

Dimpled-Hanging-Pregnant-Chad.com: the impact of Internet technology on democratic legitimacy

Noveck, Beth Simone

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*Research Group on European Affairs
Research Group on the Global Future
Bertelsmann Group on Policy Research
Research Group on Youth and Europe
Research Group on German Affairs*

Beth Simone Noveck

**Dimpled-Hanging-Pregnant-Chad.com:
The Impact of Internet Technology
on Democratic Legitimacy**

Center for Applied Policy Research
(C•A•P)

Director: Prof. Dr. Dr. h.c.
Werner Weidenfeld
Maria-Theresia-Str. 21
D-81675 Munich
Germany

phone: +49-89-2180-1300
fax: +49-89-2180-1329

<http://www.cap.uni-muenchen.de>
Geschwister-Scholl-Institute for
Political Science
University of Munich

Working Paper of the Research Group on the Global Future

Center for Applied Policy Research (C•A•P)

Dimpled-Hanging-Pregnant-Chad.com: The Impact of Internet Technology on Democratic Legitimacy

Beth Simone Noveck¹

Introduction: Legitimacy and Technology

If elected, not by the majority of those who vote, but confirmed by a constitutionally mandated process, can a candidate be the legitimate winner? If a contender wins a race run according to rules set down by an independent judiciary that nonetheless invalidates votes fairly cast, is his victory legitimate? Does the failure of the U.S. Supreme Court to televise argument over the Florida ballot recount during the recent election or to sign its opinion in the case de-legitimize the Court's authority because it refuses to expose itself to public scrutiny? Alternatively, does the secrecy enhance the legitimacy of the Court by imbuing it with an air of mysterious power? By „legitimate“ we are inquiring about the acceptance of an institution's authority and its potential effectiveness. Without legitimacy, a political leader will not be able to push his vision through in the policymaking process and might as well not have been elected (if he ever was). None of this, however, would have been an issue in the recent U.S. election, if the „technology“ used for voting - the dimpled, hanging and pregnant „chads“ - were reliable. Furthermore, if the newer technologies, television and the Internet, had not called a Gore victory at 8:03 pm on Election Night, voters might not have left the polling booth lines and would have cast decisive ballots, instead. Critical is the legal battle over whether hand-counting ballots is the appropriate technology to elect a president in the twenty-first century. In the end, as protests over the disenfranchising of voters, the inconsistency between the popular and the Electoral College votes and bipartisan corruption

grow fainter, the repeatedly televised image of George W. Bush cloaks him with the mantle of authority and legitimacy. „Indecision 2000“ in the United States, as it has come to be known, unmistakably highlights the impact of technology on the perception of political legitimacy and the legitimizing of specific forms of democratic political culture.

Two extreme opinions - one that the Internet is a boon to democracy and the other that it is destructive of democracy - have become commonplace rhetoric today. In attempting to debunk both the cyber-utopian and the neo-Luddite view, this essay argues that neither of these are wholly true because what we actually perceive is the process of political de-legitimation caused by the spread of the Internet. Because technology defines the range of possibilities for how government communicates with its citizens and how they communicate with each other, when those possibilities change, the perception of the democratic quality of our institutions changes, too. The new communications technologies, whose impact outstrips that of prior innovations, act as a mirror, exposing the inadequacy of our current political institutions that presuppose a now-outdated technological reality. As such, many perceive them as a threat to democratic life and legitimacy. This is for three reasons: First, global network technologies respect no legal boundaries and therefore undermine the legitimacy and enforcement of national law, whose rule undergirds and defines the essence of democracy. Second, the Internet, because it is largely dominated by English-language content and web sites from the United States, is seen as eroding cultural difference and localism and giving preference to a new set of global commercial and consumerist values that thrive on the Net. Third, the private and privatizing environment of the Internet is perceived to be destroying public democracy and public space. I will argue that the changing technological landscape is undermining the perceived legitimacy of our democratic institutions and is a portent for change. But it is as yet

unclear whether that change will be for the better or worse. If technology's democratic potential (instead of its destructive potential) is to be fulfilled, it requires a proactive policy designed expressly to further democratic and civic goals.

What is Legitimacy?

Max Weber wrote that the effectiveness of any form of political authority, whether charismatic or democratic, relies on a degree of voluntary subjugation by the constituency. Its willingness to submit to authority depends, in turn, upon whether that authority is perceived as legitimate. Technology changes how we interact with and perceive our world and what we understand to be the range of legitimate political choices that comprise democracy and its constituent formal values of equality, justice and fairness, rule of law and popular sovereignty and informal norms of respect for local customs and culture.² The technological and geographical reality of the small town where information can be spread by word-of-mouth and broadside justified the town meeting as a legitimate form of democracy. The legitimacy of our contemporary representative democracy and its bureaucracy grew out of the technological reality of imperfect information and limited communication across vast distance mediated by a handful of centralized institutions. The technology of one-way television reinforced this notion of a passive electorate and its elected expert proxy representatives as an adequately democratic institution.

The characteristics of the new communications technologies are fundamentally different and create political dislocations in contemporary democratic culture. Communication is essential to how we organize ourselves politically. The material nature of communications is chan-

ging. It has become a commonplace to acknowledge that the Internet has revolutionized every aspect of socioeconomic life in large parts of the world and indirectly impacted even the most distant societies. Now, as perhaps never before, the perception that we are living in a revolutionary period of fundamental change reigns.³ When the Drudge Report, an exclusively on-line political gossip column, receives more „hits“ than the Republican or Democratic party web sites during those parties' national conventions, it is obvious that the Internet is changing the nature of our democratic political culture.⁴ The spread of these Information and Communications Technologies (ICTs) is exponentially greater than any prior invention. It has only taken five years for e-mail to reach 50 million people and less than 2 years for the World Wide Web to reach 10 million people.

The Special Features of the New Technologies

New technologies, in particular, (1) the speed and ease with which networks connect people regardless of physical geography or proximity, (2) the way they facilitate access to and manipulation of vast quantities of data, and (3) the power they impart to the individual citizen to communicate from one-to-one and one-to-many at no marginal cost, upend the stranglehold of traditional information arbiters over the machinery of public perception and the conduits of political communication. These are not mere toys or tools but communications technologies that define an alternate reality with palpable architectural contours and make possible new forms of conversation and dialogue. Therefore, it has become commonplace to question whether this innovation is a threat to our democracy, slowly eroding the political terrain, reshaping its institutional and cultural contours as television did in the last generation.

Though on the one hand we celebrate (prematurely) the spread of democratic ideals, values and institutions and offer up explanations for the „end of ideology“ as a by-product of global capitalism, the impact of the new communications technology on the legitimacy of these democratic principles and institutions is uncertain. The promise of unlimited, even excessive, communication and information flows raises the question: how does the Internet, as a global communications medium, impact the legitimacy of our current democratic institutions? Focusing on the question of legitimacy, in particular, is shorthand to address the interrelationship between these communications media and the shaping of public perception. Empirically, simple observation shows that actual political change has not been as dramatic as cyber-utopians would have predicted a decade ago. Rather the Internet has changed the perception of our political processes. That affects their legitimacy and, in turn, forges the will for gradual political change.

The Internet and the Perception of Political Change

There are certain key realities that catalyze the impression that the Internet is somehow dangerous or disruptive of political life. The Internet (1) has become a significant alternative to the traditional mass media and a new source of interest articulation, often on controversial subjects given less coverage elsewhere, including sexuality, personal health and medicine, relationships and political gossip and scandal; (2) enjoys its greatest appeal among young people, who are comfortable with technology, but feel politically disfranchised or disinterested, and since 2000, also among women and people of color (in the United States);⁵ (3) demonstrates the power of decentralized communications to disperse power downward, away from government, to loosely conjoined

groups, organizing and empowering themselves via computer networks; and, finally, (4) does not depend for its success on the endorsement of organized political institutions or their elites. In fact, the ability of applications such as Napster or digital encryption to circumvent and undermine establishment institutions, contribute to their popular appeal and the perception that they constitute a political threat.

Whereas these ICTs are perceived (by some) as a threat to the political and social status quo, they present less of an immediate danger to our political system, which is still fundamentally stable and legitimate. Rather, these revolutionary technological developments threaten, not democracy itself, but the specific institutions that make up the political culture in those nations where the technologies have had their profoundest penetration. There is no doubt that the Net is changing how citizens view and participate in the political process (e.g. electronic voting), how government interacts with citizens (e.g. electronic service delivery and tax collection) and the potential for citizens to engage with each other (e.g. Net action and organizing). Dick Morris, the chief strategist for President Bill Clinton's 1996 campaign and president of Vote.com predicts, for example, that new technology will elevate direct democratic processes as legitimate: „there will be daily referenda ... the Internet will be the Congress. The Internet will be the Parliament. The Internet will be the election.“⁶ Though this prediction is both extreme and unlikely, the remark goes to the heart of the perception that new technologies undermine the stability of political institutions designed around the formal and informal assumptions that people and information cannot be easily connected.

There is nothing inherently anti-democratic about these technologies. Though they are disruptive of the old way of doing things, if anything, they have the potential to enhance the quality of democracy even as they threaten its current institutional embodiments. Used democra-

tically to further the ends of democracy, these ICTs could improve the rule of reasoned law, popular participation and engagement in the political process, the development of a more robust and deliberative public sphere and increased transparency between governing and governed. They have the potential to help overcome the democratic deficit that derives, in part, from a growing gap between increasingly homogenized global or national institutions and local values, culture and engagement.

[The Internet: A Threat to Democracy?](#)

There are three primary reasons why technology is perceived as a threat to democratic life and legitimacy.⁷ First, global network technologies respect no legal boundaries and therefore undermine the legitimacy and enforcement of national law, whose rule undergirds and defines the essence of democracy. Second, the Internet, because it is largely dominated by English-language content and web sites from the United States, is seen as eroding cultural difference and localism and giving preference to a new set of global commercial and consumerist values that thrive on the Net. Finally, the private and privatizing environment of the Internet is perceived to be destroying public democracy. Whereas the telecommunications conduits that carry Internet traffic are, for the most part, subject to common carrier requirements of non-discrimination (although this is not securely the case for Internet via cable or WebTV), the Internet is not a public technology. Both the backbone (at least in the United States) and the web sites that this infrastructure carries are private. Despite the rapid rise and fall of thousands of e-commerce companies, there is still (comparatively) almost no political life on the Net. It is only in its infancy and growth is stunted. There are no public parks or public spaces in cyberspace, which suffers from a democratic deficit dispropor-

tionate to the number of users and the time they spend there. Web sites are designed to improve commerce and hence are increasingly customized to target the individual. This individualization and privatization on the World Wide Web, the interface by which most people use the Internet, is a radical move away from the origins of the Internet as a communications and networking technology and eviscerate any notion of public media, shared cultural experience, public decision making and responsibility that are at the foundation of democratic life.

Technology Respects No Legal Boundaries

It has become an irrefragable truth that network technologies, with their power to connect people around the planet or around the block, increasingly respect no national laws. The question is whether this suggests that they might destroy and destabilize the legitimacy of our democratic system. The Internet levels the effectiveness of the institutions we consider to be legitimate at enforcing the law. There are countless examples of cyber-crimes that are perpetrated against victims in one country by out-of-reach criminals in another, operating via servers and networks in a third country. Law enforcement in Germany, for example, is powerless to get at neo-Nazis operating Web sites out of the United States or Canada. Apprehending purveyors of illegal offshore pornography or gambling operations is a disproportionate effort to the reward. There has always been cross-border criminal activity, but the scope and speed of the Internet magnify the gravity of the problem. For those who consider that Napster, Gnutella and other file sharing programs that permit users to swap and trade music and other copyrighted material should be outlawed, the question remains if such a law could ever be enforced. The failure of anti-Internet indecency legislation in the United

States resulted, not only from the fact that „indecency“ covered too broad a swathe of language and risked infringing on constitutionally permissible speech, but that such a law could never be equitably enforced. The Internet empowers users to transmit information at such rapid speeds, often securely encrypted, so that it becomes impossible to identify and, therefore, apprehend the sender.

It is not only a question of undermining the police power to physically capture a reasonable percentage of criminal suspects, but of which jurisdictional rules to apply. To be democratically legitimate, laws must be applied with fairness, equanimity and due process, and not by fiat or discretion. When a couple in California uploads adult material to an electronic bulletin board (BBS) in California - material which in California would not be considered obscene - and those images are downloaded by a postal inspector in Tennessee, it is not clear that the standards of Tennessee should apply, rather than those of California.⁸ Computer networks render transactions between citizens of different states and different countries routine and commonplace and lay bare the inconsistencies in the national systems of regulation that are differently applied to the same technology. This is a far-reaching and serious problem that touches on legal issues as diverse as electronic signatures and contracts, advertising and consumer protection rules, gaming and gambling, fraud and drug dealing. To circumvent a European ban on advertising prescription drugs,⁹ multinational pharmaceutical conglomerates have set up informational Web sites on servers in the United States, where such advertising is regulated (to some extent) but not restricted, in an effort to reach consumers worldwide. There is no consensus on whether this practice constitutes primarily a dangerous skirting of European consumer protection rules or a satisfaction of the consumer's right to know and to information. In an attempt to begin to create a more cohesive and consistent regulatory framework, the European

Union recently enacted a Directive on Electronic Commerce,¹⁰ which sets forth jurisdictional rules to be applied in electronic transactions. The Directive, for reasons beyond the scope of this paper, has provoked controversy. But its enactment highlights the urgency of the problem.¹¹

Perhaps the more significant impact on the political perception of new technology is the inconsistent application of public and constitutional law engendered by transnational networks. Because constitutional law, in particular, defines and expresses fundamental national values, including the right to free speech and movement, physical, informational and communications privacy, the inability to apply it consistently in cyberspace challenges the constitutional basis of our democracies and the deep-seated values on which they rest.

One of the most vexing and politically urgent conundrums that illustrate the pressure on our political culture created by the Internet is content regulation and the protection of children.¹² The proliferation - or rather the perception of a proliferation - of pornographic, obscene, violent and racist content on the Internet has sparked pressure on politicians to regulate content on the Net for the protection of minors who, in many cases, have better access to and facility with technology than their parents. The political desire to be on the „right“ side of pornography and children adds urgency and some degree of hysteria to a genuine problem for which the solution may be legal, technological, self-regulatory, educational or a combination of the above. But the difficulty of any form of speech regulation, especially regulation with transnational implications, is that each nation interprets „free speech“ in the context of its particular cultural and historical background. Within countries, each region, locality and individual family has differing views on what constitutes „harmful“ content. A Halloween Web site may be fun and educational to one set of parents and blasphemous and heretical to another. Frank medical information about AIDS or sexually transmitted disease

might be appropriate for a 14-year old in New York or Frankfurt and never appropriate for the children of parents in countries where traditional religious values dominate, such as in Iran or Saudi Arabia. Whereas Mein Kampf might make required, albeit repulsive, reading to a student in California, German educators might consider the book to be psychologically dangerous as well as illegal. In just such a recent case, Yahoo!, the US-based Internet company, in response to international pressure and the judgment of a French court, has agreed to ban the sale of Nazi propaganda and memorabilia from its auction and shopping sites, including its English language sites in the U.S.¹³ Yet such a restriction, if imposed by the government or courts in the United States, would contravene the First Amendment. The intractable puzzle of how to reconcile and harmonize entrenched and different traditions calls the laws themselves into question. Is the First Amendment jurisprudence of unfettered liberty the benchmark for evaluating content on a global communications network that passes through countries with very different traditions of free expression? By contrast, are laws conceived and written for a European audience with access to a limited number of television channels, applicable when spectrum is unlimited and streaming video can be delivered via the Internet?

At the same time, the inefficacy of current regulations is highlighted not only by the globalization brought on by network technologies but by the individualization they make possible. Why is national regulation, let alone supranational regulation, of Internet content necessary when the tools exist (i.e. software filters) to allow each family to make, implement and enforce its own decisions about appropriate and harmful content for the children in the family. Individual preferences can be maximized more effectively than ever before with the utilization of the appropriate tools. With a mere point-and-click I can decide and let the computer execute my decision to accept incoming mail, attachments to

that mail, mail containing or not containing certain key words, instant messages or invitations to chat rooms. With this technology, I can also impose my decision like law on other members of the household using my machine or on employees of my company by means of a proxy server.

The greater the level of Internet connectivity and usage globally, the more pressing becomes the perception that national laws and their enforcement by national governments have become an outdated and illegitimate phenomenon. Without the legitimacy of our procedural and substantive legal system, the foundations of democratic culture are called into question.

Global Technology Erodes Cultural Differences

Not unrelated, yet distinct from the obsolescence of national law, is the perceived threat to democracy from the apparent erosion of national and local culture by global networks. It is essential to be aware that the definition of „values“ is an extremely complex question, highlighting again the fact that it is perception of value erosion that is at issue. Because of the awesome power of the Internet’s communications protocols to connect citizens in a web of information sharing and exchange, regardless of the hardware platform they use, it also glosses over cultural difference and „collides with existing values“¹⁴ to produce, at the very least, a process of value change. Though the Internet opens the door for global dialogue, it potentially destroys localism in favor of globalization, magnifying the familiar coca-colonization problem a thousand-fold. One could argue that the Internet, because it places the primacy on speed, ¹⁵ moves at the pace and embodies the values of the active „American personality“¹⁶ and its culture of youth and that it does

not value deliberative traditions. This argument leads to the criticism that the Internet exports particularly American values and imposes them on those who use the Internet. I would argue, instead, that the Internet - or rather the global capital flows that it facilitates — exports, not American values per se, but the commercial and privatizing value of e-commerce that has become so prevalent. These dot.com cultural values of commercial globalization are antithetical to and corrosive of the legitimate cultural traditions that define political cultures around the world. The Internet is without an established cultural history and without any organic political culture. The absence of cultural baggage or entrenched cronyism and the primacy of openness and sharing might bode well for democratic values. There are those who point to the number of communications channels available via the Internet to celebrate the diversity that it enables. But that hope - the promise of the Net's democratic potential - must not distract attention from the value-laden nature of all technology. The Internet and computer are not inherently anti-democratic or democratic. Rather their specific characteristics imply the potential, in this case, to be one or the other or both. This goes deeper than the question of how many Web sites are in English or how many sell French instead of American goods. The choices we make about the development of our technology, the interface we give it to interact with the world and the laws by which we regulate access to it, are all value decisions that are expressed in the technology. Many of these choices are not made by democratically accountable authorities, a citizen body or even by the individual user, but rather by technology companies.

When you go to a Web page and cannot access it, the screen flashes the ever-frustrating „404 Not-Found“ error. After pounding our fists, we move on, assuming that this is the „way it has to be.“ But it does not. 404 Not Found could mean the link is old or that access has been blocked. Either way this process does not respect the democratic value

of transparency. At best, it reflects the laziness of a programmer. At worst, it is a deliberate attempt to obfuscate the truth and mask it behind the opaque wall of technological expertise. Because understanding these new technologies is a skill possessed by the few, rather than the many, the techno-elite can impose its own values on consumers of Internet services. It is because the cultural and political power of those who control technology has come to be recognized and feared that the anti-trust battle in the United States over Microsoft's packaging of Internet Explorer with the Windows operating system has been so contentious. As cyberspace increasingly becomes the locus of political interaction and socialization, the owners of the networks and those who design its front-end interfaces become increasingly responsible for the political consciousness and civic education of the next generation. On a less subtle level, legal inconsistencies between the regulation of telecommunications networks, cable and broadcast, allow the corporations who own the networks to exploit loopholes to their advantage and to the detriment of local values.¹⁷

One of the thorniest examples of the conflict between the ethic of the Internet and local values has been the contentious issue of personal privacy on the Web. The privacy dilemma highlighted the lack of harmonized legal regulation between Europe and the United States. However, the impetus behind the legal debate that flared up after the coming into force of the European Privacy Directive in 1997 is the perception that the strong commitment to privacy in Europe, in particular, (and even in the United States) is being eroded by the pressure toward „openness“ pushed by the purveyors of direct marketing technologies.¹⁸ Though the technology of encryption, in particular, has enabled a greater degree of privacy than previously possible (e.g. the ubiquitous spread of public key encryption and digital info-mediary agents), the economics of Internet-business has thus far led to an increase in targeted

marketing at the expense of personal privacy. This trend may be just that — a transitional period during the pioneering days of e-commerce - which will have preceded a shift to enhanced privacy and the utilization of Privacy Enhancing Technologies (PETs) on every desktop.¹⁹

But the commercial developers of the Internet-based e-commerce applications that drive growth on the Web have a clear goal: to sell product. The innovations in direct and targeted marketing made possible by intelligent technologies that recognize users, record and then predict their preferences create new opportunities for improved sales and marketing, even as they transform users into consumers and consumers into probabilities. The fierce competition among e-businesses for consumer eyeballs and loyalty increases the clamor for these tools to a fever pitch. The desire to extract ever more information and data in order to predict buying habits and thereby contribute to the growth of the New Economy directly conflicts with traditional values of privacy and autonomy. „Knowing your customer“ in order to anticipate and meet his or her needs has always been an important pillar of salesmanship. But with the omnipotent knowledge enabled by the integration of databases of personal information (government records, credit card and employment records, shopping information etc), a business that utilizes the right technology can know more about me than I know about myself. Because the technology makes this so easy, it becomes increasingly difficult to argue that it is inappropriate. „Privacy is dead, get over it,“ infamously exhorted Sun Microsystems President, Scott McNeely, emphasizing that technology has created a paradigm shift, leading to the devaluation of privacy as we have known it. On-line industry lobbyists argue that self-regulation and more time are required to adjust and find a balance between the potential of e-commerce and the value of privacy in an on-line world. Civil libertarians and privacy advocates, by contrast, are pushing for additional legislation and greater enforcement of that legislation in

the on-line environment worldwide. Whatever the eventual practical outcome, the debate over technology's impact on the right to and value of privacy has just begun to rage. The debate is paradigmatic of this pervasive perception that network technologies, which permit the rapid integration of informational databases to create personal profiling, threaten traditional values, especially in non-American cultures where the historical experience with fascism and Nazism has inculcated a zealous belief that the right to privacy is inviolable and sacred.

Private Technologies Not Public Democracy

The final assault we perceive on our democracy is the pervasive absence in cyberspace of public spaces and public technologies. There is no equivalent to the public park or to the sidewalk in cyberspace where citizens can happen upon a protest, a demonstration or a gathering. Though there are governmental and civic Web sites and even citizen Free Nets (publicly accessible computer systems), the decentralized and privatized architecture of the Net makes it difficult to find these places and for them to achieve the critical mass of participants. There are few town halls or public meeting spaces. Instead, a new culture of decentralized and grassroots organizing is developing among a certain techno-elite. But, for the majority of Internet users, their political experience on the Net is largely passive. They can obtain information and even governmental services as consumers - now they can, in limited circumstances, even vote — but rarely interact with each other as citizens. The community-oriented focus of the Net has been supplanted by the dominance of a consumer culture. Citizens spend more and more time on-line and grow accustomed to the absence of public spaces. Exacerbating the problem is the fact that the vast and exponentially growing repository of

free information available via the World Wide Web has necessitated the reliance on filtering technologies that sort, find and manage information, transforming it into useful knowledge rather than useless data. In the pessimistic view, these tools, however, are so effective that they allow us to hone and personalize our media experience to create the „me channel,“ where I can get anything I want, anytime. Interaction on the Net becomes individual and personal yet there is no longer any commonly shared media experience. We enter into so-called communities with people thousands of miles away and share files with music listeners on the other side of the globe but become even more removed from neighbors and friends. It is still television - from the Olympics and the NBA playoffs to the Princess Di Funeral and movies like Holocaust - that forge a common cultural conversation. Even Internet „happenings“ become newsworthy because television reports on them. But as television also moves to the Web, we pick-and-choose our own media experience. This has the positive effect of decreasing reliance on a handful of centralized broadcasters and their often mind-numbing programming choices, dumbed-down to please the lowest common denominator. But substitutes for that a new dependency on commercial filtering tools that sort and favor content preferred by a handful of centralized Web site operators and new media moguls. Behind the rhetoric of personalization and individualization is a dangerous delegation of choice to technologies that are not accountable, not democratic and that we largely neither understand nor control.

The qualitative nature of interaction on the Net is primarily me-centric, dominated by the values of targeted marketing, rather than by the motivations of politics, culture, education or other public activities. No matter how great the potential for democratic improvement inherent in these networks that connect people and their machines, they do not promote the values of democracy unless they are expressly and explicit-

ly used to that end. The values of those writing code for e-commerce are neither democratic nor political, nor do they have to be. But there are very important political consequences for our democracy from the fact that, as a society, we spend more and more time in a world without public spaces (or, as discussed briefly above, without genuine privacy or private space). Government has done little thus far to counterbalance the rampant commercialism of the Net. We have utterly failed to make a commitment to make the Internet a place for democracy, a place for us, as well as a place for commerce.²⁰

The inadequacy of national legal systems to police the Internet, the riding roughshod over cultural difference and the absence of public space on the Net, all create the perception of a gradual onslaught against democracy in those countries where Internet usage is prevalent. The appeal of the Internet among young people to the exclusion of their elders and the rendering transparent of the failings of democratic institutions designed for a different technological reality heighten the threat. This perception is as popular as the countervailing view that the Internet is the greatest boon in the history of modern democracy for precisely the same reasons: it undermines the police power of the centralized state, represents a conduit for global civic dialogue and cooperation and allows every citizen to be his own broadcaster and operate a soap box via the Web. The reality is somewhere between these two extreme perceptions.

Next Steps

The unique characteristics of the new Internet technologies, which vastly exceed the potential for political change brought on by earlier innovations, challenge the political system, regardless of nationality, party or ideology. They act as a mirror, exposing the inadequacy of our

current institutions that presuppose an outdated technological reality, and create pressure on the system. The outcome, impossible to predict with any certainty in the midst of this cultural evolution, is unlikely to be destructive of democracy. Rather, the spread of Internet technologies will change - perhaps for the better or not — the composition and character of democratic political culture and its institutions. Technology is one of the determinants that shape our political culture because it defines the range of possibilities for how government communicates with its citizens and how they communicate with each other. There are technologies now available that change the possibilities - positively and negatively - for new forms, modes and speeds of conversation and therefore are fundamentally changing the essence of democratic life. If the Internet can improve government's ability to hear its citizens and for citizens to form and express political opinions, its institutions must be responsive to these possibilities in order to remain democratic and legitimate. By the same token, if computer networks undermine the effectiveness of our democratic institutions - and therefore their legitimacy — these institutions have to adapt. It is not democracy itself that is at issue, although that might eventually turn out to be the case, but the qualitative nature of that democracy in the near term. Our laws and institutions continue to survive the explosion of the Internet culture, but this technological shift increasingly eats away at their legitimacy.

When a social phenomenon, be it spread by the mass media or the Internet, exposes the inadequacy and illegitimacy of our political culture, we have to recognize the challenge and respond, if that perception of threat to our political culture and its institutions is not to become a danger to the survival of democracy itself. That is to say, we have to begin to make room in cyberspace for citizens as well as consumers and to address the changes brought on by the Internet politically and democratically.

To respond to the jurisdictional dilemma, the conflict between global technology and local values and the absence of public space on the Net, we need to redefine our democratic processes - the means we think of as legitimate - if we are to come up with democratically legitimate ends rooted in the new technological reality. Though the Internet is promising for its potential to be used to improve democracy, it is less the nature of the technology itself that is ultimately determinative than whether we think about this technology with civic and democratic, instead of merely commercial, goals in mind. „There is nothing wrong with trying to make a profit by selling people what you guess they want, but when the Net becomes primarily or exclusively commercial, our capacity to choose is reduced to market appetites, and our potential for participation and interaction is reduced to rudimentary clientelism. In other words, without public intervention, the „new“ Net technology becomes very much like the older technologies: passive, commercial, and monopolistic.“²¹ The Net may continue, as now, to coexist alongside our democratic political culture, putting it in a bad light, revealing its inadequacies but having no substantial corrective impact. On the other hand, the technology, because it is a communications technology, can be enlisted to improve the very flaws that it lays bare. As we have already discussed, however, because there is as much potential to use the Net for anti-democratic or a-democratic purposes as for improving political culture, it must be a conscious and expressly political effort.

Therefore I want to conclude with a three-fold prescription for improving the democratic quality of these technologies and using the technology to improve, or even rescue, our democratic political culture (and eventually our democracy) from the threat posed by the evolution of networked communications technologies.

Get the values right.

Get the rules right.

Get the architecture right.

To „get the values right“ means to start with the premise that democracy is political and that we must approach the conundrums created by technological change with an expressly political outlook and approach, instead of abandoning ourselves to the ethic of the „code“ and the values of the Net, which are commercial, private and privatizing. Every technology prefers some set of values and no technology is ever implemented in a purely neutral fashion. We should not be abashed about promoting democratic values. This means creating the incentives, legal and otherwise, to keep the telecommunications infrastructure open and accessible to all, regardless of whether it is copper or fiber optic cable, terrestrial or satellite broadcasting, wireline or wireless telephony. But there also needs to be software applications for democracy, civics and education that can be used via these open conduits. Finally, qualitative, independent and trustworthy content must complement and populate the applications, if they are to be useful for democratic improvement.

To „get the rules right“ is to start establishing standards and principles by which to institutionalize the democratic processes by which decisions can be made in a wired world. That is to say, we have to focus first on creating democratically legitimate processes if we are to achieve democratically legitimate ends. This means using technology to democratize and render more transparent and efficient our current institutions and to create new cyber-institutions that promote democracy within the technology's space. This also means using technology to help foster a critical, informed and deliberative public discourse.

Though democracy the world over has certain common features, „democracy“ is not a monolithic notion but is conditioned by local cul-

ture, history and values and comes in many different forms of democratic political culture. If we focus on universalizing democratic rules of decision-making, we can begin to address the global nature of the technology without prescribing uniform and therefore illegitimate ends for different cultures.

Until recently, in Hong Kong, only businesses could register a national domain name with the .hk suffix. Individuals could not register a domain and therefore could not establish personal Web sites except by setting up a sub-page through a commercial provider. That is the wrong rule for creating an Internet that promotes free expression and democracy. Rules that prevent censorship or discrimination, either by government or by the market, in access to or use of these communications technologies are needed to set us along the right path. It is still an open discussion as to who should set these rules and how they are to be administered. Given the flexibility and power of the technology, many rules can be more effectively self-enforced (e.g. filters) by individuals with powerful software than by governmental policing. But if we are to begin to overcome the threat to democracy posed by technologies that exceed national boundaries, we have to invent new processes by which we network our institutions or create new ones to address these global challenges.

„Getting the architecture right“ means building technologies that promote the values of democratic culture. The technology is eminently flexible which means that different architectures can coexist that promote the values of variants of democracy, including improved applications for secure voting that enhance direct democracy on the Net and new applications for deliberation and discussion that facilitate participatory democracy.²² This can be achieved by a combination of public regulation, public incentives to the private sector to promote public technologies and purely private innovation that responds to the market demand for

technologies that serve democratic, educational, cultural and civic ends.

Though the idea that technology is not going to usher in the Messianic age of democracy or destroy the nation state as we know it, is intuitively obvious, the conclusion that follows from it is not and bears (over)-emphasizing. We are conscious of and perceive the revolutionary process of technological change going on around us but the real impact this change will have on the qualitative nature of our political culture is not predetermined. To date, we sense the increasing illegitimacy of political processes and institutions predicated on a different communications infrastructure to meet the challenges of high-speed networked communications. But the next step is not de facto global government and the overhaul of the ultimate structure of democratic governance, which would just replicate old ways of doing and old flaws in our current democratic systems on a bigger scale, but a rethinking of democratic processes for the Internet era. To be legitimate, our institutions must take account of a communications landscape where each person can be his own broadcaster and where citizens can cheaply and easily talk to one another about issues of public import and concern. They have to recognize the global flow of money and ideas without denigrating the local quality of culture and values. In other words, we have to use the Net as a means to further democracy and use democracy and its values as tools to make the Net a habitable terrain for citizens as well as consumers.

¹ Dr. Beth Simone Noveck is the President and CEO of Bodies Electric LLC (<http://www.bodieselectric.com>), the maker of Unchat^(tm), software for democratic communication and deliberation. She holds a law degree from Yale Law School, a PhD from the University of Innsbruck and a Bachelors and Masters from Harvard University.

² The legitimacy of a political culture has both a formal and an informal component. The former are its established institutions and rules. The latter are the informal norms and processes that do not derive from structured authority but are equally essential to the political culture and its propagation. Formal norms are the institutionalized embodiments of the respect for law and democratic values, including parliament, congress, independent courts, free elections, trial by jury, ideological neutrality and fairness embodied in doctrines like procedural and substantive due process, civil rights and liberties, equality and the crafting of institutions pursuant to the principle that every member of society should be equally subject to the strictures of democratically enacted laws. In a democratic system, formal legitimacy is present when the authority is elected according to law and in accordance with established rules, principles and standards that respect universal human rights and the rule of reason. Even in a corporation the president enjoys formal legitimacy when she is appointed by an independent board according to the by-laws of the corporation. A political leader is formally legitimate when elected according to a fair and transparent process that measures the will of the majority in accordance with the laws and constitution of the polity. But to be legitimate, a democratic system has to function not only formally but logically as well. There must be informal social associations that support the political system and, in turn, the formal political institutions must respect the consensual norms and values of the local culture and marketplace to be legitimate. The authoritative CEO is not only appointed by the board but governs with respect for the culture of the corporation, the interests of its employees and shareholders. The democratic political institution - the one with lasting power - grows out of and responds to local beliefs and practices. Shared values about acceptable speech, appropriate behavior, the relationship between the state and the citizen and between church and state go hand in hand with

official political institutions to make up a democratic political culture.

³ <http://www.aventis-forum.uni-muenchen.de/events/1100/report.html>

⁴ Ticker, Brill's Content, November 2000. Number of unique visitors to georgewbush.com, gopconvention.com and rnc.org during the week of the Republican National Convention, 392,000. Number of unique visitors to algore.com, dems2000.com and democrats.org during the week of the Democratic National Convention, 201,000. Average weekly number of unique visitors to drudgereport.com during those two weeks (as compiled by Media Metrix, Inc.), 465,500.

⁵ Since 2000, according to MediaMetrix, more women are on the World Wide Web than men. <http://www.mediametrix.com>.

⁶ Dick Morris as cited in The Digital Tea Leaves of Election 2000: The Internet and the Future of Presidential Politics, by Don Lewicki and Tim Ziaukas, First Monday, volume 5, number 12 (December 2000), URL: http://firstmonday.org/issues/issue5_12/lewicki/index.html.

⁷ To this list could be added the arguments of neo-Luddite pundits who decry the impact on social life and political socialization of our increasingly slavish addiction to technology and drift away from „traditional,“ less machine-oriented, personal or Green values. I do not include these positions because they do not address the political specifically but, rather, reiterate an age-old debate about technology and modernity.

⁸ United States vs. Thomas, 74 F.3d 701 (6th Cir. 1996), In that case, the operators of a BBS in Milipitas, CA., Robert and Carleen Thomas, con-

victed of violating the federal obscenity statutes 18 U.S.C. 1462 & 1465) because a postal inspector in Tennessee connected to the BBS via his computer and modem and downloaded sexually-explicit material onto his hard drive in Tennessee. In the federal criminal trial the downloaded material was evaluated using the local community standards of the far more conservative jurisdiction of Tennessee rather than California.

⁹ The European Advertising Directive of 1992 prohibits consumer „advertising“ concerning prescription drugs. As a result, pharmaceutical companies in Europe publish almost no product information on the Net, contributing to the fact that medical communication on the Net is US-based. In Europe, any information, even product labeling, if distributed by a pharmaceutical company is considered advertising. Denise Silber, comment to Pharminfonet medweb listserv at http://pharminfo.com/conference/MWM_faq4.html.

¹⁰ Directive 2000/EC/31. The Directive defines the place of establishment as the place where an operator actually pursues an economic activity through a fixed establishment, irrespective of where web-sites or servers are situated or where the operator may have a mail box.

¹¹ Ralph Nader, among others, has recently called for the formation of a global consumer protection authority to contend with Internet-based consumer fraud. http://dailynews.yahoo.com/h/nm/20010109/wr/tech_nader_dc_1.html.

¹² Verantwortung im Internet: Selbstregulierung und Jugendschutz (Jens Waltermann and Marcel Machill, eds., Bertelsmann Verlag 2000).

¹³ Yahoo! Bans Hate Propaganda in The Financial Times, January 3, 2001, at <http://news.ft.com/ft/gx.cgi/ftc?pagename=View&c=Article&cid=FT3GNLYJIHC>.

¹⁴ Wolfgang Kersting, Global Networks and Local Values: Some Philosophical Remarks from an Individualist Point of View, available at <http://www.mpp-rdg.mpg.de/daak.html>.

¹⁵ See James Gleick, *Faster* (New York: Pantheon Books, 1999)

¹⁶ This point was elegantly articulated by Kriengsak Chareonwongsak, Executive Director of the Institute of Future Studies for Development (IFD) in Bangkok, at the Triangle Forum when he contrasted, in his view, the „active“ American personality that is promoted by the Internet in contrast to the „reactive“ Asian personality.

¹⁷ In the United States, though there are stringent privacy protections for cable television subscribers to prevent the cable operator from using information about the consumer's viewing habits for the marketing of third party goods and services, there is no similar rule for Internet service providers. Furthermore the rule does not apply to the cable operator's provision of its own services (e.g. marketing added pay channels). The question arises, therefore, whether a multimedia conglomerate, such as AOL-TimeWarner, would be legally able to use information about the television habits of its customers to push and preference certain Internet content. This is just one example of the opaque power of the techno-elite to shape what we see and when and thereby become the most powerful and exclusive forces of interest articulation and political socialization.

¹⁸ Once again, direct marketers are going head to head with the European Commission over proposed new regulations to ban the use of unsolicited e-mail advertising. The British Direct Marketing Association objects to the EU's desire to ban companies from sending out promotional e-mails to those who have not opted to receive them.

<http://www.mediaguardian.co.uk/marketingandpr/story/0,7494,424364,00.html>

¹⁹ Steven Levy, *Crypto: How the Code Rebels Beat the Government - Saving Privacy in the Digital Age* (New York: Viking, 2000).

²⁰ Benjamin Barber, *A Place for Us: How to Make Society Civil and Democracy Strong* (Hill and Wang, 1998).

²¹ *Ibid*, 82.

²² Unchat(tm) is such an application. For more information, please see <http://www.unchat.com>.