The Internet and changes in democratic societies

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Introduction

The following essay starts from a simple idea: Is the Internet, which represents a revolution in the economy and a revolution in access to knowledge, also a revolution for democracy or simply another means of communication among many? The establishment of rights and norms of behaviour acceptable to the majority subsequent to reflection and pluralist debate is considered the way to a better society from Plato[1] to Montesquieu[2], Hegel, Alain and many others. What happens when the media through which such debate is conducted change to such an extent that they may change its nature? The experience of recent years in the public sphere has led me to outline the few tentative approaches below. They are intended to facilitate the closer study required by what indeed seems to be a transformation and one which will change the meaning of state, nation and public interest. To start with, I shall identify three key assets of the Internet for democracy; I shall then describe ten as yet unsolved problems and conclude with some approaches which might help to resolve them.

1   The Internet: Three assets for a stronger democracy?

If democratic debate is changed by the Internet, this is because the nature of the medium changes not only the knowledge communicated but also the relations between individuals; the press represents one-way communication; phone marketing represents two-sided communication of opinions. Means of instant communication "from the many to the many" are in fact a revolution, owing to three main features: speed, wealth of content, and interactivity.

1)   *Speed*

Economic and social issues have traditionally been comprehended through studies, surveys and statistics - a sort of patient alchemy. Now, however, this method has been profoundly disrupted by the Web, since society gains knowledge of itself much more quickly and thoroughly whilst also changing more quickly under the influence of the new perception which it has of itself. This does not mean that laws must be made at a frantic pace: "When the law stutters, the people listen with only half an ear," said Marceau Long, to whom were enumerated the 11 000 existing laws and the even more numerous implementing orders. But it means that the formulation of these laws, and especially their enforcement, can be more inventive, more resourceful, more fitting and more open-ended.

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[1] Plato, *The Republic*.
[2] Montesquieu, *L'Esprit des Lois*.

2) *Wealth of content*

For a long time, law-making remained the prerogative of a small circle of the clergy, a "privilege of office". With the Internet and on-line availability of government bills or draft decrees[3], everyone can react instantly, and parliament can gain a much clearer understanding of a bill's impact. But more importantly, since the bill is better known and understood by everyone, it is enforced: how many bills have remained a dead letter, having been devised in the silence of some obscure office and rapidly passing through their parliamentary readings?

3) *Reactivity and interactivity*

Related to the above is the interactivity of debate: previously, most decisions were taken in the light of analysis or reports and often involved genuine consultation of the parties concerned but not interaction right up to the final stage of a bill. Thus people are here brought closer to the decision-making process.

2 Ten unsolved problems

1) *The timing of debates*

Democratic processes have their rhythms, which are determined by basic law. The right of a government or parliament to initiate legislation follows from its elective legitimacy, at the same time reaffirming it. Yet nowadays anybody with limited resources can establish a very powerful forum which reaches a large number of people in a very short space of time and appears, by the nature of what is discussed, to be legitimate. But this poses the problem of timing: if the government, at a given moment, launches a debate on a topic, this debate may shortly afterwards be taken up in other forums where related but slightly different matters are discussed, and it is possible soon to arrive at a situation in which members of the public will want to express their opinions and parliament will want to bring matters to a conclusion, and neither party will be able to do so. Jean Monnet calls the legislative timetable a necessity[4], without which no decision could ever be reached, but this is rarely the best possible outcome for the majority. And it is not easy to imagine an adjudicator in the case in point (would we want to censor an opposition speech or the majority's freedom of expression?). Good organisation and wide publicity for a debate will therefore be the stringent and necessary conditions (stringent because these two elements are in permanent conflict) for achieving a situation where, on a given subject, we have a reasonably small number of websites and a reasonably short timetable. The art of time management[5] will be, even more than in the past, an essential qualification for a government.

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[3] Such as the Information Society Bill put on line by the French Minister of State in charge of Industry in November 1999 or, more recently, the draft decree on digital signatures. More broadly, work on e-government aims at transparency, which is a factor of democracy: See, for example, the Baquiast Report or the services provided on http://www.adminet.com

[4] Jean Monnet, *Clefs pour l'action*.

[5] See, for example, *Le maître des horloges* by Philippe Delmas.

2) *Legitimate arenas? Lobbying: Pluralism in doubt*

The question of timing also raises the question of legitimate arenas for debates of public interest. At first sight, they appear abundant: government, elected assemblies, local authorities, associations, companies concerned by a specific issue, trade bodies and trade unions, NGOs, international organisations, etc., not to mention the individual who is passionate about a particular question and who creates a website which, in its pursuit of excellence, may become a point of reference for a subject. By this yardstick the situation described by de Tocqueville in *Democracy in America*, of a country buzzing with countless discussions all the time, seems quite timid in comparison with what may be awaiting us. However, it is conceivable that very powerful pressure groups might monopolise debate to their own advantage solely by technical means (access to the majority through large portals which may wish to attract an audience by launching debates - if necessary using demagoguery), a variant of the risk described by Lawrence Lessig in his recent article on "The Censorships of Television"[6]. Or else those with a substantial interest in a particular law will do everything possible to make themselves heard in the preliminary forum, having an unwarranted influence on its wording and deepening any "digital divide". This may require forms of technical magistrature to prevent any deviant monopolisation, provided that such a magistrature does itself have checks and balances (primarily executive).

3) *The new global topology*

The Greek city-state based its democracy on the agora, which was limited by the range of the speaker's voice: in endeavouring to articulate better, Demosthenes was the inventor of a crude form of political marketing. And links between the city-states themselves were only just maintained by often intermittent diplomacy, which in any case did not prevent numerous wars. Postal services and the printing press heralded the birth of the modern nation-state, which from Louis XI to the first half of the twentieth century was progressively to become established as the model. Quicker transport and the emergence of telecommunications were soon to lead to a superimposition of new wider structures, either regional or global, but whose legitimacy and participatory possibilities were still limited by comparison with the old cultural and structural realities. But if a forum is set up, as was recently the case for software patentability, who votes? Is there not a risk that very powerful voices will make themselves heard, voices which admittedly have substantial interests in this "glocal" issue but will in no way be accountable for the externalities which the decisions which they are advocating might engender? The foundations of the Vienna Convention on Diplomatic Relations are crumbling, with the constant possibility that anybody may interfere in the "internal affairs" of anyone else, the definition of "internal" becoming more and more hazy. Thus it would seem desirable to draw up mutually agreed rules to reduce the anonymity of debate, except in a very few cases (expression of the oppressed in countries which do not respect human rights, for instance): it should not be possible to vote or voice an opinion without saying where one is speaking from, provided that a suitable degree of tolerance[7] prevails with regard to content. Such transparency may also help to reduce the hidden violence of some content according to the intellectualist

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[6] http://cyberlaw.stanford.edu/lessig

[7] See *De la Tolérance* by Emmanuel Levinas et al., Editions Autrement, for what I mean by "suitable" ("*suffisant*").

optimism of Jankélévitch, for whom ignorance and cruelty are two sides of the same coin[8]. Moreover, it can be used to differentiate between the opinions or advice of a person who, although possibly well-informed, will not however have to suffer the consequences of his or her advice, and of those who are directly affected by the law in question. The matter seems obvious and yet is not with global communications, and thus must be the subject of suitable global consensus, which we have to build.

It is also clear that our constitutional debates are insignificant by comparison with the issues outlined above: changing a basic rhythm of 5 or 7 years is doubtless important, but in a process where the decision-makers will not necessarily be only national, and indeed will be less and less so, and where international coordination is both essential and problematic[9], we should rather continue to concentrate on convergence of international standards which respect cultural differences and levels of development.

4) *Boundaries and what they mean*

Related to the risk of asynchronism mentioned above, a multiplicity of forums may also result in a lack of decision through lack of focus. This is all the more probable because:

a) The nature of the Internet encourages branching of discussion.

b) There is no reason why discussions on the same topic starting from a number of websites should develop in the same way.

c) Opponents of a decision which was nevertheless necessary in the public interest may find it worth their while to "introduce a red herring" by instigating countless developments.

It is therefore necessary to have webmasters who are mediators with real moral authority, allowing them to moderate and refocus these discussions without unjustified censorship but with sufficient clear-mindedness to allow convergence. This brings us to the next point.

5) *Methods: Convergence or stalemate?*

The art of conducting a virtual debate is constantly evolving and essentially still to be invented. It involves not only psychological considerations but also material and intellectual aspects. Just as it is not the same thing to put on a play, to go to see it, or to watch it on television, so the same chemistry is not at work when we participate in a small round table, when we speak in public before a largely anonymous audience, or when we express an opinion which technology makes available to the entire world[10].

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[8] V. Jankélévitch, *Traité des Vertus*, Vol. 3, Flammarion.

[9] As demonstrated by the stormy debate triggered in mid-2000 by the proceedings against Yahoo, in both France and Germany, for its nazi websites, with two different underlying philosophies of freedom of expression, one drawn from the First Amendment of the United States Constitution, inspired by Protestantism, and the other from the first version of the Universal Declaration of the Rights of Man, inspired by Roman law, i.e. attributing greater responsibility to the machinery of government, which is respected here but reviled elsewhere.

[10] To take the example of freeware and the French deputies' bills on this subject, it is interesting to observe the enormous differences between the original debate website and the external websites, where an extremely blunt and caricatured view of these bills is often presented, accompanied by an equally cursory knowledge of the

There is also genuine expertise involved in developing websites for public debate, in the same way as expertise is acquired for commercial websites. This expertise must be fostered. It is also desirable for it to be regulated through prudential rules (international, or at least consensus-based for OECD countries initially) which would, as far as possible, prevent brainwashing (easier and more powerful with images than with speech alone). This expertise must naturally be regarded as a public good in itself: What would we think of someone wanting to patent a means of having a more effective democracy?

Last but not least, Internet debate does not automatically tend to converge: contributions are made at different times, there is no mediator, and it lacks a "setting" in relation to the rules of behaviour to which we are accustomed. Convergence may indeed be achieved by people of goodwill, but not all debates necessarily include individuals willing to agree... It would therefore be desirable to combine this form of discussion (often preparatory) with the more classical forms of Greek tragedy which we are constantly re-enacting. In this respect, existing technology[11] today answers some of the problems raised here, but not all.

6)   *The new theory of uncertainty: Reality changed by debate*

The speed mentioned at the beginning of this paper has its reverse side: Somebody who is involved in a major public issue and whose views are then altered by what he has read may immediately alter his attitude as a result, before the discussion has actually reached its conclusion: this may bring to mind co-operative or non-co-operative behaviour (depending on what game theory recommends) for tax matters in competing States. Or, to take the opposite example, the interplay of alliances in R&D. And so the grounds on which a public decision was based would already be out of date at the time it was taken. This would consequently entail circumscribing the methods used for some subjects just as an attempt is made to limit insider trading in financial matters and take-over bids. But this must also lead us to think of public decision-making somewhat differently, without however always going to an extreme where ultimately it is only the discussion process itself which counts. To do this, rituals and rhythms are necessary to punctuate the debate.

7)   *Crises: Overreaction or underreaction?*

Often the law, rooted in custom, only changes under the pressure of accidents or crises which strike public opinion and then trigger a previously hidden social demand. It was thus that the great mining disasters in the late nineteenth century were at the root of appreciable changes in labour law, that the Seveso accident gave rise to a complete transformation in European methods for preventing major hazards, and the December 1999 storms in France led to a revision of standards for a number of installations - all events in which states were summoned as both scapegoats and the

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country whence they emanate: it would be irresponsible not to take account of how controversial this method of communication can be if due care is not exercised.

[11] See, for example, the website http://www.election.com. The company (Régis Jamin in France) inaugurated the first important public vote with the Arizona primaries in March 2000. See also the study by Elisabeth Lutin (elutin@paradigmes.com) for the June-July 2000 issue of L'Atelier de Paribas: "Le vote par internet : vers une e-démocratie?" ("Voting by Internet: Towards an e-democracy?")

ultimate shield against adversity. In this case, the Internet will probably have the same kind of amplifying role as the press and consequently could give rise to the same debates as did the laws on the press and journalists in the early nineteenth century, apart from the fact that this time there are not just some intermediaries (journalists) with a code of conduct and conscience clauses but an infinite number of intermediaries: the whole world. The difficulty now will be to have expert appraisal available quickly enough to direct the discussion effectively, since although large-scale action on the Web can have a substantial impact[12], it may also miss its mark: making a scapegoat of an oil company after the shipwreck of the Erika was certainly less effective (other than for political objectives, short-term compensation or the group's competitors) than using the accident as an argument for changing international rules for maritime transport in terms of vessel safety regulations, their enforcement, and the internalisation of safety costs through prices - an overall guarantee of more efficient energy use.

8) *Weak signals*

If public reaction to strong signals is not self-evident, weak signals also pose problems. It may be argued that with the Web we risk seeing the growth of a new form of homogenous thought, on a larger scale than before, which, although more or less appropriate for those expressing it, leaves only a symbolic place for those without a voice. Thus the failure of Seattle was also the consequence of growing dissatisfaction among developing countries with the mediocre results, in relative terms, of a policy based above all on the benefits of Ricardo's theory and the corresponding decline in interest in Third-World concerns during the 1980s and 1990s.[13] Although Weber believed that the machinery of government was the natural channel for such manifestations, there may be exceptions: Maurice Allais liked to relate how the steadfast support of government departments for sailing ships until the early twentieth century allowed the finest clippers to be built... even though, for the past twenty years, less bureaucratic states had been changing to steam at full speed. The issue here is not one of diversity: we can be fairly sure that on the Internet everything there is to say will be said. It is the relative attention, the listening to silences, which is important in this case, without overestimating them or turning a deaf ear. It is, moreover, at the root of major innovation.[14]

9) *Calmness of debate*

Democratic debate as we have hitherto known it has its filters: although speech is free, it is voiced largely through systems and rules of conduct, which are all the easier to enforce because, ultimately, they apply to only a fraction of the population. The same is not true of the Internet, where we are returning to a practice, very favourable to

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[12] It was the countless e-mails to the WTO much more than the tens of thousands of demonstrators on the spot that blocked the Seattle process. Or (to give another example), although fewer people are involved, the creation of ICANN, like the discussion concerning elected representatives, may be considered largely a result of websites such as http://www.intergov.org
See also the introduction to the book *Les chevaux du lac Ladoga* by Alain Peyrefitte.
[13] The seventh UNCTAD was in fact their last major manifestation, with the support of France... until Seattle.
[14] Cf. Thierry Gaudin, *L'écoute des silences* ("Listening to the silences"), mimeo, French Ministry of Industry, 1978, and http:///www.2100.org/text_eds.html.

innovation moreover, of the eleventh century universities: the *quod libet*, in which every scholar with a doctor's cap had regularly to undergo a running fire of questions on every subject from the whole university, from the humblest student to the most senior of his peers, and it was only if he won over his audience with the extent of his knowledge and sagacity that they would attend his lectures[15]. This works if the discussion, however lively, is conducted in such a way as to respect the human dignity of the speakers, whatever the circumstances. Otherwise, the requisite calmness vanishes, and nothing viable can emerge. This standard of behaviour must be sufficiently explicit in the coming years to avoid what would be, literally, a return to barbarism.

10) *Tribalism, communitarianism or humanism?*

One of the great merits of parliamentary democracy in its present form and of the machinery underpinning it, such as the Council of State, the Cabinet Office and the Constitutional Council, is to ensure consistent legislation which is universally discussed whatever the subject, thus guaranteeing the possibility of co-existence in all the complexity of social and economic relations. However, pessimists would say that the Internet encouraged tribalism and communitarianism: each individual focuses mainly on his own specific interests and can thus develop views which, supported by specialist websites, are fairly impervious to other points of view. From this it is only a small step to rejecting norms other than those established by the "tribe", which would lead to social break-up and the loss of that sense of a "history of shared adventure" which makes a country. On the other hand, the Internet can also allow a better understanding of other people's ways of thinking and seeing, provided that the necessary curiosity exists. Websites dedicated to democratic expression should therefore be applying themselves, above all, to encouraging this curiosity if we want to avoid the risks of a break-up of the social fabric and the violence inherent in this.

One consequence of the previous section and the above paragraph is due to the very strong and increasing temptation to act through pressure groups, which it is becoming extremely easy to set up: in the past, organising a reasonable-sized demonstration was a complex operation, requiring a structure, paid officials and considerable legitimacy. Nowadays, it may arise from any debate reaching several million readers via a large portal as a result of a sheeplike reaction in a situation of tension, even if the tension is slight to begin with (which puts a heavy responsibility on the managers of such portals, a responsibility not yet defined by any law other than the obligation to refuse content which is offensive or incites racial hatred). Such demonstrations also arise from the extreme ease with which a profession or group of professions can instantly coordinate its action by sending e-mails to all its members, including those not at home once WAP technology becomes widespread (and, at the moment, via mobile phones, although this is slower). The temptation to take civil society a permanent hostage - to the detriment of debate and civic awareness - whether corporate in origin or purely random or chaotic, will therefore become greater and greater if an appreciable effort is not immediately made to explain the dangers which this holds for everybody.

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[15] See Jacques Le Goff, *Les intellectuels au Moyen Age* ("Intellectuals in the Middle Ages"), PUF.

3 Three areas for action

The following does not remotely claim to settle the questions raised above. The advent of a global democracy with rules of subsidiarity, which is the logical consequence of global communication systems but which will encounter numerous countercurrents, cannot be achieved in a short space of time, nor can it be unequivocal. These are just suggestions, which are all capable of improvement.

1) *Best practice*

It is obvious that a major innovation will proceed by trial and error. That of the Internet allows instant comparison, which considerably speeds up innovation. The prospect of approaching elections (at least 25% of the Paris population will be on-line by election time) is also a strong incentive for the political parties to improve their practices: Would it be absurd to suggest that, beyond natural party differences, there is a need for joint reflection on the tools of expression and on basic norms so that they may meet the various challenges indicated above with the best possible result?

2) *Expertise*

In his *Esprit des Lois*, Montesquieu refers to the channels of power: the many connecting lines which, from the basic expression of needs (possibly specific or visceral) through the *cahiers de doléance* or more detailed surveys, together constitute the law. The press, the fourth power, was a powerful driving force for change in these channels in the nineteenth and twentieth centuries. The twenty-first century must confront other realities: the Internet must be used to reinvent these connecting lines, which make sense of the world from raw facts.

3) *Publicising what is at stake*

All the above would be in vain if people were unaware of it: thus there is first a need to publicise what is at stake, to ensure that it is grasped as widely as possible. How else can viable solutions emerge if not, first and foremost, the result of decentralised initiatives rubbed and polished against each other?