Panel I: The Future of the Political Economy of Press Freedom

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Panel I: The Future of the Political Economy of Press Freedom

Robert G. Picard*

Freedom of expression and press freedom are influenced by economic and power arrangements in society, and the information age is not altering that fundamental principle. The social, economic and technical changes underlying information society are altering some existing structural arrangements and are redistributing power, but they are not eliminating systemic organization and control. These changes are affecting freedoms in different parts of communication processes and systems, making necessary new understanding and approaches to promoting and ensuring freedom.

The organization of media and communication systems and markets, their relations with the state and elites, the presence of dominant content producers and providers, the choices of content provided, the consumers to whom content is directed, and how it is delivered are all being affected by the fundamental changes in society. These are increasingly shifting the mechanism of control and influence over media from public to private spheres, reducing the ability of the public to influence it through democratically determined policy, and making public oversight of media and communication systems and operations more difficult.

Media systems and their content and the degree of freedom of expression and freedom of the press are reflections of dominant cultural elements in society. The concepts, as well as the language of freedom of expression and press freedom, emerged in response to historical structural arrangements dominated by the state and became a fundamental component of the democratic revolutions. They were primarily designed to provide protection against state impediments to citizens’ expression,

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to permit challenges to state authority, and to break state-sanctioned monopolies on distribution of information. As time passed, the mass media model of communication in western nations emerged partly because of those freedoms and because of the technological changes provided by the Industrial Revolution and economic changes in society created by wage earning and continual employment.

The mass media model was highly influenced by structural arrangements based in a market economy. Specifically, this model developed within the control of media proprietors and relied upon monetized labor, and was co-opted by institutional arrangements such as class, race and gender. Further, it was subject to only a modicum of constraint by governmental policy operating within the nation-state system. Today, media and communication are undergoing transformations that are altering those structural arrangements through digitalization, globalization and the development of intermediaries whose power often exceeds that of states. The digital age is changing who can communicate, what is communicated, and how. Although individuals, small enterprises, and civil society organizations are able to participate more readily, the structures of communication are influenced and controlled by infrastructure and systems that advantage dominant content providers and those with whom financial interests are shared.

The new institutional arrangement of the digital age is more democratic, that is, participatory, than the past, but it is based on corporatism in which the participants and society have limited influence over the fundamental aspects of its operations, including decisions and practices that limit freedom of expression and press freedom.

Consequently, renewed attention to effects on expression and freedoms are required and new methods for pursuing and protecting freedoms will be necessary. This will require reconsideration of the fundamental conceptualizations, rationales and language of freedoms of expression and freedom of the press. The contemporary environment is creating a number of challenges to these freedoms which are related to the changing information and economic environment, changing notions of democracy and citizenship, private communication enterprises and economic power, and conflicts between intellectual property rights and free flow of information.

**Challenges Raised by the Changing Information and Economic Environment**

Scholars and social observers need to be cognizant of the significant changes occurring in society and how they affect the expressive freedoms. They need to focus on how changes in the mass media financing
model are altering the abilities of news and media enterprises to carry out democratic functions, the extent to which digital expression and distribution of information contribute to and inhibit democratic functions, and how new communication infrastructures and firms that provide critical functions alter power in media systems.

Citizen-consumers use contemporary communication technologies for self-expression, participating in self-defined communities, and contributing to debates about developments in society. These technologies are important to the public as it pursues personhood, identity and culture. The ascent of digital content distribution and social networks are creating powerful new arenas of communication that are governed by new power arrangements and without the traditions of democratic service that ostensibly played roles in legacy mass media because of their histories, cultures and regulation. A shift in democratic responsibility from institutional media to amorphous digital communities is underway, but the mechanisms and consequences of that change are not yet fully understood.

The new digital environment is dominated by consumptive behavior in which individuals must consume hardware, software and services from those firms controlling gateways and providing essential services. This leaves some members of society at the margins of information society. The technological structure of the new environment also creates significant new opportunities for surveillance of the public by governments and private enterprises. These have produced new mechanisms for social control and influence that did not previously exist.

Freedom of expression and press freedom were historically perceived as being accompanied by social responsibilities, but in the new environment the conceptualization of freedom appears to be narrowing to freedom to act without the moderating responsibilities, purposes, or requirements. The language of freedoms and their operationalization in law and policy are increasingly focused on individual and commercial expressive rights detached from responsibilities that might accompany them.

**CHALLENGES CREATED BY CHANGING NOTIONS OF DEMOCRACY AND CITIZENSHIP**

There is a need to carefully consider the impact of digitalization on the means of journalism and communication production, distribution and consumption, as well as on freedom of expression and freedom of the press. We need to understand how digital technologies and their associated processes transform notions of citizenship and democracy, the roles of media and communication in the new conceptualizations of that
social participation, and how the technologies and changes necessitate reconsideration of traditional conceptualizations of expression and press freedoms that support citizenship and democracy.

The systemic changes in the digital age affect notions of participation and the roles and functions of established social and political institutions. It is becoming clear that the emerging system is changing how the public conceives participation, democracy and citizenship. The outcomes of these changes are unclear, so the opportunities for new participation and the threats of new constraints on participation require attention.

**CHALLENGES RAISED BY PRIVATE COMMUNICATION ENTERPRISES AND ECONOMIC POWER**

The growth of powerful digital and telecommunication intermediaries requires consideration of the extent to which threats to freedom traditionally ascribed to government and political institutions are being relocated to private institutions and enterprises. The implications of this shift for democratic activity and the extent to which the marketplace of ideas can function with a limited number of amplified voices chosen by commercial entities with significant self-interests needs contemplation.

Consideration needs to be given to whether the concept of the marketplace of ideas itself is applicable in an environment of information and participatory asymmetry. Contemplation about the extent to which traditional conceptualizations of and policies for structural and source diversity and pluralism are appropriate in these new arrangements of enterprises and power is also essential. Continuing reliance on market and neoliberal approaches to communication developments appears to be narrowing the policy options for pursuing freedom of expression and press freedom in the digital age.

It should also be recognized that scale and scope have made some digital enterprises more powerful than many nation states and that some are operating in ways inimical to public interests. The inability of individual nation states to effectively address these development is concerning.

**CHALLENGES OF CONFLICTS BETWEEN INTELLECTUAL PROPERTY RIGHTS AND FREE FLOW OF INFORMATION**

The significant expansion of the idea of information property and legal protections for them raise questions about the extent to which intellectual property rights are interfering with flow of information and
press freedoms. These raise fundamental questions about the extent to which the state has obligations to protect economic interests, to ensure informational needs of society are met, and to seek an optimal balance of those responsibilities.

The public good needs to play a greater role in discussions of informational property and fair use provisions, and IPR limitations may require greater scope and strengthening. Concurrently, difficulties in trading rights are becoming increasingly significant because of the scale of material protected by intellectual property rights. Efforts need to be undertaken to simplify and speed trading processes if the asserted benefits of information age are to be realized.

**PREPARING FOR THE FUTURE**

Issues related to freedoms of expression and of the press are inextricably intertwined with the political and economic foundations of society. The on-going changes to structural and power arrangements that are part of the contemporary transformations of communication and society require the attention of scholars and social observers. These changes are far reaching and alter relations among individuals, community and society; affect concepts of democracy, property and labor; modify identities and cultures; and change the functions and roles of capital, private enterprises, and nation states. The opportunities and threats that the new conditions pose need to be understood, and examining them will force us to confront and question the conventions, rights and privileges, and institutional arrangements that are in place.

The future of freedom of expression and freedom of the press will very much depend on reconsideration given to fundamental questions whose answers are often taken for granted: To whom is that liberty given? Against what? To what end? Under what conditions? With what responsibilities? The future well-being of those freedoms will require consideration about what communication structures and conditions are necessary for those freedoms to be effectively employed and what protections are needed against continuing and emerging impediments to exercising those freedoms.

Undertaking those processes will required that greater attention be given to the theories, approaches and critiques emanating from political philosophy, economics, political economy, public policy, and critical legal studies. Well-rounded educations in media and communication will increasingly need to incorporate perspectives from those fields lest perceptions and operationalization of freedom of expression and press freedom remain constrained by the social conditions and political economies of centuries past.
**Recommended Readings**


**Panel Discussion Excerpts**

Discussion on challenges raised by a changing information and economic environment

**Picard:** [T]he mass media model, which we assume to be normal, has actually been with us for only 100, 125 years. And previously before the second half of the nineteenth century, media were smaller – not have great distribution . . . . And we did manage to have some democracy, democratic participation, prior to the mass media model. And all of a sudden we’re arguing about mass media model as . . . the model we have to have to preserve participation . . . . [T]he question becomes, is that the crisis itself for democracy or is that only a crisis of working out how do we communicate. Now it’s certainly a crisis for companies and for shareholders in those companies.

**Weiland:** I think we’re assuming that there’s a different political economic model that underpins this shift of these new technologies and the people who are engaging with them. But I don’t necessarily think that’s true. Yes, we can describe this new domain as being built on affective labor. People are producing things and doing things in ways that are not – they’re not monetizing them in the ways that we traditionally think of . . . . [F]urther, you have the individuals who are most prominent in this new space are themselves of a certain race, class and gender who
are basically in the same echelon of power and the same – they have the same type of echelon, position in society that those who were in power when the mass media model was dominant, they’re the same people basically.

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**Streeter:** [T]he fact that everybody talks about digital democracy does also say that people want democracy at points in their lives at certain moments and that that’s actually hugely desired and not perceived as achieved . . . . It’s good that people want the democracy. It’s good that people want a kind of knowledge that’s reliable and produced in what looks like a fair transparent way that’s open in some sense.

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**Allen:** [Does] this signal that there’s some sort of a fundamental change between these individuals and the institution that they work for and has this technology changed all of that in some way work . . . . That there’s much far less of the those institutional affiliations or obligations and how we’ve actually come to actually see a lot of younger people have come to see that institutions are just sort of like incredibly limiting their creativity and they want to be free from those.

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**Discussion on challenges created by changing notions of democracy and citizenship**

**Streeter:** I think the word “democracy” is interestingly charged these days. Of course lots of people have different definitions . . . . People want self expression. They want freedom from others and freedom from coercion, which are not the same thing. And sometimes people want to be able to participate and have influence on decisions about their communities and their lives and the larger society.

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**Weiland:** I guess I would press back a little bit on the – I don’t disagree with the idea that media forms do encourage certain types of democracy. But I think that that idea is a half-step away from arguing that certain technologies require a certain type of engagement. And I would reject wholesale that kind of technological determinism . . . . So I don’t have a definite answer to this but there’s certainly a tension between individualistic uses and communitarian uses.

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**Streeter:** [I]t’s not like there are infinite possibilities. People are subject to systematic ideologies. There are still areas of social control,
whether they’re kind of velvet-gloved sort of control or a more totalitarian or whatever. Choices are inherently limited.

**Picard:** But we’re also saying to believe that [digital world is] not influenced or controlled in some ways is naive. But there are in fact these organizational aspects of it that direct it in certain ways. That people can still find ways to use to their own interests, what else is changing? Are we losing something in this process as well as gaining something? Or is it being — operating in a different way? What are we gaining or losing here?

**Weiland:** There’s so much going on when people are engaging back and forth, it’s more likely that you’ll miss something, whereas in the prior model I would still argue that it was pretty much one way. People were just receiving information. But there was less information so presumably you were able to more easily walk away from that experience having some like set of things that you knew or that you understood. So my concern is that people are siloing themselves into . . . communities where they’re only hearing the things they want to hear, and I’m worried people are kind of narrowing their attention in ways that maybe undermine democracy because they’re only listening to the arguments that they want to hear. And they’re able to do that, it’s technologically afforded for because they’re able to find the communities you want to participate in.

**Weiland:** [T]alking about the fourth estate assumes that there is an institution. And if we have — which is not to say that it’s wrong. But if we have a bunch of communities online, for example, that are siloing, then perhaps the shift in responsibility from an institutional press which I don’t think is going away but it’s changing — is to look at those communities and try to put together, like here’s a broad view. Here’s a place where we can come together. Or here’s a sampling of everything that’s out there.

**Picard:** All of these changes, all of these things that are altering the traditions of media as we’ve known them, creating new communities, new opportunities, we take that — those changes and we go back to the issue of press freedom. Press freedom had always been freedom from something for something.
Weiland: But the lack of regulation online, I think, encourages more corporate control and that like going back to the net neutrality debate the key players in that debate were companies controlling the infrastructure who wanted to exercise more and more control over that space.

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Picard: If you look at press freedom historically and the reason we have it, it really came after the church and the state separated . . . . [W]hen the church was no longer a serious impediment in western society the state became the impediment because they grabbed the power and diminished the role of the church. So the state became the concern of people wanting to have more participation or less control over their lives, if you will the role of state’s been changing and changing dramatically over the past fifty years it’s been changing always. But we see it being diminished in some ways. And the role of companies not just as institutions but companies in the role of the state is growing larger, and some of them seem to be able to act with impunity, and some of them act as states.

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Discussion on challenges raised by private communication enterprises and economic power

Picard: [W]orries about private enterprises and economic power had traditionally been around the issues of corporations and individuals with private interests that might skew the press. Then it moved to corporate ownership as we began moving away from private ownership of means of communications to corporate owned. And now it’s moving back to private and people are interestingly concerned about that. But then we also have the issues of what’s happening now that we – because we’re coming more and more on large scale global infrastructures, and certain players being able to aggregate in a large scale nationally and internationally in a way that they had not been before, whether that becomes an issue here . . . . Are these new forms equaling some of the problems in terms of constraints of governments and political institutions in the past along the way?

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Weiland: And I do think that one idea on this agenda is really a great way to get into this, which is the marketplace of ideas. And I think that framework has at least legally been an economic justification for keeping the government out of speech and press . . . . And that – in my mind the marketplace of ideas theory assumes that the truth will win out. There are enough voices engaging to compete so that you can really have some sort of end product that we can call lower-case T
truth and that competition would ultimately produce the best outcome which I think we could also question. But when you translate this idea of marketplace of ideas thinking into the online environment I think there’s a very important problem, which is that there are market failures online. And one of the key market failures, as is true in many instances, is information asymmetry . . . . I think both from an economic point of view and a legal point of view it’s incumbent to try to redefine to provide another justification that could replace the marketplace of ideas thinking or substitute it or augment it in some way.

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Allen: I was sort of wondering if one of our questions or issues might be just its definitional ideas of freedom or press freedom and economic freedom of itself. Which is, does that inherently mean that it’s just free do you mean for the individual to do whether it’s a corporation or a person to do whatever they want to do. I’ve been thinking a lot about this because it goes back to the basic ideas of property in the United States, and if you go back and you read John Adams and Thomas Jefferson and the idea of property in their minds, there was a moral and ethical responsibility that came with the right to own property, was not the right to do anything you wanted because they thought it would make you a better citizen. So there was a social obligation that was embedded in that idea of freedom. And I think in some ways, the way we talk about freedom today and press freedom and economic freedom we forget about some of those obligations that I think are embedded in those notions, and we ought to think about that.

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Discussion on challenges of conflicts between intellectual property rights and free flow of information

Weiland: In addition to thinking about protecting economic interests and meeting information needs in terms of why we have intellectual property protections, think on the flip side of that, there’s a question of how do we meet the needs that citizens have to develop themselves as balanced, described in terms of developing their personhood and their sense of who they are . . . through mixing, through being able to appropriate and reappropriate material and in ways that some like particular with copyright and patent laws just don’t allow . . . . So I think part of thinking through these questions is balancing the economic kind of classical economic rights of companies but also individuals’ rights.

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Picard: The basics of copyright law are that you protect copyright in order to have more material available to the public. And this secondary part, which is the social effects, is what nobody’s talking about anymore.
But it’s actually the basis of the whole idea of copyright law – to make more material available. To make people – creators more willing to create and thus to have social effects.

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Streeter: [T]here was a tradition of legal realists who just said, look, property is just a bundle of rights and is indistinguishable from a privilege. Property is whatever we call it. They weren’t talking about intellectual property just property in general . . . . So there’s a way in which it’s not whether something’s public or private, but what do we want property to be in any circumstance? That it’s, practically speaking, an infinitely flexible term and legal concept and that we can do a lot of different things with it. And so you tend to think of, well, either it’s property or it’s public but I think one can, and people do quietly regulate the terms of property in ways that take into account the public interest.

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Streeter: Property is anything we want it to be. So, sure, it’s property but here’s all the things. And it’s compulsory licenses or copyright royalty tribunals and all these bizarre things that exist in the background that don’t look at all like Lockean market exchange. You can do it that way. You can say these things are not property.

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Allen: It’s still that same old model and that’s what I think is so important. That’s why I think it’s important for us to think about it from the other end as well as, you know, we say in here, okay, so to what extent do they have obligations to protect the economic interests and ensure – there’s that other part of it that I think we need to think about which is the inherent contradictions of what the citizen faces.

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Streeter: So do we want to say fair use is a “use it or lose it” right. It needs to be protected. It’s a valuable thing.

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Streeter: An expansive interpretation, an expansive strong interpretation of fair use is something that is –

Weiland: It’s also inevitable in a lot of ways because I don’t want to be deterministic but people can do it and people will do it. You would really have to cut off function – technological functionality to keep people from doing – from appropriating things.