

## Reseñas bibliográficas

WEINSTOCK NETANEL, Neil, “Cyberspace Self-Governance: A Skeptical View from Liberal Democratic Theory”, *California Law Review*, s. n., vol. 88, 2000, pp. 395-497.

The author explains his perspective of self-governance of the Internet in three main parts. He uses liberal democratic theory to explore how this ideal of liberal democratic theory would fail on the Internet; where for majorities would trample up on minorities and serve as a breeding ground for individuals’ status discrimination and systematic invasion of privacy.

The author remind us that governments derive their powers from the consent of the governed, but notice that the Internet does not lie within countries’ governments borders. Nevertheless, the author goes back to specialised literature about Cyberspace independence. It highlights the 1997 Presidential Directive where the United States of America instructs federal agencies to “recognize the unique qualities of the Internet, including its decentralized nature and its tradition of bottom-up governance.”

For the author it is important to limit the actual state-promulgated law surrounding the Internet, where most of these regulation are private orderings, such as behavioural norms of virtual chat rooms and discussion groups; network administration guidelines; listserv moderation filtering; internet service provider contracts; local area network acceptable use policies; the code embedded in browsers; servers and digital content; and the technical protocols that enable intra –and internetwork. All such norms for the author shape and delimit the possibilities for human interaction and commerce in the Internet.

However, the author recognises that there are other circumstances where real world state promulgated law is needed. Therefore, he analyses the basic three main argu-

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ments where the supporters of self-governance of Internet claim, he calls them “cyberians”:

1. The independence of the Internet will maximise welfare;
2. The State governance of Internet is essentially futile and thus the State should not attempt it. Based on the decentralised character and global reach of digital network communication, state-regulatory orders will be arbitrage and evasion.
3. The Internet self-governance more fully realises liberal democratic ideals than does regulation by even a liberal democratic State.

The author focuses on the third claim because he considers that there are plenty literature or references debating those two issues. According to the author, the third claim has two parallel components. First, what he calls the liberal perfection where Internet regulation is the paradigm of liberal rule while the second is what he calls community autonomy, not the Internet per se, but on group rights within the liberal State.

The liberal perfection, the author explains, is about Internet self-regulation more fully embodies the liberal democratic goals of individual liberty, popular sovereignty and the consent of the governed. In this sense, representative democracy might be the best we can achieve in “real world”, where collective action, information, negotiation and mobility costs make unmediated forms of governance highly impractical. But, the global networks of digital communication and data storage that underline the Internet create and generate unprecedented possibilities to drastically reduce costs. The Internet offers wealth of information, instantaneous and inexpensive mass communication, and a seemingly infinite choice of virtual communities,

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discussion groups, and rule regimes. For “cyberians” the Internet not only constitutes a jurisdiction apart from territorial State, but also a fundamentally more liberal and democratic one.

The community autonomy, the second parallel component, for the author poses an intriguing challenge to traditional liberal democratic theory. Even if virtual communities and rule orders do not represent superior forms of political organisations, democratic liberal States must give them ample space for self-regulation; but the author believes that this challenge ultimately fails. Because the absence of regulation by a democratic State, “cyberians” would be faced to invent a quasi-state institution to legislative and enforce liberal democratic metanorms governing critical aspect of the Internet organisation and operation. Even if “cyberians” were successfully to establish such an institution, for the author, this would suffer from much the same democratic deficit that characterises countries’ governments representative democracy.

The author classifies and examines three types of “cyberians” based on their claims:

- a. The author labels the “cyberpopulist” claim where “cyberians” focuses largely on the democracy side of the liberal democracy equation. The Internet cyberpopulist assert has the potential to serve as an electronic town hall, an arena where individuals can deliberate and vote on issues of natural concern.
- b. Then, the “cybersyndicalist” claim where the multifarious virtual communities developed through online discussion groups as the principal sites for the realisation of liberal democracy. Through ongoing interaction and discussion, cybersyndicalists maintain, each discussion group generates a unique set of social norms reflecting the values and preferences of its participants.

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- c. Finally, the third classification for the author is what he calls “cyberanarchists” claims. This type of claim anchors the Internet self-governance in the spontaneous order arising from freedom of exit, rather than in community norm generation. Cyberanarchists place singular emphasis on each individuals’ “real freedom of movement” among diverse “rule spaces”, rather than on the consensual, discursive formation of social norms by members of a close-knit community.

Further, the author states that “cyberians” give insufficient weight to representative democracy’s support for liberal ideals, incorrectly viewing representative democracy as a mere second-best alternative to non-mediated systems for effecting individual choices.

In addition, the author explains that this “cyberians” greatly exaggerate the propensity of online communication and communicative networks to support their vision of self-regulation. The author recognises that this “cyberians” ascertain that Internet is characterised by considerable freedom of movement. But, that freedom of movement significantly undermines the stability required for community generation of social norms. For the author, the “cyberians” subestimate that liberal ideals can be realised only through the enforcement of metanorms that protect those dissenters for whom exit is a less than tenable alternative.

The author discusses a number of areas in which a democratic State might regulate the Internet activity or provide resources for online actors in order to further liberal ideals. These include contouring status and viewpoints of discrimination, protecting the Internet user privacy, and promoting a broad distribution of citizenship resources. The author recognises that State intervention is not always appropriate. Rather, in each instance the benefits of State intervention must be balanced against possible harm to

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speech and association interests that themselves have inherent value for liberal democracy.

Later the author focuses on raises and rejects debate in which “cyberians” might set up their own representative body to create and enforce metarules designed to promote liberal democratic ideals.

Briefly, the author addresses an additional “cyberians” political claim. That claim invokes liberal and liberal democratic principles on an international level, augmenting “cyberians” claims regarding the failings of State territorial democracy. The “cyberians” argue that State’s imposition of jurisdiction over persons who reside outside the countries’ governments and who therefore lack a direct say in determining that State’s leadership or laws runs contrary to the fundamental liberal democratic principle of government by consent of the governed. They also suggest that the democratic deficit plaguing a domestic government is exacerbated in the international arena, where international agencies are even further removed from those they seek to regulate.

Finally, the author concludes that digital communication and data storage capacities are not enough well supported arguments. Neither, the networks nor rule regimes of the Internet created by private orders. Because there are limitations of these private ordering. Not regulate the Internet brings systematic invasions of privacy, gross inequalities in the distribution of basic requisites for netizenship and citizenship in the information age. He suggests that regulation should come nationally and internationally.

Vanessa DÍAZ RODRÍGUEZ