where goods, people, services and capital are allowed to circulate freely – necessarily result in freedom of information. From 1969 onwards, the Court of Justice of the European Communities (CJEC), based in Luxembourg, made a point of interpreting Community law in the light of both fundamental rights common to the Member States and international instruments such as those of the CoE, thereby forging a Community case law and clearly confirming that human rights come under the aegis of European law. After the fall of the Berlin Wall on 9 November 1989, the enlargement of the Community to include the countries of Central and Eastern Europe, together with growing Community intervention in areas requiring the protection of fundamental rights and freedoms, encouraged the EU to adopt its own protective mechanisms. The 1992 Maastricht Treaty converted the obligation to respect the principles of freedom, democracy, human rights and fundamental freedoms and the rule of law, previously applied by the European Court of Justice, into a treaty obligation for the EU and for Member States by virtue of their membership. The Treaty of Amsterdam (1997) stated that “The Union is founded on the

Importance of Freedom

principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.”] In 1999, the EU set out to draw up a Charter of Fundamental Rights, which was solemnly proclaimed on 7 December 2000 by Parliament, the Commission and the Council, then proclaimed again on 12 December 2007 after being amended. Its preamble clearly states that [“the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.”] Article 11 of the Charter, entitled “Freedom of expression and information”, stipulates that: Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. 2) The freedom and pluralism of the media shall be respected.” The Treaty of Lisbon (2007) gave the Charter “the same legal value as the Treaties”, thereby making it binding for the Member States.

It is also worth noting that the Merger Treaty (1965) gave the ECSC, the EEC and Euratom (the “European Communities”) shared institutions – the Commission, Council of Ministers, European Parliament and Court of Justice – which now had a duty to comply with transparency, accessibility and integrity, considered as “principles of good administration”. With the

Importance of Freedom

Declaration on the right of access to information annexed to the Treaty of Maastricht, the EU entrenched its policy of institutional transparency, affirming [“that transparency of the decision-making process strengthens the democratic nature of the institutions and the public’s confidence in the administration. The Conference accordingly recommends that the Commission submit to the Council no later than 1993 a report on measures designed to improve public access to the information available to the institutions”].

The principle of freedom of information, whose origins can be traced back to the 18th century is an integral characteristic of pluralist democratic societies. It states that all information held by governments and their various institutions must be public and generally accessible, and may only be withheld for a “legitimate reason” such as respect for privacy or safety issues. Some restrictions are therefore admissible, as long as they are regulated and comply with international law.

In recent decades, the right to information has been increasingly recognised worldwide and implemented by means of specific legislative instruments. This trend has been driven in particular by the Organisation for Economic Cooperation and Development (OECD), which recently launched an “Open Government” initiative with the aim of implementing legal, regulatory and institutional frameworks that encourage transparency, participation and access to information in member countries. For

Importance of Freedom

the OECD, the right of access to information is both a driver for inclusive growth and a challenge for democracy and public governance, with the potential to promote interest in public policy issues and encourage citizens to get involved in decision-making in this area. While only 13 countries had national laws on freedom of information in 1990, now some 127 countries have adopted laws on access to information. Recognising the importance of improving universal access to information and knowledge, the 2015 UNESCO General Conference, followed by the 2019 United Nations General Assembly, proclaimed an International Day for Universal Access to Information, held every year on 28 September, with the aim of strengthening open science, multilingualism, ICT and media and information literacy, and reaffirming press freedom.

As demonstrated above, freedom of information and the free circulation of ideas are inherent to respect for human rights and central to the notion of democracy. Exercising the right to access information has a twofold impact: it encourages all citizens – civil society as a whole – to get involved in the public sphere, to participate in decision-making on public policy, to scrutinise and evaluate the performances of institutions and leaders, the economic system and the use of public money (and to identify instances of corruption); and it also prompts public authorities to be more transparent and open in the exercise of public governance, more responsive to signals from citizens, more attentive to the needs and criticism of society and therefore more

Importance of Freedom

open to reform. One of the most effective ways of tackling poor governance is open, enlightened debate with civil society – hence the importance of easy access to comprehensive, wide-ranging and accurate information for all citizens. Freedom of information can also lead to increased accountability and efficacy in governance and can bolster public confidence.

The need to adopt legislation to ensure freedom of information represents a major challenge in democratic countries worldwide. At the same time, the mere existence of international and national legislative and regulatory frameworks guaranteeing freedom of information does not mean that these will necessarily be applied automatically or permanently. The content and scope of laws in this area vary, and their application depends on several factors, including the wider constitutional framework, the level of dedicated funding and human resources, the dynamism of civil society, and the ability of citizens to make use of the law. Even if legal provisions do exist, freedom of information may be hindered by complicated mechanisms to access information, inappropriate management and preservation of information (including archives), excessive bureaucracy and impenetrable systems. It is therefore vital that we move from a “culture of secrecy” to a “culture of transparency” in the public sector, and that efforts are made to raise awareness among civil society of the importance of more rigorous standards when it comes to information.

“Information, the key to democracy”

In the contemporary cross-disciplinary sense, the concept of democracy has several interdependent dimensions, three of which are seen as foundational: citizenship, the representativeness of political leaders, and the limitation of state power by means of fundamental rights.

In this context, citizenship serves as a leaven for democracy, reflecting the desire of citizens (states, districts, communities, even the world – “global citizens”) “to act responsibly in public life” to exercise their right to contribute to the way in which society is managed, and also to share their stories, culture and general concerns.

The exercise of citizenship implies first and foremost the existence of a “public space”, the structure of which may be considered from four angles: 1) a(n) (intangible) political space where citizens discuss, debate, share their ideas and compare their arguments in order to try to reach a consensus on questions of general and/or overall interest; 2) a social space, which gives rise to “ways of living together” and fosters a “recognition of the other”; 3) an economic space, represented by “the market”, governed in principle by objective rules and mechanisms, but which may nevertheless be a sphere for collective action with a political objective; 4) a (tangible) physical space, which can be divided into different spatial levels, centered

around multiple networks and where multiple “possible futures” can be discerned. Over the past three decades, the physical space has gradually become a space for citizenship and politics, insofar as social, political, protest and even revolutionary movements have emerged in the streets and taken over symbolic sites (squares, parks, gardens, etc.), with the aim not only of achieving physical visibility but also of expressing ideas, exchanging experiences, spreading messages and creating symbols. As well as serving as the *agora*, the public space has therefore also become a space of public opposition. Examples of this phenomenon include the Tiananmen Square protests (Beijing, 1989), the University Square/“Golaniad” protests (Bucharest, 1990), the “Arab Spring” (a series of anti-government protests, uprisings and armed rebellions that spread across much of the Arab world in 2010–2011), “Occupy Wall Street” (New York, 2011), the Gezi Park protests (Istanbul, 2013), the Umbrella Movement (Hong Kong, 2014), the Maidan Square protests (Kiev, 2014), the “Nuit debout” movement (Paris, 2016) and the “Yellow Vest” movement (France, 2018–2019). The notion of public space is inseparable from that of civil society, which provides a framework for regular citizen engagement with the aim of reaching collective decisions on matters of public interest. Civil society plays a role in [“ensuring that all content and procedures related to public decision-making are accessible in the public space, and relaying to the political space any demands made in the public space and the various social spheres. It helps to control and balance the action of instituted powers – not just the

Importance of Freedom

state but also economic powers and the religious sphere. In this respect, at least in an ideal world, it represents a key place for the promotion and defence of citizens’ civil, political and social rights. The workings of our democracies rely to a large extent on the distinction and complementarity between the public space, civil society and political institutions.”]. More recently, civil society has become an integral part of the political decision-making process, not only through elections – the expression of direct democracy –, but also through the possibility of being consulted and sharing views on public issues – the expression of collective democracy. But if citizens are to freely form an enlightened viewpoint and make a useful contribution to the democratic process, they need to have access to information – reliable, pluralistic, independent information, drawn from diverse and varied sources and media, which they can absorb, analyse critically on the basis of their value systems, and incorporate into their own judgement. The quality and performance of democracy depends on it – as has become all too clear in the current era of “digital democracy” (Table).

Table: The key trends in electronic democracy.

| | <i>Democracy of transparency</i> | <i>Democracy of debate</i> | <i>Democracy of consultation</i> |
|-------------------------------------|--|---------------------------------------|---|
| <i>Type of citizenship promoted</i> | Enlightened citizens who stay informed | Citizens who discuss, share ideas and | Citizens who take part in decision-making |

Importance of Freedom

| | | | |
|--|--|--|---|
| | | compare their views with those of others | Citizens who govern |
| <i>Main criticism levelled at current democracy</i> | Lack of transparency in the workings of political institutions No real right to information | Public space closed or hampered by intermediaries | Leaders who are cut off from citizens and have become autonomous |
| <i>Prevailing direction in which information circulates; online functions given precedence</i> | Downwards Websites Mailing lists | Horizontally Forums Personal pages Email Cooperative groups Mailing lists | Upwards Email Discussion forums Electronic voting |
| <i>Advantages of the internet</i> | Low cost of storage and distribution Potential for custom searches Updated | Direct horizontal communication that transcends social, organisational and geographical barriers and | Quick, direct, more informal access to elected representatives Less costly citizen |

Importance of Freedom

| | | | |
|--|--|--|---|
| | information | creates identity Reduced cost of engagement | consultations |
| <i>Potential for interaction with the political sphere</i> | Elected representatives with the role of informing or educating Alternative press | Elected representatives as catalysts/leaders Associations | Elected representatives in an advisory role Institutional channels for participation |
| <i>Frequent problems</i> | Tendency for model to lapse into mere provision of practical information Information overload | Unequal participation How to move from debates to action or decision-making | Unequal ability to make requests Security, confidentiality, authenticity of communications |

In 2019, under the aegis of the UN, the International Partnership on Information and Democracy was set up to promote and implement democratic principles in the global information and communication space with the aim of guaranteeing free, pluralistic, “quality reporting despite the changes resulting from new digital communication forms”.

Media – at the intersection of democratic culture and technological progress

The notions of *information* and *communication* are inseparable from that of *media* (the plural of *medium*), a term whose primary definition – means of communicating information – is surrounded by multiple additional facets relating to the techniques used to process that information, to content itself and the way in which it is organised, presented and formatted, and to the regulatory frameworks governing these processes.

Characterised by varying temporalities, materialities and scales and by specific theoretical and methodological approaches, the many aspects implicit in the notion of *media* have changed considerably over time, as revealed by the emerging field of media archaeology. Following on from the written word (used in the print press and also in telegraphy – the transmission of written messages), audio (for telephony and then radio broadcasts) and images (for cinematography and then television), new processes based on information and communication technologies began to be developed, driven by the emergence (1969) and global spread of the Internet, the arrival of the World Wide Web in the mid-1980s and the advent of the *information society*, bringing about a paradigm shift. Non-instant communication (of written, visual or audio material) was replaced by communication in real time. As new innovations gathered pace, this paved the way for information itself to circulate ever more quickly via new

platforms, transforming the use of content (in both technical and social terms) and the way in which information is perceived, assimilated and consumed by the public. At the same time, [“No medium has its meaning or existence alone, but only in constant interplay with other media. Radio changed the form of the news story as much as it altered the film image in the talkies. TV caused drastic changes in radio programming, and in the form of the thing or documentary novel].

The notions mentioned above relate to social phenomena: “the media represent an organisational system that takes these notions (information and communication) and incorporates them into various spheres: economic (supporting businesses), technological (boosting the quality and quantity of dissemination) and symbolic (serving citizen democracy).” The following points can therefore be observed: 1) Given that all members of civil society (citizens, politicians, businesspeople, associations, etc.) interact with information, the media can only exist in the public space, where they target both individuals and the community, with an impact that is both global and local, general and specific. In the public space, information becomes a common good, a source of democracy. 2) Over time, information has become more than just a source of knowledge; it is a product in its own right, a commodity that is subject to economic logic and the rules of the market. For example, in the mid-19th century, the print press was able to prosper and become a “press for the masses” precisely for commercial reasons, by printing advertisements that

Importance of Freedom

created a link between producers and consumers (at a time when the purchasing power of the working classes was on the rise.) Readers were seen as both citizens and consumers. Even if the press was structured in such a way that there was a clear separation between owners and news writers – resulting in the emergence of the profession of *journalist* –, this nevertheless raises questions as to the way in which the media address their readership. How do they reconcile a sound business model (based on profitability, capturing market share, etc.) with the principles of objectivity, transparency and balance that are intrinsic to information? To what extent do commercial obligations and ideological, cultural and societal factors influence the media discourse and products available to the public? Is this discourse neutral or skewed by a biased perspective and a prevailing value judgement which are instilled in members of the public, thereby diverting them from their own reasoning and subjectivity?

When he wrote for the eye sees not itself, but by reflection, by some other things”] Shakespeare was making the point that we only perceive reality by the way in which it is represented. The media do not offer us a “mirror of the world” by means of a neutral transposition of a series of facts, but rather a “showcase of the world”, in other words a view determined by a specific selection of information that is prioritised and presented in a specific way. These processes “are governed by the journalist’s *habitus*, as stimulated by changing circumstances: an event-driven view of reality, an individualistic view of the social sphere

and a relative allegiance to the ruling elites, with which many journalists are in contact, both because of the routines of their profession and because they belong to certain circles for decision-making and discussion that shape current events and opinions. Roughly speaking, all we know of the world is what the media tell us.

Information and the need for truth

In a democracy, information is a common good, a resource belonging to the public space and to the realm of public debate, which must be based on a need for truth. But in the past twenty years, the informative role of the media has undergone a number of major shifts, which have had an impact on the very notions of *truth* and *democracy*.

The first shift is technological: digital technologies have prospered at a rate never before witnessed in the history of technology, bringing about changes in the production, management, dissemination and consumption of information – in short, the way in which we relate to information – for society as a whole (information professionals, politicians and citizens.) A second shift involves practices and uses, which have resulted in a new type of relationship between information/media and their audience. [“The rise of social networks and their effect on mediated communication in present societies, as well as mobile communication, artificial intelligence (AI), virtual reality, and

Importance of Freedom

transmedia strategies, have encouraged the search for experimental and innovative responses which encourages extensions of the person for services, personalisation of content, and updated meaning of place and time. A third shift has occurred in the realm of information itself, which has been democratised beyond censorship, is now shared instantly across borders and has been radically liberalised, to such an extent that any individual, often anonymously, can produce and share information and opinions and can judge and take a stance on the basis of their own truths and values. Information now finds itself within a transitional ecosystem in which traditional and innovative media coexist and old concepts are co-opted to deal with new challenges. As algorithms take centre stage – in the absence of any meaningful ethical framework –, information has become horizontal and fragmented; we are faced with an information overload and are rapidly reaching saturation point. [“Allowing every opinion into the public sphere and giving it serious time and consideration, far from resulting in a process that is conducive to knowledge formation, destroys its very possibility.”] At the same time, the instant nature of information, [“the religion of scoops and real time, the imperatives of concision and sensation, are conducive to stereotyped reflection, clichés and spontaneous acceptance of conventional ideas”].

The proliferation of sources and the phenomena of fake news, “alternative facts”, disinformation and misinformation are becoming increasingly prevalent in public discourse, eroding the

credibility of information and giving rise to scepticism, relativism and even to a “pandemic of credulous thinking.” Examples include the radioactive cloud from the Chernobyl accident in 1986, which was infamously said to have “stopped” at some European borders; the false evidence of weapons of mass destruction which served as a justification for the US invasion of Iraq in 2003; and more recently, in 2016, the pro-Brexit campaign and the US presidential election campaign. Alongside the information crisis, we are also witnessing a crisis of truth, fuelled by the deeply anti-democratic idea that there is no “established truth” and that the source of information may have more value than the information itself. In the “post-truth era” [“a large share of the populace is living in an epistemic space that has abandoned conventional criteria of evidence, internal consistency, and fact-seeking”].

In its 2020 edition, the Reuters Institute Digital News Report—which examines long-term trends in media use worldwide and analyses the role of social media in the context of online news usage – highlights two main observations. The first is that news consumption is changing – news sources on the internet are gaining in importance, especially social media, which plays a vital role among young people. The second is the rise of intermediaries – “brokers of information that position themselves between producers and consumers while altering the flow of information.” An in-depth look reveals that in 2020, in many European countries, the proportion of the population using social

media as a news source ranged from about 30 to 60%, and thus algorithms are becoming the dominant news source. These algorithms filter, sort, personalise, recommend and classify news content by prioritising data and opinions that corroborate existing preferences, while at the same time excluding (filtering) other content classified as non-relevant for the user. [“Intermediaries act as ‘gatekeepers’ by means of these functions. This task was traditionally performed by professional mass media (newspapers, television, radio). In the digital media environment [it is] increasingly replaced by algorithmic curation”].

At the same time, traditional journalistic criteria (professional assessments, the market and the audience) are gradually giving way to what might be referred to as “news values – such as controversy, conflict, negativity, proximity or elite people.”] While traditional media outlets are aimed at society as a whole in a bid to give citizens access to reliable factual information that is cross-checked, impartial and relevant so that they can make well-considered decisions, algorithms target users/citizens individually. But relatively little is known as yet about the way in which algorithmic systems of intermediaries function – they are often referred to as “black boxes” –, and this makes it difficult to accurately assess their societal influence.

Europe and “algorithmic democracy”

In an increasingly globalised, competitive geopolitical context, in which innovation is seen as a key driver for economic growth, Europe is keen to give its Single Market a strong digital dimension.

Completing the European single market: from digital to data

In building what it refers to as the Digital Single Market, the EU “has to get to grips with new principles and notions arising from globalisation – such as dematerialisation, deterritorialisation, cyberspace and e-governance – and find answers to new questions about the nature of work, national sovereignty and territoriality, as well as the exercise of power and of democracy. This raises unprecedented social, economic, fiscal, environmental and democratic challenges with the potential to cause societal upheaval”.

Europe is facing considerable challenges. First and foremost, despite its size (513.5 million inhabitants, representing 6.9% of the world’s population), its level of development (21.8% of global GDP) and its technological ambitions (2.07% of the EU’s GDP in 2019), the EU still lags behind the US and China and is struggling to assert itself as a digital power. It also has to grapple with the technological and economic heterogeneity and

asymmetry of the Member States in their approach to the digital transition (in which Scandinavian countries and the UK, Germany and France are the leaders). And finally, multiple stakeholders acting on different levels across broad cross-cutting policy areas are generating “contradictions between techno-nationalism and techno-globalism”.

At the same time, digital wealth creation is strongly concentrated in the United States and China, which together hold 75% of all patents related to blockchain technologies, 75% of the cloud computing market and 90% of the market capitalisation value of the world’s 70 largest digital platforms. The US holds a growing place in the daily lives of Europeans through the pervasiveness of web giants such as Google, Amazon, Facebook, Apple and Microsoft (“GAFAM”), and this has increased yet further with the arrival of a “new wave” of American giants of the digital economy – Netflix, Airbnb, Tesla and Uber (“NATU”) – and by the rise of the three largest Chinese technology companies – Baidu, Alibaba and Tencent. This phenomenon is leading to new mechanisms for value creation based on knowledge and intangible assets; to the increasing dominance of networks of stakeholders over individual players; and to the emergence of new forms of sharing, creation, collaboration and consumption – especially in the realm of information. “The challenges are not just commercial, but touch the very heart of the future of Europe as a political unit mastering its own destiny”. The EU is currently working to develop a technological ecosystem that will facilitate innovation;

Importance of Freedom

it wants to assert its “tech sovereignty” and maintain regulatory sovereignty in key areas. The bloc is cooperating at international level to harmonise rules, standards and policies within a multilateral framework (UN, UNESCO, OECD, G7, G20, CoE). A number of sensitive regulatory issues have emerged recently, all with the potential to influence democracy, including the market size of social media, how to tax intangible assets, personal data management and the question of “ethical algorithms.” The EU’s approach reflects its strategic objective to move from a “digital economy” to a “data economy” – its ultimate aim is to develop a single market for data within the European Single Market.

In the digital transformation of Europe, the question of disinformation (including misleading or outright false information) and its impact on democracy has become a priority for the EU since 2015. The rise of populism and extremism in some countries (Austria, France, Hungary, Italy, the Czech Republic and Poland) and the campaigns for Brexit in 2016 and for the European elections in 2019 – both of which were marred by foreign interference – have led to a growing awareness within the EU and internationally of the harmful effects on public debate, political decision-making and democracy of manipulative communication via content distribution networks, social media services, video-sharing platforms and search engines. Disinformation campaigns led by third countries, cyberattacks and interference in the electoral process all represent threats for the EU’s internal security. There are also privacy-related issues

Importance of Freedom

regarding the massive volumes of personal data collected by these platforms and the fact that it is becoming increasingly difficult to prevent third parties from storing and using them.

Even if powers in the area of information lie with individual Member States, it is clear that the transnational and cross-border dimension of online disinformation makes a coordinated European approach necessary to ensure the protection of the EU's citizens, policies and institutions. In 2015, on the initiative of the European Council, the EU institutions and the European External Action Service set up the East StratCom Task Force "to address Russia's ongoing disinformation campaigns." The 2017 Joint Declaration on "Fake News," Disinformation and Propaganda provides a focused treatment of the application of international human rights standards to the phenomenon of disinformation. It sets out general principles and standards and defines roles and responsibilities for states, digital intermediaries and media outlets. The document emphasises states' "positive obligation" to create an "enabling environment for freedom of expression" and identifies broad strands of public policy to this end.

In June 2017, the European Parliament adopted a resolution urging the European Commission to carry out an in-depth review of the legislative and regulatory framework to limit the dissemination and spread of fake content. In 2018, the European Commission's Joint Research Centre carried out a study on fake

Importance of Freedom

news and disinformation which revealed that two thirds of consumers of online news prefer to access it through algorithm-driven platforms (search engines, news aggregators, social media websites) and also that market power and revenue streams have shifted from news publishers to platform operators who have the data to match readers, articles and advertisements.

In March 2018, the European Council addressed the question of social networks and digital platforms, reiterating the need [“to guarantee transparent practices and full protection of citizens’ privacy and personal data.”] The European Commission launched a comprehensive online consultation with citizens and stakeholders in 2017–2018 and set up a High-Level Expert Group to advise on this matter. Also worth noting are the adoption of the Directive on security of network and information systems (the NIS Directive), the General Data Protection Regulation (GDPR) and the Regulation on Cross-Border Delivery Services. The entry into force of the GDPR (2018) resulted in more stringent obligations for those using personal data and stronger rights for individuals, both within and outside the EU.

In its judgement of 13 May 2014, the Court of Justice of the European Union (CJEU) ruled on a first case of the “right to be forgotten” online. The Court concluded that Google was responsible for the processing of personal data that appeared on its pages. In September 2019, two other judgements handed down by the CJEU on “de-referencing” consolidated the basis of the

“right to be forgotten”. The first judgement restricted the territorial scope of the right to de-referencing, which is limited to the EU’s borders and is not binding for other countries. The second judgement was related to the terms of application of search engines. Under this ruling, the personal data set out in the General Data Protection Regulation (genetic and biometric data, data on sexual orientation, criminal offence data, etc.) are protected. But a balance needs to be found between the right to access information freely and the fundamental rights of those who request de-referencing. In the European Democracy Plan, which aims to empower citizens and build more resilient democracies across the EU (2020), the Commission sets out measures to promote free and fair elections, strengthen media freedom and counter disinformation.”] The plan proposes measures to increase protection for journalists and tackle disinformation and interference, while fully preserving freedom of speech. In 2020, the European Digital Media Observatory (EDMO), managed by a consortium led by the European University Institute in Florence (EUI), was also set up with the aim of “creating and supporting the work of an independent multidisciplinary community capable of contributing to a deeper understanding of the disinformation phenomenon and [increasing] societal resilience to it”.

The debate over the lack of sufficient safeguards, oversight measures and enforcement to adequately deal with information, which is eliciting a response from civil society, politicians,

Importance of Freedom

regulators and, more recently, stakeholders of the global digital economy, has given rise to a self-regulatory Code of Practice on Disinformation drafted in 2018 by representatives of online platforms, leading social networks, advertisers and the advertising industry to address the spread of online disinformation and fake news and to protect users from disinformation.

The code, which came into force in September 2019, sets out a number of commitments for a more transparent, trustworthy and accountable online ecosystem and includes a list of best practices that the signatories pledge to adopt to implement these commitments. Initial signatories include major online platforms (Facebook, Google, YouTube and Twitter), software providers (Mozilla), advertisers as well as a number of trade associations representing online platforms and the advertising industry. Microsoft and TikTok have now also signed the code (in May 2019 and June 2020 respectively), and like other companies have devised individual roadmaps with specific measures, methods and tools to combat disinformation that they intend to implement in all EU Member States.

The Commission will work in conjunction with the European Regulators Group for Audiovisual Media Services (ERGA) to monitor the effectiveness of these commitments (Figure).

Importance of Freedom

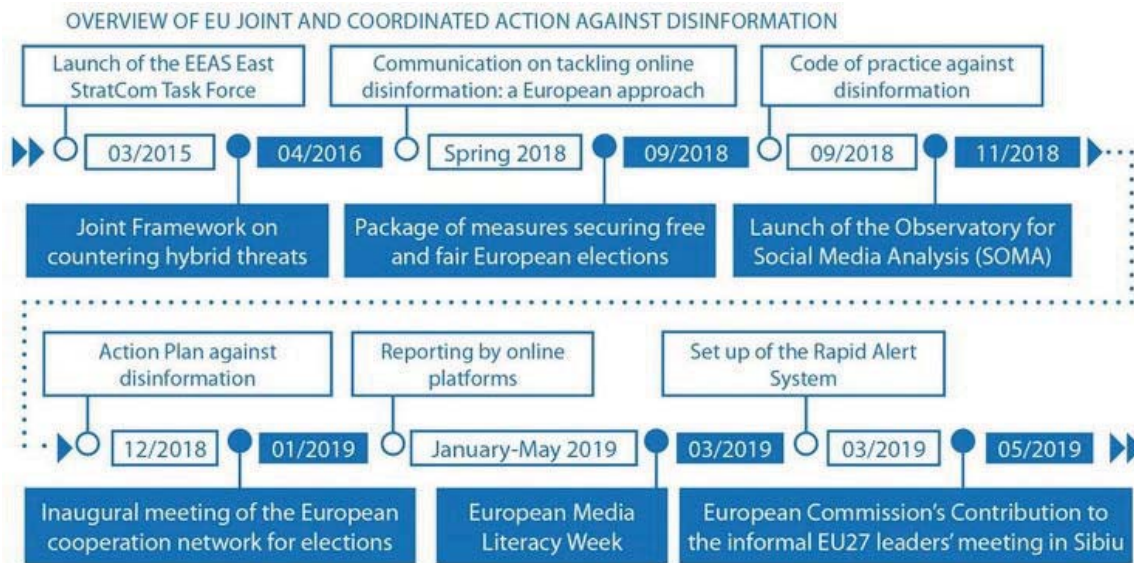


Fig. Overview of EU joint and coordinated action against disinformation

At the same time, the Commission is working to raise awareness of the intentions, objectives, sources and tools of disinformation and to highlight our own vulnerability in this area. [“It is essential to understand how and why citizens, and sometimes entire communities, are drawn to disinformation narratives and define a comprehensive answer to this phenomenon.”] In this regard, an independent European network of fact-checkers is working to develop common methods, exchange best practices and achieve the broadest possible coverage of factual corrections EU-wide, in accordance with a strict International Fact Checking Network Code of Principles. A secure European online platform on disinformation will take shape to support the network of fact-checkers and relevant academic researchers with cross-border data collection and analysis, as well as access to data across the

Member States. A number of stakeholders, including the Media Pluralism Monitor (run by the Centre for Media Pluralism and Media Freedom in Florence), EDMO and the academic community, are working in synergy to develop a sound scientific methodology which could help identify key EU-wide vulnerabilities. A further step is to empower EU citizens to better identify and deal with disinformation and undesired content (as hate speech, child pornography, elements of pro-terrorism guidance or proselytism) through online media education and digital literacy.

Charting an uncertain future

Information technology and the use of algorithms, big data and AI – all of which have already proved their worth in terms of economic growth, employment, innovation and improving quality of life – are set to play an increasing part in the development and workings of society and individuals.

While the positive potential of these factors has not yet been fully identified and harnessed, it is important to consider their impact on democracy, human rights (which overlap with wider ethical concerns) and the rule of law, as well as their influence on individual behaviour and thought. How can we know, for example, whether a person's vote – the ultimate expression of democracy – reflects a deep individual conviction or merely the influence of algorithms, or even manipulative fake news? If big data produces knowledge that is devoid of concepts and is not

based on any preliminary hypothesis, will it merely result in “expertise without experts”? If so, who will take responsibility for it? Won’t this deprive citizens of the right to debate and decide? How can we safeguard the integrity of democratic principles? Recommendations by computers may have an air of rationality or infallibility, and people might blindly follow them. [“The human being may often be led to ‘rubber stamp’ an algorithmically prepared decision, not having the time, context or skills to make an adequate decision in the individual case.”] Although they are portrayed as [“neutral tools of economic progress and social advancement, digital technologies have acquired an aura of ungovernability. In a rapidly unfolding datafied world, the integration of digital intelligence needs to be rooted in frameworks of accountability, where social intent guides the appropriation of technology”].

In recent years, this issue has been high on the agenda of many European and international multilateral stakeholders which are reflecting on the need for common understanding of concepts and principles, and appropriate transnational regulation in the area of AI, with the participation of all segments of society – governments, public and private key actors, experts, practitioners and citizens. States need to adopt interdisciplinary strategies to address the risks to democracy and human rights – and workers rights - posed by machine learning. They should specifically legislate against forms of “illegitimate interference”, including forms of persuasion and intrusion that compromise

Importance of Freedom

democratic principles, and they should encourage public debate on the subject. Governments should keep an eye of emerging disruptive technologies such as deep learning and generative adversarial networks (GANs), which make it possible to manipulate images and video so well that it becomes difficult, if not impossible, to distinguish manipulated them from authentic ones. Apps like FakeApp and Lyrebird have made the production of “deep fakes” accessible to anyone.”] AI needs to be grounded in human rights principles, and states need to update and enforce data protection regulations with respect to machine learning technologies and to promote policies that create a diverse and pluralistic information environment, including the regulation of technology monopolies in the domain of AI.

It is clear that in the years to come, journalism will be permeated by AI – computational journalism and computer-assisted reporting; i-teams for algorithms and data; natural language generation for reading levels; computational photography; and journalism as a service – and [“the advent of deep fakes and generative adversarial networks may accelerate this trend.”] This will give rise to new cross-disciplinary challenges – technological, editorial, philosophical and ethical –, which will only be resolved by a combination of research, politics, cybersecurity, moral standards and education.

This new ecosystem raises various long-term issues. First, it may impose a dominant culture, or even a single way of thinking

Importance of Freedom

(English is already virtually ubiquitous as the language of communication in this environment, and certain world views are particularly dominant). On the other hand, paradoxically, in this unfettered digital environment, the notion of borders and boundaries may suddenly rear its head in the form of standards and accessibility. In this context, digital education and media literacy are essential. The main responsibility lies with academia, since the key is not just the acquisition of digital know-how, but more importantly the development of a critical approach (not only to identify “fake news” but also to appraise “real” news stories) and a genuine ability for analytical thought, and a willingness to apply these skills. [“Critical thinking and discerning consumption of meaningful content, in a technoscape full of falsehoods remains an important challenge and policies that advocate critical media and digital literacy in schools and institutions in this context will be a positive move”].

The multidimensional paradigm that is emerging in today’s competitive geopolitical environment is driven by a number of factors, including the primacy of intangible assets in value creation; the growing transnational and international dimension of production, consumption and innovation; the prevalence of networks of stakeholders over individual players; the transition from human labour to AI; and the need to harmonise rules, standards and policies within a multilateral framework. The development of big data, data mining, algorithmic analysis and

Importance of Freedom

predictive profiling raises unique challenges for the rule of law, human rights, sovereignty and democracy.

These structural shifts will have a long-term impact on social and cultural practices, interpersonal and societal relations, the public space, citizenship and the exercise of democracy. In our digital world, there is a gap between the protection of freedom of expression and opinion and the reality of a globalised public space where, in the absence of appropriate regulations, anyone can interfere, often anonymously. Powers that were once the preserve of the state are now delegated to private structures or state entities in other countries.

In Europe, traditional media is subject to wide-ranging rules on impartiality, pluralism, cultural diversity and harmful content. Democracy in the EU depends on the existence of free and independent media. The emergence of a virtual media environment, with its arsenal of “fake news”, “alternative facts” and disinformation, is generating new risks and uncertainty for society, especially since it is deeply intertwined with the broader digital ecosystem, in which technologies and tactics will continue to evolve. The exposure of citizens to large-scale disinformation represents a major challenge.

Tackling this phenomenon will require a coordinated effort on the part of governments, institutions, traditional media outlets and social media platforms, users, civil society and the academic community. The EU aim to take the lead in raising public

awareness about disinformation. Its long-term action in this area is based on several strands: 1) cooperation between platforms and public authorities, including mobilising and coordinating fact-checkers; 2) an incremental approach to regulation, combining self-regulation (including “citizen regulation”) and co-regulation, in a way that supports diversity and pluralism (increased exposure to non-mainstream content) and promotes transparency (e.g. with “cyber nudges”) and shared practices; 3) a proactive media policy that encourages responsible behaviour in conveying information to end users and a more sustainable evolution of the online news market; and 4) a long-term strategy for digital education, media literacy and broad user empowerment.

Analog, Embodiment, and Freedom

Lots of evidence has accumulated that online content influences people. It has even been pointed out that computer algorithms sometimes know us better than we know ourselves. They can detect our interests by the searches we do and the web pages we open. If this were not so, businesses would not advertise on the Web. But does that mean we humans are just a slower, less systematic kind of computer? How different are computers and living organisms?

Peirce’s most difficult category is Firstness. It is difficult because it is about things before we really begin to think about them or

Importance of Freedom

even recognize their “otherness.” Secondness, which consists in that otherness, and Thirdness, which contains our categorizations or general conceptions of things, are fairly straightforward. In Peirce’s categorical system Firstness lies at the base of Secondness and Thirdness. Before anything is different or general, it is itself.

There is an enlightening passage where Peirce lays out the relation of Secondness to Thirdness:

I should not wonder if somebody were to suggest that perhaps the idea of a law is essential to the idea of one thing acting upon another. But surely that would be the most untenable suggestion in the world considering that there is no one who after lifelong discipline in looking at things from the necessitarian point of view has ever been able to train himself to dismiss the idea that he can perform any specifiable act of the will. It is one of the most singular instances of how a preconceived theory will blind a man to facts that many necessitarians seem to think that nobody really believes in the freedom of the will, the fact being that he himself believes in it when he is not theorizing. However, I do not think it worthwhile to quarrel about that. Have your necessitarianism if you approve of it; but I still think you must admit that no law of nature makes a stone fall, or a Leyden jar to discharge, or a steam engine to work.

Here he is arguing against the popular “necessitarianism” of his day, which we generally call “determinism” in English today. Its

Importance of Freedom

claim is that every single fact of our experience is determined by natural laws. If you know the state of facts at any time, you can deduce what the facts will be at any other time by those laws. Peirce says this implies there is no real increase in diversity in the world. Whatever diversity exists today would have existed at the beginning of the universe. Natural processes only rearrange things; they do not create anything new.

Now, actually, there are several objections one could make to the passage. The most obvious is that, of course, stones do fall because there is a law of nature, gravitation. What Peirce is saying is that when a stone falls, some other single entity, such as perhaps my foot hitting it, is the occasion for that law to operate. That is Secondness. He is arguing that my foot hitting the stone is not predictable by that or any other law.

A more difficult problem is his statement that no one can “train himself” to believe he cannot make certain choices. It seems people often do train themselves to believe that. In fact, maybe that is what depression consists in, the belief you cannot do things you would like to do. But I believe Peirce is speaking here in a more “ideal,” philosophical sense: does the philosopher really believe he cannot make choices?

How we understand the human brain has important implications for the freedom of the will. In a 1972 piece, Anthony Wilden lays out a distinction between “analog and digital communication”. Wilden is attempting to show what elements of electronic

Importance of Freedom

technology may correspond to the nervous systems of organisms, and his discussion of analog and digital brings out some interesting parallels. He says our nervous system includes both analog and digital elements, laying out in detail how nerve axons transmit messages to the synaptic connections between cells. The transmission is at first an analog one, meaning that it is about “difference” on a continuous scale. Eventually the message passed in the axon reaches a certain “threshold,” and it becomes a matter of “opposition” rather than difference. This is now a digital message. Wilden points out that genes are digitally coded but depend upon related enzymes, which are analog elements. Digitalization is always necessary whenever an important “boundary” or “frame” needs to be added to an analog continuum. As Wilden puts it:

The digital splits the world into discrete elements and helps us experience our individuality. The connection of this concept to Secondness is clear.

In another chapter of the same book, he suggests the analog may correspond to Peirce’s Thirdness, but he admits he does not understand Peirce’s categories very well. He suggests Firstness is the Real and Secondness, the Imaginary. This misconstrues them. Something imaginary is a Second when we find out it is imaginary; until then, it is an aspect of our freedom, which is Firstness. As Peirce would put it, Firstness is the “monadic” aspect of our experience. He says:

Importance of Freedom

I can imagine a consciousness whose whole life, alike when wide awake and when drowsy or dreaming, should consist of nothing at all but a violet color or a stink of rotten cabbage. It is purely a question of what I can imagine and not of what psychological laws permit.

Consciousness has this monadic aspect that is complete unto itself and not dependent on anything external. Firstness is predominant in the ideas of “freshness, life, freedom” as well as feeling, as opposed to perception, will, and thought. When we find out something is imaginary, we are essentially acknowledging a dyadic relation, a relation between what something is and what it is not (Secondness). There is also an element of Thirdness that comes into this, in that becoming convinced something is not real is coming to a sense of the persistence or stability of that reality. That is a triadic relation, because it involves a sense of connecting links between things, things yet to come as well as in the past. It is saying, “I will not see evidence of it in the future.” Thirdness has a necessary connection to future time. For example, evolution is Thirdness because it is the emergence of things in time. Education is Thirdness because it means becoming aware of more things and different categories of things.

Wilden cites John von Neumann’s classic work *The Computer and the Brain*. Von Neumann talked about analog and digital computers but did not interpret human cognition in terms of the analog. Analog computers work by representing numbers by units

of actual physical quantities, while digital machines represent them “as in conventional writing or printing, i.e. as a sequence of decimal digits”. He thought our cognition was basically digital with some analog features. He emphasized the binary nature of nerve impulses. They were basically “on-off switches,” and he put less emphasis on the threshold features Wilden emphasized. What is “non-digital-like” in our brains is the result of their working statistically rather than analogically. If we imagine computing machines to have existed prior to the human brain, we might say the brain gave up precision in arithmetic to gain “an improvement in logics”. The nervous system uses two types of communication, the “non-arithmetical” and the “arithmetical.” The latter includes “communications of orders,” which are logical. Our nervous systems require less “logical depth” than digital computers, so statistical information is adequate.

Hubert L. Dreyfus conceptualized human cognition in terms of the analog in his 1965 book *Alchemy and Artificial Intelligence* but appears to have given up that understanding in his later work *On the Internet* (2009). In the first work, he lays out three areas that digital computers are unable to handle: fringe consciousness, essence/accident discrimination, and ambiguity tolerance. Dreyfus’s conception of the analog appears to have influenced Wilden. One problem he lays out in some detail is language processing. It is difficult to understand language as simply a list of words in sentences constructed by rules. Dreyfus cites Wittgenstein on how our understanding of language appears

to be inseparably connected to the way we live. Our lives provide us with the context that makes words and sentences understandable. This is an example of “tacit” knowledge and ambiguity tolerance. He cites Bar-Hillel for the view that machines can only make good translations of language if they can learn.

Dreyfus quotes a statement by Bullock on “graded synaptic potential,” similar to Wilden’s “threshold effects,” arguing that the nervous system is a “complex analog device” rather than digital. He goes on to speculate on “wet” computers that simulate the way the human brain works, perhaps taking the form of an analog computer using ion solutions whose electrical properties change to model relationships. However, he cites Maurice Merleau-Ponty for doubts this would be adequate, since the human body as a whole plays an important role in facilitating intelligent behavior. This is the primary theme of Dreyfus’s later work, *On the Internet*.

Post-Wilden views of analog and digital

Dreyfus has made an ongoing effort to monitor the progress of Artificial Intelligence and appears to make an effort to evaluate it as generously as possible. For example, he admits the development of Google, with its weighting of web pages by their apparent importance to searchers, shows some of his skepticism was excessive. Google shows a computer can get a sort of indirect

knowledge of what web pages are about without really understanding them. If a lot of searchers have shown interest in a page, that indicates something about its content. However, it says nothing about the *correctness* of the content. The interest of people in a page may be due to irrational factors or manipulation by the publisher.

Dreyfus says the big problem with AI is the computer's lack of "embodiment." Humans have common sense, and this is inextricably tied to our having bodies. This appears to have replaced the concept of the "analog" for him. After all, analog computers are just another kind of machine. As Von Neumann showed, analog computers are used to do arithmetic. They are really just a different way to represent quantities. Our common sense comes from our not being machines.

However, there may be another sense in which the analog is relevant. Wilden pointed out that the human programmer provides a "necessary analog component to complement the amazing brute-force problem-solving capabilities of the digital computer". Computers operate on codes, and a code as a whole is an analog of something. It is a way to get computers, with their ones and zeroes which are mostly meaningless to us, to do useful work by modeling some human activity such as writing or playing games. Von Neumann showed that digital computers have this power because they have memory. This allows them to do things besides arithmetic. The programmer can instruct the computer to

transform its numerical memory into something non-numerical. Nonetheless, one can argue the computer has no knowledge of the world. It is primarily a kind of mental prosthesis that allows us to perform certain functions faster and more accurately.

There is a connection between this and Peirce's semiotic theory. The computer code functions as a kind of "icon," in that its relation to a human cognitive activity is one of similarity. The skill of the programmer consists in her ability to make the program as analogous to the human activity as possible, while making sure the computer is consistently able to perform the actions. When she does not do a good enough job, the program, and perhaps the computer as a whole, "crashes."

In the book, Dreyfus makes a contrast between Plato, who pushed a "disembodied" conception of human personality, and Nietzsche, who emphasized our embodiment. Dreyfus is particularly doubtful about the efficacy of distance learning. He goes through the stages of learning from the novice, the advanced beginner, competence, proficiency, expertise and, finally, mastery and shows how the body and emotion are increasingly necessary as one progresses up the scale. Have not the Stoics and Descartes taught us that we make the most progress without emotion Dreyfus argues that learning above the stage of novice requires a level of emotion. We must want to succeed and worry about not measuring up. The teacher provides a model of

commitment, and if we are not physically present with him or her, we lack the cues necessary for progress:

If the teacher is detached and computer-like, the students will be too. Conversely, if the teacher shows his involvement in the way he pursues the truth, considers daring hypotheses and interpretations, is open to students' suggestions and objections, and emotionally dwells on the choices that have led him to his conclusions and actions, the students will be more likely to let their own successes and failures matter to them.

In a 2018 article, Beatrice Fazi attempts to build on the work of Gilles Deleuze to create a “digital esthetics”. While Deleuze did not talk about computers very much, his work implied that the digital could not participate in the esthetic or creativity, central aspects of his philosophy. Digital computers depend on discreteness, on determinacy, but for Deleuze, indeterminacy was essential to life. Is there any way the digital can play a role in creativity? She surveys some attempts to make computers “creativity and esthetics friendly.” One approach is to link the operation of the computer to the lived experience of users (“embedded computing”). This provides an “analog” or “embodied” supplement to the computer’s cold, digital operation. Anna Munster made a particularly vivid attempt at this by emphasizing that the analog and the digital that come together in human-computer interaction are “more than the sum of their parts”. Humans and computers working together have the potential to produce novel elements neither could produce on their own.

Fazi is not entirely satisfied with this solution. It is problematic because it ties the value of the digital to the analog (or embodied) elements, and she wants to believe the digital, or more precisely the computational, is valuable in itself. She calls her desired conception a “computational esthetics.” This must go beyond “the discrete features of digital technologies, such as digits and pixels” to include also the “finite steps that characterize computation as an axiomatic and algorithmic method”. She discusses the work of Alan Turing in formalizing the nature of computing processes. He showed they work via precise, finite routines, but also that certain problems could not be solved in this way. They are “incomputable” because the steps they require are infinite. Gödel’s Theorem showed that the computational depends ultimately on formal axioms arising from indeterminacy, since they cannot be deduced from the formal system themselves. Thus Fazi ends with a computational esthetics broadly compatible with Deleuze. The computational is valuable for its “systematizing and rationalizing logical capacity” while not undermining indeterminacy and freedom.

The Second Cognitive Revolution

A development bearing on all these questions is what has been called “the Second Cognitive Revolution.” Dreyfus was an important person in the history of this movement. Rom Harré has summarized the direction of the movement by saying the earlier Cognitive Revolution was too focused on cognition as governed by

formal rules and schemata. It had been an advancement over earlier understandings which interpreted the mind as simply receiving external stimuli passively. We do not just respond to our environment; we also have complex “representations” of it. The movement drew on the work of Turing to conceive of the brain as an “information processing device”. It was primarily digital in nature since digital computers contain representations of the world in their memories. By the mid-80’s, it was clear that a more subtle understanding of language was necessary to really understand human cognition. This involved rejecting the whole Cartesian model of thought as something internal and seeing how it functions within life as a whole, especially in its social aspects. Ludwig Wittgenstein had a major role here with his concept of “language games,” of language as a sort of set of recipes rather than formalizable rules. As Harré points out, the First Cognitive Revolution had been too trapped in “the presumptions of individualism”. In fact, social cognitive processes precede individual ones.

In Dreyfus’s contribution to the same volume, he argues against the concept of representation altogether. Drawing on the work of Walter Freeman, he argues for what he calls a “Heideggerian” or “Merleau-Pontian” artificial intelligence to solve the “frame problem.” Both machines and living organisms encounter facts in the world, but the frame problem asks how a machine might be programmed so it can assign significance to novel facts. As he puts it, speaking of a closely related “binding problem”:

How can the brain keep track of which facts in its representation of the current world are relevant to which other facts? long as the mind/brain is thought of as passively receiving meaningless inputs that need to have significance and relevance added to them, the binding problem has remained unsolved and is almost certainly unsolvable.

Drawing on Freeman's work with rabbits, Dreyfus, in line with his emphasis on embodiment, argues that organisms select relevant elements in the world based upon their prior experiences and purposes (feeding, defense, reproduction, etc.). He lays out Freeman's analysis of how "cell assemblies" in the animal are activated by sensory stimuli such as smell. These assemblies are self-organizing, bringing together different parts of the animal's brain and body, not just passive receptors but directed by its active concerns. Drawing on Merleau-Ponty, he calls the interaction of the organism's nervous system and the environment "basins of attraction". The binding problem is simply a result of trying to interpret the animal from the researcher's perspective rather than that of the animal. He suggests machines might be designed to function the same way.

In the following chapter of the volume, H.M. Collins raises some serious problems with Dreyfus's proposal. The difficulty is that it does not explain what is unique about humans. As Terrence Deacon argued in his *Symbolic Species*, symbolization is what is distinctive to humans. We share with animals an immediate "indexical" (in Peirce's terms) engagement with items in our

environment (Seconds), but since we also use “symbols” (in Peirce’s sense), involving conventional (shared) signifiers for general aspects of the world (Thirds), an element of representation seems inherent to our cognition. It would seem, in fact, that this symbolic element must be “digital” in Wilden’s sense, in that it provides a stable, discrete representation of general aspects of the world while permitting us also to speak of particular things and persons (Seconds) and feelings and esthetic qualities (Firsts). As Peirce would say, it is only because we use the lower “iconic” and “indexical” forms of signs that symbols emerge as possible. The meaningfulness of symbols stands on their foundation. Peirce’s pragmatic theory of meaning analyzes the meaning of concepts as generalizations of expected experience, which would have to take the form of indexes and icons. There Peirce seems to deny the iconic element, but if we understand the relationship between indexes and icons in his understanding, an iconic element is inseparable from indexes).

So where does that leave Wittgenstein’s conception of language as a collection of recipes, inextricably linked to our “embodied” ways of living? In reality, Peirce’s theory is very close to it. Words are only meaningful to the extent we have “interpretants” for them, which are our habitual and fallible ways of seeing things as we consider signs.

Implications for free will

Another contribution in the same volume is “The Illusion of Free Will and its Acceptance” by Giuseppe Trautteur. The purpose of the article is argue for what he calls “double feel”, the apparent truth that people can be both convinced that they have free choice and realize theoretically that there is no evidence for free will. He talks at length about the scientific evidence for free will and concludes it is not there. He even cites the experiments published by Kornhuber and Deecke which showed that neural commands initiating action precede our conscious awareness of making decisions. While he is aware of the indeterminacy of microscopic quantum events, he is convinced that macroscopic events are strictly determined by natural law.

Trautteur expresses a great deal of sorrow about this and says it cannot help but undermine ethics and religion. Why are we creatures that seem to insist on this illusion? Trautteur entertains the proposals of Clore and Damasio that we are born with “markers” for “cognitive feelings” such as the sense of volition.

To respond to this I would like to go back to something I mentioned at the beginning. Peirce criticized necessitarianism for denying that there is any increase in diversity in nature. Natural laws just rearrange the preexisting diversity. He thought this idea was intolerable for any view of the world that attempted to

Importance of Freedom

understand creativity in any sense. Firstness is manifested in the variety of the world, and perhaps one could even argue that “internet addiction” is somehow dependent on it. To borrow a phrase from Dreyfus, a person addicted to online content is not “detached and computer-like” Our ability to get addicted appears to depend on computers showing us interesting things, and this depends on diversity. Without Firstness, the internet would be a bore. Especially with the development of the World Wide Web, digital computers can convey analog information like sights and sounds. They are not just for number crunching or word processing.

Peirce’s theory was that lawfulness (Thirdness) was growing in the universe. As he says:

- *At present, the course of events is approximately determined by law. In the past that approximation was less perfect; in the future it will be more perfect. The tendency to obey laws has always been and always will be growing.*

Perhaps we can move away from a focus on proving what determines each of our actions and consider the possibility that creativity itself is the best evidence of indeterminacy. Purely “free” choices do not have to happen constantly as long as they *can* happen at times.

Importance of Freedom

In a July 7, 2019 article in the *New York Times*, Patrick Berlinquette writes of his experiences using “The Redirect Method,” a program targeting Google searchers with ads to influence searchers’ behavior. He acknowledges that marketers like himself profit by “exploiting impatience and impulsiveness,” but he wants to show online ads can do positive things, too. “Redirect” gives counter-messages to a person’s apparent interests. Berlinquette experimented on influencing two groups of troubled people, those who were suicidal and those who might become mass shooters. He was helped in setting up the programs by the experience of the National Suicide Prevention Lifeline and the Redirect Method’s experiences reaching out to ISIS sympathizers. The ISIS campaign provided Google with a blueprint that shows, step by step, how to create redirect ads to influence people. Google has a suicide algorithm, but it has gaps he attempted to fill. He says he would measure the success of his algorithm by how many people clicked on his ad and called the number on his web site, linked to the national helpline. There was a similar link for people who seemed interested in perpetrating shootings.

He was quite successful with suicidal people but not with shooters. With the first, the “conversion rate,” the rate of people responding, was 28% compared with the usual Google rate of 4%. With shooters, the success rate was low, though he does not give an exact percentage. Why would the success rate be different for the two groups? My guess is that it is not due to some flaw in his

Importance of Freedom

mass shooter algorithm, but because the desires of the two groups are different. Suicidal people usually want help. If someone reaches out, they will respond. People considering mass murders are not interested in talking to anyone, or at least the chance of their wanting to is much less. The explanation lies in their inner desires rather than some external manipulation. In Peirce's terms, it is Firstness, not Secondness or Thirdness.

Chapter 3

Building Democracy: National and International Factors

Trends Of Democracy Building

There is an agreement in research about democracy building (democratization) that the previous century consisted of major ideological battles. Scholars on democracy building have argued that the last decades of the twentieth century consisted of a spirit of democracy with a growing number of democratic states around the world. From the 1970s to the mid-1990s, a global spread of new democracies occurred in most regions of the world—except the Middle East—and challenged post-totalitarian and authoritarian states, military regimes and despotic leaders in Southern Europe, Latin America, Asia, Africa and Central and Eastern Europe. These political changes made scholars portray the global changes in terms of “the triumph of democracy,” “the end of history,” “the democratic revolution” and how democracy had become “globalized” as a third “universal language” aside from money and the Internet.

At the beginning of the twenty-first century, however, authoritarianism has gone global and is challenging democratic regimes and the notions of political rights and civil liberties

around the world. Recent studies from the early 2000s and forward have pointed at a potentially worrisome trend in new types of authoritarianism and hybrid regimes comprising both authoritarian and democratic institutions. This trend may have left the world community at a crossroads of democracy and authoritarianism. The global spread of democracies during the late twentieth century and the rise of authoritarianism in the early twenty-first century have raised an interest in understanding and explaining how to build democratic states around the world. This study chapter sets out to understand how to build a democracy by identifying national and international favorable factors for democracy building. Section 2 after this introduction illustrates the global patterns of democracy building over time and is followed by Section 3 on the theoretical foundation of democracy. Sections 4 and 5 explain the favorable national and international factors for building democracy. Section 6 concludes this study.

In the early 1990s, studies on democracy building mushroomed, identifying how the number of democracies worldwide had become greater than ever before in modern history. About 25 years ago, Huntington identified major democratic waves in political changes, going from dictatorships to electoral and liberal democracies. The transition processes to electoral democracies centered on the establishment of popular votes and an election as the main competition for office. The numerous transitions into electoral democracies around the world embedded the right to

Importance of Freedom

vote for competitive parties in free and fair elections where the electoral outcome was respected and assured based on checks and balances between a country's judiciary, executive and legislative powers.

In the early 1990s, Huntington argued that the historical global spread of democratic transitions in the nineteenth and twentieth centuries could be described as waves of democracy building. A historical wave constituted numerous states around the world, all going through democratic changes within a specific period of time. In particular, a wave of democratic change included a larger group of transitions from nondemocratic (authoritarian) to democratic (electoral) regimes within a specified period of time, and this change outnumbered the reverse transitions into authoritarianism. The wave metaphor of global democratization had a great impact on the scholarly interests in the patterns of democratic change around the world. However, many scholars in the field of democratization raised concerns about how democratic regimes were defined, focusing only on free and fair elections (electoral fallacy), thereby disregarding other important democratic qualities, and the overlapping time periods of these waves of democratization. Most scholars who focused on democracy building agreed, however, that Huntington shed light on important historical transformations in a suggested "two steps forward and one step back" pattern. Huntington summarized the historical changes until the early 1990s in three waves of democratization and two reverse waves.

Importance of Freedom

The first wave of democratization was the longest in terms of years covered (1828–1926). It was argued that the first wave began with the American and French revolutions and transplanted ideas of what democracy was all about and how democracy could be established. This wave of democratization included the spread of the political right to vote to new previously marginalized groups of society and to newly established states around the world, such as in the West, Australia and South America. The historical record showed how the first wave included democracy building in about 30 states after World War I. The wave of democratization did, however, halt and was reversed with the authoritarian and totalitarian ideologies developed in Germany, Italy and Japan during the 1930s and 1940s, which resulted in reverse democratic setbacks and authoritarian regimes in Eastern and Southern Europe, as well as in South America.

The second wave of democratization (1943–1962) lasted for a far shorter time compared to the first wave and was an outcome of the major international political changes of the balance of power that came with the end of World War II and the defeat and collapse of Nazism and fascism. The collapse of antidemocratic systems resulted in the expansion of new democracies in, for instance, West Germany, Austria, Japan, Turkey, Greece, Uruguay, Brazil, Costa Rica, Argentina, Colombia, Peru and Venezuela. The aftermath of the war became a window of opportunity for the new spread of democratic regimes, political

Importance of Freedom

rights and civil liberties in greater number of states, though primarily with the deviant cases in the communist states in foremost Eastern Europe and East Asia (China). It was the powerful role of the Soviet Union in a post-World War II context that eventually founded the reverse wave of authoritarianism and resulted in the consolidation of communism in the Eastern European states and in limited democracy in Latin American states and some East Asian states.

The third wave of democratization (1974–1991) was argued to have begun with transitions in Southern Europe in the early 1970s and ended with major democratic transformations in Eastern Europe as a result of a weakened and finally collapsed Soviet Union. Democratization began in Spain, Portugal and Greece and peaked with the transitions in communist ruled Poland, Czechoslovakia, Hungary and Romania and the independence of 15 new states. The third wave of democratic transitions was, however, global in a geographical scope, with numerous new democracies established in Latin America and Asia, outnumbering the previous authoritarian traditions of regimes around the world. The third wave had great global impact on the democratic political landscape. As stated, “the birth of more than ninety democracies in this period represents the greatest transformation of the way states are governed in the history of the world”, and as a consequence, many scholars perceived the twentieth century as the century of progress. Though the academic community had spent decades of research

Importance of Freedom

on how to explain and foresee democratization, the third wave of democratization came as a surprise and sparked greater interest in the geographical scope of transitions, the driving engines behind such democratic change and the possibilities of further democracy building within newly democratized states. Scholars agreed that the third wave was global in scope and how the numerous transitions actually led to the number of democratic regimes now outnumbering authoritarian regimes for the first time in human history. Both scholars and international politicians argued how democracy was a symbol of good governance and how the wave of democratic transitions had shown “the unabashed victory of economic and political liberalism” in the world. The global victory of political liberalism was argued to consist of the democratic transitions that established government by the people based on popular free and fair elections in multi-party systems. For almost half a century, the scholarly world had argued that democracy was based on free and fair elections. In his famous study, Schumpeter presented a minimal definition on democracy and became the founding father of a procedural definition of democracy. Schumpeter’s definition of an electoral democracy focused on competing political elites for power. From this perspective, democracy was perceived as a political tool for selecting politicians and how popular elections, as a core political procedure, were essential for the spread and consolidation of other crucial political rights and civil liberties often tied to democratic systems and societies. In the early 2000s, however, a growing number of individual academic

studies, think-tanks and statistical assessments on democratic freedoms identified new challenges to the previous global transitions embedded in the third wave of democratization. Though this has not yet been argued to be the signs of a third reverse wave of global authoritarianism, scholars have pointed out worrying signs of democratic challenges across the world. First, it has been argued that many transitional states have turned up as vague electoral democracies with authoritarian characteristics. They have had free and fair elections, but have continued to face political, economic and social obstacles that have had negative impacts on the democratization process. These obstacles have created political societies of democratic fuzziness where democratic patterns have been mixed with undemocratic ones. Such obstacles may be found in electoral democracies with patterns of restricted participation and liberties, electoral democracies influenced by the existence of personal rule and patron-client relationships, electoral democracies with the existence of human rights abuses, electoral democracies in which there is a massive and perhaps uncontrolled popular mobilization that challenges order and stability and/or electoral democracies where undemocratic actors, such as the military, continue to influence politics. All these democracies may have elections and may tolerate legal alternative parties in opposition to the ruling party, but they are challenged by other major problems that influence the democratization process and democratic stability. Second, it has also been argued that we have seen an authoritarian surge in international affairs with greater activities

among major authoritarian powers to contain democracy around the world. Aside from limiting democratic rights and liberties at home, authoritarian states have actively coordinated foreign policy actions to halt the global spread of democracy. Such authoritarian measures have included media initiatives to limit the impact of Western news around the world, political actions against pro-democracy and human rights' organizations, such as in global and regional intergovernmental organizations, and in civil society. Altogether, "The extent of the authoritarian challenges forces us to confront the disconcerting prospect that the most influential antidemocratic regimes are no longer content simply to contain democracy. Instead, they want to roll it back by reversing advances dating from the time of the democratic surge". The increasing bulk of studies have presented different concepts to describe these challenged electoral democracies.

There has been a long and on-going scholarly discussion on how to define and measure democratic and nondemocratic regimes. Democracy is a fuzzy and multifaceted concept. In the literature on building democracy, two conceptions of democracy are relevant; a minimalist and maximalist perspective. First, the minimalist perspective has defined democracy as an electoral democracy, focusing on the procedural system of institutions and the institutional mechanism of free and fair elections. An electoral democracy has embedded the procedure of free and fair elections in which political elites compete for political power and where the population uses the election to check the political

Importance of Freedom

power from wrong-doings. The scholarly studies on electoral democracy has stressed the importance of political procedure to ensure political rights and civil liberties, although the main focus from a minimalist perspective has been on the implementation of elections as a guarantee for the idea of government by the people. Such definition of democracy has been argued to provide scholars with the ability to make comparative studies on democracy-building in different states by analyzing if there are free and fair elections or not.

Second, the maximalist perspective has, in comparison to the minimalist perspective on electoral democracy, focused on a more substantive democracy embedding political rights and civil liberties beyond the procedure of free and fair elections. Such conceptualization of a liberal democracy has developed out of the notion of the “fallacy of electoralism”, meaning paying too much attention to the election and missing out on other important political rights and civil liberties in a democracy. It has been argued that the fallacy of electoralism may lead to the definition of states as democracies, although such states consist of nondemocratic traits. Although free and fair elections are important in democracies, focus on electoralism only is a too narrow perspective on what democracy is all about. The maximalist perspective has therefore introduced the definition of a liberal democracy, based on the procedural ingredients in an electoral democracy, but also including additional rights and liberties in, for example, minority rights, political equality,

Importance of Freedom

freedom of belief, opinion, discussion, speech, publication and assembly, the rule of law and securing human rights, etc.. It has been argued that three fundamental dimensions exist in a liberal democracy; high level of competition, participation and liberties. As summarized by Georg Sørensen,

“Meaningful and extensive competition among individuals and organized groups (especially political parties) for all effective positions of government power, at regular intervals and excluding the use of force.

A highly inclusive level of political participation in the selection of leaders and policies, at least through regular and fair elections, such that no major (adult) social group is excluded.

A level of civil and political liberties—freedom of expression, freedom of the press, freedom to form and join organizations—sufficient to ensure the integrity of political competition and participation”.

The minimalist perspective and the maximalist perspective on democracy have provided scholars on democratization with important theoretical notions of foundations of democracy. Overall, there has been a scholarly tradition to implement the minimalist definition of democracy when analyzing democracy-building, by focusing on free and fair election as an important mechanism to promote other political rights and civil liberties. This has resulted in the conclusion that building democracy is

Importance of Freedom

very much about institutionalizing free and fair elections. However, the scholarly studies on building liberal democracy have stressed the possibility and importance of further developing electoral democracies, beyond the free and fair elections, including political rights and civil liberties. Robert Dahl has presented a well-known conceptualization of a democracy (polyarchy). His definition of democracy may be seen as a midrange definition between a minimal and maximal definition of democracy. Dahl has presented two dimensions of a democracy in contestation and participation. First, contestation refers to structured political competition through free and fair elections and second, participation refers to the popular right to participate as voters and/or politicians. In his definition of democracy, eight important institutions are mentioned. These are freedom to form and join organizations, freedom of expression, right to vote, eligibility for public office, right of political leaders to compete for support and votes, alternative sources of information, free and fair elections and institutions for making government policies depend on votes and other expressions of preference. Although Dahl's definition focuses on electoral procedures, contestation and participation also embed other political rights and civil liberties. To ensure the implementation of democracy in contestation and participation, it is argued that civil liberties are crucial. Such liberties are, for example, freedom to think, believe, worship, speak and publish one's views as well as the freedom to form and join organizations among other things.

Importance of Freedom

The scholarly discussion on definitions of democracy has come with studies on nondemocratic states. The process of democracy building starts in a nondemocratic environment which may be of different natures such as one-party-states, military regimes, dynastic rule, theocratic rule, tyranny, oligarchy, absolutism, despotism and monarchy, etc. The research on nondemocratic regimes has set out different types. At first, democracies stood in sharp contrast to the totalitarian type. The totalitarian regime was characterized as a regime-type enforcing state objectives and goals on society and citizens, by concentrating all power to the elite and by subordinating societal activities and people to the control of the regime. In sharp contrast to a democracy, the totalitarian society was defined as an atomized society with very limited independent political, economic, social and judicial institutions due to the total control by the regime through the use of propaganda and terror. To uphold total control, research has come to stress the importance of the implementation of an official ideology, single mass party, secret police, full control of communication, monopoly of coercive methods and a central control of the economy. Another and more common nondemocratic regime has been the authoritarian regime. The authoritarian regime, compared to the totalitarian, has said to have a limited official ideology that dictates societal sectors and with a less powerful, violent and controlling police. The authoritarian regime is also open for socioeconomic pluralism and to some degree political pluralism, although such pluralism is never allowed to become political influential and challenge the

ruling political elites. It should, however, be stated that democracy-building is far easier to achieve in an authoritarian setting compared to a totalitarian one. This is due to the existing political institutions in an authoritarian society, the allowance of pluralism and political opposition and to the more limited use of state violence and terror compared to totalitarian systems.

Building democracy: national factors

The previous trends of democratic progress around the world, followed by recent pessimistic assessments of returning authoritarianism, have led to a redeveloped interest in how to build democracies worldwide. There is a long tradition of studying how to protect and promote democracy. The main focus has been to identify the explanatory factors or driving engines that encourage countries to transition to democracy and in how to consolidate new democracies to become stable and enduring. There has been a dominating focus on national factors for the transitions to democracy. The research on explanatory factors for building democracy grew out of an increasing number of studies on domestic actors and structures of the 1950s and onward, focusing primarily on socioeconomic factors. This approach was tied to developmental studies and was referred to as the modernization school or the modernization thesis. One of the first and most important studies on economic development and its role in modernization was Dankwart Rostow's *Politics and the Stages of Growth*. In the 1960s, in the context of decolonization and new

Importance of Freedom

independent states, studies focused on how to establish political order and stability. The modernization perspective on political order was illustrated by the famous study by Lipset, *Political Man*. Lipset argued that modernization, in terms of a high level of gross national product, was an important driving engine for building democracy. By assessing democracies around the world, it was convincingly argued how high levels of modernized socioeconomic structures were related to democratic states. In other words, states with economic modernization would become transitional democracies and, with further modernization, also become consolidated democracies. Lipset's focus on economic factors for democratization could be summarized as the more well-to-do a nation, the greater the chances that nation will sustain democracy; this became a major insight on how to explain democratization and triggered further studies on when modernization has been an important explanatory factor to build democracies and when it has not.

Over time, new studies began to explore a more complex picture of modernization and democratization by unfolding a more detailed understanding about what economic and social indicators could trigger democracy building. These studies did not question the importance of modernization for political development, but pinpointed the economic and social structures that are needed to be developed to see democratization. It was argued that democracy building was based on economic progress embedding improved infrastructure, higher levels of education,

shared societal values and improved health, etc. The main point made was that modernization embedded social issues that became explanatory factors to democracy rather than just focusing on pure economic growth. States with economic growth could through political reforms to facilitate social structures that were beneficial for developing and consolidating democracy. In more recent decades of research done on the modernization thesis, economic progress leading to improved technology and the flow of information and knowledge has become new emphasized indicators for building democracy. The IT revolution has empowered people to engage in societal issues and provided people the tools to hold politicians and governments accountable for their decisions and actions, although research also stresses how authoritarian regimes may use new technology to haunt down political oppositions.

In addition, modernization was said to also impact the domestic class-structures. For instance, Moore, in the classical study *Social Origins of Dictatorship and Democracy—Lord and Peasant in the Making of the Modern World*, argued the importance of the result of the modernization in the changes of the class structure. He stressed that modernization was not sufficient in deciding democratization, since such socioeconomic development with higher levels of gross domestic product (GDP) could also lead to authoritarian system. Modernization embedded more specific favorable factor for democratization in industrialization, urbanization, increased power to the middle class, decreased

Importance of Freedom

power to rural landlords and improved infrastructure, education and health care that all contributed to improved conditions for democracy. It was further argued that industrialization also integrated the commercialized countryside with urban areas, building ties between the urban middle class and rural peasants. Many studies have stressed the importance of a growing middle class to build democracy by integrating the lower and upper classes of the society into collaboration and unity. Socioeconomic modernization provides an economic and political ambitious middle class of business people, professionals, shopkeepers, teachers, civil servants, managers, technicians and clerical and sales-workers. However, some studies have pointed out that the working class is pro-democratic, whereas the middle class is less interested in political change and more interested in protecting its economic role as an antidemocratic force, while other studies have emphasized the alliances between the working class and the middle class to build democracy. The main argument has been that democracy is likely to develop based on industrialization and a growing power of the organized middle class and/or working class. Democracy is less likely to emerge in less modernized, agrarian societies and the dominating body of studies have stated a correlation between higher gross domestic product (GDP) and a growing middle class as the the main pro-democratic forces.

A second set of domestic factors to democracy aside from socioeconomic modernization includes the political culture. The perspective on political culture has referred to people's

Importance of Freedom

aggregated political orientations/attitudes toward the political objects of a society, such as the institutions, politicians, norms and values. Such interest in political culture has also included the analysis of the political cultural in terms of existing religious and/or civilization codes within Protestantism, Catholicism, Confucianism and Islam.

The perspective on political culture was developed in the 1960s and onward and focused on issues of socialization and the political orientations in cognitive orientation (referring to the knowledge of and beliefs about the political system), affective orientation (feelings about the political system) and evaluation orientation (including commitment and support for political institutions and the values and judgements of system performances). One pivotal study for this tradition of approaches for democracy building was Almond and Verba's *The Civic Culture*, where political culture referred to "the specifically political orientations—attitudes toward the political system and its various parts, and attitudes toward the role of the self in the system". Their study analyzed the nature of the political culture that promoted and protected stable democracies and when political culture was defined as the aggregation of individual political attitudes. They argued that there existed three types of political cultures: the parochial, subject and participant culture. In the parochial culture, citizens were only indistinctly aware of the political system; second, in the subject culture, citizens saw themselves as subjects to political affairs rather than

Importance of Freedom

participants and third, in participant culture, citizens are participants of the system. The above-mentioned study stressed a connection between stable democracy and participant culture, but added that the importance of elements of parochial and subject cultures. It was argued that in the participant political culture, citizens participated in political affairs and supported political affairs, as well as how the parochial and subject political dimensions made the participating citizens loyal to the existing political decisions and implementation procedures, and thereby, they were supportive to the existing democratic institutions. It was further argued that a grave danger to democracy existed in too much of a subject culture because it could lead to an antidemocratic, authoritarian political system.

Other studies about the role of political culture have focused on political culture as a multidimensional phenomenon and have measured people's political support of political community, regime principles, regime performance, regime institutions and political actors. These studies have assessed that the overall citizens' support of democracies is high around the world, but there are dissatisfied democrats in societies. Democracies embed an increasing tension between democratic values, which are highly supported, and the trust in existing democratic institutions, which is declining. It has been concluded that there is high confidence within established democracies regarding political objects in the political community and the regime principles, but less confidence and trust in regime performances,

Importance of Freedom

regime institutions and politicians. The reasons behind such tension may be the identified existing decline in social trust and civic engagement, failure in regime performances and constitutional design or cultural factors rooted in modernization and changing norms and values.

Important studies on modernization and shifting norms and values have added insight about potential explanatory factors and challenges for democracy. Inglehart conducted the famous World Values Survey, assessing the patterns of political attitudes in states worldwide. From a comparative perspective and over a long period of time, this survey has analyzed political attitudes toward the political community, democracy as an ideal form of government and regime performance. This survey has identified a decreasing respect for political authorities—such as in, for example, the police and political parties—and such declining respects is explained in terms of shifts in cultural values among citizens promoted by globalization, cultural transformations and modernization. The modernization process has fundamentally transformed the political and cultural system from being previously based on religious beliefs to political institutions, rational behavior and post-materialist values of maximizing individual well-being. Such fundamental transformation of culture may explain the identified shifting support to important political objects of democracy. The scholarly interest in and study of the aggregated attitudes of citizens toward political objects has been related to research focused on the role of the

civil society. Research on civil society has concerned people's attitudes in a society toward political objects and the articulation of such attitudes into organizations, associations, unions and interest clubs. One famous and now classical study on civil society is De Tocqueville's *Democracy in America*, where a nineteenth century American prosperous democracy was argued to be based on a highly developed civil society. The American democracy was dynamic, vital and stable due to the highly developed network of civil society across economic, social, cultural and religious organizations and associations. These patterns of civil society constituted a platform or arena for societal activities between the outer bounds of government and the inner bounds of family ties and provided an interesting and important function for political life in democracies. The focus on the role of civil society re-emerged in the early 1990s with Putnam's study, *Making Democracy Work—Civic Traditions in Modern Italy*, in which he analyzed potential ties between democratic stability, political institutions, socioeconomic factors and sociocultural factors in northern and southern Italy. Such an approach questioned existing theories on socioeconomic factors and democratization and stressed the importance of civil society for institutional functionality, efficiency and democratic legitimacy. Democratic governance, it was argued, was based on the existence of a dynamic civil society of civic engagement, trust and reciprocity between citizens, which would foster improved political and administrative performances and legitimacy.

Importance of Freedom

The growing bulk of studies over time on civil society and democracy has focused on the relationship between civil society and the state and has concluded a positive versus negative definition of a civil society. First, it has been argued that civil society may be a counter force to the state and, second, an arena or platform for civic education and participation. The negative definition of a civil society refers to the counter force role a civil society may play in regulating and controlling the state and its performances. A civil society may function as an arena of civil society actors who balance the power of state institutions in relation to societal forces and who make sure that state's institutions do not abuse their authority. On the other hand, the positive definition of the civil society refers to the assisting function civil society can have in relation to the state by providing an additional societal arena where citizens can meet, articulate, aggregate and associate freely and become aware of political life. A civil society may therefore contribute to ideas, expertise, norms and values and societal actions to alleviate the pressure on the state and to guide the state in new directions for policy-making. A civil society may therefore have different functions in a democracy and may be an essential part in a vital and consolidated democratic system.

A third and final set of identified domestic factors for democracy building—aside from socioeconomic factors and political culture—includes political institutions and the political role of domestic political elites and the masses. One of the first and

Importance of Freedom

most important studies about political institutions and democracy was written by Huntington: *Political order in changing societies*. In times of societal developments, it was argued that one of the unstable factors in a society was insufficient institutionalization: "The primary problem of politics is the lag in the development of political institutions behind social and economic change". The focus on political institutions as pivotal to democracy stressed the danger of increased political and economic demands from societal forces and delayed political institutionalization. It was argued that societal transformation led to increased societal demands on politics and how such demands had to be met by new institutional arrangements. Lack of institutionalization would jeopardize political order, as the political system would come under severe pressure and finally overload. Such institutional overload would provide grave danger to political order and lead to political illegitimacy and system collapse. Institutionalization, to safeguard political order, referred to the development of a strong multi-party system that could attract and mobilize people's political concerns into the political system in an orderly fashion. By channeling people's political demands into a political party's system, democracy could prevail and avoid being challenged by unsatisfied revolutionary groups. Building democracy was therefore argued to be a process of institutionalization, in the establishment of functional political parties, to ensure political participation. Political parties were essential for political order in that they provided instruments for attracting and representing interests

Importance of Freedom

and aggregating preferences. They were also tools for recruiting future politicians and institutionalizing elections by empowering political competitive alternatives and organizing the political agenda.

Research on political factors for democracy has also focused on the specific type of institutions that best favor democratic progress and stability. Studies have explored how to design or institutionally structure democracies in the best way to promote democracy and have assessed parliamentarism versus presidentialism. Such focus has, to a high extent, been based on the scholarly contributions by Linz and his colleagues. In his study, *The Perils of Presidentialism*, Linz argued that presidentialism is less favorable than parliamentarism for promoting and protecting stable democracies. Such conclusion was based on four perils of presidentialism. First, he argued that the nature of presidential elections (winner-take-all) could result in a presidency based on support from a minority of the electorate and provide a legitimacy gap. Second, he further argued that the fixed presidential terms and the many hindrances to change a president faces could be problematic for democratic vitality and change, especially when considering how the parliamentary system is more adjustable to changing conditions. Third, another danger was the divided legitimacy between the elected president and the elected members of Congress. Potential different political opinions between these two branches could lead to policy gridlock, declining political vitality and

Importance of Freedom

functionality and, in the long term, result in increasing societal demands, political illegitimacy and political instability with opportunities for undemocratic forces to take power. Fourth and finally, presidentialism could potentially foster personality politics and become open for inexperienced leaders to become president. Overall, the focus on presidentialism as less favorable for democracy than parliamentarism led to a growing number of studies about how to design democracies with opposing views, using the pros and cons with different institutional arrangements. Dominating arguments have discussed potential weaknesses in the presidential systems, in minority presidents, rigid terms and difficulty of removal, policy gridlock and the election of inexperienced outsiders and how the parliamentary democracies have seemed to be more functional and long-lasting compared to presidential democracies. However, it should be stated that many studies have challenged these arguments or assumptions by pointing out favorable conditions within presidential democracies, but also how political instability may be caused by weak democratic structures rather than by presidentialism).

The research on political explanatory factors for democracy was developed further in the 1980s by focusing on political actors in building democracy. Such an approach was referred to as the transitology or the transition paradigm by stressing the importance of individual political actors in the transition to democracy. Previous studies about political explanatory factors

had been foremost focused on structural conditions, while these new studies shed light on political actions taken by formal political actors and societal forces beyond the political system. O'Donnell et al. provided several studies in *Transitions from Authoritarian Rule—Prospects for Democracy*, *Transitions from Authoritarian Rule—Southern Europe*, *Transitions from Authoritarian Rule—Latin America*, *Transitions from Authoritarian Rule—Comparative Perspectives* and *Transitions from Authoritarian Rule—Tentative Conclusions about Uncertain Democracies* and focused on political actors and their preferences in the political and societal system. These studies identified different fractions of the political elite; two of these fractions within the dictatorial regime were the hardliners and softliners. Hardliners referred to the core of politicians against democracy and who viewed such a system as something that could bring chaos and disorder by undermining the existing privileges of the elite. It was further assessed how one group of hardliners firmly believed in the prevailing dictatorial system, but how softliners within the elite were less ideologically oriented and more pragmatic, foremost concerned with selfish political motives. The dictating political elite were therefore divided into two groups: hardliners and softliners. Where the hardliners were prepared to use their authority through repression and violence to keep stability and status quo, the softliners were open to limited political change to satisfy citizen demands or to increase quality of performances and receive legitimacy, as long as such political changes did not jeopardize the political survival of the elite.

Importance of Freedom

Therefore, softliners may be favorable for initiating democracy, but only if they believe that popular elections would result in a legitimate re-election of the same elite. These studies concluded that democracy could be built if there was a growing division between hardliners and softliners within the dictatorial elite and if softliners were able to convince or force the hardliners to democratize the system.

The role of softliners was, to some extent, dependent on the role of societal forces beyond the political system. Studies on political actors and their preferences for building democracy also focused on two more groups of actors in the moderates and the radicals (revolutionaries) within the society outside the formal political system. It was argued that the radicals wanted to overthrow the illegitimate elite of hardliners and softliners, while the moderates were open to forging alliances with softliners within the elite to see democratic change. It was stressed in in these studies that the transition phase to democracy often began with a division between hardliners and softliners within the authoritarian regimes, but strategic linkages between elites and the societal masses were important. This combination of alliances within the political elite and the societal groups outside the political system was referred to as the game of transition. The game of transition to democracy could take different paths. Democracy may result based on a pact between the dominating elite and the opposing elite to build democracy, through a reform when the societal masses are stronger than the elites and would build democracy

Importance of Freedom

from the bottom up, but without using violence; through imposition when one group of the political elite mobilizes and uses violence to overthrow the regime (such elite is often the military); and finally, through revolution, when the societal masses (revolutionaries) are strong enough to overthrow the traditional ruling elite by violence. Most studies on the game of transition have stressed the importance of the pact transition for democracy. Such a path would ensure an orderly progress toward democracy based on compromises and the growing trust between powerful elites. This path, based on a pact-strategy between elites, also limits the number of people engaged in the transition, which is favorable for further democratization, as fewer people bring involved improves the chances of reaching compromises and does not led to an overload of political wants and demands. Further related studies on elites and masses have from an economic position argued that citizens prefer democratic systems due to the economic redistribution majority rule provide. This is in opposition to the elites that rather prefer nondemocratic political systems since they protect social and economic privileges and represent a favorable system of redistribution for the people in power. Transition to democracy may, however, happen if concessions from the elites are not credible and when repression and the use of violence are perceived as too risky and too costly.

Building Democracy: International Factors

The above-identified domestic-oriented perspectives on socioeconomic, cultural and political factors have provided explanations for democratization. The complementary perspectives of explanatory factors for democratization shed light on important driving engines for building democracies around the world and have enlightened the public and those in academic life regarding when democracy is likely to happen. The bulk of studies have been comprehensive, but these perspectives have contained one important flaw: the neglect to focus on international factors for democracy building. Until the 1990s, most research on how to build democracy focused on domestic factors. The dominance of domestic factors was primarily due to two phenomena. One explanation for the domestic bias in research on democratization is the construction of separating academic disciplines in comparative politics and international relations where research on how to build democracy belonged to the former. The tradition of comparative politics was to focus on domestic structures and actors to explain political situations and changes. Scholars in international relations, however, were less interested in domestic politics and focused on how states and other powerful actors engage in diplomatic, economic and political relationships with others and with what motives and impact they do so. Another explanation for the domestic bias in research has concerned the fuzzy idea of what really constitutes the international factors, reaching for any structures and/or

actors in the world beyond the state's territory. This has made potential international explanatory factors to democracy hard to pin down, which has left many scholars abandoning international perspectives on democracy building.

Some significant research efforts for identifying the international dimension to political change began in the 1960s. In a time of decolonization, a large number of studies focused on political and economic linkages and dependencies between developed and less-developed states. It was argued that international political and economic structures penetrated state borders and provided links between powerful and less-powerful actors. The notion of links and penetrated systems was especially explored among scholars within the dependency school, arguing that third-world states were influenced by rich states in the West based on an unjustified and unequal world economic structure. The criticism, however, pointed out the lack of specificity of how to analyze and understand international factors and how and when domestic politics and economics were influenced by or dictated by external forces.

It was argued that states were open systems vulnerable for penetration and that developed and powerful states could have a political impact on democracy building. For instance, Rosenau identified the link politics between the international and national domains as "any recurrent sequence of behavior that originates in one system and is reacted to in another" and focused on the

potential impact such links could have on democracy. In the 1990s, the debate about the international dimension re-emerged in the scholarly debate on globalization. The quickly growing number of studies about globalization covered the diffusion of global characteristics within economics, technology, culture and politics and stated a growing notion of interdependence in the world. It was further argued that economic, technological, cultural and political transformations across borders of intensification of interactions, exchanges and meetings led to a de-territorialization of politics in favor of macro-regional, international and global actors and processes. Globalization and global politics were portrayed as enhanced interdependence where global changes were cutting through state borders by challenging the domestic political, economic and cultural domestic structures by decreasing geographical distances around the world.

Research on the international dimension on democracy building, triggered by the studies on globalization, peaked with the end of the Cold War and with the increased power within the West. It resulted in the conceptualization of the international dimension to democracy in democratic diffusion and democratic promotion. First, the diffusion of democracy was argued to happen between nearby locations and between geographical locations far away with similar political, economic and cultural structures (or historical ties). It was stated that the spread of democracy was facilitated by political, cultural and economic salience often

Importance of Freedom

provided by geographical proximity, but diffusion could happen as a global phenomenon in a world of decreasing geographical distances. Diffusion of democracy was one important dimension of globalization—aside from the spread of economic liberalism and technology—and embedded the growing popularity of installing democratic governance. The diffusion of democracy from one state or region to another required diffusion agents to assist the spread of democratic rights and liberties. Diffusion agents acted as socialization agents within the transnational networks and domestic domain, interpreting and introducing global norms and values to domestic settings.

A second international dimension factor for building democracy has been democracy promotion. Research on democracy promotion has been based on traditional insights from international relations and foreign policy-making, focusing on international actors' motives and methods. The foreign policy analysis has displayed a growing interest in democracy promotion in which democracy promotion has referred to a foreign policy motivation to impact other governments and nations in a pro-democratic direction. Studies during the 1990s argued that democracy promotion were essential factors for the global scope of democratization by identifying powerful actors, such as the European Union, the Organizations of Security and Cooperation in Europe and the United States, among others, and the declining power of Soviet Union. These actors promoted democratic ideas and encouraged governments and people around the world to

launch democratic reforms, which led to transitions and, in the long run, snowballing effects on a growing number of states. The links between international democracy promotion and transitions were clarified through important research, such as in Pridham's study: *Encouraging Democracy—the international context of regime transition in Southern Europe* and *Building Democracy—The International Dimension of Democratization in Eastern Europe*. Pridham argued that international factors played a significant role in democracy building and discussed how such factors had had an increased role in explaining the transitions to democracy in Europe from the 1970s to the 1990s.

Another impressive study on the international factors for democratization was Whitehead's study, *The International Dimensions of Democratization—Europe and the Americas*, which conceptualized different methods or modes of democracy promotion in contagion, control and consent from a comparative perspective across the Atlantic. Schmitter added a fourth mode in conditional cooperation and illustrated different actors, motives and processes that could shed light on the international factors for democracy. Conditional cooperation referred to the international influence on domestic democracy building based on the use of carrots and sticks. Democracy promotion was often implemented by offering political, economic and/or technological assistance and support (carrots) tied to formalized democratic demands on the reforms to be taken. Control, on the other hand, implies a mode based on coercive political, economic and/or

Importance of Freedom

military methods to see democratization without the necessary domestic consent through deliberate, forceful acts. Such a mode of influence could include intervention and isolation to enforce the transition to democratic institutions and political culture. In sharp contrast to control, contagion implies a mode of non-coercive impact where domestic democratic reforms are a consequence of the spirit of the time, the global surge of democracy and the domino effects from other states' transitions; that is, what was previously discussed in this chapter as the diffusion of democracy as a political idea and encouragement to dare to change domestic institutions in a democratic direction. In contemporary research on democracy building, international factors are systematically considered as explanatory factors, leaving national and international factors as equally important to take into consideration when trying to explain transitions to democracy around the world. In a globalized world order, national and international factors to democracy building are interwoven leaving scholars with a wide range of potential explanatory factors to be considered.

Democracy refers to the government by the people. It ensures contestation and participation and provides citizens with political rights and civil liberties that promote popular freedom. Democratic systems have been challenged by nondemocratic systems and ideas over time. In the early twenty-first century, we have seen more democratic states than ever, with expanded freedoms in political rights and civil liberties, although an

authoritarian upsurge is identified. Such authoritarian upsurge challenges electoral processes, political pluralism and participation, freedom of expression, associational and organizational rights and the rule of law, etc. This chapter has discussed the state-of-the-art research about factors favorable for building democracy in a time of authoritarian upsurge. So where do we stand today when we try to understand the possibilities and problems for democratic transitions? The research from the 1950s forward has developed explanatory factors for democracy building by pointing out national and international factors. This study identified the most important factors from a socioeconomic, cultural and political perspective. It was further argued that the international factors for democracy building, until recently, have constituted forgotten factors for democracy. This has been due to the comparative approach of most democratization studies and to the problems of conceptualizing international factors. However, this chapter presented two important international factors in democracy diffusion and democracy promotion. These factors complement the traditional domestic-oriented understandings of explanatory factors for democratization.

Based on decades of study about democracy building, contemporary research has continued to focus on national or international explanatory factors on the one hand and how links between the two groups of factors may interact on the other. Though international factors have come to play a much more

important role in explaining transitions to democracy than before, today, it is the links between international democracy diffusion and democracy promotion and domestic salience that are in focus. This has led to a re-focus on political elites and civil society actors as domestic democracy agents and gatekeepers in relation to external pro-democratic pressure. However, in a time of a reawakening of authoritarianism in the world, international pro-democratic forces are under heavy pressure from antidemocratic regimes. This has resulted in further studies on international politics regarding democratization and the balance of power between major states and international organizations and how certain states may be under international pressure and at a crossroads between democracy and authoritarianism. This has especially been the case in contemporary Eastern Europe and East Asia with the rising international power of Russia and China. Contemporary research on democracy building has become even more complex and requires scholarly collaboration between researchers belonging to comparative and international politics. It requires a firm understanding of national and international explanatory factors, but also how such factors may interact. Based on previous research, long-term structural factors are important to build democracy. Such factors are economic prosperity, civil society activities, popular mobilization and political institutions. But actor-oriented factors are also crucial to understand democracy building in the short-run. It is foremost the different domestic elites and their perceptions, behavior and strategies

Importance of Freedom

that may provide window of opportunities for transitions to happen. In addition, national determinants to democratization must be linked to international factors in actors, structures and processes that penetrates state borders and may be prodemocratic or antidemocratic in nature.

Chapter 4

Political Freedom

Corruption, Causes and Consequences

Political freedom (also known as **political autonomy** or **political agency**) is a central concept in history and political thought and one of the most important features of democratic societies. Political freedom was described as freedom from oppression or coercion, the absence of disabling conditions for an individual and the fulfillment of enabling conditions, or the absence of life conditions of compulsion, e.g. economic compulsion, in a society. Although political freedom is often interpreted negatively as the freedom from unreasonable external constraints on action, it can also refer to the positive exercise of rights, capacities and possibilities for action and the exercise of social or group rights. The concept can also include freedom from internal constraints on political action or speech (e.g. social conformity, consistency, or inauthentic behaviour). The concept of political freedom is closely connected with the concepts of civil liberties and human rights, which in democratic societies are usually afforded legal protection from the state. Various groups along the political spectrum hold different views about what they believe constitutes political freedom. Left-wing political

Importance of Freedom

philosophy generally couples the notion of freedom with that of positive liberty or the enabling of a group or individual to determine their own life or realize their own potential. In this sense, freedom may include freedom from poverty, starvation, treatable disease, and oppression as well as freedom from force and coercion, from whomever they may issue.

The socialist concept of freedom ("liberty") as viewed by neoliberal philosopher and Nobel Memorial Prize Economist Friedrich Hayek is that "the use of 'liberty' to describe the physical 'ability to do what I want', the power to satisfy our wishes, or the extent of the choice of alternatives open to us... has been deliberately fostered as part of the socialist argument... the notion of collective power over circumstances has been substituted for that of individual liberty."

Social anarchists see negative and positive liberty as complementary concepts of freedom. Such a view of rights may require utilitarian trade-offs, such as sacrificing the right to the product of one's labor or freedom of association for less racial discrimination or more subsidies for housing. Social anarchists describe the negative liberty-centric view endorsed by capitalism as "selfish freedom".

Anarcho-capitalists see negative rights as a consistent system. Ayn Rand described it as "a moral principle defining and sanctioning a man's freedom of action in a social context". To such libertarians, positive liberty is contradictory since so-called

Importance of Freedom

rights must be traded off against each other, debasing legitimate rights which by definition trump other moral considerations. Any alleged right which calls for an end result (e.g. housing, education, medical services and so on) produced by people is in effect a purported right to enslave others.

Political philosopher Alasdair MacIntyre theorized freedom in terms of our social interdependence with other people.

Nobel Memorial Prize Economist Milton Friedman, argues in his book *Capitalism and Freedom* that there are two types of freedom, namely political freedom and economic freedom, and that without economic freedom there cannot be political freedom.

In his article "Why the Market Subverts Democracy", Robin Hahnel takes issue with Friedman's concept of economic freedom, asserting that there will be infringements on the freedom of others whenever anyone exercises their own economic freedom. He argues that such infringements produce conflicts that are resolved through property rights systems, and therefore it is essential to decide what is a better or a worse property rights system, yet Friedman simply takes for granted the existing property rights and does not question them.

Political philosopher Nikolas Kompridis posits that the pursuit of freedom in the modern era can be broadly divided into two motivating ideals, namely freedom as autonomy or independence and freedom as the ability to cooperatively initiate a new

Importance of Freedom

beginning. Political freedom has also been theorized in its opposition to and a condition of power relations, or the power of action upon actions, by Michel Foucault. It has also been closely identified with certain kinds of artistic and cultural practice by Cornelius Castoriadis, Antonio Gramsci, Herbert Marcuse, Jacques Rancière and Theodor Adorno.

Environmentalists often argue that political freedoms should include some constraint on use of ecosystems. They maintain there is no such thing, for instance, as freedom to pollute or freedom to deforest given that such activities create negative externalities, which violates other groups' liberty to not be exposed to pollution. The popularity of SUVs, golf and urban sprawl has been used as evidence that some ideas of freedom and ecological conservation can clash. This leads at times to serious confrontations and clashes of values reflected in advertising campaigns, e.g. that of PETA regarding fur.

John Dalberg-Acton stated: "The most certain test by which we judge whether a country is really free is the amount of security enjoyed by minorities."

Gerald C. MacCallum Jr. spoke of a compromise between positive and negative freedoms, saying that an agent must have full autonomy over themselves. It is triadic in relation to each other because it is about three things, namely the agent, the constraints they need to be free from and the goal they are aspiring to.

Importance of Freedom

Hannah Arendt traces the conceptual origins of freedom to ancient Greek politics. According to her study, the concept of freedom was historically inseparable from political action. Politics could only be practiced by those who had freed themselves from the necessities of life so that they could participate in the realm of political affairs. According to Arendt, the concept of freedom became associated with the Christian notion of freedom of the will, or inner freedom, around the 5th century CE and since then freedom as a form of political action has been neglected even though, as she says, freedom is "the *raison d'être* of politics".

Arendt says that political freedom is historically opposed to sovereignty or will-power since in ancient Greece and Rome the concept of freedom was inseparable from performance and did not arise as a conflict between the will and the self. Similarly, the idea of freedom as freedom from politics is a notion that developed in modern times. This is opposed to the idea of freedom as the capacity to "begin anew", which Arendt sees as a corollary to the innate human condition of natality, or our nature as "new beginnings and hence beginners".

In Arendt's view, political action is an interruption of automatic process, either natural or historical. The freedom to begin anew is thus an extension of "the freedom to call something into being which did not exist before, which was not given, not even as an

object of cognition or imagination, and which therefore, strictly speaking, could not be known".

The word corruption is derived from the Latin word "corruptus," which means "corrupted" and, in legal terms, the abuse of a trusted position in one of the branches of power (executive, legislative and judicial) or in political or other organizations with the intention of obtaining material benefit which is not legally justified for itself or for others.

Corruption was referred to as a great sin already in the Bible: "Do not accept a bribe, for a bribe blinds those who see and twist the words of the innocent." However, the history of corruption is in fact related to the beginning of the creation of law and the state and was already in the antiquity considered an evil, which negatively affects the public administration and the functioning of the political system. The earliest records of corruption date back to the thirteenth century BC, to the time of the Assyrian civilization. From the found plates, written in cuneiform, the archeologists managed to discern how and who accepted bribes. Under the Roman law, the criminal offense of corruption was defined as giving, receiving or claiming benefits in order to influence an official in connection with his work. Due to the prevalence of corruption in the country, this law was supplemented by a new law, which predicted compensation for damage in double value of the damage, and the loss of political rights for the perpetrator of the corruptive act. However, this did

Importance of Freedom

not help alleviate corruption, especially due to the fact that corruption was most practiced by the members of the Senate and senior state officials, both in Rome itself and in the remote Roman provinces. The early Christian faith condemned corruption, yet corruption later also developed greatly in ecclesiastical structures, and achieved its peak with the selling of indulgences in the Middle Ages, all until the condemnation of the latter (as well as of other immoral acts of the clergy, with the Pope at the head) by Martin Luther. Apart from the condemnation of corruption, the Reformation also led to a break with until then dominant Catholic culture and the emergence of Protestant ethics.

As a child (he was a hostage at the Ravenna court), Attila I noticed a high level of corruption among the state officials of the Western Roman Empire and how they appropriated the state money (as a consequence, there was less money in the Treasury and therefore the taxes increased). He thus decided that if he would ever to rule, he would do so fairly and by oppressing the corruption in his own country. The early feudalism was familiar with various laws that punished the bribing of courts also with death. Later, when the developed feudalism again turned to the Roman law, a number of laws (Dušan's Code, Mirror of the Swabians) discussed the abuse of position. Then, in late Feudalism, countries became virtually helpless in the fight against corruption, as illustrated by the case of France, which in 1716 established a special court in which should rule in cases of

abuse of royal finances; however, these abuses (embezzlement, extortion, bribery, scams, etc.) were so extensive that the court was abolished and a general amnesty introduced in 1717 made some forms of corruption quite a tradition. The corruption was also widespread during the time of the Spanish Inquisition, where the victim of the accusation could make amends with money, which made the corruption, especially among the inquisitors, extensive.

Throughout the history, many intellectuals dealt with corruption or theorized about it one way or another. Machiavelli² had a low opinion on republics, considering them even more corrupt than other regimes, and according to him, corruption leads to moral degradation, bad education and bad faith. On the other hand, however, the great philosopher, diplomat and lawyer Sir Francis Bacon³ was known both for receiving bribes and taking them. When he reached the highest judicial position in England, he was caught in as many as 28 cases of accepting a bribe and defended himself before the parliament by saying that he usually accepted a bribe from both parties involved and that the dirty money therefore did not affect his decisions. The parliament did not accept these arguments and sent him to the jail where he spent only a few days as he was able to bribe the judge.

Thus, although the corruption has been occurring in society ever since, it has only been given more attention in the recent period—the researches on the phenomenon and its negative

impacts have become more common after 1995, when countries and international institutions began to be aware of this problem. The attitude of the public toward corruption was, until then, neutral. In 1998, Kaufmann and Gray found that:

- Bribery is widespread, especially in the developing and transition countries; there are, however, significant differences between and within regions.
- Bribery increases transaction costs and creates insecurity in the economy.

Bribery usually leads to ineffective economic results, in the long term impedes foreign and domestic investments, reallocates talents due to income and distorts sectorial priorities and technology choices (for example, it creates incentives for contracting major defense projects or unnecessary infrastructure projects, but does not encourage investments in rural specialist health clinics or in preventive health care). This pushes companies into the “underground” (outside the formal sector), weakens the state’s ability to increase revenue and leads to ever-increasing tax rates (as too little tax is taken), which is levied on less and less taxpayers, consequently diminishing the state’s ability to provide enough public goods, including the rule of law.

Bribery is unfair, as it imposes a regressive tax, which heavily burdens in particular commercial and service activities performed by small businesses.

Corruption destroys the legitimacy of the state

Many other researchers and institutions (the World Bank Institute—WBI, the European Commission, the United Nations, the EBRD) have investigated corruption and its impact on macroeconomic and microeconomic indicators through various forms of corruption, as well as its connection with local customs and habits, and how it affects the everyday lives of people. Most studies are therefore mainly the analyses of the effects of corruption on various economic indicators, such as GDP growth, investments, employment, tax revenues and foreign investments, or the study of various forms of corruption in relation to politics and the economic environment, the research of its social condition and various manifestations. Dobovšek agrees with the negative effects, i.e. high economic, political and social costs, and adds that corruption is not a weakness of people but of institutions (supervisory and other), as they should be the ones to obstruct the greed and temptation of individuals within them.

Although corruption differs from country to country, it is possible to identify some of the key common driving forces that generate it. What is common to all countries, which are among the most corrupt, has been identified by Svensson;

- all of them are developing countries or countries in transition,
- with rare exceptions, low-income countries,

- most countries have a closed economy,
- the influence of religion is visible (Protestant countries have far the lowest level of corruption),
- low media freedom and
- a relatively low level of education.

The impact of corruption on the economy

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Regardless of the above, corruption cannot be assessed unambiguously, since there is never only one phenomenon that is responsible for the occurrence and the development of it; corruption always arises from an array of several, interrelated factors, which can differ considerably from one another. Among the most commonly mentioned factors that influence the development of corruption are: political and economic

environment, professional ethics and legislation, as well as purely ethnological factors, such as customs, habits and traditions.

Political and economic environment

The phenomenon of corruption is strongly influenced by the political and economic environment. The more is the economic activity in the country regulated and limited, the higher the authority and the power of officials in decision making and the greater the possibility of corruption, since individuals are willing to pay or offer payment in order to avoid restrictions. A great potential for corruption is especially there where the officials are under the regulation given the opportunity to decide on the basis of discretion.

The level of corruption is also affected by the monetary policy. Goel and Nelson in their research found a strong link between monetary policy and corruptive activity in the States. The States that have a well-regulated financial sector, not a lot of informal economy or black market are also less corrupt than those where the opposite is true. They also find that there is less corruption in the countries with higher economic and political freedom.

Dimant puts it well in his claim that the level of efficiency of public administration determines the extent to which corruption can find fertile soil and sprout. Such efficiency is determined by the quality of the regulations and permits, since ineffective and

unclear regulations help to increase the level of corruption in at least two different ways:

- The artificially created monopoly of power that enables civil servants to obtain bribes is based on their superior position and embedded in the system.
- On the other hand, however, ineffective and unclear regulations cause inhibition and therefore encourage natural persons to pay bribes in order to speed up the bureaucratic procedure.

Corruption is also strongly influenced by the low salaries of public administration employees (state officials), who are therefore trying to improve their financial position by receiving bribes, and consequently, the socio-economic situation of the government officials also affects the phenomenon of corruption. This is demonstrated also by Allen et al. in their study where they find that corruption arises because agencies, institutions and the government can no longer control corruption effectively due to underpaid officials, which is a problem especially in the developing countries, where they do not have the sufficient tax revenue to properly reward the local officials. However, low wages are not the only cause of corruption; the poor state of the public administration, which is a consequence of political “overcrowding” of officials, due to which loyalty usually prevails over professional standards, also strongly affects the corruption. As an important factor influencing corruption, some authors also

indicate satisfaction with the work done by officials—the more they are dissatisfied with their work or place of work, the higher the degree of corruption, which is confirmed by Sardžoska and Tang in their studies. The mentioned authors find that the private sector has higher ethical values, in particular those that affect satisfaction with work, than the public sector and is therefore less unethical (especially regarding thefts and corruption). Indirectly, Svenson also affirms this and states that in principle, the salary level of civil servants affects the receipt of a bribe (the higher it is, the smaller the chance that the person will act corruptly). However, he continues on that a higher salary also strengthens the negotiating power of the official, which leads to higher bribes and he also states that, on the basis of existing research, it is very difficult to determine whether a higher salary causes less corruption, which means that the level of salary is not a decisive factor, but merely one of many.

The economy is unfortunately largely dependent on politics and often reflects the rule of law; various options for eliminating competition are exploited, and bribery is just one of the possible weapons in the struggle to gain a job. At the same time is the mentality of the economy sometimes: “The cost of a bribe is only a substantial business cost, an integral part of the contract,” or “Even if we stop the bribery, our rivals will not, so we must bribe in order to remain competitive, “or” bribery and misleading behaviour are not really crimes, they are just part of the old business practice. They are part of the game and everyone does

it.” On the other hand is the point sometimes simply the “lubricating” of the bureaucratic wheel by the private sector to do certain things faster or easier.

The political influence of corruption is also manifested through the proverb: examples are attractive! If the top of the politics (government, parties and leading politicians) is corrupt, then corruption shows at all levels, and this evil at the same time spreads among the ordinary population, as nobody trusts the institutions or the rule of law. Johnston thus points out useful thinking in terms of two types of equilibrium—the balance between the openness and the autonomy of the institutions and elites it leads and the balance between political and economic power and opportunities for cooperation. Ideally, the institutions should be open to influences and feedback from different sources, yet at the same time sufficiently independent to effectively carry out their work. Where the openness and independence of the institutions are in balance, the officials are accessible, but not excessively exposed to private influences; if they can make authoritative decisions, while not using their power to arbitrate, the corruption is relatively low. But where the official power is poorly institutionalized, too exposed to private influence, and the officials’ independence is reflected in excessive exploitation of their power—they can do as they please—the possibility for extreme corruption is again high.

Professional Ethics And Legislation

Lack of professional ethics and deficient laws regulating corruption as a criminal offense, and the prosecution and sanctioning of it are also an important cause for the emergence and spread of corruption. A great influence comes also from the ineffective sanctioning of corruption, which only increases the possibility of continuing the corruptive actions of those involved, creating at the same time a strong likelihood that others will join in the corruption due to this inefficient sanctioning.

The sole lack of professional ethics is a particular issue, as the administration requires different amounts of time to develop or change its ethics and professional standards, which is well known in transition countries (in some, ethics and professional standards changed overnight and approached the equivalents in the developed democracies, and in some, they remained the same as in socialism). It is precisely in the transition countries that the “softer” acts of corruption are often considered to be acceptable and justifiable. Therefore, due to lack of professional ethics in some countries that otherwise manage illegal corruption well, there is nevertheless a widespread form of legal corruption.

Corruption also generates a lack of transparency and a lack of control by supervisory institutions. Therefore, where there is insufficient legal basis or sufficient political will to control, which enables a non-transparent functioning of both politics and

the economy, corruption flourishes. Corruption is also affected by the extensive, non-transparent or incomplete legislation, where laws can be interpreted in different ways (for the benefit of the one who pays).

Different countries have different attitudes to corruption. In Europe alone, we can find two extremes; from completely corruption intolerant North to the warm South, where corruption is an almost normal, socially acceptable phenomenon. Or the difference between countries with a democratic past, which traditionally prosecute corruption, and former socialist countries, where the corruption in the state apparatus was a part of folklore tradition. Then, there are also different customs; in some cases, a “thank you” in the form of a gift for a service (for which this person has already been paid with a salary) is an expression of courtesy, and elsewhere it is considered corruption. Everything is only a matter of ethics and morality; however, they can be very different in different areas and different countries.

Some forms of corruption also relate to an informal form of social security, where the family or the immediate community takes care of its members. Such forms of informal social security prevail in less developed countries, where there is no legal regulation of formal social security and in the countries of Southern Europe where the influence of the broader family (patriarchate⁵) is still very strong, like for example in Italy, Greece, Albania, Bosnia, etc. These countries are known for

Importance of Freedom

nepotism, cronyism and patronage, since the family as well as the wider community provide social security. The family or community takes care of their members, who, in return, must be loyal and in a way also repay the benefits they receive from it. The same is true of faith. While the southern, predominantly Catholic, very hierarchically organized part of Europe, encourages the cult of the family (also joint and several community) and several liability, the northern, mainly Protestant part, emphasizes individualism and individual responsibility (which means less forms of corruption). The corruption also prospers better in countries where Islam and Orthodoxy are the main religion. The influence of the dominant religion in the country is thus important.

The influence of majority Protestantism has been tested several times and has proven to be an important factor for the low level of corruption in a country. However, the relationship between Protestantism and good governance is probably rooted more in history than in today's practice. Today, there are many nominally Protestant countries that are de facto secular, while also many non-Protestant countries fight effectively against corruption. Thus, the influence of Protestantism appears to emerge from its egalitarian ethos, which could indirectly function as a support to the general orientation toward ethical universalism, literacy and the promotion of individualism. Its role is therefore important, as it at certain stages of the development explains why the first countries that were well managed were predominantly Protestant.

Importance of Freedom

This does not mean that other religious traditions are incompatible with good governance, but only that they have not succeeded in compiling this particular array of factors at the right moment.

Similarly, the research by North et al. showed that, according to the authors, the least corrupt countries or those countries where the rule of law is the strongest were predominantly Protestant in 1900 and those who are most corrupt were predominantly Orthodox in the same year. The results of their research have shown that there is a link between religion and corruption on one hand, and respect for the rule of law on the other, but not that the link is causative. The questions therefore arise: Why do some religions respect the rule of law more than others and control corruption? Do the characteristics of a particular religion themselves lead to the results? Are there any differences in religious doctrines, practices or cultures that lead to such results? Are there other links that are not rooted in the religious culture, but are related to religious affiliation?

A study titled *Perception of corruption* by authors Melgar et al. tried to find out which groups of people are more likely to pay for corruption. They found that those who think that there is a lot of corruption also perceive it so and are consequently more willing to pay for it (as they think or expect the society to function that way). By using a wide and very heterogeneous set of data and econometrics, it has been shown that the social status and

personal characteristics also play an important role in the shaping of corruption perception at the micro level. While divorced women, unemployed persons, persons working in the private sector or the self-employed are considered to be in positive correlation with the perception of corruption (corruption is perceived more and they are more willing to pay bribes), the opposite applies to married persons, full-time employees, people who frequently attend religious ceremonies and people with at least secondary education (they perceive less corruption and are also unwilling to pay). According to the classification of countries, they find that it can be proved that all African and Asian countries are in the upper half of the table, and the same applies to the former socialist countries and most of the East Asian countries. People living in these countries perceive more corruption than others. On the contrary, most European countries and some of the former English colonies show lower perceptions than the average (there are also exceptions) and rank in the lower half, the same as half of the richest countries. They also added that the geographical classification of countries has been strongly correlated with the corruption perception index (CPI), which shows that individual characteristics and social conditions are specific factors that influence the perception of corruption. However, they have also found that better economic results reduce the perception of corruption, while the macroeconomic instability and income inequalities have precisely the opposite effect. With Mahič, we also found a similar influence on the perception of corruption; in the economic crisis (high

unemployment and low purchasing power), the perception of corruption is rising. A very important factor that affects corruption is also demographics. A number of studies have shown that patriarchal society is more prone to corruption. This is confirmed by several researches that actually explore to what extent are men women corrupt. Several earlier, especially econometric contributions to the debate on who is more corrupt, men or women, argued that there is a link between a higher representation of women in government and lower levels of corruption. An influential study of 150 countries in Europe, Africa and Asia by the World Bank confirmed this and concluded that women are more reliable and less prone to corruption. The subsequent findings were later reinforced by further research. Rivas also affirms this in his research and notes that, according to the results of the survey, the conclusion could be that women are less corrupt than men and that the increase in the number of women on the labor market and in politics would help fight corruption. Lee and Guven in the survey: *Engaging in corruption—the influence of cultural values and the contagion effects at the micro-level* also raised the question of whether men are more corrupt than women. The findings of the research support the thesis that women are less susceptible to corruption than men, especially in cultures that require men to be ambitious, competitive and materially successful, as these factors significantly contribute to unethical behavior. This was surprisingly well shown also in practice when, due to gender equality, the Peruvian government a decade ago decided to

involve more women in the police units. When the 2,500 female police officers were joined as traffic police officers, something unexpected happened; bribery was drastically reduced, and people welcomed the female police officers on the streets.

In 1997, Tanzi and Davoodi conducted a systematic study of the impact of corruption on public finances. Several important findings came to light:

- Corruption increases the volume of public investments (at the expense of private investments), as there are many options that allow for public expenditure manipulation and are carried out by high-level officials so as to get bribes (which means that more general government expenditures or a large budget offer more opportunities for corruption).
- Corruption redirects the composition of public expenditure from the expenditure necessary for basic functioning and maintenance to expenditure on new equipment.
- Corruption tends to pull away the composition of public expenditure from the necessary fixed assets for health and education, as there is less chance of getting commissions than from other, perhaps unnecessary projects.
- Corruption reduces the effectiveness of public investments and the infrastructure of a country.

Corruption can reduce tax revenues by compromising the ability of the state administration to collect taxes and fees, although the net effect depends on how the nominal tax and other regulatory burdens were selected by the officials, exposed to corruption.

The influence of corruption on the economy was studied by the same authors through several factors:

- *Through the impact of corruption on businesses:* The impact of corruption on a business is largely depend on the size of the company. Large companies are better protected in an environment that is prone to corruption, they avoid taxes more easily and their size protects them from petty corruption, while they are often also politically protected, which is why the survival of small (especially start-up companies) and middle-sized companies, regardless of their importance for the growth of the economy and the development, is much more difficult than the survival of large companies.
- *Through the impact of corruption on investments:* Corruption affects (a) total investments, (b) the size and form of investments by foreign direct investors, (c) the size of public investments and (d) the quality of investment decisions and investment projects.
- *Through the influence of corruption on the allocation of talents:* Indirectly, corruption has a negative impact on

Importance of Freedom

economic growth through the allocation of talents, since gifted and prospective students are driven, due to the influence of the environment and the situation in the country, for example, to study law rather than engineering, which would add value to the country.

- Through the impact of corruption on public spending: Corruption has a negative impact on public spending and has an especially strong impact on education and health. There are also indications of the correlation between corruption and military expenditure, which means that high level of corruption reduces economic growth due to high military expenditure.
- Through the impact of corruption on taxes: Because of corruption, less taxes are levied than would otherwise be, as some of the taxes end up in the pockets of corrupt tax officials. There are also frequent tax relieves in the corrupt countries, selective taxes and various progressive taxes; in short, there is much less money than the country could have, and so corruption, through the country's financial deficit, also affects the economic growth; and conclude the findings on the negative impact (both indirect and direct) of corruption on economic growth.

Smarzynska and Wei came to similar conclusions regarding the effects of corruption on the size and composition of investments. Corrupt countries are less attractive for investors, and if they do

opt for an investment, due to non-transparent bureaucracy, they often enter the market with a joint venture, as they usually understand or control matters of the home country better. The local partner can also help foreign companies with the acquisition of local licenses and permits or can otherwise negotiate with the bureaucratic labyrinths at lower costs. Generally inclined (as investors) to the joint venture in the corrupt countries are especially the US investors; however, even investors from those European countries, which are among the highest ranked on the CPI, quickly adapt to local conditions.

Corruption for various reasons also affects the following:

- Employment, because the job does not go to the most suitable or qualified person, but the one who is ready to pay for it or in any other way return the favor.
- Also affects total investments.
- The size and composition of foreign investments and the size of public investments.
- The effectiveness of investment decisions and projects. In the presence of corruption, the investments are smaller, as entrepreneurs are aware that they will have to bribe the officials or even give them a profit share for a successful implementation of a business. Due to these increased costs, the entrepreneurs are not interested in investing.

Wei even made a projection which predicted that in the case of reduction in corruption in Bangladesh to the level of corruption in Singapore, the growth rate of GDP per capita would increase by 1.8% per year between 1960 and 1985 (assuming that the actual average annual growth rate was 4% per year), and the average per capita income could have been more than 50% higher, whereas the Philippines could, if its level of corruption was reduced to that of Singapore (if everything remained unchanged), have raised their investments in relation to GDP by as much as 6.6%, which means a significant increase in the investments. At the same time, he notes that in order to reduce the corruption to the level of Singapore in the countries that he compared (India, Kenya, Sri Lanka, Turkey, Colombia, Mexico and Ghana), the State should raise the salaries of officials by 400—900%. He therefore asks himself whether this would even be possible. However, he notes that in the event of a large increase in salaries, a new form of corruption would likely arise when everyone would be prepared to pay a bribe for a well-paid official job.

Corruption often reduces the effectiveness of various financial assistance programs (both state and international), as money is “lost somewhere along the way” and does not reach those that need it or for whom it is intended, as the financial benefits, deriving from corruption, are not taxable because they are hidden. The state is thus also losing part of the income from the taxes due to corruption, while the public spending, resulting

Importance of Freedom

from corruption (or narrow private interests) leads to negative effects on the budget. The European Commission in its report found that corruption is costing the European economy about 120 billion a year, and according to the European Commissioner for Home Affairs, Cecilia Malström, the corruption in Europe is most present in public procurement, financing of political parties and health care.

The United Nations estimate that the cost of corruption in Afghanistan amounted to about \$ 3.9 billion in 2012. According to Transparency International, the former leader of Indonesia, Suharto, embezzled between \$ 15 and \$ 35 billion, whereas the embezzlements of Mobutu in Zaire, Ferdinand Marcos in the Philippines and Abacha in Nigeria are estimated to amount to \$ 5 billion. However, the World Bank survey shows that \$ 1 billion in bribes, both in rich and developing countries, is paid annually, which means that even the developed countries are not immune to corruption (but in a different form) and that the political corruption is especially present in large infrastructure projects. Bađun on the example of Croatia gives conclusions, which are valid for all post-communist countries.

Impact on enterprises: A survey conducted by the EBRD and the World Bank shows that bribes paid in smaller companies account for 5% of their annual profits and in medium-sized companies 4% of their annual profits. However, both are, compared to large companies, where bribes comprise less than 3%, in a much worse

position, which shows how bribes are causing problems or are putting these smaller companies into a subordinate position compared to the large ones, which in turn leads to the collapse of these.

Also interesting is the study of the *Shadow Economy in Highly Developed OECD Countries* where Schneider and Buehn also find the link between the low quality of institutions that are the holders of the rule of law (or degree of corruption) and the shadow economy, and therefore, the weaker the “law” is, the higher the degree of corruption and of shadow economy. In the study *Corruption and the Shadow Economy*, the same authors explore the relationship between the degree of corruption and the emergence of the shadow economy, and their findings are that the high level of shadow economy and the high degree of corruption are strongly linked to one another. One of the hypotheses in this survey (which has been confirmed) is also: the higher the degree of corruption, the lower the economic development measured by GDP per capita. The authors detected a positive correlation; corruption thus affects the economic development.

However, the extended practice of finding annuity outside the logic of the market and competition can therefore lead to a (neo) liberal conclusion that the root of the existence of corruption is in the very existence of the state—especially in excessive, selective and deforming state interventions and subsidies that

create fertile soil for the development of corruption. The truth is that the devastating combination consists of widespread state intervention and subsidies in the simultaneous absence of a strong institutional framework and detailed rules of the game, including the control of public finances and effective anti-trust legislation and legal practices. On the other hand, however, there is no clear evidence that private monopolies are more effective and less corrupt than the public ones and that privatization, especially long-lasting, gradual and non-transparent one (so-called gradualism), reduces positive developmental and social effects, including the reduction of corruption. Yet market deregulation, legal and judicial reform and transparent management of public procurement would significantly reduce corruption in many developing countries (as well as in transition countries), at which point the government should play an important role in the shaping of the anti-corruption policy. There should be a strong strengthening of the public procurement institution. The law is admittedly strict about the public procurement, but one of the main reasons for public procurement problems is the lack of a skilled workforce, and public procurement is thus still the breeding ground of corruption. There also exists a proverb "poverty is a curse," which applies largely to all developing countries, as these are the countries that are most affected by poverty. Poverty destroys all ethical and moral values. One of the important aspects of the damage to the global economy is also the failure to respect copyright and intellectual property. The more corrupt countries are also

Importance of Freedom

inclined to lower respect for the aforementioned, and the economic damage amounts to billions of dollars. Cavazos-Cepeda et al. found that reforms, legal, fiscal and intellectual incentives to respect copyright and intellectual property patents encourage the society to make itself more innovative and economically more effective; however, they underline the importance of human capital and investment in people as one of the most important factors for reducing the level of corruption in the country.

There are also theories that corruption can act as the lubricant of the economic wheel and at least in some cases has a positive impact on the economic growth. The empirical analysis done by Dreher and Gassebner on a sample of 43 countries between 2003 and 2005 shows that corruption is even useful, but with some reservations. In particular, they investigated the short-term effects of corruption and found, for example, that in countries where corruption is widespread, more new entrepreneurs enter the market (corruption in the public sector is expected to promote private entrepreneurial activity). They are, however, not necessarily to succeed, as there is a high likelihood that they will go bankrupt due to the rigid regulations that block the activity and because of which bribes are needed. They do acknowledge, on the other hand, that most authors who have been doing research for a longer period of time admit the harmfulness of corruption both for society and the economy. Something similar show the data for some Asian countries, where, unlike their findings (short-term benefit), the high degree of corruption

coincides with the long-term economic growth. Svendson also notes that, in light of the theoretical literature and various research studies, notwithstanding that these show the negative impact of corruption on the economic growth, but this cannot be said for sure, since there are difficulties in measuring corruption, and at the same time, the question arises whether the econometric models that were made are good enough to capture all the important variables. He also states that corruption appears in many forms and that there is no reason to assume that all types of corruption are equally harmful to the economic growth.

Recent empirical researches also attest to that; while many countries have suffered, as a characteristic consequence of corruption, the decline in economic growth, other countries have had economic growth (in some cases a very positive one) despite corruption. The latter is also to be expected, since corruption has many manifestations and it would be surprising if all types of corrupt practices had the same effect on economic performance. Analyses show that one of the reasons for this is the extent to which the perpetrators of corrupt practices—in this case the bureaucrats—coordinate their behavior. In the absence of an organized corruption network, each bureaucrat collects bribes for himself, while ignoring the negative impact of others' demands for them. In the presence of such a network, the collective bureaucracy reduces the total value of the bribe, which results in lower bribe payments and higher innovation, and the economic

growth is consequently higher in the latter case than in the former case. The interesting question is not so much why is the degree of corruption in poor countries higher than in the rich ones, but rather why the nature of corruption differs between countries. The extent to which corruption is organized is just one aspect of this, but there are other aspects. For example, it is common practice in some countries to pay ex post (as a share of profit, for example) instead of ex ante (in advance, as a bribe) to officials or politicians, so it is assumed that the effects on the economy will be different. The precise reason why corruption should take on one form and not the other is an important issue which has been largely ignored and which could have to do with cultural, social and political reasons, as well as economic circumstances.

In the fight against corruption, a remarkable role was also played by the debt crisis. The *die Welt* newspaper mentions the study of the Hertie School of Governance, which shows that Italy, Spain and Portugal have made great strides in the fight against bribery and corruption of their civil servants due to lack of money, which enabled a significantly more transparent and “pure” practice for the award of public procurement. The crisis is supposed to dry up monetary resources and thus reduce the chances of corruption. Also, the crisis has changed the perception of the society, and bad business practices, which were acceptable before the crisis, are acceptable no longer. However, the fight against corruption is often similar to the fight against windmills.

Importance of Freedom

The case of India shows how corruption is changing, getting new dimensions, not only in scope, but also in methods. Just as the population in India is growing, so is corruption, and there are always new ways how to cheat both the state and the society. The perception of corruption is increasing year after year. Despite all the anti-corruption moves and anti-corruption initiatives, people do not hesitate to offer or accept a bribe. The bribers are becoming innovative, they adapt to the situation and the innovation of companies in paying bribes and hiding them is also visible. However, just as elsewhere in the world, the negative effects of corruption are the same; it reduces foreign direct and domestic investments, increases inequality and poverty, raises the number of freeloaders (renters, free-riders) in the economy, distorts and exploits public investments and reduces public revenues.

Corruption is, in fact, a multidirectional process. On one hand, the provider benefits, on the other the recipient, and both are aware of the deed that remains hidden. The third link in the chain is everyone else, the victims. Although not every act of corruption is yet a criminal offense, it is, however, unethical and detrimental to the economic and political development of a society. Usually, there are persons involved with political, economic and decision-making power, and as the philosopher Karl Popper wrote in his book, *The Open Society and its Enemies*, that the greatest problem is not the question of who should give orders, but how to control the one who gives them. How to

organize the political and social institutions in order to prevent the weak and incompetent rulers from doing too much harm? However, as there is no general and unmistakable way of preventing the tyranny or corruptions of the heavyweights, the price of freedom is eternal alertness. Greediness, ambition, rapacity and immorality have been known to the human society ever since the emergence of civilization and use every tool available to them: kinship, common past, school contacts, common interests, friendship and, of course, political as well as religious ties.

In a study by Šumah et al., we did an analysis of countries, taking into account their ranking on the Corruption Perception Index published every year by Transparency International, and identified the main factors affecting the level of corruption in a particular group of countries, or rather, we tried to find similarities and differences between individual groups of countries in terms of what affects the level of corruption in these groups. We have established a basic model of three factors (risk, benefit and consciousness) that was created on the basis of the merger of several known, scientifically proven factors that cause or reduce corruption or affect its level in the individual country. According to this degree of corruption, we have identified five groups, classified the countries and analyzed their common characteristics. The findings were as follows:

Importance of Freedom

- Corruption is linked to the level of GDP (the higher the GDP, the lower the rate of corruption).
- Corruption is related to the level of education (the higher the average level of education, the lower the level of corruption).
- Corruption is strongly linked to the geographical location. The highest level is in Asia (mainly in Central Asia), Africa (North and Central Africa) and South America (according to the Transparency International map).
- Corruption is strongly linked to the country's prevailing religion.

Corruption is linked to freedom in the country (personal freedom, freedom of speech, economic freedom, etc.), with respect to the rule of law in a country and inefficiency of public administration, which is often also locally limited or is inherently corrupt.

The lower the country is ranked, the more dominant is the patriarchal society.

Many researchers are still involved in corruption. The findings show that there is a link between corruption and its negative effects, but from most of the studies it is not possible to determine what the cause is and what the consequence. Whether is the level of corruption lower due to high GDP, or is it vice versa, cannot be directly identified, since the corruption depends on economic indicators, while at the same time affecting them. It

Importance of Freedom

is also very difficult to claim that the average low level of education is due to corruption or, conversely, that corruption is a result of low education. Similarly goes for the rule of law and (in)efficiency of public administration. This interdependence will surely continue to be the subject of numerous researches in the future, for the only way to be successful in the fight against corruption is if we know the causes and begin to eliminate them.

Nevertheless, there remains something that needs to be emphasized. Almost all of the studies ignore the fact that the top of the most corrupt countries consists of countries with one of the various forms of armed conflict (civil war, intertribal conflicts, inter-religious wars or some other form of aggression), which means that peace in the country is a prerequisite for a successful fight against corruption. The least corrupt countries are countries that have a lasting peace on their territory (most since the Second World War or even longer), which is confirmed by the above fact. Peace is therefore one of the prerequisites for a successful fight against corruption.

The answer to the question of how to deal with corruption is not unambiguous; some countries have achieved great success in dealing with it in a relatively short time (Singapore, Estonia and Georgia) and some have been struggling for a long time (the most famous example is Italy). The first condition is in any case to ensure freedom (personal freedom, economic freedom, freedom of speech, freedom of the press, etc.) and democracy, and then

Importance of Freedom

education and awareness of people. However, at this point, it is not about introducing the Western type democracy, as our culture knows it, for it has often proven that, especially with the help of the army, more harm than benefit was caused. It is necessary to start using good practices of countries that are similar to each other (religion, habits, tradition, ethics and morality) and that have common history.

Chapter 5

Digital Media and the Challenges for Fundamental Rights

The problem of content control and regulation

Communication conveys meanings linked to culture and generates a context where human interaction takes place. This process determines socialization to a large extent. 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 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. 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. 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). 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.

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”.

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.

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). 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

Importance of Freedom

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. 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.

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

Importance of Freedom

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. 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.

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. Neopublic space-time has cultural and social implications for the citizenship of the digital world.

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. 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: 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. The current legal recognition of these freedoms is produced in a parallel way within different

Importance of Freedom

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.

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. 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-mail, social networks, or web pages have been added. This triumvirate offers lots of opportunities to come in the communication horizon. 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. From this quantitative point of view, the valuation is thus positive.

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.

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.

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.

Importance of Freedom

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 significant for those who want to express themselves.

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.

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.

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 assertions.

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/EC 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.

Importance of Freedom

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 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,

Importance of Freedom

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.

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, 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).

Importance of Freedom

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. It would be necessary to look for a more nuanced formula, concreted 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. 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 Constitution. 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.

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. In this sense, the 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

Importance of Freedom

involved the collection of personally identifiable information of over 87 million Facebook users. 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.

“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”.

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”.

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.”. 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”. 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”. 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. 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

Importance of Freedom

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”.

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.

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.