Technological Evolution and the Right to Communicate:

The Implications for Electronic Democracy

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Abstract

This paper examines the co-evolution of information and communications technologies and communication rights. The emphasis is on the right to communicate. The paper provides a historical analysis through several generations of human rights developments of the inter-relationships between technical advances that enabled new communication modalities and the subsequent social and organizational interests that evolved. These communication modalities include bi-directional, interpersonal communications supported by telegraphy and telephony; unidirectional, mass communications made possible the broadcast technologies of television and radio; and bi-directional, many-to-many communications supported by the broadband technologies of satellite, the Internet, and the World-Wide Web. Three generations of human rights have been recognized in this context: civil and political rights; economic, social and cultural rights; and the emerging area of collective rights.

1. Introduction

We examine in this paper the intersection between communication technologies and human rights. We analyze the inter-relationship between technical advances that resulted in new communication modalities and social and organizational interests that evolved through several generations of human rights development. As communication technologies evolved into increasingly sophisticated global networks, communication rights evolved, from specific rights expressed as negative freedoms to a comprehensive and positive human right: a right to communicate. In short, the intersection of communication technology and communication rights is a process of expanding universalism. Thus, we can see the Internet on the side of communication technology and the right to communicate on the side of human rights as together constituting what Armand Mattelart calls "networks of universalization" (Mattelart 2002, 1).

Communication, communication technologies, and human rights are inextricably linked. Communication is a fundamental social process necessary for individual expression and for all social organization. The ability to communicate is the essence of being human. Human rights are those rights one has by the very nature of being human; they are inalienable. Taking away an individual's ability to communicate and repressing their human rights are both dehumanizing. Throughout history, humans have expanded their ability to communicate through technology. Therefore, technology joins with communication in a complex inter-relationship with human rights.

Founded on eighteenth century Enlightenment concepts of progress, universal rights, and the freedom of goods and ideas, communication technologies evolved – from the construction of national networks of roads to the information highway-- into ever more complex and geographically dispersed networks concomitant with the growing universality of human rights. It is not coincidental that one of the earliest modes of a formal technical network of communication, the inauguration in 1794 of the semaphore telegraph in France, arose out of the same Enlightenment ideals of universal communication and the political turmoil of the closing decades of the eighteenth century as did the

French Declaration of the Rights of Man and Citizen. Following the French revolution, the semaphore network would be promoted as a guarantee of democratic rights in the new Republic (Mattelart 2000, 4).

The connection between democracy, human rights, and communication technologies remains a compelling idea in policy-making as illustrated by recent annual Human Development Reports of the United Nations Development Programme (UNDP). *Human Development Report 2000*'s theme is "Human Rights and Human Development" (UNDP 2000). As the report indicates, "Human rights and human development share a common vision and a common purpose – to secure freedom, well-being and dignity of all people everywhere" (1). Consequently, "…human development is essential for realizing human rights, and human rights are essential for full human development" (2). The report also links human development, human rights, and technology in its observation that "[t]oday's technologies and today's more open societies present great opportunities for networking and for building alliances" (6). The report recommends using education and media to promote human rights norms throughout society.

In its *Human Development Report 2001,* the UNDP gives even greater attention to the importance of technology to human development by adopting the theme "Making New Technologies Work for Human Development" (UNDP 2001). It notes the importance of communication technology in promoting citizen participation in decisions that affect their lives. The Report asserts "[t]he ultimate significance of the network age is that it can empower people by enabling them to use and contribute to the world's collective knowledge. And the great challenge of the new century is to ensure that the entire human race is so empowered—not just a lucky few" (8).

We see, then, that there is a longstanding recognized link between communication technologies and rights; however, there is little understanding of the interaction between these two spheres. It is our belief that it is necessary to study the development of the interaction of communication technologies and human rights and its consequences in order to formulate effective strategies for research, public policy, and advocacy promoting electronic networks and democracy.

Section 2 examines the co-evolution of communication rights and telecommunications. This discussion is organized along the dimension of the so-called generations of rights. Section 3 provides discussions of the counter arguments to a right to communicate, the implications of the right to communicate for democracy, and a proposed agenda for the right to communicate. Conclusions are given in Section 4.

2. The Right to Communicate Across the Generations of Rights

We contend that there have been successive innovations in communication technologies along with successive generations of human rights. To examine the interrelationship of these two phenomena we need to discuss the development of human rights.

It is not intended here to provide an extensive discussion of the nature of human rights. That debate, long and continuing, involves attempting to arrive at the nature of human rights, identifying "essential" or core lists of rights, ascertaining their universality, determining whether rights are attached to individuals only or also groups, and a host of other issues. Such philosophical considerations, while important, should not hinder our efforts to develop a conceptual framework to meet practical public policy needs.

At the most fundamental level, human rights are those rights one has by the very nature of being human (Donnelly 1989). A United Nations glossary defines human rights as follows:

> Human rights are the rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity. They give all people moral claims on the behaviour of individuals and on the design of social arrangements—and are universal, inalienable and indivisible (UNDP 2000, 16)

For our purposes, it is important to recognize that human rights are social constructs. As Howard observes: "Human rights are human rights because humankind has decided they are. Human beings create their own sense of a morally worthwhile life" (Howard 1995, 15). It is because human rights

are social constructs that they evolve over time, that some rights are discarded and others added, and that one can speak of generations of human rights.

Scholars and jurists of human rights identify three generations of human rights (Vasak 1990; Marks 1982): civil and political rights; economic, social, and cultural rights; and collective or solidarity rights.

While reference is made to "generations" of rights, this does not mean that one set of rights takes precedent or replaces an earlier set of rights; they are cumulative. As well, rights in each generation are not entirely mutually exclusive; they overlap and are interdependent. Nor is each generation exclusively a negative or positive right. Despite these caveats, the fact remains that over time there has evolved sets of rights that are becoming more widely accepted and that continue to be elaborated upon and added to. Therefore, there has been an increasing expansion of human needs that have fallen within the set of human rights. The development of global interactive communication networks in the last half of the twentieth century has generated the need for a right to communicate.

2.1 Pre-Civil Rights: Writing and Early Postal Communications, circa 2,000 BCE – 1793

The word "telecommunication" was suggested by the French in the early 1930s as a new term to encompass the technologies of radio, telegraphy, and telephony during the formation of a single international body to manage all of them: the International Telecommunications Union (Codding 1995). The term telecommunication is, therefore, usually associated with the *electrical transmission* of messages over long distances. The earliest form of telecommunication was based not on technologies of electrical transmission, but on the technologies of writing and road construction and on the organization and management of networks of couriers, animals and facilities. From a technical perspective, therefore, postal systems must be viewed as the earliest type of complex telecommunication medium. Though primitive relative to those technologies usually associated with telecommunication, postal communication's enabling technologies created the necessary preconditions for the earliest developments in civil and political rights themselves and the evolution of norms of communication toward expectations of universal access. Postal communications even contributed to the development of other communication technologies.

Cuneiform, heiroglyphic, and hieratic forms of writing began to develop as far back as 3,000 BCE Egypt and Mesopotamia were sites for their development. Phonetic and script forms of writing began to replace these as more efficient and sophisticated tools for communication around 2,000 BCE Writing and the transport of written messages became essential tools for the management of the ever-larger empires that began to form. As Scheele pointed, out the use of runners to carry memorized messages was in practice when writing emerged (Scheele 1970, 7-10). Writing because of its advantages over memory of accuracy and durability began to replace human memory and with it, writing-based protocols for messaging emerged. The Egyptians had established courier services by 2,000 BCE, the Chinese some time after 1000 BCE, and the Assyrians by 700 BCE (Scheele, 8,10-12,16). Evidence from early Assyrian empires revealed the use of analogs to modern day envelopes and addresses. Mail, along with roads and armies, became the tool by which empires maintained control over large areas and for facilitating trade. Postal communications was considered efficient and reliable by the time of the Persian Empire (Scheele, 8).

As Innis and others have shown, media of communication, writing in particular, and transitions to new media have made profound impacts on civilizations; and characteristics unique to different media have determined the natures and biases of the impacts they were able to make in terms of space and time (1964, 3-32; 33-60). In some ways, the most profound impacts that postal communications were to have on the development of communication rights were residual when examined across the breadth of its history. Modern civil society access to communications, wide-spread literacy necessary to make use of such access, and expectations and norms around universal communication can all be linked to the advent of postal services, but they were nowhere to be seen in its origins. In other ways, the impacts of postal communications on rights and norms were recursive or cyclic in nature. Knowledge of writing was limited, and in some cases restricted, to a small class of scribes in most societies. As the core technology of postal communications, however, it enabled a more efficient and wider

dispersion of knowledge than before, including knowledge of writing itself. Arguably, this recursive interplay between writing, knowledge dispersion and the post, lead to greater pressures for both knowledge of writing and postal services. Political transitions resulting in the disappearance of state-run postal services created space and time for these residual and recursive impacts to strengthen and take hold throughout civil society.

Access to early postal communication was limited to royalty, their officials, and wealthy civilians, usually merchants. Early state postal services were distinct from the courier services used by civilians and were more efficient since they were able to establish and maintain well-supported roads, networks of horsemen and facilities to house them. In the Roman empire, access to the cursus publicus was initially limited to official government business, as was also the case in the early Egyptian and Chinese systems. Since civilians could not use the state post, access to this type of medium of communication required the ability to hire people to carry messages, usually slaves or paid couriers, which average citizens would not have had. Access to the post by civil society was further limited in that it was transitively dependent on having access to a relatively small class of literate officials, scribes, among a vastly illiterate populace to produce and interpret correspondence (Scheele, 11). The raw media of early writing technologies were also of limited access to average citizens of the day. Clay tables were used in Mesopotamia, Assyria, and Persia; and the Romans employed tablets called diptychs on which messages were recorded in wax (Scheele, 7-8,12). The use of Papyrus was originated in Egypt and was adopted gradually in other parts of the world. Scheele points out that the production of Papyrus was monopolized by the Egyptians, which certainly limited its affordability and, hence, accessibility (11). Parchment, made from animal skins, came into greater use by 300 CE (13).

While civil society access to early postal systems was highly limited, civilians were brought into direct contact with them. Many communities bore significant responsibility for the maintenance and costs of state postal systems. These systems evolved into operations requiring significant investments and expenditures for roads, road maintenance, animals, and support of the workers. Official couriers in China had authority to confiscate horses from local communities, for example, and in Rome, local communities had to provide accommodations for them. Arguably, this contact planted the seeds for the development of norms around telecommunications in that these communities must have eventually benefited from trade and the spread of literacy made possibly by these services, and they were able to observe their operation. This lead in the latter case to the development of private courier services.

Both state-sponsored postal services and literacy suffered a general decline in Europe with the fall of the Roman Empire and the resulting void in coherent political leadership across large regions. By the ninth century CE, state-sponsored postal systems had practically disappeared in Europe, though courts maintained their own messenger services (Scheele, 19-27). Roads left by the Empire provided the means for private services to continue and develop. Private, institutional courier services came into being in the eleventh century as universities, cathedrals and other types of institutions emerged and sought means of communicating with other institutions (19). In China, the imperial postal system was opened for civilian access in 1402 CE. In Europe, private courier services began to evolve further in the twelfth century with the increase in commerce between city-states. This lead eventually to the establishment of numerous relationships between private courier organizations and governments, the best known of these was the Thurn and Taxis Posts.

It was during the ascendancy of the nation-state that the seminal developments in civil and political rights occurred. A culture of greater literacy in the eighteenth century eventually enabled greater intellectual and economic development, and eventually created an environment in which the work of intellectuals such as Voltaire, Diderot, and Rosseau – whose work collectively weakened the hold of the church and the absolute rule of the monarchy, and fostered revolutionary thought -- had wider accessibility than in early periods. The telecommunication of these ideas played a critical role in their impacts. Correspondence between these and other figures is well known. Voltaire, for example, is believed to have written over 20,000 letters to other philosophers and dignitaries across Europe (Tallentyre 1919). The societal pressures brought to bear by the dissemination of the ideas of

Voltaire and others into civil society, or the third estate, is recognized as significant factor giving rise to the French Revolution.

As the larger nation-state became ascendant, a movement back to government-run postal systems began. This occurred for a number of reasons. As Adam Smith pointed out, governments could realize significant profits from these services (1976, BK V., CH 1, Pt. II. p. 246). Even when governments did not maintain national postal services, they usually did not entrust private couriers with state communications; they maintained their own courier services. Thus, they were inclined to control their own postal systems when it became feasible. The corresponding concern by civil society was over the ability of governments to censor and prevent the transfer of mail. Most systems were government controlled by 1867.

During this period, another cycle of sorts would take place, providing greater access to the posts by civil society. Government-controlled postal services were again the norm. On one hand, the fee structures and the desire to make a profit made their legitimate use prohibitive for many. While on the other hand, abuses to avoid paying postal fees became widespread. The British government sought to continue its postal service while making it more viable in light of these abuses. Ironically, abuse of the postal system and the government's desire to continue service for the general population is evidence of the entrenchment of postal services by this time as a norm for communication, otherwise other means of communication might have been sought by its abusers. Postal reforms were enacted by Great Britain in 1840, which made the cost of access more affordable and uniform through a nonprofit, flat-rate model. The reforms also made the British system less prone to abuse, through the introduction of the most significant development in postal communications leading into the modern era, prepaid mail using postage stamps. These reforms resulted in a doubling of the usage of the service the following year and a more than four fold increase by the end of that decade (Scheele, 32-35). Many countries quickly adopted the British model, thereby fostering the concept of a universal system of postal communications shared by most countries.

Thus, the residual and recursive social impacts of postal communication occurred along multiple trajectories, with political trends yielding time and space for this medium to become entrenched within civil society and for the dispersion of knowledge to more citizens. In this way, it began to create and shape norms around communication rights.

2.2 Modern Civil and Political Rights: Moderns Postal Service and the Introduction of Electrical Telecommunications, 1793 – 1948.

The period from 1793 to 1948 saw seminal developments in civil and political rights from the French Revolution to the adoption of the Universal Declaration of Human Rights in 1948. The evolution of civil and political rights in individual states occurred in the context of increasing internationalization of communications. Early international standards bodies formed around the deployment of postal services, telegraphy, telephony and radio to resolve realized and potential international political and technical conflicts that they raised. It was in this context that the notions of universal service and freedom of transit for communications began to emerge. Their introduction cannot be seen initially as statements on human rights as much as they were necessary requirements for the operation of international networks. The failure by individual states to uphold such principles could cause the common area of operation to disintegrate. As with postal communications, the presence of this type of principle fostered the development of norms that would influence later human rights perspectives on universal service.

Internationalization of Postal Communications

The Universal Postal Union (UPU) was established in 1874 following the return to government-controlled postal services across Europe and other parts of the world. By this time, postal service was an entrenched medium of communication for a significant segment of civil society in many countries and rates and practices for international mail had to be normalized. The reform of the British system, which simplified and reduced access costs for postal services, created pressure for reform at the international level. (Codding 1964, 18-20). Concerns included reducing rates, reducing transfer times,

instituting uniform procedures for mail forwarding and the transfer of official mail, and eliminating extra costs for forwarding mail. The work of the UPU with most relevance to communications rights have been the concepts of *universality* in the handling and fee structure for international mail and *freedom of transit* in the transfer of mail through third countries (73-75). These principles failed during World Wars I and II, but their presence at other times arguably contributed to a burgeoning conception of communication rights.

Telegraphy, Telephony, and Early Radio

Telegraphy, telephony, and radio evolved along different trajectories with respect to universality and communication rights in the international context. This was due in part to the unique characteristics of each technology and the development of two fundamentally different types of regulatory models: one controlled by the private sector in the United States and government-controlled telecommunications systems in most other countries. In the case of radio and telephony, however, interconnection or interoperation barriers raised by the private sector hindered universality.

The first electrical telegraphy devices were demonstrated in the early 1830s. Telegraphy's impact was rapid. The first Trans-Atlantic telegraph transmissions were performed in 1866. In the U.S., the first coast-to-coast line was completed in 1869. The telegraph made rapid impacts on communications, from speeding up the delivery of written correspondence, in the form of the telegram, to the instantaneous reporting of the news during the American Civil War. As with postal services, countries saw the need to standardize telegraphy. Consequently, the International Telegraph Union was founded in 1865. Universality was a stated goal from the outset. The ITU Convention of 1865 articulated support for the availability of telecommunication services for all people (Hamelink 1994, 66).

The telephone was invented in 1876. By 1885, the ITU had begun to address its use (ITU 2002). The goal of universality would have been extended to telephony under the umbrella of the ITU's constitution. Universality in this context, as with early work on international postal and telegraphy communications, was probably concerned more with practical matters, than with moral and ethical ones. In particular, the concern was with the maintenance of a common international operating area. As Codding has pointed out, the characteristics of this technology raised different challenges to universality in the international context (1995). Language was less a barrier for processing mail and Morse code than it was for human conversation. Thus, the dispersion of telephony in Europe was slower than in the U.S. and, therefore, was less a factor in generating norm-creating pressures toward human rights conceptions of communications than it was in the U.S.

Radio was invented in 1895. Its first application was for radio-telegraphy in 1896. Its international regulation was first taken up in the period 1903 to 1906 with the formation of the International Radio-Telegraph Union (IRU). The characteristics of this technology caused an urgent need for government regulation. Transmissions via radio are not directional nor confined to a medium as they are in telegraphy or telephony. Thus, the management of radio spectrum and of broadcast areas had to be addressed. The Marconi Corporation raised interoperation barriers -- hindering universality -- by not allowing its operators to communicate other using non-Marconi equipment. This issue was resolved by the IRU in 1912 (Codding 1995).

Universality came about in a different way in the U.S., initially driven more by private sector machinations than by the concerns over the creation of a common operating area held in the ITU. Theodore Vail proposed universal service in 1907 in the context of a regulated monopoly in his drive to regain control of the market. Customers during this time often had to choose between competing telephone companies whose networks had disjoint coverage. This was an interconnection barrier to universality. Vail was motivate to establish universal service, not necessarily as a way of meeting human needs, but as a way of reducing competition through the interconnection of competing networks (Anderson et al. 1995, 117; Mueller 1997). Dispersion of telephony was further aided by its lower access cost relative to telegraphy (Codding 1995).

Radio regulation became more complex in 1920 when Marconi initiated sound broadcasting, which brought about instantaneous broadcast communications (ITU 2002). Radio had several

characteristics unlike other information and communication technologies (ICTs) up to that time, which gave it the potential of disseminating information to many millions of people across divisions of demographics and geography. The broadcast characteristics of the medium allowed information to be sent easily across large geographic areas. The audio nature of the medium eliminated literacy as a barrier to information. Finally, cost was not a major barrier to acquiring information from radio, as evidenced by its high household penetration rates. Therefore, radio became a medium for public discourse in a national network context in the U.S. and other countries during the period of the 1930s and 1940s (Savage, 1999, 1-6). Savage noted that by the 1940s, over 80% of U.S. households had radio sets, but it was easy and customary for those who did not own them to share their output with those who did own them. By the 1940s, these factors lead to radio becoming a preferred source of news and other information. In the U.S., the dispersion and characteristics of the medium generated a struggle by the private sector in a non-regulated environment. As McChesney has shown, the resolution of this struggle with the U.S. Communications Act of 1934 greatly restricted communication rights in this medium in the U.S. (1994). This would be mitigated somewhat over the next 30 years with civil society and regulatory interventions.

By 1934, pressure from governments resulted in the merger of the International Telegraph Union and the International Radio-Telegraph Union to form the International Telecommunications Union (ITU). Telephony had been fully integrated into the old ITU in 1925 (Codding 1995). It was also in this year that the U.S. Communications Act was passed. It included the first provisions mandating universal service for telephony in the U.S. As with postal service much earlier, both this government intervention and increasing dispersion contributed over time to changes in the United States in norms for access to information, emergency services, and the performance of other life-critical tasks. Today access to a telephone is considered a necessity in many countries. This norm, for example, was more strongly codified following the 1934 Act in such legislation as California's *Lifeline Bill*, which stipulates that a minimum level of basic telephone service be made available to all (Moore 1983). The passage in 1934 of this Act has negative impacts on progress toward a right to communicate. It instituted a commercial broadcasting model for radio, which greatly limited community-based broadcasting. This would also serve as the model for television broadcasting (see McChesney 1994).

The development of the United Nations and its Universal Declaration of Human Rights in the aftermath of World War II brought all of these previous technological and regulatory developments into the context of human rights. Both the UPU and the ITU became specialized agencies of the UN in 1947.

2.3 Economic, Social, and Cultural Rights: Modern Broadcast and Electronic Telecommunications, 1948 - present

The second generation of rights arose in the nineteenth century in response to the consequences of the industrial revolution. These are economic, social, and cultural rights including the right to an education, housing, health, employment, adequate income, and social security. Their political foundation is socialism and they are sometimes characterized as welfare rights. As claims for greater social equality, they are *positive* rights that require the provision of the resources necessary for individuals to exercise these rights.

Many of these first and second-generation rights were enunciated in the Universal Declaration of Human Rights adopted by the United Nations (UN) in 1948. They were codified in international law in two UN treaties adopted in 1966 that went into effect in 1976: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). These covenants, along with the UDHR, are known as the International Bill of Human Rights (UN 1993). The UN has adopted numerous other declarations and treaties elaborating on these rights. Not all countries have ratified or implement the human rights enunciated in the International Bill of Human Rights as debate continues over the nature of human rights. Nonetheless, over 140 countries have ratified or acceded to the International Bill of Human Rights, which indicates that there is worldwide acceptance if not implementation of a set of human rights norms.

The basis for the modern conception of the human right to communicate derives from rights set forth in the Universal Declaration of Human Rights (UN 1993), adopted in 1948. The centerpiece of the declaration with regard to communication is Article 19, which states:

> 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.

Article 19 is buttressed by two other articles, which are key to the its realization. Article 27 section 1 states:

> Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Scientific advancements necessary to invent modern communication such as telephony, the Internet or other technologies that enable the World-Wide Web can be seen in the context of Article 27, not as the exclusive domain of those who are able to negotiate the market place to acquire them, but as entitlements of people whose societies support their creation (e.g. through government research grants or a reallocation of resources). The rights set forth in Articles 19 and 27 imply that a society must maintain adequate literacy rates and basic infrastructure for their enforcement. Article 28 addresses this in principle, stating:

> Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Articles 19 and 28 can be seen as complementary since it is argued that communication is a necessary component for maintaining a social and international order in which rights such as those set forth in the Universal Declaration of Human Rights are enforced. All of these articles were transmitted to the ICCPR and ICESCR, which made them binding on states party to them.

Mass Media: Radio and Television

At the birth of the UN, significant developments in creating broadcast models for radio and television had already taken place. Government-controlled models dominated in most countries and dispersion was moving apace. Household penetration rates for television would actually become greater in many countries than that of the telephone. For example, telephone penetration of U.S. households was 94.1% by 1998 (NTIA 1999, 2), while an estimated 98% of U.S. households had at least one television set that same year (TVB, 2000). Radio and television share several characteristics that have made them especially important in a communication rights context:

- use of their output is not dependent on literacy,
- they enable the broadcasting of information over large areas,
- barriers to participation in content formation are high due to transmission equipment costs (with the exception of micro-power radio),
- infrastructure costs are lower relative to telephony and telegraphy, and
- access costs to radio or television sets are low relative to telephony.

Developing nations and non-governmental organizations in them became highly sensitive to these characteristics. They objected to what they saw as undemocratic uses of mass media by colonizing nations, which was aided by their uni-directional nature. This ultimately contributed to the conception of the right to communicate. The concept of one-way data flow was developed in the 1950s as a characterization of the dominant news flows from the industrialized nations to developing and underdeveloped nations at the time (UNESCO 1980a, 36). Freedom of information was seen as a one-way process of transmitting information from those in power to ordinary individuals. Thus, in the wording of Article 19, certain types of information were being imparted in one direction and usually without people explicitly seeking it. Hamelink points out that colonizing nations began broadcasting to their colonies in the 1920s. Independence movements within colonies and ultimately the

independent states they would become had to contend with the social and political impacts of colonial media on their pre-revolutionary nationalists movements, the internal inter-ethnic conflicts they usually entailed, and on changes to their national cultures. Such conflicts continue to this day. The Bandung Conference in 1955 at the advent of the Non-Aligned Movement, and the United Nations Conference on Trade and Development in 1964 were forums in which issues of post-colonial communication and North-South communication imbalances were raised (Hamelink 1994). A host of developments followed over the next thirty years, leading to identification and development of the right to communicate. Satellite communications raised these issues to a new level.

Satellite Communications

When the Soviet Union launched Sputnik in 1957, the implications of satellites for both cultural development and communications were quickly perceived. Satellites had tremendous potential for the transmission and networking of information spanning great distances and remote regions. The implications were so profound that Marshall McLuhan's characterization of the "global village" became the emblematic phrase of the era. The United States and Canada quickly followed the Soviet Union with their own satellite programs. Direct broadcasting over wide areas of the planet by satellite increased concerns among many countries about the challenge of maintaining cultural diversity and identity. Direct satellite broadcasting (DBS) opened up the possibility of transmitting signals anywhere without any government control. The issue of Canadian cultural sovereignty vis-à-vis the United States was one impetus for Canada's rapid entry into satellites. Radio in particular was considered an important tool in nationalist development. There was the realization that direct satellite broadcasting could undermine national government communication strategies. As Comor observes, "…because of the 'intimate' quality of the human voice and image entering one's home, DBS provides an effective means through which both a literate and non-literate population can be reached." Because of this intimacy, "an effective and immediate expression (and manipulation) of human emotion is a well-recognized political and commercial advantage relative to other forms of mass media" (Comor 1994, 87-88). Coupled with the concern over the control of broadcasting, developing countries for some time had been raising the issue of their lack of mass communication resources relative to those in the developed nations. In 1961, the General Assembly of the United Nations passed a resolution that "Communication by mean of satellite should be available to the nations of the world as soon as practicable on a global and non-discriminatory basis" (Hamelink 1994, 67).

This concern for cultural diversity in the face of technological developments was soon linked to human rights. There was already reference to culture in the Universal Declaration of Human Rights. Article 27 states that "Everyone has the right freely to participate in the cultural life of the community." There is also reference in Article 22 to economic, social, and cultural rights. In 1968, UNESCO held a conference of experts to consider the possibility of cultural rights as human rights. However, the linking of the implications of direct satellite broadcasting to human rights would be articulated at that time by the Frenchman, Jean d'Arcy, Director of Radio and Visual Services in the UN Office of Public Information, in an article published in 1969 on "Direct Broadcast Satellites and the Right to Communicate (d'Arcy 1969). D'Arcy had the professional and personal background to see the inter-relationship between new communication technology and human rights.

Being located at the United Nations in its own media program, d'Arcy was undoubtedly familiar with the concerns and discussions surrounding cultural diversity and media dominance. Being French, he was from a country that was not only the source of one of the great Western human rights traditions but was a country sensitive to the issue of protecting its cultural and lingual identity. Since the nineteenth century, France was especially concerned about the "Americanization" of its culture and language. In the post-World War II period there was particular concern about media dominance as expressed, for example, in the 1967 bestseller, *Le Défi Américain (The American Challenge)* by the French journalist, Jean Jacque Servan-Schreiber. As someone who worked in the French media industry, served an administrative role in the United Nations, as well as being a communications scholar and activist, d'Arcy had a fertile background for envisioning a link between developments in communication technology and human rights at that particular time.

Certainly, it was quickly grasped that the right to communicate "protects cultural diversity in a world which is increasingly subject to the homogenizing influences of technology" (Anawalt 1985, 200). As countries expressed concerns about "cultural aggression and cultural imperialism," the rhetoric would shift from the traditional right of freedom of expression to d'Arcy's idea of a right to communicate (Van Dyke 1980).

However, as important as the cultural component of the right to communicate is, it is a second interrelated aspect that d'Arcy stressed and that is of particular relevance to the theme of this paper and this EURICOM conference. This is the importance the right gives to the individual citizen and groups to participate in the communication process.

While recent developments in direct broadcast satellite communication was the immediate context in which d'Arcy conceived of a right to communicate, he drew for inspiration on Bertolt Brecht's response to the development of an earlier communication medium, the radio. In reading Brecht's essay, "Theory of Radio," published in 1932, d'Arcy was especially struck by Brecht's comment on the radio as a potential technology for interactive communication. Brecht wrote:

> Radio must be changed from a means of distribution to a means of communication. Radio would be the most wonderful means of communication imaginable in public life, a huge linked system—that is to say, it would be such, if it were capable not only of receiving but of transmitting, of allowing the listener not only to hear but to speak, and did not isolate him but brought him into contact (quoted in Richstad, forthcoming)

At the time Brecht wrote his piece the commercial and regulatory structures of radio were reaching the configuration that would prevail through much of the rest of the century. Prior to that time there were many amateur broadcasters using radio as wireless telephony and distributing content to their communities and among themselves. This distributed local broadcasting would flourish until it was marginalized by the commercialization and concentration of radio broadcasting and the accompanying regulatory structure that emerged in the 1930s (Stevenson 1996). Similarly, at the time d'Arcy was thinking about a right to communicate, cable television, another technology whose implementation was initially perceived as having the potential for democratic participation, was undergoing greater commercial concentration and regulation (Surman 1996). Brecht's comments, written as radio was moving rapidly into its commercial/regulatory phase, reflected an alternative vision for radio. D'Arcy was writing at a not dissimilar time, as cable was moving into its more commercial and concentrated structure. For d'Arcy, direct broadcast satellites opened the possibility of interactive participative communication as envisioned by Brecht. By doing so, it also changed the social and technological context of traditional rights with communication, in particular, if there was to be any hope of developing a truly democratic mode of communication free from the dominance of large public and private organizations and regulatory structures.

The importance of communication is acknowledged in the United Nations Universal Declaration of Human Rights. References to aspects of communication are:

- Article 12 on privacy;
- Article 18 on freedom of thought, conscience, and religion;
- Article 19 on freedom of expression and the right to seek, receive, and impart information through any media;
- Article 20 on the freedom of peaceful assembly;
- Article 26 on the right to education; and,
- Article 27 on the right to participate in the cultural life of the community as well as intellectual property rights.

However, these statements of rights and freedoms were conceived in the context of the print media and one-way, top down distribution through mass communication systems. They arose out of a print and broadcasting environment in which rights were concerned about the free flow of information rather than the process of communication. Jean d'Arcy described this situation as the "mass media mentality": "For almost a century, people in this age of mass societies have become conditioned by their 'mass media mentality' to accept as normal and ineluctable a unilateral, vertical flow of non-diversified information" (d'Arcy 1983). As d'Arcy asserted, this conceptualization of

communication is inadequate in an era of global interactive telecommunications where the individual can participate in horizontal interactive communication.

He recognized that Article 19 in particular of the Universal Declaration of Human Rights was too narrow in a world of global interactive communications (d'Arcy 1969). Article 19 was formulated in the immediate aftermath of World War II when the primary concern was the free flow of information through the mass media, in particular, radio. He saw that broadcasting, computing, and satellite telecommunications were going to become increasingly inter-related, opening up multiple channels of communication among individuals and groups. Global two-way or interactive communication to other individuals or groups of individuals could be placed in the hands of everyone. As more people gained access to the means of participating in the emerging communication processes communication would no longer be dominated by economic and political elites. Consequently, d'Arcy concluded:

> The time will come when the Universal Declaration of Human Rights will have to encompass a more extensive right than man's right to information, first laid down-twenty one years ago in Article in 19. This is the right to communicate (d'Arcy 1969)

He claimed that people had been so immersed in the mass media mentality for over a hundred years that they accepted as normal the "unilateral, vertical flow of non-diversified information" (1983, xxi). National and international communications regulatory regimes reinforced this structure of communication. However, for d'Arcy a key to understanding the difference between the traditional one-way mass media technological and social structures and the emerging environment is the difference between information and communication. In the past, these two terms were often used synonymously. However, technological progress and social change were, according to d'Arcy, creating distinct meanings to these two words. The distinction between information and communication is crucial. (d'Arcy 1983, xxii-xxiv; Fisher 1982, 13-14)

The distribution of information and the accompanying mass media mentality were the result of the economic and technological development of mass media. In the past each new media created its own mass industry. The invention of the rotary press in the mid-nineteenth century led to a concentration of publishing and printing along with mass distribution of newspapers and other publications. The same process of concentration and mass distribution evolved in the radio, film, and television industries. These systems, dominated by a few major producers and distributors, were designed for the vertical, unilateral, mass distribution of information, not for communication. As d'Arcy asserts, "Communication implies interactivity" (d'Arcy 1983, xxii)

For d'Arcy the social and human rights implications of direct broadcast satellite would be more than just an improved version of cable. Its import would be that it breaks free from the controls embedded in traditional communication economic and regulatory structures. It could not be controlled. As new political and social structures are always created around new modes of communication, d'Arcy claimed there was a need "…to rethink the patterns in terms of the era of the direct broadcast satellite, the computer and the domestic high-capacity cable rather than to attempt to force tomorrow's tools into today's structures" (d'Arcy 1969, 3).

Ahead of his time in anticipating the potential of convergence, d'Arcy envisioned the emergence of new technological and social structures that would replace the outmoded models of the past that reside in each sector of mass communications. Writing in 1983, he observed "The present convergence of all sectors around electronics has made us aware of the social and cultural importance of communication as distinct from information." The old structures of separate sectors of mass distribution would be destabilized and driven towards one unified system. The new structure will allow for horizontal, multi-channel, and interactive communication between individuals and groups. The older communication structures were concerned about the distribution of *content*. Consequently, the rights associated with them were focused on content as well. The new, interactive, unified system is about the process of communication, hence, the need for a new right that does not exclude considerations of content, but whose starting point is the *process* of communication. It is because of this new structure that "A new right for man is due to emerge from it." (1983, xxiv)

As d'Arcy explains, the development of earlier communication technologies into separate sectors gave rise to separate concepts of freedoms including freedom of assembly, freedom of thought,

freedom of expression, freedom of the press. However, it useful here to note the differentiation between freedoms and rights as does Desmond Fisher in his consideration of the right to communicate. An individual can choose to exercise a freedom or not. Whether one exercises a freedom does not diminish an individual as a human. As well, the state and others are only restrained from hindering the exercise of a freedom but are under no obligation to promote its exercise. In contrast, a human right is inherent to the individual, it is possessed whether one exercises it or not and to repress such a right is dehumanizing. Furthermore, the state is under an obligation to insure through the provision of legal and material resources that the individual can exercise the right. (Fisher 1982, 19) Thus, it is helpful to see that earlier communication rights were predominately negative freedoms, that is, freedoms from state repression. What d'Arcy called for was not the replacement of the traditional communication freedoms but their encompassing by a broader human right, the right to communicate. This represents a shift from rights expressed as negative freedoms associated with separate spheres of communication—assembly, speech, press—to a positive comprehensive human right encompassing all these freedoms and more. The right to communicate would serve as the crown of what d'Arcy called an "ascending progression" of rights and freedoms (d'Arcy 1983).

Thus, the right to communicate and its social and technological environment differs from the previous era in the distinctions made between:

- the role of the individual as a passive receiver of information and the role of an active participant in interactive global communication;
- information and communication;
- content and process; and
- freedoms and rights.

2.4 The Third Generation: Collective Rights and Solidarity Rights, 1955 – Present.

The third generation of rights emerged in the closing decades of the twentieth century. They are still widely debated and, are still largely absent in international law. These rights differ from the earlier rights in a number of ways:

- they arise out of planetary or global concerns,
- they embody both individual and collective rights,
- they are even stronger positive rights in that they require state intervention often at both the national and international levels in coordination with other states,
- they often involve a redefinition or extension of earlier rights.

These are considered collective or solidarity rights such as a right to a clean environment, to collective economic, social, and cultural development, to peace, to common heritage, to humanitarian assistance, and to communicate. Initially, they arose in the last half of the twentieth century out of the anti-colonial era (for example, the right to development) but also reflect other global concerns such as the environment. It is because they are global in nature they require the state to be interventionist, not only nationally but also internationally in insuring citizens can exercise these rights individually and as a collective.

From Bandung to Montreux and Beyond

The Bandung Conference of the Non-Aligned Movement in 1955 and the ITU Plenipotentiary Conference at Montreux in 1965 were sites where the development of communication rights entered the domain of collective rights. The earlier conference began to address the social and cultural impacts of broadcast ICTs in developing countries. The Montreux Conference began to deal with the economic, social and political impacts of ICTs (Markle Foundation 1972, 3-6). In particular, developing nations began to link communication with development. Recommendations were made to the Plenipoteniary that the ITU support technical assistance, establish a regional presence, and that member states establish a fund for use by developing countries for this assistance (Codding 1995). This initiated a movement that has continued to the present, with mixed results in achieving these recommendations. By 1982, the ITU's convention had been successfully changed to include in its

mission the "[maintenance] and [extension] of international cooperation … for the improvement and rational use of telecommunications" (quoted from Codding 1995). A number of civil society organizations involved in communication rights have extended this conception of development to include not only technical assistance for member states, but also for communities therein. Among many other issues, they maintain that assistance must extend from the technical level to that which would allow communities to both make use of information transmitted over ICTs and to participate in its formation (see Rockefeller Foundation 1999 and WSIS-CSCG 2002).

Futher Development of Communication Rights Theory

As envisioned by d'Arcy, the right to communicate displays all the characteristics of third generation rights. It is planetary in that it was conceived at the time when the global implications of satellite communication, combined with computing networking, were becoming apparent. It is a right belonging not only to individuals but groups, thus, it is a collective or solidarity right. It is a strong positive right in that the state has the responsibility to insure its citizens have the resources to exercise the right. Finally, it is an extension or redefinition of earlier rights and freedoms, in particular freedom of opinion and expression. However, like other third generation rights the debate of what constitutes a right to communicate is yet to be resolved.

Jean d'Arcy himself never provided a concise definition of the right to communicate. Nor was his idea immediately taken up within the United Nations community. We noted earlier that one of the factors giving rise to third generation rights was the decolonization movement following World War II. And we noted that less developed countries were expressing concerns about media dominance and cultural diversity. Consequently, the 1970s was a period of intense debate within the United Nations about cultural diversity, media dominance, and the "free flow of information. During this time, the Non-Aligned nations were advancing the proposal of a New World Information and Communication Order (NWICO) (UNESCO 1980b). As well, Cold War politics established further fault lines. Nonetheless, efforts began within UNESCO in the 1970s to formulate a right to communicate. In 1974, the UNESCO General Conference adopted a resolution authorizing the Director General to consult experts for defining a right to communicate. The General Conference reaffirmed this initiative in 1978. A number of meetings of experts were held under UNESCO auspices and within the International Broadcast Institute. However, the right to communicate fell victim to international North-South and East-West ideological and power politics in the 1980s. The United States and Great Britain withdrew from UNESCO, the idea of a NWICO collapsed, and UNESCO abandoned it efforts to formulate a right to communicate. In the 1980s and 90s UNESCO would revert to focusing on freedoms in specific communication sectors such as its "Promoting the Free Flow of Information and the Development of Communication."

However, with the collapse of the Soviet Union and the end of the cold war, combined with the emergence of the Internet, there is renewed interest in communication rights. Thus, while it is not possible to give a definitive formulation of a right to communicate it is possible to draw on earlier work in order to illustrate the potential of the concept as a strategic framework for promoting democratic communication.

Michael Freeden makes the point that "The meaning of a concept is shaped by the range of further concepts that are attached to it and support it." Thus, the concept of a right will be linked to such other concepts as liberty and equality with the result that "The resulting configuration will enable the content and role of the 'right' to be interpreted." Consequently, a right can be seen as a cluster of related concepts whose inter-relationship gives the right its meaning. (Freeden 1991, 2) The right to communicate is just such a cluster of concepts. It can be conceived as a human right that is the apex of a cluster and hierarchy of rights, freedoms, entitlements, and responsibilities. The right to communicate includes at a minimum "the right to inform and be informed, the right to active participation in the communication process, the right of equitable access to information resources and information, and the right of cultural and individual privacy from communication" (Richstad and Anderson 1981, 26-27). The right to communicate encompasses interconnected freedoms such as the freedom of opinion, expression, and information. These freedoms in turn are exercised through such

entitlements as freedom of the press, the lack of censorship, the rights of journalists, the right to access to information, and so forth.

The right to communicate also embodies the right of individuals and groups *not* to communicate, a right relevant to cultural rights and national and group identity. In contrast to traditional statements of freedom of information in mass communications, the right to communicate is participatory, interactive, and applies to groups as well as individuals. The right to communicate also embodies the concept of citizen participation and responsibility for the formulation of communication policy and rights (Fisher 1982; Harms 2002). It provides a framework for addressing rights, freedoms and entitlements related to access including literacy, language, intellectual freedom, cultural diversity, language right, and intellectual property rights.

While its precise definition and application requires further research and debate, the pioneers promoting a right to communicate provided the basic framework for developing a strategy to advance democracy and electronic networking. That framework, as delineated by Jim Richstad (forthcoming), one of the early advocates of the right, is:

- Participatory communication,
- Interactive communication,
- Horizontal communication, and
- Multiway communication.

The Information Society: Computer Networks and Other Advanced ICTs

The networking of computers began in the middle 1960s, evolving into the U.S. ARPANET and eventually into a global network of networks, the Internet (see McIver & Elmagarmid 2002). The characteristics and the history of the Internet serves as a nexus for many, if not all, of the earlier phenomena in the development of ICTs and the co-evolution of the right to communicate. Like postal services, the Internet developed out of government sponsored efforts. The culture of communication and development within it in the West evolved into one decidedly anarchic and civil, in which civil and political rights were at the very least assumed by many of its users. As with earlier communication technologies, tensions evolved between governments, civil society and the private sector over the use of and legal protections within this medium (see UN 2001).

Unlike earlier ICTs, however, its technical characteristics enabled unique dispersion possibilities and it supports almost all earlier forms of communications. The packet switching nature of the Internet allows a distributed infrastructure, which distributes set-up and access costs to different organizations, and amortizes infrastructure development costs. Use of packet switching is also independent of the physical transmission medium – copper, fiber optics, radio, or satellite. Its store-and-forward means of operation allows it to support multiple modes of transmission – continuous, discontinuous, synchronous and asynchronous. These technical characteristics have made its dispersion potential high. In fact, dispersion has taken place over many types of infrastructure. At the application layer, packet switching has provided a nexus for different forms of communication. The Internet is, therefore, able to support all components of Richstad's framework: interactive, participatory, horizontal and multi-way communications. The implications of this for the application layer is that it has provided a nexus for the integration of all elementary forms communication -- text, audio, images and video – and most earlier higher forms of communication – postal services, telephony, radio, film and television, and collaborative applications. In fact, the Internet is now serving as a bridging technology between new and older forms of communication (e.g. broadcast radio to Internet). Thus, from a communication rights perspective, the Internet has raised all of the earlier issues of civil, political, economic, cultural and social rights; potentials for dominance; and potentials for participatory and democratic use.

3. Discussion

In this section, we address counter arguments to the right to communicate and explore the implications of the co-evolution of ICTs and communication rights for communication and democracy.

Counter arguments

From a political perspective, opposition to the right to communicate has been varied. Western countries have generally opposed it because it was part of the establishment of some information order. Other countries have opposed it because they saw it as justifying the importation of Western values (Hamelink 1994, 300). The business sector in some countries has shown resistance to such a right on grounds that it would result in undesirable government interventions in the market (Birdsall and Rasmussen 2000).

From a conceptual perspective, a human rights approach to communication is open to criticism for being inflexible and, therefore, incapable of accounting for the priorities that face communities attempting to provision communication services. Human rights or (originally) natural rights have been criticized at least since the late eighteenth century as being absolutist. It might be claimed that a right to communicate implies specific implementation requirements, some of which would not be in the best interest of some societies. It would be unreasonable, for example, to implement individual Internet access in societies where literacy rates are low and public health and other basic services are lacking.

Also, a human rights approach to communication may not be seen as compelling by those who criticize it on grounds that they are absolute and they don't "trade off." The cost and complexity of the various technical solutions to a right to communicate, as well as the levels of technical competence to use them might be seen as evidence against a human rights claim. Following this logic, evidence for a human rights claim to communication takes the form of the preconditions for the technical implementation of that communication: basic infrastructure, financial resources and technical competence. The Universal Declaration of Human Rights recognizes this dilemma in its preamble by stating that it is:

> ...a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance...

What makes the right to communicate compelling are not the preconditions for its implementation, but the very fact that communication is a basic human need because it is a fundamental social process necessary for expression and all social organization. This need does not vary with respect to the level of economic development of a society. All humans need to receive and impart information to live. The urgency with which the right to communicate should be addressed varies by the level of development of a society. Lack of access to communication, for example, has been identified as a critical factor in public health crises around the world (see Garrett 2000).

Many ICTs now exist as potential solutions to the technical aspects of the right to communicate and most can be deployed at granularities appropriate to a community's needs and resources, from community-level access points down to individual access. Garrett suggests that providing citizens of underdeveloped countries with community-level points of access to health information would be a critical starting point for addressing health care crises such as AIDS epidemics in many of these underdeveloped countries.

Communication and Democracy

Over the past century and a half the innovation of each new mode of electronic communication has been hailed as a mode of promoting greater democracy and communication. Such claims have been made for the Internet era as well. In the past, new technologies have spawned the need to conceive and refine rights and freedoms. However, the technologies have tended to devolve into specific concentrations of large providers and distributors and their specific legal regimes. Their related rights and freedoms have also tended to be differentiated. With the current networking technology, there arises the need to formulate an encompassing conceptual framework to advance democratic

communication. It is our contention that there is currently an opportunity to adopt the right to communicate as that conceptual framework. The rights discourse is more intense than ever and moving towards third generation planetary rights. Related to this development, the latest communication technology allows for global interactive, horizontal, and multiway communication. However, the challenge remains to insure that communication technologies are also participatory.

To achieve that end, we contend that the right to communicate be adopted as a conceptual framework for a three-fold strategy consisting of the development of:

- A research agenda. While there has been valuable work done in the past and current efforts to formulate a right to communicate and its application, much more is required. The right to communicate provides a framework in which to direct research on human rights and freedoms, communication technologies, public policy, and their interrelationships.
- A public policy agenda. The right to communicate provides a framework for addressing a whole range of public policy issues: intellectual property, censorship, language rights, cultural identity, group rights, and so forth. Too often, such issues are dealt with on an individual basis or by economic development concerns alone rather than broader cultural, educational, and social objectives.
- An advocacy agenda. Ultimately rights and freedoms and public policy will only be achieved when established and enforced at the national level, although within established international norms. The right to communicate can provide a coherent, comprehensive framework for formulating an advocacy agenda that can be implemented at the international and national levels.

4. Conclusions

Human rights frameworks can and must be used as part of the solution to addressing communication imbalances, independent of specific communication modalities. Such an approach would bring with it the advantage of providing policy makers with a universally available set of standards for addressing human needs and a common lexicon with which to debate, identify and implement solutions.

Access to ICTs becomes more of a fundamental human need as increasing numbers of governmental functions and organizations use these technologies to facilitate basic services necessary for people to maintain an adequate standard of living, or as the lack of use of these technologies results in the hindrance of the lives and livelihoods of people. This type of human need can best be articulated as the human right to communicate.

A well-established legacy of human rights instruments and development processes offer the best framework within which to guide the development of policies in this area. This includes norms, enforcement procedures, and implementation mechanisms. While critical components of a right to communicate, such as Article 19 of the International Covenant on Civil and Political Rights (UN 1993, 28), have been established as international law within ratified treaties, a comprehensive human right to communicate has not itself been established in international law. However, activities over the past decade by non-governmental organizations such as the People's Communications Charter and the recent resolutions of the UN ECOSOC (2000) and the Millennium Assembly of the United Nations (2000) are encouraging signs that the right to communicate will eventually be adopted by the world's nations.

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