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Herbert A. Terry
Indiana University

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Changes that Challenge the Soul

Herbert A. Terry*

It is hard to dispute many of the descriptive elements of David Bartlett's vision of future electronic journalism. Modern communications technologies, which are abundant rather than scarce, are, indeed, undermining old communications industries and forcing revision of the laws and policies that have traditionally governed them. Communications and computing continue to converge and, in the process, old industry structures distinguishing among print, broadcasting, cable television, and data processing become less relevant. The work of journalists and the role they play in society are changing dramatically. Journalists are less able to function as authoritative gatekeepers. News consumers can already circumvent gates, obtain more "raw" information unprocessed by journalists, and demand information content and packaging custom-tailored to their tastes and perceived information needs. These changes, already present but likely to accelerate, can empower information consumers, profoundly transforming the world of the journalist and the information consumer alike.

Despite Bartlett's recognition of all these changes, however, Bartlett believes there is some "soul" to "news machines" that either can or must remain unalterable. Putting aside the question of whether machines have souls, the essence of Bartlett's argument is that the center of the machine has been the journalist. While the journalist's job will change substantially in the emerging information environment, he states that basic freedoms of the journalist—especially freedom from government regulation—must be and can be recognized and protected in more or less the same ways as they have been acknowledged in the past. This freedom, Bartlett appears to believe, should be true despite the profound changes in the information environment of which he is so well informed. That, however, is not

* Associate Professor of Telecommunications, Indiana University. A.B. (history) Stanford University, 1970; M.A. (journalism) University of Minnesota, 1974; Ph.D. (journalism and mass communication) University of Minnesota, 1976. Comments should be addressed to: Herbert A. Terry, Department of Telecommunications, Radio-TV Center, Indiana University, Bloomington, IN 47405; internet address terry@indiana.edu.

necessarily true. The environment may be evolving in such fundamental ways as to compel us to reassess the viability of "old souls" in the new information world. Indeed, the most profound change may be that the information consumer, rather than the journalist, occupies the center of this new information world.

There are several points about Bartlett's argument that lead me to raise these concerns. The first problem is Bartlett's inattention to how changes in the communications environment alter the economics of mass communication from the information consumer's perspective. Like many advocates of market-based communications deregulation, Bartlett states that relying on market forces to determine communications supply and content is preferable to relying on government regulation and is adequate to fulfill consumer needs. He further asserts, more seriously but without support, that information in the emerging environment will be "affordable" to consumers. Bartlett's focus, then, is on liberating content producers and transmission system providers from government control. Rather, he should ask whether affirmative law or policy may be required to protect information consumer interests in an environment vastly different than that which has existed with minimal change since the eighteenth century.

Bartlett's producer-oriented approach sometimes overlooks factors of which, at other points in his argument, he is intensely aware. The emerging communications environment is one where, to an increasing extent, information providers must target increasingly specialized—and smaller—audiences. This kind of retargeting has economic and social effects that Bartlett underplays. Until recently, mass communications media in the U.S. have been relatively costless to consumers. Newspapers were cheap and broadcast services almost free. Advertising paid the bills. Especially in electronic media, consumers received that which attracted large audiences and for which advertisers were willing to pay. While that certainly had unfortunate consequences for information diversity, its effect was that basic mass information was available to nearly all citizens at very low cost.

As Bartlett observes, however, that is changing unalterably. Cable television is a good example of the consequences of the change. Many advocates of market-based communications policy applaud the idea that cable permits audiences to have a direct economic relationship with information providers. Since consumers vote more directly with their dollars for the information services they desire, at least in theory, those services are more responsive to consumer needs than advertiser supported services—provided that consumers can afford the new services.

Until just a few years ago, however, television was "free." Today, millions of Americans pay more each month for cable TV than they pay for

water and sewage services, and some receive no cable service at all because they cannot afford it. This heightened emphasis on direct payment for information risks stratifying participation in the "information stage" by economic status or social class. Bartlett seems to dismiss the idea that government might have to do something to prevent development of an economically determined information underclass. Creation of such a class, however, through government neglect, may be more important than the issue of whether the government exercises any traditional content controls over the superhighway.

Bartlett is right in believing that these trends will continue as scarcity is further eliminated, and as transmission and information storage costs decline. The new information environment will become, even more than now, a "direct-pay" environment. Bartlett, however, brushes aside crucial consequences of these changes that cannot be ignored or assumed benign. Information in the future will have direct costs for consumers. While technological scarcity may be nearly past, economic scarcity—the lack of resources to buy things necessary for basic life—will become more important in the information-dependent parts of our lives than it has been in the past. It may well rise to a level comparable to housing, food, transportation, and health care. The changes Bartlett describes seem likely to force both media and political leaders to focus more on communications law and policy from a consumer's perspective than from a producer's perspective.

Will citizens, as Bartlett simply asserts, find information "affordable"? Will institutions that are heavily dependent on information—schools and universities—be able to pay for information "on demand," where, in the past, they have purchased information collections—books—only once and not paid for information reuse? What, if anything, should people do if some information is socially or personally essential, but personally or institutionally unaffordable? Will that require expanded systems of information subsidization (beyond less-than-cost postal or telephone rates and public libraries)? Will notions such as "public broadcasting" (a media focus) transform into notions of "public telecommunications" or even "public information" in a sense far beyond the journalists' concerns of access to public meetings and public records? Will consumers need the information equivalent of food stamps in order to ensure that they are not left at the side of the information superhighway or towed from the parking lot?

Answers to these questions are difficult and, as yet, unclear. The issues, however, cannot be ignored through a romantic devotion to freedom for information producers and distributors. Consumers have long had differential economic ability to participate in information marketplaces, but

in the past they usually got basic services through advertiser-supported mass media. That seems to be changing fundamentally; indeed, it may be one indication that we are moving beyond the age of mass communication itself. These economic changes will force increased attention to the distribution of access to information and communications systems, and the possible remedies for their adverse effects upon individuals and society.

In the end, the digital information age may require reconsideration of even our most fundamental principles of freedom of expression and, in turn, First Amendment constitutional law. Here, too, Bartlett's analysis is romantic and idealistic more than it is realistic. Bartlett believes that the best way (and perhaps the only way) to protect the information interests of consumers is to protect content producers and distributors from government regulation. While this is a well-tested and effective approach, it may now be simplistic and its benefits may be overstated in the emerging information environment.

Bartlett greatly overstates both the historical and contemporary pervasiveness of electronic media content regulation. Despite the persistence in some areas of electronic content regulation such as political broadcasting, obscenity, and children's television requirements, the general picture is one of few direct content controls and of historical skepticism about content regulation. Government's real power over electronic media has always been its ability to control entry through mechanisms like licensing and franchising. While content regulations as part of the licensing and franchising processes have usually been slight, it is valid to believe that electronic communicators have, at times, altered content to avoid licensing or franchising controversies.

Given this, the most important concern ought not to be whether government will resort to content regulation in the more diverse modern information environment. That has not happened much in the past and seems unlikely now. It is probably not even practical, given the vast proliferation of channels and messages. Government efforts to regulate content are likely to be unsuccessful because those efforts will be overwhelmed by the volume of content. What will matter, more than content controls, are structural issues—who gets to do what under what conditions. In addressing those issues, debates over policies on the information superhighway are likely to focus on the interests and rights of information pathway owners to decide what information to carry, their rights—if any—to become content producers as well as distributors, and the interests of consumers in being able to reach others through these new pathways and to receive information from diverse sources. If anything, the technological developments Bartlett outlines seem likely to heighten, not

erase, constitutional law debates about the First Amendment rights of information consumers to receive information. While Bartlett would like the future to be mainly concerned with print-derived models of media freedom from government control, a more likely result, and perhaps a more desirable one, is an amplification of the lines of thought already found in broadcasting and telephony. These lines of thought promote First Amendment values and interests of consumers to receive information and to use effective means of communication for self-expression.

If we go down this path, we will obviously be rethinking much of our First Amendment cultural heritage. That, too, is desirable and inevitable given changes in our culture, our media, and the interplay between the two. A final concern about Bartlett's vision is its Western orientation toward freedom of expression. The changes in communications technology that Bartlett describes do not respect natural or national boundaries. His vision of expression that is free from government control and left to the initiative of privately owned capitalistic media is not similarly global. Our notions of freedom of expression are derived from well-known "usual suspects" ranging from Mill and Milton to Rehnquist, Kahn, and Limbaugh. We are intellectually linked to our "founding fathers" and Western enlightenment thought in ways not shared by people and nations whose interests, traditions, and backgrounds cannot be ignored in a global information environment. Different cultural ideas about freedom of expression will collide in this increasingly interconnected environment. If we seek to impose our values upon that global system and, in turn, upon participants in it who come from different heritages, we risk, at best, miscommunication and, at worst, outright conflict over information policies. Bartlett argues for a universal, unchanging "soul." That soul, whatever it is, transcends changes in culture and technology. It seems more likely that the future of global, instantaneous, interactive, digitally based, electronic communications poses real challenges to those basic traditions and requires new approaches. We will be forced, more than before, to focus on how communications law and policy promote the interests of information consumers. We must become more respectful of communications policies different from our own. We need not lose our soul, but we may have to be more situational about it than we, as well as Bartlett, have been in the past.

