Media Divides

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Communication Rights and the Right to Communicate in Canada

Marc Raboy and Jeremy Shtern

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Preface

In November 2005, the Social Sciences and Humanities Research Council of Canada (SSHRC) and the Law Commission of Canada (LCC) launched a timely call for proposals on the theme of "Communication Rights and the Right to Communicate."[1]

We received a grant from the LCC and SSHRC to conduct research and analysis around this question and to draft a report for the LCC based on our findings. For scholars with an interest in doing critical research that contains the potential to affect real-world structures and experiences, this was in many respects an ideal partnership. As a team of academic specialists on various elements of Canadian communication policy, our role would be to provide an empirical assessment of the state of communication rights in Canada. The LCC, meanwhile, as an arm's-length government agency, could draw on its mandate to advise the minister of justice. Under the *Law Commission of Canada Act*, the minister of justice is, in turn, required to respond officially on behalf of the government in a timely fashion to any report received from the LCC.[2] This meant that our research into and analysis of the state of communication rights and the right to communicate in Canada could be undertaken with the ultimate view of taking action to improve it and a not entirely naïve expectation that they just might do so.

Shortly after, however, the LCC's funding was withdrawn as part of a $2 billion reduction in government spending by the recently elected Harper government's effort to "ensure all programs are effective and efficient, are focused on results ... and aligned with the government's priorities."[3] Although this did not affect our grant and only increased our resolve to meaningfully investigate these issues, the LCC was forced to immediately cease and desist. This meant that we were pushed to reconsider not only where and in what format we would seek to disseminate this research but also whether our work

could still hope to contribute to the improvement of policy and practice around communication rights and the right to communicate in Canada.

We had always intended to work closely with the LCC to explore what our assessment and analysis of the state of communication rights and the right to communicate in Canada implied, and the LCC's evisceration meant that we now needed, in designing, conducting, and presenting our research, to focus more explicitly on how action could be taken to improve the state of communication rights and the right to communicate in Canada. Absent the partnership of the LCC, we had to assume the dual role of critical researchers and promoters of reform to the best of our abilities or face the unsatisfactory compromise that we had "done our part" in merely presenting our research. Our strength in this area lies not in any direct links to the government but in whatever weight might be attached to our credentials as academic specialists.

Research matters in policy making, and where and how it is published matters for the impact of such research. Our view is that we can gain the most influence for our argument by presenting it in a peer-reviewed academic publication such as this volume. In turn, we hope that this volume might give valuable leverage to others who may have more sway in the policy process than we do, who will be encouraged and enabled to run with the ball there.

Taking action to improve the realization of communication rights and the right to communicate in Canada does not involve only governments. In some respects, it already involves governments too much (often, as we will discuss, government is not only part of the solution but also part of the problem). More importantly, it involves people. It involves citizens and it involves expressions of citizenship. The problem is that it involves them all too infrequently. Of course, there are problems in the institutional framework in which communication occurs in Canada and in the actions that government takes. There are possible reforms that should be pursued in the effort to remedy these issues. At the same time, however, there is, as we point out in this book, a great distance between institutions and people in Canada where communication is concerned. Furthermore, people do not generally understand their communication rights and very rarely push hard enough to claim them. Activists, community groups, and nongovernmental and civil society organizations in Canada lack literacy and coordination with regard to media and communication issues and the capacity to present claims that can compete with those of government and industrial stakeholders. We hope this book will speak to these audiences.

Acknowledgments

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Our team first met to discuss and plan this project at Media@McGill in June 2006. We would like to thank Susana Vargas Cervantes for helping with the organization of those sessions. We were fortunate to be able to include Montreal-based communication activist Alain Ambrosi in those discussions, and would like to acknowledge his influence on this research and thank him for his participation and his unique insight into the topic. Matt Dupuis from the department of Art History and Communication Studies at McGill provided technical support for our online collaborative tools. Media@McGill Outreach Specialist Claire Roberge assisted indirectly in countless ways throughout the period during which we were writing this book.

A small army of research assistants contributed in various ways to our research. We acknowledge each of their contributions in the relevant sections, but thank Geneviève Bonin, Normand Landry, Evan Light, Aysha Mawani, Mary Milliken, Jennifer Parisi, Kirsty Robertson, and Gregory Taylor here as well.

We thank McGill University law professor Tina Piper for her insightful and constructive critical reading of an early draft of parts of this book that were presented at the McGill Arts/Law Colloquium series in January 2008. The questions and comments raised in response by scholars from both faculties participating in the colloquium were also helpful. Professor Piper later

graciously agreed to read and comment on a more substantive draft of this book, for which we express a further debt of gratitude.

Participants in Marc Raboy's 2008 graduate seminar on Global Media Governance struggled with us over the question of what a Canadian right to communicate might look like and how to get there. Simon Grant, a McGill law student at the time and now a practising lawyer in Toronto, allowed us to include an adapted version of a paper written for that seminar as an appendix to this book.

Fortunately, given that the rough cut of the bibliography was around 100 pages long, one of us happens to be related to a librarian; Laura Shtern graciously helped us track down and organize our references.

We also thank the anonymous reviewers who evaluated the manuscript for UBC Press. Each of these critical readings helped us not only to address the weaknesses of the initial version of this manuscript but also to better understand and appreciate its strengths.

Abbreviations

ACLU	American Civil Liberties Union
ACTRA	Alliance of Canadian Cinema, Television and Radio Artists
AMARC	World Association of Community Radio Broadcasters
APC	Association for Progressive Communication
APTN	Aboriginal Peoples Television Network
ARC	Alliance canadienne des radiodiffuseurs communautaires du Canada
ARCQ	Association des radiodiffuseurs communautaires du Québec
ARPANET	Advanced Research Projects Agency Network
BBC	British Broadcasting Corporation
BDU	broadcast distribution undertaking
CAIP	Canadian Association of Internet Providers
CAIRS	Co-ordination of Access to Information Requests System
CAP	Community Access Program
CARFAC	Canadian Artists' Representation/Le Front des artistes canadiens
CAW	Canadian Auto Workers Union
CBC	Canadian Broadcasting Corporation
CBNC	Crossing Boundaries National Council
CBSC	Canadian Broadcast Standards Council
CCPA	Canadian Centre for Policy Alternatives
CCTV	closed circuit television
CDM	Campaign for Democratic Media
CIGF	Canadian Internet Governance Forum
CIPPIC	Canadian Internet Policy and Public Interest Clinic
CIUS	Canadian Internet Usage Survey
CMCC	Canadian Music Creators Coalition
COPPA	*Children's Online Privacy Protection Act* (US)
CR	communication rights

CRACIN	Canadian Research Alliance for Community Innovation and Networking
CRAFT	Communication Rights Assessment Framework and Toolkit
CRFC	Community Radio Fund of Canada
CRIS	Communication Rights in the Information Society
CRTC	Canadian Radio-television and Telecommunications Commission
CSIS	Canadian Security Intelligence Service
CTF	Canadian Television Fund
CTV	Canadian Television Network
DFAIT	Department of Foreign Affairs and International Trade
DMCA	*Digital Millennium Copyright Act* (US)
DNS	Domain Name System
DoC	Department of Communication
DOC	Documentary Organization of Canada
e2e	end-to-end
ECOSOC	Economic and Social Council (UN)
EPIC	Electronic Privacy Information Center
EU	European Union
FCC	Federal Communications Commission (US)
FGHRs	first-generation human rights
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
FISC	Foreign Intelligence Surveillance Court (US)
FLQ	Front de Libération du Québec
FOI	Freedom of Information
GAC	Governmental Advisory Committee (of ICANN)
GATS	*General Agreement on Trade in Services* (WTO)
HTTP	Hypertext Transfer Protocol
IBI	International Broadcast Institute (later IIC)
ICAMS	International Campaign Against Mass Surveillance
ICANN	Internet Corporation for Assigned Names and Numbers
ICCPR	*International Covenant on Civil and Political Rights* (UN)
ICESCR	*International Covenant on Economic, Social and Cultural Rights* (UN)
ICT	information and communication technology
IDRC	International Development Research Centre
IGF	Internet Governance Forum
IHAC	Information Highway Advisory Council
IIC	International Institute for Communications (previously IBI)
IMC	Independent Media Center

INS	Immigration and Naturalization Service (US)
IP	Internet Protocol
ISP	Internet service provider
IT4D	information technology for development
ITU	International Telecommunication Union
K-Net	Kuhkenah Network
KO	Keewaytinook Okimakanak
LCC	Law Commission of Canada
LEAF	Women's Legal Education and Action Fund
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organization
NCRA	National Campus and Community Radio Association
NFB	National Film Board
NGO	nongovernmental organization
NIEO	New International Economic Order
NSA	National Security Agency (US)
NWICO	New World Information and Communication Order
OECD	Organisation for Economic Co-operation and Development
OIPCBC	Office of the Information and Privacy Commissioner of British Columbia
OPC	Office of the Privacy Commissioner of Canada
OTA	over-the-air
P2P	peer-to-peer
PANS	public access network services
PIPEDA	*Personal Information Protection and Electronic Documents Act*
POTS	plain old telephone service
PSTN	public switched telephone network
QoS	quality of service
R2C	right to communicate
RCMP	Royal Canadian Mounted Police
RDS	Réseau des Sports
RFID	radio frequency identification
RIA	rich Internet application
SCA	Speech Communication Association
SGHRs	second-generation human rights
SNS	social networking site
SOCAN	Society of Composers, Authors and Music Publishers of Canada
SSHRC	Social Sciences and Humanities Research Council of Canada

TCP/IP	Transmission Control Protocol/Internet Protocol
TPRP	Telecommunications Policy Review Panel
TSN	The Sports Network
UDHR	*Universal Declaration of Human Rights* (UN)
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
VoIP	Voice over Internet Protocol
W3C	World Wide Web Consortium
WACC	World Association for Christian Communication
WIPO	World Intellectual Property Organization
WSF	World Social Forum
WSIS	World Summit on the Information Society
WTO	World Trade Organization
XML	Extensible Markup Language

PART 1

Communication Rights and the Right to Communicate – The State of the Art

Introduction

Marc Raboy and Jeremy Shtern

Origins of an Idea

There is compelling tangential evidence about how deeply the critical threads of communication rights discourse run in Canadian thinking in, of all things, a 1949 book review of a volume devoted to chronicling the Canadian activities at the United Nations from the previous year. The book in question (Canada 1949, 109) describes a Canadian intervention in the freedom of information debates held at the UN Human Rights Commission in 1948 as follows: "The Canadian delegation held that free access to sources of information and freedom of expression are indispensable to the democratic process. Without a precise knowledge of the facts, the chief Canadian delegate argued, the people could not intelligently exercise their powers of discretion and control over their governments." On which the book review's author remarked: "This blithe statement ignores the growth of massive communication enterprises which have been known to wrap themselves righteously in the mantle of freedom of information in the very act of omitting or distorting information essential to a democratic population. The difficult question of ways and means to secure a responsible, as well as free press is overlooked" (Shea 1949, 439-40).[1]

The same essential point can still be made today to advocate for communication rights; it has, in fact, been reiterated and developed at points in between in reports and articles from activists and scholars, civil servants, and government departments.

Canada made an important contribution to the emerging global debate on communication rights and the right to communicate (CR/R2C)[2] in the 1970s, with the report of an official government-sponsored study group known as the Telecommission.

The Telecommission was launched in September 1969 as a comprehensive study mandated by the newly created federal Department of Communication

(DoC) to examine "the present state and future prospects of telecommunications in Canada" (Canada 1971, vii). Its stated purpose was "to gather as much information as possible, together with the widest cross-section of opinion," and produce a report of interest to governments, the telecommunications industry, private and public institutions, and the "public as a whole." More than forty different studies were organized under the coordination of a high-level directing committee,[3] and, in total, more than 8,000 pages of background material were produced. These extensive activities were the basis for the 1971 report *Instant World: A Report on Telecommunications in Canada*.

Instant World concluded that the establishment of a Canadian right to communicate was required in order to confront the social implications of the ever-increasing centrality of technologically mediated communication to Canadian society. The report justified its call for a right to communicate as an evidence-based conclusion that emerged bottom-up after "time and again, participants in the Telecommission studies called for recognition of a 'right to communicate' as a fundamental objective of Canadian society. The subject dominated the seminars and conferences, and was raised in many of the individual studies" (Canada 1971, 232). The report stated in no uncertain terms:

> The predominant theme underlying nearly all the discussions at the seminars was that the "right to communicate" should be regarded as a basic human right. In the impending age of total communications, the right to freedom of assembly and free speech may no longer suffice. Many people are unable to communicate; they do not receive the messages distributed by communications systems, they lack the know-how to use them, and above all, they are deprived of the opportunity to send messages through them. The basic decisions that govern the development of communication systems are political; therefore, if all Canadians are to be provided with the minimum services needed for the exercise of a right to communicate, political decisions and money will be required. (38)

The *Instant World* notion of the right to communicate stemmed from the belief that equitable communication is fundamental to democracy (especially 232), and the report made the case that "if it be accepted that there is a right to communicate, all Canadians are entitled to it" (229).

Published only two years after a seminal paper by a senior French cultural mandarin, Jean D'Arcy (1969), had first introduced the notion of the

right to communicate to the international community (see Chapter 1),[4] *Instant World* is possibly the most substantial official document framing the concept of communication rights in Canada. Moreover, it played an influential and catalytic role in the development of the international R2C movement, not only providing the first real elaboration of what could be meant by the right to communicate but also setting a key precedent that policy makers and governments could and would take the notion and its legal and policy implications very seriously. It may not be a stretch to argue that the *Instant World* discussion of the right to communicate was a crucial step in the evolution of the idea from abstract concept to global policy issue and basis for an activist movement. In any case, evidence of the contention that *Instant World* is in fact "one of the most comprehensive and original sets of materials in the development of the right to communicate" (Richstad et al. 1977, 114-15) can be found by examining the bibliographies of most treatments of the issue.[5]

In addition to its historical significance, *Instant World* accurately anticipated how mass communication would change and evolve in the subsequent decades. Its predictions of how future technical and social developments would facilitate what it called an "impending age of total communications" have proven to be remarkably accurate. For example, *Instant World* foresaw the impact of what we refer to today as "technological convergence": "The conjoint technology of communications and computers," it said, "promises the development, probably before the end of the 20th century, of information systems that may to some extent replace paper and its storage" (Canada 1971, 230).

This prediction was based on the assumptions – since proven correct – that telecommunication networks would be increasingly used to provide remote access to computer memory, that computer processing speeds and memory capacities would increase rapidly over the coming years, and that small, low-cost freestanding computers (along the lines of what we now know as the PC) as well as smaller-sized multifunction high-speed devices (such as the iPod) would be cheaply fabricated and marketed to the general public, with the sum effect that "much heavier demands for *mobile communications*" (Canada 1971, 118, emphasis added) could be anticipated in the future. *Instant World* also predicted that this variety of compact, light, autonomous, mobile, and relatively cheap apparatuses would make radio and television content ubiquitous.

In addition, the report anticipated many of the phenomena characteristic of today's "new media":

- *Broadband services* were seen as a necessary response to the need to interconnect and to populate the range of new communication devices with content (118).
- *On-demand programming,* parallel with and as an alternative to scheduled services in broadcasting, was seen as the most logical application of broadband to broadcasting distribution systems (118).
- Regarding *electronic service delivery* (and what we now know as *e-mail*), *Instant World* argued that information systems "will partly replace or transform methods of administration, book-keeping and clerical services, postal operations, publishing, banking, transportation, modes of entertainment, and the means for their enjoyment" (230).

Instant World also foresaw the importance of the then nascent use of earth-orbiting *communication satellites* and, under the label of the "wired city" (230), the emergence of urban interconnection movements along the lines of the *municipal Wi-Fi public Internet connectivity projects* that have developed in Canadian cities such as Montreal, Toronto, and Fredericton in the early twenty-first century (see, for example, Powell and Shade 2006).

It was argued in *Instant World* that, if such a communication environment were to emerge, there could "be no doubt that unremitting effort and attention will be needed to eliminate or at least control the possible anti-social by-products of the technological revolution, while at the same time striving to put new opportunities to the best use. What is needed is a sustained effort to foresee the social and economic effects of the new technology, and to plan accordingly as far in advance as possible" (Canada 1971, 125).

Despite the international influence of the report, extensive and forceful evidentiary support for its conclusions, and the expressed enthusiasm for the idea of a Canadian right to communicate by high-level Ottawa insiders, the concept was virtually abandoned by the government of Canada. Certain programs that emerged around the same time – such as the Challenge for Change initiative of the National Film Board (NFB) and the community cable access requirement of the Canadian Radio-television and Telecommunications Commission (CRTC) – arguably gave some substance to the R2C in Canada in practice.[6] But, the term "right to communicate" itself fails to appear in any subsequent policy papers or reports and did not directly form the basis of any legislative action (McPhail and McPhail 1990; Birdsall et al. 2002; Hicks 2007).

Furthermore – and significantly – *Instant World* did not deal substantially with a range of what we now consider to be "conventional" media issues: corporate concentration of ownership, public funding, cultural diversity, and intellectual property rights. We now realize that the communication environment, especially technologically mediated communication, needs to be viewed holistically, as difficult as this often appears to be for policy makers.[7] And so, one of the greatest challenges of this book is to try to develop a conceptual understanding of CR and R2C that takes account of the various subfields in which communication rights play out and to see the idea of a right to communicate as encompassing all of them.

Despite falling back from the forefront of the domestic public policy agenda, Canadian interest in the right to communicate has not waned. As the "age of total communications" forecast by *Instant World* in 1971 has gradually shifted from "impending" to "emerging," the idea of a Canadian right to communicate has been sporadically revisited by activists and scholars working in a variety of disciplines, and individual Canadians have been particularly active in international debates on CR and R2C.[8] Official Canada, meanwhile, has been a generous contributor to international public discourse on a range of important CR issues, from freedom of expression to cultural diversity and information technology for development (IT4D).[9]

The experience of John Humphrey, considered by many to be Canada's most distinguished human rights activist, illustrates a great deal about how human rights, public policy, and government rhetoric tend to be linked in Canada. In the process, it underlines why we have designed this study so as to problematize these linkages.

Human Rights, Cultural Policy, and the Insufficient Rhetoric of "Brand Canada"

Researching her 2001 book, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights,* Harvard law professor Mary Ann Glendon (2000, 250) was so taken by what she uncovered about the role of Canadian John P. Humphrey that she published a sidebar paper "to pay tribute to this 'forgotten framer' [who] helped to set conditions for a better future on our increasingly conflict-ridden, yet interdependent planet."

In his capacity as director of the fledgling United Nations Human Rights Division, Humphrey himself wrote the first draft of the *Universal Declaration of Human Rights (UDHR)* in 1947. In a letter to his sister, written three days

into this task, Humphrey said, "I am now playing the role of Jefferson."[10] Glendon (2000, 250) summarizes Humphrey's seminal contribution to the making of the *UDHR* as "buttressing its aspiration toward universality by drawing on sources from many different legal cultures" and points out that "both during the drafting process and after the adoption of the Declaration, Humphrey and his staff provided essential continuity, backup, and staying power for the often-embattled U.N. Human Rights Commission." While Humphrey's name may be little known abroad, this is hardly the case in Canada.

Humphrey's role in the drafting of the *UDHR* is celebrated domestically, particularly by the government of Canada itself. For instance, under the heading of "Canada's International Human Rights Policy," visitors to the Department of Foreign Affairs and International Trade (DFAIT) website are informed that "Canada has been a consistently strong voice for the protection of human rights and the advancement of democratic values, from our central role in the drafting of the Universal Declaration of Human Rights in 1947-8 to our work at the United Nations today" (Canada n.d.).

If by "our role," the government of Canada is using the royal "our" in the sense of "any and all Canadians, including John Humphrey," then this can be considered an accurate statement. If by "our role," however, this statement refers to the role of the government of Canada – the same government of Canada that was, on 7 December 1948, one of only seven countries (Canada and the six-member Soviet Bloc) to abstain from the vote taken by a UN committee on whether the *UDHR* should be submitted for approval to the full UN General Assembly (UNGA) – then it is hard to argue that "central" has a positive connotation in describing "our role" here.[11]

According to Hobbins (2002), the relationship between Humphrey and the government of Canada actually deteriorated in the aftermath of the *UDHR* episode. For the remainder of his career, Humphrey would go on to occupy a variety of high-level posts concerned with the study and realization of human rights both internationally and domestically. In these roles, he was a frequent and vocal critic of the government of Canada's human rights record for nearly fifty years. The net effect was that "policy makers probably grew very tired of this criticism and ultimately found it simplest to ignore him" (1). The Jefferson of the *UDHR*, indeed.[12]

The process through which the government of Canada appropriated the legacy of John Humphrey, to the point where his role in the *UDHR* drafting process can be claimed by DFAIT as part of a collective accomplishment

despite Canada's ambivalence over the course of that episode, illustrates a great deal about the relationship between rights discourse, government policy, and on-the-ground practice that we seek to problematize in this study. It is joined in this respect by numerous other examples.

In the midst of Louise Arbour's term as UN High Commissioner for Human Rights, the government of Canada's lack of concrete action in the area of human rights led Amnesty International to release a report entitled *Canada and the International Protection of Human Rights: An Erosion of Leadership?* (Amnesty International 2007). An admonition of the Canadian government from Arbour herself is cited in that report, yet, as was the case with Humphrey, Arbour's accomplishments circulate through Canada's foreign policy documents and the rhetoric that surrounds them is used to promote the notion that, by promoting "Canadian values," the government is intrinsically supporting human rights.

All of this can be attributed to an effort to associate human rights with "Brand Canada." Efforts to construct and promote a narrative in which something called "Canadian values" are intrinsically wedded to the realization of human rights and social justice concerns are generally associated with the Chrétien Liberal government of the 1990s.[13] Perhaps the strongest example of this was the inclusion of something called "Canadian Values and Culture" as one of the three pillars of Canada's foreign policy between 1995 and 2005. These Canadian values were said to include not only respect for human rights but also the importance of cultural affairs, including Canadian communication and cultural industries (see Canada 1995, section V; Canada 2003a). Canada puts a great deal of stock in its image as a champion of human rights, and there is no shortage of positive accounts surrounding the claim that no other country protects what we call communication rights to the extent that Canada does.

The challenge of this study is to hold Canada accountable to its own high standard by examining the links between rhetoric and action and to determine how the actions of our government reflect on the claims that it makes about its role in realizing communication rights. In assessing the realization of communication rights in Canada, however, we have tried to be sensitive not only to gross abuses of government power but also to the more subtle nuances around how public policies, the manner in which they are implemented, and the actions of various stakeholders affect the realization of communication rights. We also aim to situate the Canadian debate in a broader, global context.

Bringing an International Debate (Back) Home

Discussion of the links between rights and processes of communication burst onto the international scene at the highest level with the 2003-05 World Summit on the Information Society (WSIS) (Raboy and Landry 2005; Mueller, Kuerbis, and Pagé 2007). At the same time, media, communication, and human rights activists from around the world placed this concern on various national, regional, and global agendas through sustained lobbying efforts in arenas such as the WSIS and venues such as the World Social Forum (WSF). These activities crystallized in an international advocacy campaign for Communication Rights in the Information Society (CRIS), which in the early to mid-2000s became an increasingly important player in the burgeoning international social justice movement (Padovani 2005; Padovani and Nordenstreng 2005; see also Chapters 1 and 2 of this volume).

In parallel, the role of media and communication in the realization of human rights came under attack in Canada in a stunningly wide range of guises, from the Juliet O'Neill and Maher Arar cases to the reduction of public broadcasting services, the proposed deregulatory revisions to national telecommunication policy, and the controversies surrounding Internet network neutrality. Communication rights are also at stake in ongoing debates on radio spectrum ownership, the impact of media mergers on diversity, and the possible liberalization of foreign ownership regulations in broadcasting and telecommunication, among many other examples.[14]

As we have seen, Canada talks a good game around the right to communicate and is generally pointed to as an influential leader on the topic internationally, and individual Canadians are at the forefront of thinking and activism concerning this issue. Paradoxically, however, and despite Canada's record in international diplomacy, human rights, and innovative practices in the fields of media and information and communication technologies, substantive policy development regarding the right to communicate in Canada has been relatively weak. Thus, the initiative that led to this book not only was timely but also stepped into a relative vacuum.

The premise for the call by the Social Sciences and Humanities Research Council of Canada and the Law Commission of Canada was that "it is no longer clear that a legal framework based primarily on freedom of expression is adequate to the diverse purposes we might imagine for law in supporting democratic communication under contemporary conditions," and that, in response, we need to ask "what other principles and legal instruments might be necessary to supplement this right, and to make it real in the complex

political, economic and social context of contemporary Canada." The call defined communication rights as "a broad range of other principles relevant to democratic communication" that buttress the universal human right to freedom of expression, and it described the right to communicate as "an umbrella-like" notion that "could encompass a range of principles that are not reducible to either freedom of expression or the related communication rights."

This book represents a preliminary effort to examine from various policy directions and disciplinary fields how this problematic plays out specifically in Canada. In an effort to avoid the fixation on the United States found in much Canadian communication policy analysis, we set Canadian communication rights debates mainly in the context of Canadian history, international organizations, and the emerging global media and communication policy environment. It is our view that a narrow and exclusive focus on "national" concerns is sometimes used to avoid the political and policy choices and responsibilities that Canadians and the Canadian government have to make in the area of communication governance.[15] We also think that it is useful to avoid preoccupation with the strong traditions that frame speech debates in the United States when reflecting on freedom of expression in Canada. Giving consideration to the US First Amendment notion of free speech – a degree of nominally absolute protection from government interference that is unique to the United States – is of little immediate relevance to the situation in Canada and inevitably leads to intractable debate with free speech fundamentalists that prevents consideration of other important communication rights issues. This book thus examines the system of policy and practice that interconnects a wide array of largely distinct communication policy issues and investigates whether Canada's legal framework for governing communication is adequate to the diverse purposes that we might imagine for law in supporting democratic communication. In turn, we consider what supplementary principles and legal instruments might be necessary to strengthen the links between human rights and processes of communication in the complex political, economic, and social context of contemporary Canada.

Canada is a signatory to numerous international agreements that are generally considered to constitute a universal human rights framework with respect to communication (see Chapter 1). Thus, universal communication rights are intrinsically also Canadian communication rights, and communication rights can be said to apply to Canadians insofar as they can be said to exist in general. But this is only the baseline. Universal communication rights are

augmented, enforced, and sometimes contradicted in the domestic sphere by national legal frameworks and public policies and practices. Constitutional law concerning communication in Canada – as at the international level – has been largely limited to protection of the bedrock right to freedom of expression and specification of its legitimate limits. Communication law and policy, on the other hand, seeks to address a range of concerns with respect to national sovereignty, cultural diversity, social justice, and identity by prescribing measures that deal with issues such as media regulation, spectrum management, access to telecommunication services, and more. As we shall show, there is a disconnect between the constitutional protection of freedom of expression and the realization of all such measures in practice. In short, the state of communication rights in Canada is precarious, and part of this disconnect stems from what we observe to be a systemic failure of Canadian communication policy in overseeing a just distribution of our communication resources. Those Canadians who have direct access to the media and communication technologies, who enjoy copyright protection and the capacity to communicate effectively, benefit from a different quality of freedom of expression from those who do not.[16] These are just some of the "media divides" referred to in the title of this book.

The Social Cycle of Communication

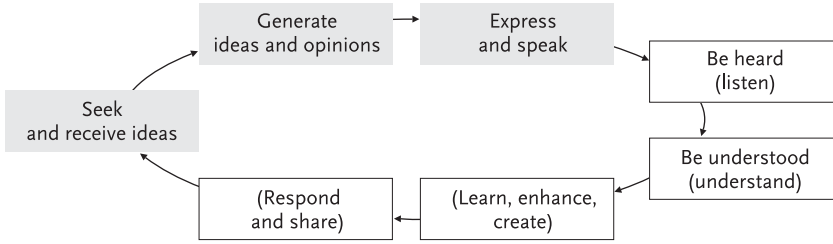
This study is premised on the Law Commission of Canada's definition of communication as "the core of democratic public life. In forms ranging from dialogue between citizens on a local, national or international scale, or between citizens and governments, to the various practices associated with the production, circulation and consumption of information, communication is central to the operation and legitimacy of democracy. In addition to these functions, communication also enables the social relationships and cultural practices that have been identified as foundational to the vibrant and diverse public cultures upon which democracy rests" (see Appendix 1).

This approach draws from thinking that is well established within the mainstream of political philosophy and free speech scholarship.[17] It holds that the prospects for democracy in a large, modern society where notions of community can no longer plausibly remain based strictly on face-to-face interaction are intimately tied to the creation of spaces of communication wherein the entire public can engage in transparent, informed, and sustained democratic discussion. This view of communication is not universally influential, however. Raymond Williams (1976, 63) reminds us that "in controversy

Figure 1

The social cycle of communication

The contrast and complementarity between freedom of expression and communication rights is illustrated in the "social cycle of communication" (adapted from CRIS 2005a).



about communication systems and communication theory it is often useful to recall the unresolved range of the original noun of action, represented at its extremes by *transmit,* a one-way process, and *share* ... a common or mutual process." Communication can, in other words, mean dramatically different things to different people in different contexts.[18]

The Dutch scholar and human rights activist Cees Hamelink (2003, 155) argues that existing international human rights standards are largely based on a model of communication that, influenced by the mathematical theories of Shannon and Weaver (1949), posits communication as a linear, unidirectional process rather than as "a process of sharing, making common or creating a community." This distinction between communication as one-way transmission and communication as sharing forms the basis of what the CRIS campaign calls the "social cycle of communication" (see Figure 1). Figure 1 shows the communication process as a multifaceted cycle. The gray boxes represent the activities within this cycle that are encapsulated by the one-way transmission view of communication. When the white boxes are taken into account as well, we begin to approach a dialogic notion of communication as sharing.

Our assessment of communication rights in Canada uses the idea of the social cycle of communication by positioning it as a normative claim about the ideal role of communication in Canadian society. In other words, ensuring the realization of all of the functions encapsulated by the social cycle of

communication is what we view as the normative purpose for Canadian law and policy in supporting democratic communication under contemporary conditions.

When we talk about rights in relation to communication, we refer indiscriminately to the rights promoted by international human rights agreements and those laid out in the domestic human rights framework (such as the *Canadian Charter of Rights and Freedoms*), as well as areas of law and public policy that articulate the claims that citizens can make on their governments and on each other, and the corresponding obligations of each. Chapter 1 does some of the work in particularizing this concept of "rights." The choice to situate this study in the language of rights is a conscious one and is not taken naïvely or unproblematically.

Through these discussions, and by framing our understanding of communication rights and the right to communicate around what we call the social cycle of communication, we use the language of rights as a way of capturing and accounting for the trade-offs and balances that must be struck in communication policy – between freedom of expression and privacy, for example.

The interrelated concepts of communication rights and the right to communicate emerge organically out of this set of normative assumptions. Together, these notions refer to a distinct approach to conceptualizing the law and policy framework that is required to ensure the realization in practice of the entire social cycle of communication and to produce clearly definable analytical categories for assessing it.

The idea of communication rights refers to all of the provisions that are required in order to ensure the realization of the social cycle. Freedom of expression covers certain key communicative functions (the ones in the gray boxes in Figure 1) but is not in itself a sufficiently comprehensive basis for the entire social cycle of communication. Communication rights, therefore, include other distinct *flanking* or enabling rights that are required to complete the right to freedom of expression to ensure that all people are able to seek and receive information, generate thoughts and opinions, have others hear, understand, learn from, and create on the basis of freely expressed ideas, and share with and respond to the ideas of others.[19]

Focusing on the realization that all of these are distinct, separate, and disparate rights is one approach to translating the concept of communication rights into the policy realm. An alternative would be to adopt a singular, encapsulating right to communicate. The status, history, and conceptual as

well as juridical challenges of efforts to establish a universal right to communicate are discussed in Chapter 1.

Both notions – communication rights and the right to communicate – are based on the premise that the whole of the social cycle of communication is greater than the sum of its parts. The CRIS campaign makes the case that "while communication rights can be realized only through a set of enabling rights, securing them at the same time gives new and additional meaning to those enabling rights. The dividend comes through the empowerment of all as equals within the communication arena, and the potential for a virtuous cycle of communication. This generalized capacity for ongoing dialogue, in turn, leads to further communication, and to a cycle that ultimately deepens democracy, mutual understanding and respect" (CRIS 2005a, 25). This can be accomplished by securing all flanking or enabling communication rights at the same time, by establishing and securing the realization of a right to communicate that encapsulates them all – or by following a common approach that encompasses both. We reflect on how each option can apply to the Canadian context in Chapters 9 and 10.

Our approach in this book has been to both assess the ensemble of communication rights in Canada as a systemic issue (what we call the horizontal view) and to investigate, in greater depth on a thematic basis, the realization of specific sets of communication rights (what we call the vertical view).

The Horizontal View

The horizontal view of CRs and the R2C includes the following elements:

- in-depth interrogation of the conceptual and practical basis of the notions of CRs and the R2C as well as their applicability to the situation in Canada at present (this Introduction and Chapters 1 and 2)
- a cross-cutting and comprehensive audit of the realization of communication rights in contemporary Canada (Chapter 3)
- recommendations aimed not merely at the reform of individual policies or agencies but also at a broad reorientation of the system of communication in Canada and the legal and policy framework in which it operates (Chapters 9 and 10).

The task of assessing communication rights and the right to communicate in Canada involves an exercise in mapping and evaluating the various domestic laws and policies that impact communication rights and that are relevant

to discussions of the right to communicate. Our take on the horizontal view on communication rights is primarily based on the application of a methodological instrument developed by the CRIS campaign, the Communication Rights Assessment Framework and Toolkit (CRAFT) (CRIS 2005a).

The CRAFT proposes a methodological approach to the evaluation of communication rights in a specific jurisdiction, using a matrix that was developed and tested on the ground against the policy and legal contexts in four countries (Brazil, Colombia, Kenya, and the Philippines) and one regional entity (the European Union).[20] It has its origins in a process somewhat similar to our own, in that the concept of "communication rights" in all of its diversity was first intuitively disassembled by the country teams working together, and subsequently reassembled to reflect the relationship between the constituent parts of the framework as well as the realities of different social, cultural, legal, and political contexts.[21] The framework was then applied in each of the participating entities.

In our case, between June 2006 and early 2008, a team of academic specialists on various elements of communication and media policy in Canada undertook a collaborative effort to respond to the questions posed by the CRAFT.[22] The responses generated drew on a number of sources, including research conducted by the members of our team for the "vertical view" chapters of this book. This was complemented by additional contributions based on previous studies and personal expertise that individual team members had accrued over years of involvement in teaching, research, and advocacy of communication policy in Canada.

A variety of methodological approaches ranging from interviews to documentary analysis are represented in the data used in our assessment. Despite the element of subjectivity inherent in this approach, the diversity of methods used by our team members provided an important measure of triangulation when it came time to tease out the commonalities indicated by the CRAFT framework.

We began by collecting as much data as we could around each of the CRAFT questions. While we did not answer questions that demanded areas of specialization that were not represented in our team, there were, in the end, few questions where this proved to be the case. Through a period of commentary and exchange within the team, we refined these responses to the individual questions. Over the course of this conversation, new issues emerged and certain responses were reframed or removed. We then synthesized these findings into a series of discussions of the state of the art in a

handful of identifiable communication rights issues in Canada: freedom of expression; freedom of the press and media; access to information; diversity of media content and plurality of media sources; access to the means of communication; access to knowledge; right to equality before the law, one's honour and reputation, and to protection against unwarranted damage to them; right to privacy; minority cultural and linguistic rights; and the right to self-determination and to take part in government. Each of these issues was evaluated not in the broadest sense but in relation to media and communication. In other words, in order to avoid presenting our assessment in a cumbersome question-and-answer format that would include many redundant responses as well as unanswered questions, we, in effect, reassembled the CRAFT framework's list of questions into a more manageable list of readily definable communication rights.

Reflection on Method

One insightful reader of an early draft of parts of this book, McGill University legal scholar Tina Piper, asked whether it was fair to say that the CRAFT framework had a built-in methodological bias toward negative evaluations, in particular toward highlighting challenges to Canadian law and policy that had emerged as media controversies.[23] This is, in our view, probably true and certainly deserving of some reflection.

Piper had not in fact seen the CRAFT prior to asking this question; however, she rather accurately anticipated what it looks like. The CRAFT questions are generally posed to examine non-compliance. For instance, CRAFT question D1.3 asks: "Are there adequate measures to ensure that all linguistic communities have access to a minimum of society's knowledge available in appropriate language and form?" (CRIS 2005a, 74). Rather than focus on Canada's globally acknowledged status as champion of official bilingualism, we instead focus our assessment on underlining the fact that official bilingualism policy regarding the Canadian media is not always equal and systematic, on questioning the status of other minority languages, and on suggesting that linguistic duality in the Canadian media is promoted at the expense of a broader focus on securing the communication rights of an increasingly culturally diverse Canadian population.

One point that came up in our earliest discussions of the potential utility of applying the CRAFT framework to Canada was the idea that Canada would be a "hard case" for an assessment of communication rights. Although meant to have universal applicability, the CRAFT was developed primarily

for use in assessing the realization of communication rights in developing countries with limited historical commitments to democratic governance and the enforcement of human rights. Could the framework be meaningfully applied to Canada? Canada is a country, after all, that revels in its worldwide image as a champion of international human rights and a model of intercultural dialogue. A place where protective cultural policies, universal public service, and non-market communication governance have historically been central to the concept of nationhood and to the agendas of governments. The sort of interrogation that the CRAFT framework would make of Colombia, for example, might contribute little to our understanding of communication rights in Canada. In the end, these reservations did not dissuade us from undertaking the CRAFT assessment of communication rights in Canada, but they do underline an important point to make in introducing our findings.

In assessing the realization of communication rights in Canada, the critical predisposition of questions posed by the CRAFT framework – in addition to enabling us to mine our thematic studies for overlapping themes that complement it – proved to be a sufficiently fine analytical tool. We acknowledge that our assessment tends to privilege flaws in the system and sometimes does not explicitly underscore areas where communication rights in Canada are adequately achieved. We think, however, that there is something of deeper value to the situation of communication rights in Canada in adopting a critical posture.

There is no way to sugarcoat this: our view of communication rights in Canada is a highly critical one. We think that the problems we will point to are cause for significant concern and require immediate action in order to redress certain issues and develop suitable alternatives regarding others. It is important to point out, however, that we can focus our critiques, and indeed our recommendations, at this level of activity around communication rights only because, as a precondition, the principles of human rights, democratic governance, and non-market roles for communication are formally well established in Canada. In being highly critical of the realization of communication rights in Canada, we will make the case that some principles are not leading to the realization of their stated desires in practice and that, in other areas, principles need to be rethought.

This study did not address, in any comparative sense, the position of Canada relative to other countries. Despite our critical assessment of the state

of communication rights in Canada, it is still our impression that the realization of communication rights in Canada is, if not quite ideal, as strong as it is anywhere in the world. That is, it is not our intention to suggest that Canada is doing worse than Colombia or the Philippines, merely that Canada is doing worse than Canada seems to think it is doing and that Canada could and should do better than Canada does.

The Vertical View

The vertical approach to assessing communication rights in Canada involves a series of thematic studies that draw on a variety of methodologies to examine the links between communication rights and a selection of key specific public policy areas that we argue are central to shaping communication in Canada at present: media, access, Internet, privacy, and copyright.[24]

Each one is something of a hot-button issue area for communication rights in Canada. They all reflect on how emerging technologies and changing social trends such as multiculturalism and globalization are stretching the existing policy frameworks for Canada's communication system. Each thematic study examines a particular policy framework as well as the practices around it. Each suggests how single areas of information, communication, cultural, or human rights policy cannot be dealt with alone, and how the policy objectives in each of these areas can be met only when flanking rights – policy objectives in related areas – are also achieved. In each of these studies, our assessment points to specific issues and problems that are in need of urgent attention, and we make a series of policy recommendations designed to contribute to improving the status of communication rights (see Chapter 9).

Our vertical and horizontal views of CRs and the R2C in Canada are both parallel and intersecting. Each vertical chapter reflects in its own way on the realization of freedom of expression in Canada, on its status as a two-tiered freedom, and on the importance of viewing communication policy making as part of a social cycle of communication.

Overview: Part 1

In this introductory chapter, we argue that the prospects for democracy in Canada depend not only on the formally acknowledged right to freedom of expression but also on a "social cycle of communication" that includes protection for the rights to seek, to receive, to impart, to listen, to be heard, to

understand, to learn, to create, to respond, and even to remain silent. Democracy also entails responsibility, constraints, and limitations where the exercise of the rights of one group or individual impacts on the rights of others.

Developed primarily with regard to global discussions around universal human rights, the notion of the right to communicate is politically controversial and conceptually fluid. It is not our intention to invoke this contested rights construct unproblematically. In Chapter 1, we examine the international history of CRs and the R2C and the associated political, philosophical, and juridical controversies.

In Chapter 2, Seán Ó Siochrú, the international spokesperson for the CRIS campaign, reflects on the challenges that have confronted the campaign in its efforts to engage non-specialist activists and capture public attention during the WSIS proceedings and since. Discussing CRs and the R2C in relation to human rights, social justice, and the communication for development perspective, Ó Siochrú suggests that CRs and the R2C can be valuable mobilizing tools when they are used to "frame" media and communication policy issues.

Overview: Part 2

Chapter 3 synthesizes our assessment of the realization, in practice, of communication rights in Canadian law and policy. We identify the policies and laws that are relevant to the realization of communication rights in Canada and highlight cases, controversies, and issues that empirically demonstrate the conceptual critiques of the principles at the core of debates surrounding CR and R2C, pointing readers toward the more in-depth discussions of relevant issues that are presented in the rest of Part 2.

In Chapters 4 through 8, we present a series of thematic studies that examine, with a narrower focus and in greater depth, certain issues where cross-cutting trends are particularly relevant and where the realization of communication rights in Canada is particularly problematic, to an extent that would seem to call into question the very orientation of communication policy making in Canada at present.

Through fundamental changes in the traditional media policy areas of regulation, predominance of public institutions, and support for Canadian content production, Canadian media are changing. Marc Raboy argues in Chapter 4 that these changes raise troubling questions for communication rights. In his discussion of communication rights and the Canadian media,

Raboy examines issues such as community broadcasting, concentration of media ownership, the lack of diversity of voices in the Canadian media, and the conceptual basis of regulation in the media sector.

Extending the discussion from traditional media, in Chapter 5 Leslie Regan Shade considers and contextualizes the evolving concepts and policies surrounding universal access to information and communication technologies (ICTs) in Canada. She provides a socio-technical model for defining access to ICTs, looks at debates surrounding digital divides from recent Canadian scholarship, and provides an overview of federal ICT programs and policies in Canada.

Questions of access aside, the Internet has been an enabler of many significant changes to social and technical aspects of communication. It has changed many norms, including the reach and cost of communication services. In Chapter 6, William J. McIver Jr. makes the case that the Internet is, as such, a necessary site for examining communication rights. His chapter looks at technologically grounded issues, including network traffic shaping, semantic Web and Web 2.0 technologies, and Voice over Internet Protocol (VoIP) telephony, and how they relate directly to social communication in Canada.

The type of communication facilitated by the Internet is not without its drawbacks, however. Nor can the existence of cyberspace be seen as somehow making communication immune to the realities of the world we live in. In her second thematic contribution to this volume, Leslie Regan Shade makes the case that the need for privacy rights has been significantly amplified by the development of intrusive technologies of surveillance in a post-9/11 political climate suffused with global security concerns. Chapter 7 addresses these issues and argues that the challenges of emergent material technologies coupled with political technologies of regulation and governance necessitate a reconsideration of a privacy rights platform for the twenty-first century.

Copyright law is a piece of the communication rights puzzle, as it can either foster or impede the development and dissemination of ideas and human expression. In this respect, it is an issue that cuts across concerns about communication rights with regard to media, access, Internet, and privacy. In Chapter 8, Laura J. Murray discusses how Canadian copyright law is a better tool for communication rights than its counterparts in many other countries but how, nonetheless, the rights of owners of copyrighted material are often emphasized to the detriment of the rights of users. In addition,

her interviews with artists and creators in Canada point to a general lack of awareness of the relative advantages that Canadians have in the communication rights aspects of copyright.

These vertical chapters make no claim to uniformity. It is not our intention that they be symmetrical. Each author is a distinguished policy specialist in his or her domain, and there was no attempt to get them to speak in a common voice or fit all of the chapters into a common mould. They do complement each other in a series of important ways, however, all of which develop and reflect upon the central arguments about communication rights and the right to communicate that are then taken up in Part 3.

Overview: Part 3

Our assessment of the performance of existing institutional structures (public institutions, regulatory bodies, government programs, accountability mechanisms, and so on), the adequacy of the legal and regulatory frameworks governing these structures, and the nature and degree of public participation in the design and execution of communication policy in Canada underlines numerous instances in which inadequate or nonexistent provisions in other areas of Canadian law and policy are creating a chilling effect on freedom of expression. In Part 3, we argue that the role of law and policy in supporting communication rights in Canada is highly problematic at present.

Across the spectrum of Canadian law and policy related to communication rights such as access to information, freedom of the press, and the right to honour, dignity, and reputation (in relation to media and communication), we discuss gaps that exist between the principles declared in Canadian policy and communication rights as realized in practice on the ground, as well as law and policy-making activities in Canada that have failed to adapt to new developments and that lack coordinating principles and common objectives. We argue that communication law and policy in Canada have failed to adequately adapt to the shift to digital media, to respond to the emergence of the Internet, to protect human rights in the post-9/11 security environment, and to accommodate the pressures of copyright reform and a host of other current trends.

On the basis of this assessment, enriched by the detailed thematic or "vertical studies" presented in Part 2, we make the case in Part 3 that the Canadian communication system lacks coherence and that steps need to be taken to eliminate parallel and conflicting principles, monitor performance, and enforce existing rules, and that, overall, freedom of expression is experienced

as a two-tiered freedom in Canada. Chapter 9 is therefore devoted to a discussion of possible policy remedies that are intended to improve the conditions observed in our assessment.

The sum effect, we argue, is a great distance separating the Canadian communication system from the everyday lived lives of most Canadians that reflects stark inequalities between the ability of different sectors of society to exercise their communication rights meaningfully. In addition, we question whether freedom of expression – a largely one-way process of information transmission – is sufficiently suitable as a defining legal principle for supporting the diverse roles that law and public policy could play in supporting democratic communication in contemporary society.

Before thinking about new policy in the effort to recapture communication rights, we argue that Canada should actually use the policies it already has. We recommend the further development of analysis and monitoring functions across the full range of Canadian communication policy making that would evaluate and ensure, on an ongoing basis, that existing Canadian policy objectives related to communication rights are being met, or that would at least report on how they are not. We propose greater coordination between government, nongovernmental organizations (NGOs) and civil society groups, and academic researchers.

The civil society sector has been a key driver in the push for the realization of communication rights internationally and in other countries. Dedicated funding for public interest advocacy of the type that is available to US civil society groups from private organizations such as the Ford Foundation, or to European NGOs in the form of direct government subsidies, simply does not exist in Canada on the same scale. Overall, we recommend that there be a serious process of reflection on the role of civil society groups within the Canadian communication policy framework and consideration of how the indispensable work they do could be better supported and accounted for by public authorities.

Generally speaking, communication policy in Canada has been intimately tied to cultural development and sovereignty, to the ongoing project of forging a national identity across Canada's linguistic, cultural, and regional divides, and, in turn, to protecting this fragile state of affairs from being subsumed in our monolithic neighbour to the south. Yet, in an increasingly globalized communication environment, we are left asking how sustainable is a media system oriented toward the protection of national sovereignty. Media policy making in a globalized and multicultural Canada requires a

shift in focus from nation building to the promotion of diversity and the expression of multiple forms of citizenship.

Our study repeatedly underlines the need to bring the media closer to people. Supporting community media is one way to accomplish this; a renewed focus on local media is another. Neither, however, is adequately provided for in Canada at present, despite the grand claims made by official policy documents such as the federal *Broadcasting Act*.[25] In parallel, the Canadian media need to be further diversified in terms of their ownership, management structures, representation of minorities, and other areas. Bringing the media closer to people also involves ensuring that Canadians are empowered to use the media that they create, that reflect their lives and environments, and that their tax dollars fund. This means a greater policy orientation to open access that includes making publicly subsided cultural products accessible to everyone.

Finally, in Chapter 10, we argue that the establishment of a Canadian right to communicate could encapsulate all of these initiatives and reflect on how and where such a right could be established in Canadian law, what it might look like, and what the challenges and impediments to doing so are.

Critics of the establishment of a right to communicate have always been preoccupied with the question of what kind of human right the right to communicate should be: a "negative" right, like freedom of expression, that gives individuals protection from the state, or a "positive" right that ascribes a role of collective protection to the state. Supporters of the establishment of a right to communicate have never been able to agree on what they see as an acceptable response to this question. While this remains a current concern for supporters of the right to communicate and a standard rebuff by its critics (see, for example, Mueller et al. 2007), the literature on human rights has long accepted the view that the dichotomy between these two types of rights is a false one. The communication rights literature remains uniquely preoccupied with this dilemma, due largely to the fact that the intellectual basis of the movement consists primarily of media and communication scholars and activists rather than human rights specialists. As we shall see, the issue remains unresolved and an international debate on the question continues.

In 1971, *Instant World* presented the right to communicate as "the need to put a soul in the system" (Canada 1971, 39). Our assessment of communication rights and the right to communicate in Canada at present aims to see how far we have come toward that end. This involves looking beyond

rhetoric and examining the capacity that Canadians have to make claims about the communication system that is so fundamental to the way we experience our everyday lives. For all that Canada does and tries to do in the area of communication rights, our assessment is that we are still a long way from having a system with this sort of soul.

1
Histories, Contexts, and Controversies

Marc Raboy and Jeremy Shtern

Communication rights and the right to communicate have been developed, elaborated, and applied primarily at the global level. Although Canadian actors have sporadically – and importantly – contributed to these discussions, our assessment of communication rights in Canada must be seen mainly as an exercise in applying an international framework to our national context. Thus, discussion of the international activity that has shaped communication rights is necessary in order to transparently and reflexively adapt it to the Canadian situation.

The foundation and core of the international regime of human rights is the 1948 *Universal Declaration of Human Rights (UDHR)* and its two separate treaty instruments: the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, each of which was ratified in 1966. Taken together, these documents constitute what is commonly referred to as the "International Bill of Rights" or the "International Bill of Human Rights."[1]

Parts of these documents reflect directly or indirectly on communication in society – the social cycle of communication (see Introduction) – and taken together, they can be said to constitute a set of acknowledged communication rights. At the same time, the treatment given to communication issues in the International Bill of Rights documents does not go far enough and fails to include most of the flanking rights that we referred to in the Introduction. The international movement to establish a singular right to communicate has been an ongoing attempt to pick up these pieces.

Early Political Controversy Surrounding the Right to Communicate

Efforts to enshrine the functions associated with the social cycle of communication within the universal human rights framework have always

proven controversial. Even the drafting of the *UDHR* was dominated by the fierce and highly partisan disagreement characteristic of the Cold War.

The initial planning of the *UDHR* called for an article on freedom of information. A UN General Assembly (UNGA) declaration from 14 December 1946 described freedom of information as "the touchstone of all the freedoms to which the United Nations is consecrated," and instructed the Economic and Social Council (ECOSOC) to arrange a conference whose purpose was to "formulate its views concerning the rights, obligations and practices" (Canada 1949, 108) relevant to these issues and make recommendations to the General Assembly about what related articles warranted inclusion in the *UDHR*. The rationale for this conference was that "understanding and cooperation among nations are impossible without an alert and sound public opinion" (108).

It was the perspective of journalists and publishers in shaping public opinion, however, and not the public's own role in forming and voicing this opinion within the mass communication environment, that was further privileged by the details of the UN Conference on Freedom of Information that was held at Geneva in March and April 1948. The same 1946 resolution calling for the arrangement of the conference explicitly instructed that "delegations to the conference shall include in each instance persons actually engaged or experienced in press, radio, motion pictures or other media" (Canada 1949, 108). What we would refer to today as "civil society" was effectively absent.

The UN Conference on Freedom of Information pointed to the fundamental right to freedom of information as nothing less than "essential in the cause of peace and for the achievement of political, economic and social progress" (Canada 1949). In addition, it forwarded forty-three resolutions to the UNGA for consideration, and three separate draft conventions were suggested: one sponsored by the United States on the international gathering and transmission of news; a French initiative giving states the right to obtain publicity to officially correct misinformation affecting their international relations; and a British draft convention delineating the basic elements of freedom of information and the obligation of states to establish non-official organizations to monitor the standards and professional conduct surrounding information dissemination and reception. A subcommittee on freedom of information worked on versions of the same ideas for the draft articles to be included in the *UDHR*.

Freedom of information as discussed in this context can be defined as "the freedom to seek out information and ideas, the freedom to express opinions and to spread information by different means and the freedom to receive information and ideas" (UNESCO n.d., 3). From the perspective of the newsgathering associations, this included a policy environment that would facilitate the right to send newsgatherers anywhere there is news; the right of newsgatherers to transmit their reports without censorship and at reasonable cost back to their home countries; and the ability to publish and sell the products of "worldwide news organizations" in all countries (Binder 1952). Freedom of *expression*, as an extension of freedom of opinion and as a necessary precondition to freedom of the press, was an important component of this view.

Driven by Western governments and news organizations, discourses regarding freedom of information thus blended concerns for the protection and expansion of information markets with concerns about the role of propaganda in the escalating ideological, economic, and political conflicts of the Cold War (see Whitton 1949). The ideological centrepiece of all of these initiatives was the US notion of a global "free flow of information," according to which "information may flow freely and unimpeded across national frontiers" (UNESCO n.d., 9).

The USSR and its allies countered with the idea of a balanced flow and exchange of information that condemned warmongering through propaganda but justified government authority over information and journalists. Although they were largely regarded as bit players in the debate at this point, a diverse group of smaller countries seemed to find common ground between the two extremes. Binder (1952) refers to a group of Latin American and Arab countries and labels these the "middle ground group." Here, and in pointing to the role of Sweden, which he characterized as a Western country with a government-run media that was particularly assertive about the need to expand the parameters of the polarized debate, Binder could easily have been describing the R2C debates that would take place within the UN Educational, Scientific and Cultural Organization (UNESCO) more than twenty-five years later.

Very quickly, however, the debate over freedom of information became polarized and intractable. The socialist countries blocked approval of the remaining draft articles as well as for a Convention on Freedom of Information that had been proposed by the United States and the United Kingdom. As a result of the rapidly escalating controversy, the UNGA decided in late

1948 to defer consideration of all items related to the debate except for article 19 (on freedom of expression) until after the adoption of the UDHR. In the end, only the article relating to freedom of expression was adopted by the UN Human Rights Commission for inclusion in the final draft of the *UDHR*. A Convention on Freedom of Information was drafted in early 1951 only to be sidelined when a vote at the ECOSOC taken in September that year decided "not to convene an international conference of plenipotentiaries for formulation and signature" (Binder 1952, 218). Between 1962 and 1980, an item regarding freedom of information appeared on the agendas of both the UNGA and the ECOSOC every year. Neither would ever lead to conclusive results (Kortteinen et al. 1999, 402).

Communication Rights as Part of the International Human Rights Regime

Notwithstanding the political intrigues that we have just described, a legal regime of international human rights was put in place after 1948 and has continued to develop over the past sixty years. The notion of communication rights is most straightforwardly introduced by examining the relationship between communication and this regime of universal human rights.

The notion of communication rights relates to the legal principles that people can use as a basis for making claims about how the media and communication systems in their societies should be structured. We can talk about communication in the language of human rights to the extent that international law addresses aspects of the processes of communication in society, both directly and by implication.

Information and communication issues are directly treated in the International Bill of Rights, which articulates the right to freedom of expression in article 19 of both the *UDHR* and the *ICCPR*. Article 19 of the *UDHR* 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."[2]

In addition, other articles within the International Bill of Rights reflect some dimension of the process of communication in society, even if communication is not necessarily their primary focus. To speak of communication rights as legally binding human rights guaranteed in the International Bill of Rights is therefore to invoke the following:

- a right to freedom of expression and opinion
- a right to participate in one's own culture and use one's mother language, including ethnic, religious, or linguistic minorities
- a right to enjoy the benefits of scientific progress and its applications
- a right to information regarding governance and matters of public interest (access to information)
- a right to the protection of the moral and material interests of authorship
- a right to one's honour and reputation and to protection against unwarranted damage to them
- a right to privacy
- a right to peaceful assembly and association
- a right to self-determination and to take part in government
- a right to free primary education and progressive introduction of free secondary education.[3]

Although not always their primary intent, each of these rights includes a dimension that bears on the process of communication in society. These emerge more clearly as communication rights if we add the phrase "in relation to media and communication" to each right.

In articulating and providing legal personality to universal human rights, the *UDHR*, *ICCPR*, and *ICESCR* are supported and expanded on by a panoply of secondary agreements, legal instruments, and precedents dealing with the interpretation and application of specific rights (Drake and Jørgensen 2006, especially 16). Various studies and scholars have compiled extensive lists of the international instruments that comment on or in some way pertain to the relationship between human rights and the process of communication.[4]

These listings constitute what is in many respects an ad hoc and inefficient framework. Not all parties are willing to connect the numerous and disparate dots or even accept the interpretation that rights protections for processes of communication have reached beyond the bounds of article 19. "While communication rights can be realized only through a set of enabling rights," the Communication Rights in the Information Society (CRIS) campaign explains, "securing them at the same time gives new and additional meaning to those enabling rights" (CRIS 2005a, 25). With the goal of securing communication rights, there have been significant intellectual, activist, and political efforts to establish a singular *right to communicate* that could encompass a range of principles that are not reducible to either freedom of expression or the related communication rights listed above.

Enter the Right to Communicate

The movement to establish a right to communicate is largely based on the premise that freedom of expression does not comprehensively address the social cycle of communication in modern, technologically mediated societies. Proponents of the right to communicate posit that, while many communication rights do exist through secondary implications and liberal interpretations of existing human rights provisions, communication processes are so central to contemporary society that a comprehensive communication rights framework is required. During the past forty years, this idea has circulated in discussions about universal human rights in a range of international institutions.

The first explicit mention of a right to communicate is generally credited to Jean D'Arcy, a former senior official of French television and the director of radio and visual services in the United Nations Office of Public Information. As director of programming for the French public broadcaster in the 1950s, D'Arcy had been considered a courageous and visionary executive and was known for his vigorous defence of journalistic freedom.[5] In a 1969 paper written for the European Broadcasting Union, he argued: "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 21 years ago in Article 19. This is the right of man to communicate. It is the angle from which the future development of communications will have to be considered if it is to be fully understood" (D'Arcy 1969).

Interestingly, D'Arcy's paper did not contain any further explanation of what he meant by the right to communicate. The notion itself would resonate, however, and has since been studied, expanded upon, and problematized by others, without any clear agreement about what the right to communicate might actually mean.

As we discussed in the Introduction, one of the earliest and most significant of these pioneering efforts was done within the Canadian government's then newly established Department of Communication (DoC). Its 1971 publication *Instant World* presented a baseline definition that "the rights to hear and be heard, to inform and to be informed, together may be regarded as the essential components of a right to communicate" (Canada 1971, 4). This Canadian report is widely considered a seminal document in the global development of communication rights discourse.

Other important hubs of activity relative to the right to communicate emerged in the early 1970s, including the work of the Speech Communication Association (SCA) and the East-West Communication Institute at the

University of Hawaii, largely through the coordination efforts of Professor L.S. Harms[6] as well as the International Broadcast Institute (IBI).[7]

The Swedish National Commission for UNESCO began working on the right to communicate as early as 1972. Communication governance in Sweden during much of the twentieth century was structured around two key policy principles: maintaining a free press and a highly interventionist role for government regulation in the public interest. As early as the freedom of information debates in the late 1940s, it had been clear to Sweden that this policy approach was increasingly untenable as global debates became polarized between the contradictory ideals of untrammelled censorship and complete laissez-faire communication markets.

The eighteenth session of the UNESCO General Conference, held in 1974, passed a resolution presented by Sweden that authorized the director-general of UNESCO to "study and define the right to communicate" and report back to UNESCO at the next General Conference in 1976 (UNESCO 1974). In response, UNESCO Director-General Amadou-Mahtar M'Bow convened an informal working group charged with defining the right to communicate and set about consulting with communications organizations around the world about their perspective on human rights and communication. L.S. Harms was a member of this working group and prepared the draft of its report. The final report was, as charged, submitted to the nineteenth General Conference of UNESCO in 1976, with the conclusion that "additional study and research on various aspects of the Right to Communicate" was required and should be included in UNESCO's program of activities (Richstad and Harms 1977, 126). Under the aegis of UNESCO, a group of experts on the right to communicate was established in 1978. The effort was abandoned before its goals could be realized, however, as UNESCO was constrained by both political controversies and conceptual and juridical debates over the links between the universal human rights framework and processes of communication.

The New World Information and Communication Order

Over the course of the UNESCO activities of the late 1970s and early 1980s, the idea of a right to communicate came to be inextricably linked to the Non-Aligned Movement (NAM) of UN countries launched in the early 1960s and largely composed of developing, postcolonial states. Having established – against the resistance of the more powerful states – the notion of a New

International Economic Order (NIEO) as a viable force in international politics by the early 1970s, the 1973 NAM summit declared that "the activities of imperialism are not confined solely to the political and economic fields, but also cover the cultural and social fields" (Padovani and Nordenstreng 2005). Spearheaded by the NAM, this line of thinking grew into the movement for a New World Information and Communication Order (NWICO) that would dominate the UNESCO agenda for the better part of the next decade and emerge as the most significant political battleground to date over the role of communication in struggles for human rights.

The argument in favour of a NWICO was based on the following contemporary realities of global communication:

- The "'free flow of information' doctrine," introduced in the 1940s and central to UNESCO activities since the 1960s, was being used to justify liberalization of global communication regulation and reinforce the dominance of Western media and news content.
- Concentration of media and communication industries was increasing and translating into ever-greater foreign ownership in smaller and poorer countries.
- The importance of Western-controlled technologies in media production and dissemination was increasing, making it difficult for others to keep up (CRIS 2005a).

In response, the NAM pushed the NWICO as a policy prescription based on the so-called Four D's:

- democratization (pluralism of sources of news and information)
- decolonization (self-reliance and independence from foreign structures)
- de-monopolization (of concentrated ownership in communication industries)
- development (Nordenstreng 1986; Padovani 2005).

The NWICO also found political support within the socialist bloc, the historical site of opposition to the free-flow principle.[8] As such, the NWICO was fervently opposed not only on economic but also on political and ideological grounds by the most powerful Western countries as well as the communication industries and institutions of the West. The residual political

baggage and ill-will from the freedom of information debates of the 1940s would only exacerbate an already divisive issue.

In an effort to avoid a seemingly intractable direct confrontation between the West and the NAM and its supporters, the nineteenth General Conference of UNESCO in 1976 created an International Commission for the Study of Communication Problems, chaired by Nobel and Lenin Peace Prize laureate Sean MacBride.[9] What became known as the MacBride Commission centred on an extensive program of consultation and research. A number of the submissions that it received focused on the right to communicate, including texts submitted by D'Arcy and Harms. *Many Voices, One World,* the report of the MacBride Commission, was presented to the twenty-first General Conference of UNESCO in 1980 (see UNESCO 1980). It devoted an entire subsection to the right to communicate and its role in the democratization of communication. Recommendation number 54 of the MacBride Commission report reinforced this link, arguing that "communication needs in a democratic society should be met by the extension of specific rights such as the right to be informed, the right to inform, the right to privacy, the right to participate in public communication – all elements of a new concept, the right to communicate" (265).

The creation of the MacBride Commission succeeded in delaying the inevitable showdown between the NAM and the Western countries by four years, but *Many Voices, One World* did little to dissipate the tensions. Not limiting their displeasure to the MacBride Commission report itself, the opponents of the NWICO mounted a full frontal attack on the institutional credibility of UNESCO as the organization that had convened and then endorsed the findings of the MacBride Commission. Western governments, led by the United States and supported by the private media industry and its lobby groups (including, for example, the World Press Freedom Committee), accused UNESCO of attempting to impose government control of the media and even of trying to suppress freedom of expression (CRIS 2005a, 17). The United States pulled out of UNESCO in 1984, and the United Kingdom and Singapore followed suit soon after.[10] In 1987, M'Bow, who had been personally involved in the R2C discussions, was replaced as director-general of UNESCO.[11] By that time, new medium-term plans for the organization's activities would make only cursory mention of the NWICO, while the "free flow of information" had been reinstated as a central doctrine. The result was that, by the 1990s, the profile of the right to communicate as a political issue had diminished in the intergovernmental arena.[12]

Rebirth and Renewal: The Emergence of the CRIS Campaign

A victim of its association with the ill-fated NWICO debate, the right to communicate largely disappeared as a political issue between the mid-1980s and the early twenty-first century. For activists and scholars, however, it retained much of its provocative appeal as a construct able to invoke a whole series of issues about media, democracy, and international development. As discussed in greater analytical detail in Chapter 2, the themes raised by the NWICO continued to resonate in academic and communication activist circles (see Traber and Nordenstreng 1992), and throughout the 1990s more and more moves were made to coalesce these diverse actors and interests. The so-called MacBride Roundtables on Communication and numerous other conferences and meetings were soon augmented by loosely coordinated action in the form of initiatives such as the People's Communication Charter, the Cultural Environment Movement, and the Platform for the Democratization of Communication.[13] The focus of these efforts was not just the democratization of communication as a positive value in and of itself but also the fostering of a role for the media in the democratization of societies.[14]

Often unaware of each other's existence, nongovernmental organizations (NGOs) and activist groups were emerging globally around communication issues such as community and alternative radio, video and other media, free and open source software, and media gender bias. At the same time, relatively new information and communication technologies, most notably symbolized by the arrival and diffusion of the Internet, were being taken up by social protest movements in Latin America, the US, and East Asia, as well as networks of activists engaged with issues surrounding the environment, gender, and human rights (see Ambrosi 2001).

In addition, by the late 1990s, the Internet was central to the organization of a burgeoning transnational anti-globalization movement (see Deibert 2002). The challenge was how to refute the conventional view that the media are "value-free containers" of information, how to problematize media as a social issue, how to mobilize activism around the principle that the media can be contested spaces, and, in the process, how to create a new social movement around media and communication out of these disparate but vibrant groups (Raboy 2003, 112).

Many of these initiatives came together in 1999, to form a loose association of media activists called Voices 21. A statement by Voices 21 made the case that "all movements that work toward social change use media and communication networks," suggesting that it was therefore essential that all

such groups focus on current trends in media and communication, such as increasing concentration of media ownership. Voices 21 proposed the formation of "an international alliance to address concerns and work jointly on matters around media and communication" (Voices 21 1999).

The UN's World Summit on the Information Society (WSIS) – in the early stages of organization at the time – represented an ideal venue for action. The summit's foundational documents indicated that it was to be a multistakeholder process, with a large place for civil society participation (see Raboy and Landry 2005). But when a letter to the summit organizers requesting a meeting to "clarify the opportunities for civil society involvement as well as generate ideas and possibilities about the [WSIS] process" went unanswered, the Platform for the Democratization of Communication convened its own meeting in London in November 2001.[15] At this meeting – called to push along civil society participation in the WSIS – the group was renamed the Platform for Communication Rights, and the CRIS campaign was launched.

In framing a social movement with designs on influencing intergovernmental policy making around right to communicate discourse, the CRIS campaign could hardly be accused of following the path of least resistance. To many in the intergovernmental policy-making community, the mere association of R2C with the NWICO history made it a total non-starter. In addition to the political controversy that we have already discussed, however, the juridical and conceptual foundations of the idea of the R2C were also contested, even among its supporters. While a case could be made that the Cold War politics and polarized ideological conflicts that had been so problematic to the history of the R2C were no longer cause for concern in intergovernmental negotiations by 2001, the invocation by the CRIS campaign of this historically loaded concept carried with it additional baggage, namely, that the conceptual and juridical debate about what exactly could be meant by the right to communicate had yet to be resolved.

Conceptual/Juridical Tensions

The most significant and potentially intractable conceptual debate around the right to communicate is the question of what kind of human right the right to communicate should be.

The most common categorization tool used to make normative distinctions between different human rights is the generational model. The eventual separation of the rights first outlined in the *UDHR* into the two distinct conventions, the *ICCPR* and the *ICESCR*, reflects a widespread acknowledgment

of the philosophical and juridical differences between what have become known as first- and second-generation rights.

The *ICCPR* (including article 19) represents, to this line of thinking, "first-generation human rights" (FGHRs) while the *ICESCR* specifies what are seen as "second-generation human rights" (SGHRs). This distinction is made on the basis of the *ICCPR* rights having, as a group, a shared historical context, conceptual approach, and potential for enforcement that differ significantly from the history, conceptual approach, and enforcement strategy common to the group of rights captured in the *ICESCR*.

Historically, ICCPR rights, including freedom of expression, were all largely recognized in numerous national-level constitutions throughout the eighteenth and nineteenth centuries. On the other hand, *ICESCR* rights represented, legally at least, relatively new constructs that entered rights discourses in the postwar era without the same degree of national-level precedent.

Conceptually, first-generation rights can be distinguished from second-generation rights in at least two significant respects: the question of to whom they are granted and the question of the juridical means by which their application is pursued. The *ICCPR* first-generation rights are seen as rights that are provided to *individuals* through a *negative* approach, while the *ICESCR* second-generation rights are viewed as *collective* and *positive* rights. According to Drake and Jørgensen (2006, 14), FGHRs are "negative rights" in the sense that "they proscribe state interference with individual freedoms," while SGHRs are "positive rights" in that they "require states to create the conditions in which individuals and collectives can enjoy a certain quality of life, or to provide certain goods or services to that end."

With regard to their *enforcement,* while first-generation rights are seen as a series of individual guarantees that are strictly and immediately enforceable, many human rights experts argue that the realization of second-generation rights is undermined by its contingency on state resources. Drake and Jørgensen (2006, 14) summarize this perspective as the view that "the CESCR, though also a legally binding treaty ... is more aspirational and progressive in nature, and the realization or violations of the rights it entails are open to greater latitude in interpretation" (see also Roth 2004). In sum, it is argued that the enforcement of second-generation rights "boils down to a promotional obligation which ... deliberately refrains from establishing true individual rights" (Tomuschat 2003, 39).

The major conceptual challenge associated with the right to communicate stems from the fact that, as an object for human rights discourse,

communication can be interpreted to fit rather neatly into either of these seemingly exclusive juridical frameworks.

The argument that the right to communicate should reflect the approach of first-generation human rights invokes the normative view that free individuals and not the state must remain the ultimate decision makers about what communication is permitted and between whom, even if the maintenance of individual rights comes at the expense of collective issues such as the protection of cultural identity (Kuhlen 2004). Thus, many press and media groups as well as freedom of speech and anti-censorship activists argue that any collective claims to communication rights would have undesirable political and/or ideological effects on the individual's capacity to communicate freely in society and might result in increased government control tantamount to censorship.

At the same time, however, it is argued that the dominance of mass media, the unequal access to means of communication, and the privileged position of profit-driven corporations in modern society necessitate a positive, collective approach that obliges states to ensure that rights frameworks protect the role of communication in society. In this view, the individual simply lacks the ability to communicate effectively in a technologically mediated context; thus, the state must bear responsibility for ensuring that communication processes support the needs of society. A strong case can therefore be made that communication, as an inherently social process and one that implicates groups as well as individuals, requires rights that would be affirmed by imposing obligations on governments to bear the burden of ensuring that people do have the means and ability to communicate.

This fluidity is acknowledged by even the strongest supporters of the right to communicate. For instance, in his 1982 report for UNESCO entitled *The Right to Communicate*, Desmond Fisher laments that "there is no doubt the whole argument over locus of the right to communicate is one of the most intractable sticking points in the debate. If it can be solved, the main stumbling-block will have been removed and the task of ... having it acknowledged in national and international legislation will have been greatly eased" (Fisher 1982, 27). Fisher, however, also highlights the great utility of the concept itself:

> The concept of the right to communicate offers the possibility of ending the impasse ... It expresses a more fundamental philosophical principle and has a wider application than previous formulations

> of communications rights. It springs from the very nature of the human person as a communicating being and from the human need for communication, at the level of the individual and of society. It is universal. It emphasizes the process of communicating rather than the content of the message. It implies participation. It suggests an interactive transfer of information. And underlying the concept is an ethical or humanitarian suggestion of a responsibility to ensure a fairer global distribution of the resources necessary to make communication possible. (8)

Contemporary Discourses

As we have just seen, the challenges associated with framing intergovernmental activist efforts around the R2C have been both political and conceptual. The CRIS campaign employed discursive links to the right to communicate in full awareness of the political and conceptual baggage of the term. As one of this chapter's authors[16] has previously written: "The link made by CRIS between communication rights and civil society participation in the World Summit on the Information Society was not a casual one" (Raboy 2004b, 95). The campaign, however, also used the notion of communication rights to deploy the same core set of normative assumptions to avoid rehashing the unproductive aspects of the NWICO debates. The CRIS approach was thus ultimately informed by "the benefit of strategic hindsight" (CRIS 2005a, 18).

As we discussed in the Introduction, the strategy mobilized by the CRIS campaign as a response to these tensions focuses on securing existing rights related to communication, on framing freedom of expression as part of a social cycle that can be achieved only where other distinct flanking or enabling communication rights are also realized and, in parallel, on working toward the ideal of establishing a yet-to-be-defined right to communicate. The key distinction between previous outings of the R2C and the CRIS approach is that CRIS is interested not only in establishing a formal legal statement of the right to communicate but also in raising awareness concerning all links between discourses of human rights and the social cycle of communication: "The right to communicate can be used as an informal rallying cry for advocacy, appealing to a common sense understanding and the perceived needs and frustrations of people in the area of communication ... but, also can be used in a formal legal sense, in which a right to communicate should take its place alongside other fundamental human rights enshrined in international law" (CRIS 2005a, 20).[17]

By framing the right to communicate "as an informal rallying cry," the CRIS campaign succeeded in reviving the notion of the right to communicate in intergovernmental politics largely by embracing the notion's conceptual fluidity. In the process, the lack of precision that could be perceived as a vulnerability in the idea of a right to communicate was turned into an opportunity to develop the idea of communication rights. In the following chapter, Seán Ó Siochrú, the international spokesperson for the CRIS campaign, expands on this assessment of what communication rights mean and do in the contemporary context, explores the utility and legitimacy of the term as the basis for policy analysis and advocacy, and reflects on the development and use of the Communication Rights Assessment Framework and Toolkit.