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## New Role of the State

New technologies, political upheavals, changed concepts of human rights—all these conspire to make this an important moment for rethinking and reformulating speech freedom and regulation in a global environment. The ability of any state fully to control the images that permeate its territory is questioned everywhere.<sup>1</sup> During the 1990s, destiny seemed to lie with the freedom to receive and impart ideas regardless of national boundaries. But it would be naïve to see the world as a place where information moves without various forms of restriction. Redefined state power and changes in modes and practices of authority are more likely than what is often characterized as state decline. States have undergone a frenzied testing of new and modified techniques aimed at regulating, if not mastering, the market for speech in response to the forces that seem to undercut their autonomy. Many elements are at work in this experimentation and redefinition by the state, and elaboration of them forms the substance of this book. In particular, there is a shift away from the singularly inward forms of state control to outward-looking, regional, or multilateral approaches, and away from law and regulation toward negotiation and agreement. The tentacles of influence by one state over the media of another are hardly new, but the process of interaction, through treaty or agreement on the flow of ideas, information, and sheer data, is every day, intensifying.

Globalization of media encompasses more than the pervasive activities of big conglomerates and the extent to which messages they produce dominate the world's consciousness. The global media market is far more enveloping than a forum for trade in films and television programs. It is also an increasingly interdependent site for the development and application of formal and informal rules that shape common narratives, a space in which ideologies compete and forge allegiances that ultimately determine the persistence of governments and nations themselves, and an arena where imagery becomes a supplement or substitute for force. Pressure to affect

policy formulation and public opinion abroad has always been a preoccupation of those holding or seeking power as governments attempt to influence populations through propaganda, both inside and beyond their boundaries.<sup>2</sup> With the stakes greatly raised since September 11, 2001, governments, more explicit, now, about the interplay between conflict, instability, and ideology, recognize their need to affect hearts and minds abroad.

It suddenly became obvious, in the “war against terrorism,” as in many preceding wars, that public opinion was a significant front and space for engagement. In the early days of US flights over Afghanistan, bombers destroyed local radio transmitters and replaced Radio Shari’ah with US programming. Reflecting a preoccupation with hostile attitudes across the world, Congress hastened to confirm Charlotte Beers, a veteran of the advertising industry, as under secretary for public diplomacy hoping to achieve more aggressively favorable US images abroad. In a moment of exasperation, Congressman Henry Hyde summarized the feeling of many: “How is it that the country that invented Hollywood and Madison Avenue has such trouble promoting a positive image of itself overseas?”<sup>3</sup>

In this interdependent environment, the definition of speech practices within states and how information technologies evolve within their boundaries is no longer left wholly to the states themselves. Evolution of local systems is an essential part of the global infrastructure. Decisions involving a state’s information space have external ramifications for trade and global security.

International attention is sharpened as governments become obsessed with the power of information, both as an attribute of domination and wealth creation in times of peace and as a weapon in times of war. Thus, though states still legislate individually to maintain their cultural identity, the significance of what they do is increasingly becoming subject to international incentives, pressures, and obligations.

The world is engaged in a vast remapping of the relationship of the state to images, messages, and information within its boundaries. National governments, public international agencies, multinational corporations, human rights organizations, and individuals are involved in this process. All is under construction, yielding a thorough shaking and remodeling of communications systems.

Thirty years ago, cable television sparked transformations; twenty years ago the communications satellite did the same. In the last ten years the Internet and the convergence of new technologies have invited wholesale restructuring. In this teeming experiment, the various players and observers are seeking a vocabulary of change and a set of laws and institutions that provide them with legitimacy, continued

power, or the opportunity to profit from technological advantage. There is a need to examine this process of remapping from different perspectives and provide a framework for understanding its background, mechanisms, and prospects. Only with a grasp of the massive changes taking place can implications for cultural and political change, for human rights debates, and for the shape and functioning of governments be understood in a sophisticated and detailed way. In the chapters that follow, I set the groundwork for a systematic approach to issues of media regulation in a world of changing technology, altered corporate arrangements, and shifting ideologies.

In this chapter, I describe tones of global media reorientation, the constellations of change that occur as geopolitical, ideological, and technological transformations interact. In chapter 2, I set forth several analytic theories that might be used to explain shifts in state strategies.

In part II, chapters 3 to 6, I analyze tropes of restructuring in this global framework: not only the use of models and metaphors, but the significance of specific themes and influences such as privatization, self-regulation, national security and control of offensive content. I explore new categories of thinking about the relationship of the state to its media, in the face of the inevitable persistence of older modes of description and analysis. I deal with the language of change, the exterior housing in which state and non-state actors articulate and reformulate doctrine with respect to wildly varied contexts for the adaptation of information technologies.

In part III, I try to piece together what elements exist of a more or less coherent foreign policy, especially at a time of heightened security concerns, toward media globalization. Finally, I bring these various influences and actions together by redefining and categorizing national responses to new information technologies. The task is to pull explanatory factors apart and, by doing so, see their interconnectedness.

### **Interactions and Influence**

It is helpful to turn to the anecdotal: epiphenomena of the complex contemporary formation of information policy and law by the extension of government interest outside its boundaries. Examples of such actions or efforts to act, in the day-to-day life of the world, are extraordinarily rich and varied. Those concerning the United States are legion.

I take only one of many examples from post-September 11 events. In the opening days of the war in Afghanistan, Secretary of State Colin Powell called the Emir of Qatar seeking his cooperation in moderating the views of Al Jazeera, the now-famous satellite service with an important demographic of Arab viewers. Prior to the events of September 11, 2001, Al Jazeera had been proclaimed a beacon of diversity and openness in a sea of state-dominated Middle Eastern Media. After September 11, its programming, reach, and effectiveness were viewed by many in the US government as inimical to its campaign against terrorism. Its service as a platform for Osama bin Laden videotapes was a cause for enormous concern in the United States. After persistent efforts to persuade the satellite service to refrain from airing the videotapes, a second approach was tried, one that offered US officials for interviews on Al Jazeera. The State Department then studied the possibility of purchasing air time on Al Jazeera for advertisements that would help in the redefinition of the United States in the minds of the satellite channel's broad-ranging and critical audience.<sup>4</sup> Finally there were efforts to consider supporting competitors to Al Jazeera, either by providing modes of financial support for other, possibly blander, satellite services that might draw audiences away from Al Jazeera or by establishing, through the US international broadcasting structures, a service that itself would compete for attention and viewership among those the United States sought to influence. The Al Jazeera story serves as a case study for the ways governments attempt to modify infrastructure and the market in order to influence message.

Throughout time, the instances of US interest in foreign media structures has been frequent. Among other the examples, in the 1990s the US ambassador to India attempted, on behalf of US business interests, to discourage Indian broadcast reform legislation that would severely restrict US foreign investment or ownership in the sector. The Office of Trade Representative wrote the chair of the Federal Communications Commission to further a policy preventing the use of Canadian satellites to deliver signals to US audiences so long as Canada prevented the use of US satellites for Canadian audiences within its borders. When Liberia forbade local radio stations to retransmit Voice of America programming, US officials protested.

In the late 1990s the US Ambassador in the Czech Republic intervened with Czech authorities in a legal struggle between US investors in a private station and their former Czech partners. Also in Prague, American officials encouraged the Czech government to seek postponement of European program quota requirements

(because of their potential impact on US exports) that would otherwise be imposed as a condition for Czech accession to the European Union.

Striving to isolate the then-Serbian leader, Slobodan Milosevic, the United States urged Israel to eliminate a Yugoslav channel from a transponder on an Israeli satellite system. In 1997 the United States petitioned Australia to lease an Australian transmitter for sending Radio Free Asia signals to Vietnam; however, Australia refused due to “foreign policy and technical considerations.”<sup>5</sup>

These are almost random examples of US efforts to affect media structures outside its borders. A similar list can easily be compiled for other countries. When the government of Angola determined that it was not obligated, under the Lusaka Protocol (which provisionally resolved aspects of its civil war), to allow the United Nations to set up a shortwave radio station designed to increase pluralism in Angola, foreign policy issues came into play.<sup>6</sup> Greek state radio established a nine-language program for foreign workers in Greece, partly to compete with messages sent to the same workers from their countries of origin.<sup>7</sup> When Turkey acted to keep what its government called “reactionary broadcasts” off the air, a head of its Supreme Radio and Television Board recognized that “silencing” a station meant that the affected parties would “complain to Europe.”<sup>8</sup> The Organization of Security and Cooperation in Europe (OSCE) sent delegations to Slovakia to help ensure that Slovakia’s media law did not contain language provisions that discriminated against native Hungarian speakers. One goal was to lessen or prevent tension in the region and another was to ensure that European standards were approximated.<sup>9</sup>

The consequences of the change in governance in Hong Kong in 1997 is a useful instance of media decisions that were once purely domestic, but now have international implications.<sup>10</sup> The new authorities announced that Radio Television Hong Kong (RTHK) should not retransmit BBC programs critical of the Special Administrative Region government. “The handover has brought an end to Britain’s power,” the statement argued. “Why does the BBC still have a ‘colony’ in the radio, to give expression to Britain’s political intention, making irresponsible remarks on and flagrantly interfering in Hong Kong’s political affairs?” Officials stated:

Hong Kong has returned to Chinese sovereignty, but radio and departmental-level officials still want to maintain the BBC’s relaying slot and interpret the practice as ‘editorial independence.’ This runs counter to autonomy and legal principles. . . . Which government-operated radio in the world has provided a slot for a state-owned radio of a foreign country and relayed its political programmes as they were, while these programmes attacked the elections prescribed by the constitution of the country concerned?

Regulation of Russian media in their attempts to reach ethnic Russians in the now-independent states of the former Soviet Union also carries foreign policy implications. Many decisions concerning Russia's television networks are of continued interest for the "near abroad," and government decisions in other newly independent states which appear "local" or domestic in impact can be construed to have strategic implications for the relationship with Russia. A 1998 article in *Nezavisimaya Gazeta*, about moves against Russian media in the former Soviet Union, reported:

With the creation of the Commonwealth of Independent States . . . it was contemplated that the information relations and cultural cooperation that had taken shape over decades would remain and develop successfully. But unfortunately, . . . following the sovereignty parade . . . relations in the sphere of the exchange of information are weakening from year to year.<sup>11</sup>

In the 1990s Ukraine demonstrated a marked dislike for Russian media within its borders. Officials were reported to desire a ban on Russian newspapers and to have protested a Russian television report on weather conditions in Ukraine as "interference in Ukrainian affairs."<sup>12</sup> In Kazakhstan, the national leadership decided to switch its own television channel distribution to the Intelsat satellite system instead of Gorizont, partly to impede reception of Russian programs. Kazakhstan, like other post-Soviet states, adopted language laws that favored non-Russian speakers, furthering an exodus of the Russian language population. Decisions in Kazakhstan, Ukraine, and elsewhere that reduced or cut off transmission of Russian television led to street demonstrations by Russian nationals who argued that they were the subject of cultural and language discrimination. In Uzbekistan, relay of Russian stations to domestic radio-receiving stations was terminated. In Georgia, a ban on advertising on foreign TV channels was perceived as directly antagonistic to Russian channels.<sup>13</sup> The Discovery Channel replaced one such starved-out Russian channel, NTV, on cable systems. Throughout the zone, domestic decisions for restructuring the media were closely tied to implications for relations with Russia.

During the Serbian conflict over Kosovo in 1999, Serbia banned the rebroadcasting of foreign services like RFE/RL or the Voice of America. According to then-Information Minister Aleksandar Vucic, the services "aim[ed] to spread fear, panic, or defeatism" within the former Republic of Yugoslavia. Vucic saw the ban as "a way to prevent the psychological propaganda war which foreign countries have waged against us by broadcasting their programmes on domestic radio and TV stations or by directly or indirectly influencing the editorial concepts of media

companies.” Vucic said that if any station or other medium acted contrary to the preservation of the territorial integrity, sovereignty, and independence of Serbia, it would be warned and then seized by the Information Ministry. “This has nothing to do with the freedom of the press because they are not spreading information, but conducting a propaganda war against our country on behalf of their governments.”<sup>14</sup>

An example from the Koreas, prior to rapprochement, provides an additional perspective.<sup>15</sup> North and South Korea, long engaged in image-related maneuvers designed to shape attitudes toward an adversary and each other, sought to maintain control of their own information space. In October 1999 the South Korean Ministry of Unification issued a communiqué about North Korean Television occasioned by the greater availability of its signals.

The document is an exemplar in the legal history of transnational satellite regulation, though it is of minor political significance. The communiqué illustrates the measured use of public regulation as a response to messages from abroad and the subtle workings of government in a contested market for loyalties. The Ministry of Unification favored exposure of the North Korean signal, on the reasoning that opening South Korea to broadcasts from Pyongyang would “promote the South Korean people’s understanding of the true conditions in North Korea, enhance their capacity to assess the falsehood of the North Korean system,” and contribute to restoring national homogeneity through “knowing North Korea properly.”

In a way, the inevitable accessibility of South Korean information space meant that fashioning a guarded opening was a better strategy than pretending that the South Korean public could not observe North Korean television. The document could be interpreted as evidence that few states are capable of screening out powerful and desirable satellite signals and that it was better to take credit for promoting speech than to appear overly restrictive. On the other hand, one could interpret the communiqué as evidence that states believe that they can decide, spoonful by spoonful, how information will be introduced into the society. In the case of South Korea’s action, the opening was an aspiration of control. It occurred four months after a North Korean satellite signal had been launched capable of transmitting signals that could be picked up by anyone in South Korea and redistributed by cable or other means. Under the newly enunciated approach, South Korean broadcasting stations would be permitted to receive the satellite signal and use excerpts in their news and other programs. Such uses were a dispensation. Until the communiqué, video clips from North Korean television were only available through

specific distribution by the South Korean government and were to be shown only in government-determined “unification-related” programs.

Now, “self-regulation,” undergirded by state policy would determine when South Korean broadcasters could show such excerpts. Broadcasters were exhorted to limit the use of the signals to those contexts that “endeavour to provide grounds for restoring a sense of national homogeneity, national reconciliation, and a proper understanding of the actual situation in North Korea.” Stations were also advised “to provide sufficient commentary” so that the contents of the North Korean broadcasts would not “create confusion in the public’s awareness about North Korea.” These were rules for broadcasters, not for citizens. For individuals, an even narrower kind of peephole liberalization was provided. South Korean citizens could watch the satellite signal (when not mediated through stations), only at specially approved sites, typically called Unification Training Centers. Limitations on direct viewing by citizens were justified as part of a gradual, step-by-step opening to North Korean broadcasts.

Neither the United States nor other developed countries put pressure on the South Korean government at the time to allow greater access to information from the North. To the extent that the West and South Korea were, together, part of a cartel of the imaginary, they had an interest, prior to the active process of normalization, in limiting access by North Korea to a potentially sensitive citizenry in the South. Access would be increased as part of the process of unification, with each droplet of received information considered a bargaining chip for altering the mix of information in the North. Geopolitical factors, not the competition of the private against the public, decide these questions, while technology, in the form of satellite signals, triggers the tepid opening. Technology seems capable of causing a redefinition in the law, a rechanneling of information, and a redefinition of who is the gatekeeper and what standards that gatekeeper should follow.

Canada is a well-examined case where national media policy has had a consistent dimension of international concern (primarily an understandable preoccupation with images coming from the United States). In the early 1960s Graham Spry wrote of the evolution of the Canadian system into one where the Canadian Broadcasting Corporation (CBC), the national public service broadcaster, was “out-flanked, surrounded, and hemmed in to a subordinate place in the structure of Canadian broadcasting.”<sup>16</sup> As private broadcasting established its strength, Spry could describe the combination of messages as a “predominantly commercial system used to sell goods, most of them American.”<sup>17</sup> In its 1971 policy statement on cable



television, the Canadian Radio and Telecommunications Commission (CRTC) recognized the need for a stronger program production industry in order to keep Canadian broadcasting from being reduced to “a technically sophisticated distribution system for imported programs.” One noted Canadian communications scholar, Marc Raboy, underscored the need for an industrial policy. “The creative development and perpetuation of a Canadian program production industry is mandatory if Canada is to survive as a culturally autonomous nation.”<sup>18</sup>

Throughout the period of technological transformation from broadcasting to cable television, the principal task of the CRTC was to improve the ratio of Canadian to US programs. One technique was to reduce the incentives to cable operators for carrying US stations by requiring that Canadian commercials be substituted for those that had been placed by the originating US broadcasters. The CRTC suggested amendments to the Income Tax Act to favor Canadian advertisers using Canadian stations and attempted to require cable systems to carry all local Canadian stations, all regional Canadian stations, distant Canadian stations, and other Canadian options before carrying those from the United States.

The CRTC also established rules that limited importing US cable channels into Canada where there was a Canadian alternative. A famous application of this policy occurred when a Canadian entrepreneur, recognizing the opportunity presented by the preference, approached US-based Country Music Television and demanded a share of the channel against the threat to establish a local preemptive competitor. Upon their refusal, he established a competing Canadian country music channel, though one that performed mainly US music. The CRTC ordered the US channel removed even though it had been in the market for a decade.<sup>19</sup>

The Canadian regulatory regime, like those in many other states, used ownership rules presumably to affect content. Canadian policies established in 1988 prohibited foreign takeovers of Canadian-owned film distribution firms unless the investor undertook to reinvest a portion of its Canadian earnings, usually up to 10 percent of gross revenues. Foreign investors were permitted to establish new distribution firms for their proprietary products only. The 1994 decision of Investment Canada to allow Viacom to acquire indirectly all of the Canadian interests of Paramount Communications, Inc as part of its general acquisition of the parent was an example of negotiation for cultural enhancement. Viacom, as a condition for the approval, agreed to provide international distribution of at least four Canadian feature films of suitable commercial quality within the following five years.<sup>20</sup>

The effort that Malaysia has put into the process of establishing “technologies of boundary” is also an important example of national response. Direct-to-home satellite broadcasting was, prior to the Internet era, always thought the greatest threat. As late as 1994, only the prime minister, the minister of information, and Malaysia’s nine hereditary rulers were allowed to receive satellite television. In a further liberalization, hotels with ratings of three star and above could gain satellite television delivery of CNN.<sup>21</sup> When Malaysia finally authorized more general availability for satellite broadcasting, delivery was vested in a favored private monopoly provider, Malaysia-EastAsia Satellite (MEASAT). The population could only use parabolic dishes with a diameter of less than two feet, dishes designed only for the reception of signals from MEASAT’s satellite. Under Malaysian legislation, adopted in October 1996, larger dishes, or dishes that were not licensed, became illegal and would have to be dismantled. As the information minister at the time, Mohamed Rahmat, said, “We will open our sky, but just a little with the use of the specific satellite dish. . . . We can ill-afford the influx of foreign elements which could be detrimental to our efforts in nation-building.”<sup>22</sup> MEASAT allowed “the authorities to better manage the new services . . . preventing the influx of negative elements into the country.”

Malaysia required that all programming distributed by the MEASAT satellite to its population be uplinked from Malaysia. The physical custody of a point of origin provides an opportunity to review signals for content-related violations. There has been, apparently, a great viewing center, with 1,000 workers, watching every program as it is dispatched from earth to one of MEASAT’s transponders.<sup>23</sup> India, too, in its 1997 draft-broadcasting bill, had an uplinking requirement. For international channels with central headquarters in important production centers, this might mean sending a program stream by satellite from Taiwan or Hong Kong to India or Malaysia, downlinking it there, and uplinking it again to the satellite that will distribute the programming to the ultimate consumer.

### **Constellations of Change**

Media structures, laws, and policies are scarcely ever modified to find a more beautiful form, or even to develop a more efficient way to achieve commonly agreed-upon goals. Changes in structure, including changes in law, occur because of pressure from within industry, the society, and the government, from within or without the state. As the twenty-first century opened, the global struggle against terrorism seemed to lead to new forms of dependence between media and government,

and as a consequence, toleration of even greater tendencies to monopoly. Even before the implications of national security had set in, mergers of extraordinary size caused many to wonder what new form of competition would develop in the zone of media and communications and whether residual ideas of social responsibilities for media could be realistically maintained.<sup>24</sup> In Europe and elsewhere, the long-standing tradition and privileged status of public service broadcasters was in decline.<sup>25</sup> Across the former Soviet Union, in India, Indonesia, and elsewhere, communications laws and policies were developed with new purposes and a new rhetoric to accompany them.<sup>26</sup> As the very structure of the communications industry worldwide was being reformulated, agencies, national and international, charged with management and regulation of the sector, were under pressure to review and alter policies in accord with deemed global transformations.

In each national case there were local reasons for change and local differences in implementation of changes. But from the whole, themes emerge, possibilities for identifying large causes and patterns in this reordering of the relationship between the means of communication and the state. A great global communications system is being built (or rebuilt). Because its contours are important for the fundamentals of national identity, for trade, and the world political order, the shaping of it is a matter not only of domestic preference but also of international debate and foreign policy.

There are those who see the process as technologically determined, inevitable, and inexorable, the product of innovation fueled by the energy of capitalism.<sup>27</sup> A geopolitical perspective sees media reform as an instrument that follows and affects shifting balances of power.<sup>28</sup> Altered relationships between United States and Iran, between India and Pakistan, or between Russia and any of its former affiliated republics, or rapprochement between South and North Korea—each has its media policy consequences.<sup>29</sup> A modified version of the school of cultural imperialism may attribute legal transformations to the engulfing nature of international trade in imagery. Change can be understood as an adjustment to or reaction against an outside wave of programs and information. Still another perspective might attribute transformations in selected media structures to altered ideologies of freedom of speech, human rights, and the democratization of authoritarian and totalitarian regimes. None of these perspectives—of technological or geopolitical determinism or the influence of trade and ideology—is alone sufficient to explain the global reshaping of media structures. Together, in varying ratios and various settings, they explain a great deal.

Looking across the dark, initially undifferentiated sky of media transformations, various distinct constellations begin to emerge. Think of the post-Soviet transitions. A rhythm developed between the ideological and the actual, the motivation and the realization.<sup>30</sup> The impetus for change in media laws and structures in these states followed a stated shift in ideology, but almost from the outset, ideological motivations gave way to the intensely political. In virtually every of the post-Soviet polities, from Latvia and Lithuania, south to the Balkans, and across to Central Asia, remapping began with the old monopoly state broadcaster.<sup>31</sup> Almost everywhere new governments sought succor in the old monopoly, though their hold on the ancient ways had to be cushioned in a new rhetoric. In many of these societies, there were questions about whether the media, rising from the shards of history, could contribute to the enhancement of democratic processes. It was a puzzle how a stable set of young media institutions could develop without an effective rule of law and absent the economic underpinning for independence. Corruption too was endemic, especially as those who received valuable licenses during privatization and those in power became closely intertwined.

Another constellation of change, as stark in distinction as can be imagined, has been the transformation of information space in Western Europe. There, it is not ideology but technology, not the dissolution of the state but adjustments between the European Union and its members and issues like concentration and ownership that have sparked change.<sup>32</sup> Mutation there initially concerned itself only indirectly with media as a force that underwrites or alters modes of democratic practice. As the commitment to public service broadcasting flagged, there were rhetorical flourishes of support but unenthusiastic budgets to achieve them.<sup>33</sup> In these highly developed societies, transformations occur with the industrial expansion of information flows. The transformations are dramatic, with a new generation of corporate scale far transcending the pace of change of ten years earlier. While the collapse of the Soviet Union brought about, in essence, the sundering of its vast information space, in Europe the project has been to create a newly unified field of imagery, even if it was largely commercial in nature. The adoption of the Television without Frontiers Directive of 1989 was the beginning of a rigorous effort to create transnational broadcasting regulation.<sup>34</sup>

What had been a political and economic aim in the European Union, namely to remove restrictions to the delivery of services, including information services, was facilitated by the onrush of technology that made such delivery cheaper and virtually unblockable. Change and remapping information space is, in this context, an

overwhelming and expansive undertaking. It is an enterprise of financial institutions, technical experts, and powerful industries, together enlarging their economic sway. In the states of Europe and the United States, convergence is the hallmark—convergence not only of varying technologies but also of public service broadcaster with the private, and of information with consumption.<sup>35</sup> The remapping of media is supposed to transform politics to e-democracy, government to e-government, business to e-commerce and beyond. In the United States, in Europe, in the First World in general, this era seems like the industrial revolution or the coming of the railroad in transformative significance. Vast changes in information would mean the dismantling of the old scaffolding for regulation and the substitution of the new.

There are many other constellations of change: one exists in the steady effort to extend access to media (and telephony) to areas where the basic infrastructure of modernity is not yet in place but there is a rising and potentially large middle class. India is an example where the relentless search for new markets by indigenous and transnational entrepreneurs put pressure on the legal and regulatory system.<sup>36</sup> There, as well, concern was rampant about the relationship among the discordant narratives arising from imagery from abroad and the consequences for local power, local culture, and local concepts of good and right.<sup>37</sup> Remapping in China is tied to hopes or fears of porousness, predictions of challenge to central control or new techniques for asserting government dominance.<sup>38</sup> Technologies widely thought to be inherently democratic are often programmed, designed, and built (whether successfully or not) to maintain lines of strong authority.<sup>39</sup>

A major constellation of change—one with vast implications for the remapping of media laws and policies—has emerged from the war in Afghanistan, the campaign against terrorism, and the heightened preoccupation with global stability and threats to national security. An altered set of information policies emerged with new forms of words and differently accentuated principles. Readjusted balances had the capacity of challenging hard-won speech commitments, seeking to harmonize them with more clearly emphasized public order concerns. Within the new constellation of change were such fundamental matters as the relationship between government and Internet service providers, the relationship between government and Internet users (surveillance), and the relationship between the freedom to receive and impart information and the needs of national security. Greater attention may be paid to exceptions to the freedom to receive and impart information in the jurisprudence of Article 10 of the European Convention on Human Rights and similar instruments

during times of crisis. Speech-related restrictions could result from a rise in the incidence of national emergencies. In a constellation of change driven by national security considerations, there would be changes in freedom of information policies, changes in content regulation in broadcasting and press, including changes in regulation of hate speech.<sup>40</sup>

These constellations are composed of various combinations of ideology, technology, demography, and history. They reflect the cycles in domestic and international moods toward regulation and interference in the operations of private entrepreneurs. The last two decades have been a time when, in many states, forms of regulation were severely scrutinized as their contribution to some larger public or national objective was questioned.<sup>41</sup> International trade agreements brought even greater market-oriented constraints to bear on the capacity of individual states to shape regulatory policy. The idea that broadcasting should be private, not public, became surprisingly dominant. Attitudes have shifted toward greater acceptance of multinational corporations operating in the global sphere. Indeed, laws designed to avoid concentration at home are revised, in many countries, on the ground that large multinational corporations are necessary for competition in a global market. Thus governments engage in industrial policy so that their media companies can gain influence and traction in a new global environment.<sup>42</sup> The formation of trading blocs and the liberalization of trade has dramatic implications for media and telecommunications law. As the US Federal Communications Commission announced, it would “pursue an aggressive agenda aimed at increasing competition in communications markets around the world,” so as “to benefit American consumers and “open new market opportunities for American companies.”<sup>43</sup>

In a fragile world where new routes of information can tear at sensitive existing arrangements, religiously divisive speech, encouragement of violence, violation of cultural norms, and terrorism become the subjects of accelerated regulatory demands.<sup>44</sup> These are areas where domestic laws are constantly revisited in light of new circumstances, new technologies, greater jurisprudential complexity owing to crossborder data flow, and the abundance of modes and pathways of distribution. Protection of intellectual property has its place here as well; coalitions of publishers and other related parties use international agreements to compel modifications in domestic laws in order to protect copyrighted property.

Geopolitics, as a motivation for change, exists in another form, the use of force. After World War II successful military campaigns followed by occupation triggered wholesale modification of the domestic media laws of the reconceived state.

At the end of the century, massive revisions of the media structures in Bosnia-Herzegovina and Kosovo were the consequence of a militarily similar but legally different use of force and intervention. The resulting more frequent use of “peace-keeping forces” is accompanied by a greater dependence on the shaping of media as a component of their success.<sup>45</sup>

In the era of change, the United States initiated, among others, Radio Free Asia, Radio Democracy in Africa, and Radio Free Afghanistan and overhauled the governance of Voice of America and Radio Free Europe/Radio Liberty to establish post-cold war roles for them.<sup>46</sup> The restructuring of such services across the world, actions to preclude transborder satellite transmission of disfavored parties, the development of new engineering techniques for clandestine transmissions are part of this new mode of propaganda to affect the mix of information within another nation’s boundaries.

There are many ways to describe the importance of new technologies to thoroughgoing transformations in national media and telecommunications law and to the international organizations that are active in the area. New technology contributes to the robust process of global media law revision because existing patterns of law and regulation are perceived as outmoded to the extent that those laws and regulations are technology specific.<sup>47</sup> New technologies have led to a widespread discounting of the capacity of the state to maintain control over the flow of images within its borders; States, as a consequence, react.<sup>48</sup> The Internet caps a progression of powerful improvements in media technology that have transformed boundaries and political realities. The inevitability of crossborder data flow makes the task of controlling information almost impossible or, at the least, very costly. For those societies—and there are many—where control of information is critical to maintaining power, steps are taken to deflect the dangers of too many channels, too many diverse sources of information, and national boundaries that are too permeable.

As states interested in taking such steps have discovered, new technologies can enhance as well as diminish forms of control. Some states have sought an Internet architecture that will allow historic patterns of state power to continue and in some ways be enhanced.<sup>49</sup> Restrained by little other than the limits of acquiescence by the international community, states like China, Iran, and Iraq have responded to the consequences of technological innovation with dramatic measures, including the imposition of severe restrictions on the availability of satellite dishes and the intensified application of customary and informal pressures to conform. It is,

however, too easy to attribute these responses to more authoritarian societies alone. Almost all countries, including Western democracies, articulate a need to shape information technologies to permit monitoring for security purposes, or tracking and intervention where child pornography, terror, fraud, or other crimes may be involved.<sup>50</sup>

Technological innovation almost always creates the problem of parallel mechanisms of information distribution with asymmetrical relations to government.<sup>51</sup> One form of distribution is regulated and the other not, while the players complain that the playing field is not level. Such was the argument when cable television began to compete with terrestrial broadcasting or satellite began to compete with cable. Technologies of abundance undermine traditional bases for broadcasting regulation, the most familiar of which is scarcity, and in societies where courts take doctrine seriously, these new technologies can have dramatic effects on the nature of law and policy.

On the other hand, new technologies also create new bottlenecks and enhance the capabilities of dominant players to thwart competition. Since technology presents both an opportunity and a threat, new modes of communication can remake the composition and power of messages sent out by various speakers with disturbing implications for the status quo. It is almost a cliché that the new technologies of satellite and the Internet disrupt or enable the reinforcement of new national identities. Certain diasporic groups can consolidate with more effective means of internal communication at their disposal, and by so doing, may bolster or endanger political alignments. Media structures are placed under challenge either to embrace or resist these new capacities. China, Saudi Arabia, and India, reaching out to their own populations abroad through satellite and the Internet, gain strength in political and national identity arenas.<sup>52</sup>

### **An Altered Bubble of Identity**

These examples, these constellations, begin the process of illustrating how international and domestic media decisions are inextricably intertwined with global communications realities. They help demonstrate how, in a time of global media interconnections, it is almost impossible to reach decisions or adopt practices about broadcasting or the Internet in one state that are not the consequence of or do not affect the political and legal climate of other states. They inaugurate an inquiry into why states act as they do.



I begin this inquiry by suggesting the division of national responses to the complexity of information inflows into two categories or types. The first is the state's efforts to protect its own information space—its own bubble of identity—against unwanted incursions.<sup>53</sup> This is often an act of defensiveness, for the protection of domestic producers, sometimes creative and supportive of valuable aspects of national identity, territorial integrity, national security, and the strengthening of citizenship. The second category is less often recognized and documented, but it is central to the development of theory. This is the effort by a state (or states) to influence or alter media space and media structures outside its own borders. I use this distinction—between state efforts directed inward and state efforts directed to other states—to underscore my departure from a more or less standard or static conception of the shaping of media structures in which it is the domestic media space that is the exclusive target of attention.

To make things more complicated, each of these two categories of state activity can be divided into two further segments. When a state seeks to protect its information space from the influence of external imagery, it can, on the one hand, do so unilaterally by using technology, internal force, or the power of law. On the other hand, it can do so by negotiating with other states (or with media conglomerates) and seeking their cooperation in the distribution or regulation of distribution of information across borders. Whether it does so one way or another has significant legal and policy implications.<sup>54</sup> Conversely, states that aggressively seek to influence the information space of other countries can do so unilaterally (that is, without negotiation or consent), or they can do so in a mediated or negotiated manner. Understanding these various contexts helps to explain a wide array of state responses and provides an opportunity to evaluate them as well.

The most familiar category, one most associated with the debate over national sovereignty, includes states' *unilateral* efforts to control their own information space from undesired external influences. There are myriad examples. An historic archetype of this state approach is the Soviet Union's jamming of shortwave RFE/RL broadcasts.<sup>55</sup> A current manifestation is the (increasingly difficult) outlawing of satellite receiving dishes in some countries in order to deter the reception of CNN, Disney, or other undesired signals from various parts of the globe.<sup>56</sup> A softer version, more negotiation than unilateral action, is the legendary telephone conference call initiated by Condoleezza Rice, the US National Security Advisor, during which she urged television network news executives to refrain from playing videotapes of Osama bin Laden.

The most complex aspect of unilateral state action is efforts in some societies—like China—to design the Internet to facilitate the screening of unwanted information and provide a continued regulable gateway between information providers and citizenry.<sup>57</sup> A requirement, such as once proposed in India, for mandatory national uplinking of signals that will be downlinked within the territory, falls within this rubric. Such a rule provides the mechanical precedent for later control. A cousin, even if a distant one, is the Foreign Agents Registration Act (FARA), in the United States, first enacted in 1938 in response to a perceived flood of publications entering the United States from foreign governments. In its earliest form, FARA required “public disclosure by persons engaging in propaganda activities and other activities for or on behalf of foreign governments” and foreign principals “so that the Government and the people of the United States may be informed of the identity of such persons and may appraise their statements and actions in the light of their associations and activities.”<sup>58</sup>

I have already referred to the case of newly independent states (like Ukraine and Kazakhstan) flexing their cultural muscles in the post-Soviet period by downgrading or excluding Russian broadcasters from the airwaves. These were usually unilateral decisions.

The move away from unilateral acts to negotiations or agreements characterizes many emerging state responses to the new technological environment. The realization that unilateral control over information space is weakening makes it more likely that there will be voluntary negotiations with states (or media conglomerates) from which undesirable information originates. This unwanted information, data, or images could be political in nature but could also disrupt local regulation on gambling, attitudes toward child pornography, or standards on the representation of women.

Historically international treaties or agreements embody such negotiation, though efforts in those areas traditionally have been quite unsuccessful. Examples of such agreements include the League of Nations’ Convention Concerning the Use of Broadcasting in the Cause of Peace, which would have obligated its parties to prohibit broadcasting any transmission incompatible with the internal order of another party.<sup>59</sup> The UN resolution of 1982 concerning direct television broadcasting would have encouraged consultation between broadcasting states and receiving states.<sup>60</sup> The Television without Frontiers Directives, governing members of the European Union, is an example of a more successful operative effort to establish a regime that will mediate information crossing the relevant boundaries.

States have turned to almost invisible contacts and informal negotiations for controlling their information space. One example, discussed in chapter 3, is the story of MED-TV, the satellite service that broadcast to Kurdish populations, particularly in Turkey. Turkey failed unilaterally to suppress MED-TV by policing, within its borders, the purchase and mounting of satellite dishes; as a result it was required to employ a bilateral strategy to stifle the MED-TV channel. Turkish officials mounted a campaign to pressure the British government to withdraw MED-TV's license and sought, in other European capitals, to deny MED-TV leasing rights on government-controlled transponders on Eutelsat. Turkey contended that MED-TV was a "political organization" that supported the PKK, widely characterized as a terrorist organization. Undoubtedly other aspects of power relationships entered into its discussions with British and other counterparts.

I have referred to the effect of these unofficial negotiations among states and between states and global program services of distributors of channels. New global channel service competitors are much more dependent on agreements with states or with gatekeeper broadcast entities within states than is realized. Domestic structures are the pillars upon which global media systems are built. The television signals of CNN or BBC do not simply waft through the air, encountering no controllable gatekeeper before they invade the collective local consciousness. Today, to understand the actions of News Corporation or MTV and the competition between CNN and BBC World, we must look at the domestic pillars upon which they depend. We must see how shifts in those pillars are used to temper the entry of the global players. Indeed, "law," in the sense of officially developed norms that control behavior, may be more often the creature of negotiation than declared statute or regulation.

These negotiations take place in a double transition: the transformation of scope and scale among the producers of channel services and programming who seek to distribute signals transnationally, and the transformation of the structure of receiving mechanisms that exist as gatekeepers and filters within every country. For music video channels to gain entry into certain markets, to gain shelf space on cable or in a bouquet of channels carried by the favored direct-to-home provider, the channel must negotiate the program content with the provider, though there is usually no explicit legal standard at the base of such negotiations. Channels may promise that they will confine themselves to entertainment and not carry news, not as a result of formal law but as an informal condition for entry. I discuss, in chapter 8, negotiations between international broadcasters and local transmission facilities in the countries in which they are distributed. Formal or informal arrangements between

states and large-scale international news organizations will become more frequent, implicating contractual ties with governments to operate terrestrial transmitters, to broadcast via the national system, or otherwise merely to gather information.

In addition to the negotiations between companies and states, there are other forms of negotiation, namely bilateral or multilateral efforts to limit or affect the impact of transborder data flow. Article 22 of the European Television without Frontiers Directive, requires bilateral consultations where a member state hosts programs that, arguably, significantly impair the moral development of children in a receiving member state, thus imposing a limit, though only an extremely narrow one, on the circumstances in which one member state can allow signals to flow, without objection, into the territory of another.<sup>61</sup>

There are an increasing number of such negotiations to protect information space. Some of the most known examples are between the receiving state and the large multinational private broadcasting firms. India agreed, in an arrangement that soon fell apart, to permit CNN to broadcast on a favored Doordarshan frequency if CNN agreed that the Indian broadcasting host would provide most of the news about its own domestic affairs. China agreed to more extensive entry for Star-TV, but in apparent exchange, Star-TV's parent, News Corporation, agreed that the BBC would not be carried.<sup>62</sup> It is extremely likely that MTV, the popular music television service, negotiates to ensure that it is cognizant of and, to the necessary extent, abides by local custom and preference in its choice of music, music videos, and hosts. More confident post-Soviet Republics negotiated with Russia to admit Russian language programming under approved circumstances. Similarly a meeting of information ministers of the Gulf Cooperation Council (GCC) served, even before the war in Afghanistan, as the arena to mediate disputes between Qatar, the home of Al Jazeera, the outspoken satellite broadcaster, and the government of Bahrain that considered its broadcasts deleterious and violative of the public order.<sup>63</sup>

But what of the second major category: decisions by countries to invade or affect the information space of other states without their consent? Chapter 8 is about how international broadcasting evolved from a classic cold war machine that made unilateral efforts to alter the nature of third-party information space into something more nuanced.<sup>64</sup> Black or clandestine radio, when secret financial support or actual physical invasion of a country is used to establish an unauthorized transmitter, is a quintessential example of such involuntary adjustment of voices in a state's information space.<sup>65</sup> In Afghanistan, from the outset, the wiping out of Taliban radio and the substitution of US-controlled and Western-originated broadcasts (from

special Commander Solo aircraft) was an integral part of the military campaign. Radio and TV Marti, directed at Cuba, its legitimacy disputed in the target state, is another example of a unilateral effort by one state to affect the information space in another state.

The decision by European governments to support specific newspapers and radio stations in Slobodan Milosevic's Serbia can be characterized as an unmediated effort by one set of states to alter the information space of another country. Most dramatic, however, have been those events—approximating Occupation at the end of World War II—where a conquering army seizes both physical and media space and, invoking the rights and duties of Belligerent Occupation transforms that space so as to achieve particular political goals.<sup>66</sup>

The final subset of national responses involves affirmative efforts, consensually based, by one state to alter external media spaces. These responses sometimes mirror and sometimes overlap my earlier category described from the perspective of the receiving state. What distinguishes them is that governments enter and alter a third state's mix of information, but do so with the (often barely obtained) consent of the receiving state. Modern international broadcasting, where, for example, the Voice of America is carried on a state licensed FM station, with the state's consent, and frequently paying for the privilege, falls within this category. The Television without Frontiers Directive is a superb example, where multilateral negotiations have led to the development of a European information space in which the channels that are permitted within one member state must be, with few exceptions, accepted elsewhere in the Union. Chapter 7, dealing in part with Bosnia-Herzegovina, depicts an example of such an affirmative intervention where the question of the nature of consent will, in the future, be a subject of debate.

## **Place and Space: Globalization and Sovereignty Implications**

### **Place and Space**

The opposing notions of space and place are markers for a dual perspective on the impact of technology on governments and their responses. They mirror, to a large extent, the contrast between multilateral approaches to regulating information and the more traditional national expectation. Efforts to retain, reconfirm, and underscore traditional boundaries and established notions of community can be characterized as contributions to the idea of place. These efforts confront the challenge of the seemingly uncontrollable, alien, deconstructing, and erasing ideas of space.

Writing about South Asia and the arrival of satellites, Page and Crawley characterize the response of the state as far from peripheral. “It involved a re-thinking of a whole range of activities and policies at the heart of government and social organization.”<sup>67</sup>

By space, I refer to a model of activity that assumes that transmission of images can occur in a manner impervious to imposed public parameters or sanctions. Here law is removed to a set of principles only, a virtual admission that the ordinary machinery of government is ineffective. In this new configuration of transmission there seems to be neither a fixed locus for enforcement or set of rules to be enforced. This idea of space captures a dream—or nightmare—where messages by individuals, groups, nongovernment organizations, and transnational corporations compete, unfettered by regulation, in the distribution of images throughout the globe.<sup>68</sup>

The idea of place is just the opposite. In my use of the term here, I refer to the capacity of government, linked to geography, to maintain control over identity-related media and to have some influence over the mixture of language and imagery that is a significant aspect of the binding nature of the nation-state. The history of broadcasting has been the struggle to domesticate frequency allocation to conform to those special ideas of place that are the state. International regulations and arrangements were designed, as the League of Nations–sponsored Convention Concerning the Use of Broadcasting in the Cause of Peace, put it, to “implement national service of good quality within the frontiers of the country concerned.” Sometimes the issues surrounding place have been quite substantive; the never-realized Convention would have provided that:

The High Contracting Parties mutually undertake to prohibit and, if occasion arises, to stop without delay, the broadcasting within their respective territories of any transmission which to the detriment of good international understanding is of such a character as to incite the population of any territory to acts incompatible with the internal order or the security of a territory of a High Contracting Party.<sup>69</sup>

This is a remarkable use of an instrument of law to enshrine concepts of place. States would be sureties that their lands were not the source for information or imagery that would cause unrest elsewhere. It is worth asking what formal or informal understandings govern the same question today. Some governments establish clandestine radios precisely to encourage dissent and revolt within the territory of another. More complex is the relationship among allies, the extent to which a country can look to governments related by treaty of friendship to prohibit or discourage messages that are antagonistic to its own status quo.

In the early 1970s when concerns over satellite transmission were new, the term “spillover” was used to describe violations of the rule of place. It was the job of regulatory agencies to keep spillover to a minimum, and to regulate strictly or condemn intentional spillover. The United Nations discussed principles that would bar certain kinds of programs from direct broadcast satellites, require consultations with governments whose audiences were targeted and, in some instances, require national consent for direct broadcast signals that were specifically directed from one state into the territory of another.<sup>70</sup>

Opposition to radio pirates was applauded. Now, in the period of ascending globalism, the old ideal of signal transmissions that conform to national borders has changed. The efforts of countries to control their information space are questioned through the invocation of international norms. The excitement, the association with freedom, and the attraction to capital lie with the transnational, with the accumulation of audience and markets across borders. Space, both in terms of the locus for transmission and the absence of authority, can be said to be supplanting place. A resultant task is to understand which measures, administered in what way, represent an acceptable bridge between concepts of space and place.

### **Sovereignty**

The ideas of space and place are affected by two other terms, “sovereignty” and “globalization.” These terms are frequently used in discussions of media and new technologies. I use the term sovereignty to describe the power of a state (or other accumulation of power) to make and enforce laws and to seek to have a monopoly of the use of force. Though all may desire it, there are few states that have absolute sovereignty, and most sovereigns have recognized or bargained away limitations on their power, both domestically and internationally. Sovereignities are not fixed, even if, for reasons of stability, the world order often encourages the illusion that they are. It is a characteristic of many states that their very destiny, the heart of their sovereignty, has been historically contingent upon a variety of economic, military, and other factors, domestic and international.

Ultimately what is of concern for this book is not sovereignty in general, but the nature of sovereignty with regard to information or media space. Thus, for example, the expansion of the European Union would mean that the sovereignty of the Czech Republic and Hungary will be modified by their treaty obligation to install European-style quotas on programming by all broadcasters within their borders. In chapter 7, I explore how the Dayton Accords and their implementation affect the

sovereignty of Bosnia over the structuring of media there. In chapter 7, I try, as well, to demonstrate how the foreign policy of the United States and other countries is implemented to induce change voluntarily or involuntarily in the media-related policies of other states. In the modern era it is also frequently the case that evolving ideas of national identity often themselves, cross-border, modify traditional notions of sovereignty. Under challenge, in particular, is the intense and long-standing idea that a convergence of sovereignty and identity is optimal.<sup>71</sup> Altered versions of self-determination spring from this challenge, with newer forms of autonomy related to the control of imagery (or access to imagery) rather than to older, boundary-configured ideas of sovereignty. The sustainability of a state depends in the long run on rational economic decisions of its citizens or on the use of force or on the pull of cultural bonds and historic loyalties. Media influence what constitutes the rational, the efficacy of power, and the strengthening or weakening of cultural bonds. To the extent the state depends on the bargained-for consent of the governed, media are effective for persuasion and consensus building. But media have a relationship with the other two modes of maintaining statehood as well. It is less expensive to assert sovereignty comfortably through an emphasis on imagery than through an emphasis on force, and it may be cheaper to build loyalties than to rely on terror. It stands to reason, then, that a state, unchecked, would prefer to have a monopoly over media imagery than to have such critical tools in the hands of others.

### **Globalization**

Globalization is quite specifically related to sovereignty. Globalization means, at bottom, the increasing tendency toward the incapacity of the state to maintain control over the shape and mix of images. Globalization means that the potential of the media to buttress the identity of the state and its inhabitants is altered. Globalization means that the cultural bonds and loyalties that seemed once to be within the control of the state are now less so. Globalization could also be interpreted as the growing inability of a sovereign to keep out unwanted signals and information. It may mean the development of an international regime and international norms (e.g., “human rights”) to prevent a sovereign from excluding information even when it is technically capable of doing so.

There are other definitions of globalization, such as the quite poetic description in *Space of Identity* by David Morley and Kevin Robins. Globalization, they say, involves a shift from a world where “the notions of space as enclosure and time as duration are . . . redesigned as a field of infinitely experimental configurations of



space-time.”<sup>72</sup> Globalization could imply a positive aura: hands across the sea, development of a common vocabulary, and rendering the distribution of information and entertainment more equitable. On the other hand, globalization may be said to mean an overarching umbrella of sameness, at least cultural sameness in large regions. More specifically, globalization has been interpreted to mean the spread of a Western media culture, often a US culture of commercialization and consumerism. The scope of certain interpretations sometimes rises to suspicion of a United States imperialistic conspiracy: communications globalism as the nefarious construct of corporate investment, converting information into just another set of widgets, rather than a glorious basis for national identity. Satellites, surrealistically, extend invisible “footprints” that rechart and reimagine areas of the world’s surface. Globalization is said to imply the end of the nation-state, deprived of control over its information space. Most succinctly, globalization is the “radical increase in the technical, economic, and political costs of territorializing information.”<sup>73</sup>

## **Conclusions**

The widespread remapping of media laws is not new, though its current form, born out of the peculiar globalness of our era, is distinctive. Every new medium, every new technology for transmitting information, causes responses by those who feel threatened. A half-millennium ago, revolutions in print caused fears over dominion and sovereignty, and those in control responded. Even before print, when graven images held great sway, iconoclasts imposed a law of their own. The bonding of religion and state meant prohibitions too on symbols of those whose faiths were found discordant. Homing pigeons were an early technology for flying over boundaries with messages. Biblical stories of spies entering the Promised Land predate the present revolutionary technologies of boundary penetration and surveillance.

Each mode of gathering or transmitting information caused its own reaction. The introduction of radio broadcasting was no different. Almost from the beginning, radio was seen to be a threat to national sovereignty, much as the Internet is now. The very first broadcasts were ship to shore, a harbinger of pirate broadcasting. Radio, intrinsically, knew no political boundaries until it was tamed and domesticated. The 1920s and 1930s were chapters in regulatory history that confirmed state interests in maintaining control of information flows within their boundaries, though even then the growth of propaganda underscored other potentials for the radio medium. By the 1970s, satellite distribution of signals presented what seemed

a decisive moment in the sundering of political lines. Now the Internet, with its silent, abundant ubiquity, seems to be the capstone of this tendency to obliterate borders.

Central to much of modern scholarship is the idea that modern technologies can be, in Ithiel de Sola Pool's memorable phrase, "technologies of freedom" precisely because of the capacity to overwhelm boundaries—whether physical or legislative—and as a result they become key to the spread of democracy.<sup>74</sup> Political transitions now taking place seem clear manifestations of this view. Technologies of freedom are the stuff of every morning's news: new generations of satellites, the promise of far more abundant telephony, and signals reverberating around the globe. It is a small jump from the profusion of these new technologies to the evanescence of national boundaries as gates or walls against the free flow of information. It is asserted almost everywhere that national borders are increasingly irrelevant, and that technology traverses boundaries so effectively that it continues to confound current modes of media and political organization.

Most of what is written and celebrated emphasizes this overwhelming and determined nature of technology to weaken national controls over information and cultural images within their borders. Seamlessness is tied to the promotion of human rights and democratic values. Information and its growth expand national economies and international trade. Enlarging the marketplace of ideas helps to reduce intense and troublesome separatist identities as well as the possibilities of genocide and war. The general benefits of the free flow of information are apparent. Still it is important to check enthusiasm, track popular resistance, and observe the efforts by states to continue control.

It is certainly inevitable, and often desirable, that states concern themselves with the sustenance of their language, enrichment of their history, and strengthening of their internal political and creative processes. Yet each of these has implications for the weight and impact of information across national borders. States have national security needs and these too, as we have seen in the wake of September 11, have radically transformative consequences for media policies. It is vital to examine the complexities and contradictions in Western attitudes toward unmediated distribution of information, the historic problem of oscillating between demands for freedom and concern over content. We do not yet know what constitutes an ideal global Republic of Information.

Given the active strategies of states responding to challenges to their authority in a post-global age, those who ring the death knell of the state may ring too soon.

There is a curious and present contradiction between the exaltations of theory and the less sublime practices of the everyday world. At the same time that the function of the state and its capacity to describe and enforce law is brought into doubt, law-making and invocation of the need and power to control imagery increase. It is not without precedent that these two phenomena, a disparagement of the capacity of law on the one hand, and a widespread turn to invoking law on the other, should coexist (perhaps one is a sign of the other), but there is something remarkable about it. The market is so powerful, technology so ubiquitous, that we are often reminded that the process of law making, especially in the field of media regulation, is like building castles in the sand where complex structures will be forcefully erased by an overwhelming cascade of waves. Yet simultaneously, there is a passion for moral controls, for regulation of indecency, and for restoring some sense of an order and security.

The relationship between media and borders is always in transition. However, that transition is not only what it is widely considered to be: technologies of freedom sweeping past traditional media monopolies designed to keep out new and dissenting cultural and political voices. That transition includes the efforts, not only in Malaysia, China, and India but also throughout the world to design new boundary technologies that will allow some continuing control over internal information space. The transition includes the use of new technologies to create diasporic boundaries: intense opportunities for the unification of physically dispersed populations. Political boundaries affect media boundaries, and the opposite is true as well: the radical changes in the media map will alter the physical map in ways yet unknown.

Military strategies, business planning, international diplomacy, the work of scholars and politicians, are all conducted in the shadow of this process of change. For all these actors and observers, precisely because so much turns on assumptions about the flow of information, the contours of transformations in the media and their relationship to the power of the state ought more closely to be examined. In the remainder of the book, I seek to focus on the way states refashion law and policy as methods of responding to the powerful, wide-ranging, and seemingly unregulable nature of modern communications.