

## DOES POWER GROW OUT OF THE BARREL OF A MODEM? SOME THOUGHTS ON JACK GOLDSMITH AND TIM WU'S *WHO CONTROLS THE INTERNET?*

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Sometimes the cliches are true. Like this one: “Power grows out of the barrel of a gun.” As I read *Who Controls the Internet?*,<sup>1</sup> that old Maoist catchphrase kept resonating, because the short answer to the title’s question is, “The guys with guns.” This must come as something of a disappointment to those who were counting on computers to suddenly and dramatically alter the balance of power between individuals and their governments, but a look at human history suggests that it’s no great surprise.

At its heart, *Who Controls the Internet?* is about the way national governments turn out to be able to exercise much more control over what people do on the Internet than most “visionaries” in the 1990s thought would be possible. The book begins with a discussion of John Perry Barlow’s *Declaration of Independence for Cyberspace*<sup>2</sup> and then demonstrates that the notion of a boundary-free Internet is, well, a bit exaggerated. After all, China has successfully suppressed dissidents online and has made it difficult for users to access content available in the United States;<sup>3</sup> the French government has successfully forced Yahoo! to stop selling Nazi memorabilia to users in France,<sup>4</sup> and so-called “data havens” like SeaLand—an offshore site for storing controversial information outside the reach of government regulation—have failed,<sup>5</sup> to name only a few examples.

“We know where you live” is an old threat. In recent years, the improvement of geolocation technology has let advertisers (and governments) map Internet users to real-world locations; at the same time, courts and

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1. JACK GOLDSMITH & TIM WU, *WHO CONTROLS THE INTERNET? ILLUSIONS OF A BORDERLESS WORLD* (2006).

2. *Id.* at 20-21.

3. *Id.* at 87-104.

4. *Id.* at 1-8.

5. *Id.* at 65-66, 85.

regulatory agencies have shown a decreased willingness to defer to the Internet as some sort of special place. The result, as Goldsmith and Wu say, is an Internet that is becoming less independent and more geographically bordered. Barlow's vision of a separate and untouchable cybersphere is increasingly unrealistic. Interestingly, they also argue that this isn't so bad.

I very much enjoyed the book. But it will surely come as a dash of cold water to the more effusive strands of 1990s cyberlibertarianism, which held, as Barlow put it, that the Internet was beyond the jurisdiction of national governments, those "weary giants of flesh and steel."<sup>6</sup> Some of those cyberlibertarians dreamed of a worldwide revolution driven by technology that would just kind of, well, happen, without a lot of troublesome preliminaries or complications. Call it the revolutionaries' version of Erica Jong's "zipless fuck."<sup>7</sup> Such a vision turns out, alas, to be just as illusory in the political context as in the sexual.

I'm a cyberlibertarian of sorts myself, of course, but of a somewhat less effusive variety. And I think that although *Who Controls the Internet?* is a useful corrective to overblown views of effortless cyber-anarchy, it's also a mistake to see it as a proclamation of business as usual. Where the likes of John Perry Barlow erred was in seeing a singularity—an abrupt transition to a wholly different way of living—when what was really happening was a modest steepening in the curve of individual empowerment that has been going on for years. And *Who Controls the Internet?* doesn't deny that steepening, but it may understate its cumulative impact.

Though the communications revolution hasn't brought about an anarcho-libertarian global paradise, as once envisioned, that doesn't mean that it hasn't done any good. Chinese bloggers—and text-messengers—managed to end-run the Chinese government's information quarantine regarding SARS.<sup>8</sup> Bloggers played a major role in publicizing and coordinating the Orange Revolution in Ukraine<sup>9</sup> and the Cedar Revolution in Lebanon.<sup>10</sup>

Certainly, governments and companies constrain some forms of Internet activity. But we shouldn't overstate their impact, and we shouldn't forget that Internet activity is also constraining governments, even in repressive countries. In spite of China's filtering and censorship, new communications tools have

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6. *Id.* at 20.

7. ERICA JONG, FEAR OF FLYING (1973).

8. Xeni Jardin, *Text Messaging Feeds SARS Rumors*, WIRED NEWS, Apr. 21, 2003, available at <http://wired.com/news/medtech/0,1286,58506,00.html>.

9. See Guardian Unlimited, News Blog: Ukraine blogs on, [http://blogs.guardian.co.uk/news/archives/2006/03/27/ukraine\\_blogs\\_on.html](http://blogs.guardian.co.uk/news/archives/2006/03/27/ukraine_blogs_on.html) (Mar. 27, 2006, 12:24 GMT).

10. Audrey Kurth Cronin, *Cyber-Mobilization: The New Levee En Masse*, PARAMETERS: J. U.S. ARMY WAR C., Summer 2006, at 77, 84 (2006) ("The combination of cell phones and the Internet has facilitated a variety of democratic movements, including the Rose Revolution in Georgia, the Orange Revolution in Ukraine, the sweeping of Philippine President Gloria Macapagal Arroyo into power, anti-globalization protests by groups like Direct Action, and many other types of grass-roots campaigns.").

produced a considerable increase in accountability on the part of powerful institutions like the army, which was formerly not accountable at all. A recent report at StrategyPage points out that Chinese citizens are now quick to protest on the Internet and via cell phones when the army seizes their land without cause or creates environmental problems; this ability to make noise has caused the government to impose new rules limiting what the army can do.<sup>11</sup> To put things rather mildly, that represents a significant change. This sort of empowerment is also likely to encourage more assertiveness on the part of the citizenry in other areas. It may not be democracy, exactly, at least not yet, but it is an improvement: converting an unresponsive and murderous Stalinist/Maoist tyranny into something that responds to cellphone calls is not an achievement to be sneezed at.

These constraints are international, as well as domestic. China imprisoned blogger Hao Wu, but the Internet and other technologies meant that his arrest was reported around the world almost instantly, leading to emails and other forms of pressure directed at getting him released and making sure he wasn't harmed while in jail.<sup>12</sup> Likewise, Egyptian blogger Alaa Abdel Fattah was arrested by Egyptian authorities, and within hours a worldwide movement and website were set up, leading to his release, again unharmed.<sup>13</sup>

There's nothing new about human rights enthusiasts organizing global campaigns on behalf of imprisoned dissidents, of course: that's been Amnesty International's traditional role. But these new ad hoc coalitions of bloggers form more swiftly, reach more people, and manage to do so without the political baggage that sometimes afflicts traditional human rights groups. It's peer-networked human rights activism.

Likewise, of course, we have peer-networked journalism. It's much harder to keep big secrets. You can—and the Chinese do—filter all sorts of messages, but if mass arrests or imprisonments were taking place—or a disease outbreak like SARS, as we've seen—the likelihood that governmental control of the Internet would stop them from being reported is very, very low. And peer-networked human rights and journalism can be combined, and have been.

That's certainly what happened when Philippine President Joseph Estrada was ousted in a "people power" revolution organized by cellphones and text messages:

In the Philippines, text messaging played a key role in the ouster of President Joseph Estrada. When Estrada's impeachment trial on corruption charges was suspended indefinitely in January 2001, outraged citizens messaged each other the news, and within two hours, 150,000

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11. China Orders Army to Play by the Rules, StrategyPage.com, Mar. 22, 2006, available at <http://www.strategypage.com/htm/htpeace/articles/20060322.aspx>.

12. Rconversation: China Continues to Hold Hao Wu without Charge, [http://rconversation.blogs.com/rconversation/2006/04/china\\_continues.html](http://rconversation.blogs.com/rconversation/2006/04/china_continues.html) (Apr. 14, 2006, 4:16pm).

13. Nadia Abou El-Magd, *Egyptian Blogger is Ordered Released*, THE GUARDIAN (UK), June 20, 2006.

protestors stormed downtown Manila to demand Estrada's resignation. They kept their vigil for four days -- until a new president was sworn in to office.

A mural in Manila memorializes the uprising and the importance of cell phones in sparking the popular revolt.<sup>14</sup>

And it's not just cell phones:

One of the biggest proponents of this seeing-is-believing philosophy is Witness, a group that has placed video cameras in the hands of human rights groups. Founded by musician Peter Gabriel in 1992, the nonprofit has worked with 150 groups worldwide to expose social ills ranging from the systematic rape of girls and women during Sierra Leone's 10-year civil war to sweatshops in New York. . . .

In some instances, the mere presence of a Witness video camera has been enough to ward off violence during confrontations with armed men. On the Philippine island of Mindanao, for example, indigenous activists say their equipment protected them against sugar company thugs trying to drive them off their land.<sup>15</sup>

Combining video cameras and cellphones, as technology is in the process of doing, only intensifies the effect. An ordinary video camera can be confiscated and its tape destroyed, but a video camera that can transmit video wirelessly can be relaying the information to hundreds, thousands, or millions of people—who may react angrily and spontaneously if anything happens to the person doing the shooting. Certainly it becomes much, much harder to do the dirty work unobserved, as most totalitarian regimes prefer.

These are incremental improvements, not drastic ones. But with enough incremental improvement, what eventually appears is a change that is qualitative, not just quantitative. In fact, whether you see a singularity or incremental change depends in part on your time scale—the agricultural revolution was revolutionary, but it took thousands of years; the industrial revolution took a hundred or so. We should probably wait more than a decade before pronouncing the cyberlibertarians' dream entirely false.

We also — both within the United States, and, to some degree, internationally — need to think a bit about what we want from all of this. Discussion of privacy and control in the context of the Internet tends to proceed rather episodically. We don't seem to encounter a lot of first principles, except in the context of manifestos like Barlow's. But a *naif* like myself might be tempted to start with this one: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.<sup>16</sup>

This principle, from the Universal Declaration of Human Rights, would seem to put Barlow's analysis on a pretty sound footing: if nations are really

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14. Julia Scheeres, *Pics Worth a Thousand Protests*, WIRED NEWS, Oct. 17, 2003, available at <http://www.wired.com/culture/lifestyle/news/2003/10/60828>.

15. *Id.*

16. Universal Declaration of Human Rights, Article 19, available at <http://www.un.org/Overview/rights.html>.

barred from interfering with seeking, receiving, and imparting information and ideas regardless of media or frontiers, then most of the national controls that Wu and Goldsmith discuss are illegal, and the nations that are imposing them should be asked to cease and desist. But while I may be naive enough to believe that these words should hold meaning, I am not naive enough to believe that they have sufficient force to prevent governments censoring speech that they find uncongenial; certainly they have not had such force in the over fifty years since they were set down, with great solemnity, at the United Nations.

Nonetheless, while parchment barriers have done little to constrain governments, other phenomena have done so. In 1948, the Soviet Union was seen by many as a serious rival to the United States; China, meanwhile, was in the end stages of adopting communism. Within fifty years, the Soviet Union would be gone, and China would be communist in name only. Unable to compete in a new, knowledge-driven world, both nations succumbed.

*Who Controls the Internet?* opens with an overblown quote from 1893 about the revolutionary potential of the telegraph. We are meant to smile at the overreach in this passage:

The new technologies will bring "every individual . . . into immediate and effortless communication with every other," "practically obliterate" political geography, and make free trade universal. Thanks to technological advance, "there [are] no longer any foreigners," and we can look forward to "the gradual adoption of a common language."<sup>17</sup>

But though the telegraph did not produce the drastic change that some enthusiasts promised, the world is, in fact, a very different place now as a result of the communications revolution. I spoke with an undergraduate of the University of Tennessee not long ago, and she informed me that she had put herself through college by having adult-sized diapers made in a factory in Shanghai for \$2.50 a dozen, and then reselling them to the diaper-fetish community via eBay at a steep markup. All her business, except shipping the goods, was transacted via the Internet. Language barriers were not a problem.

My daughter, age ten, is an aficionado of the anime-based NeoPets site and chats online with friends around the world. For the ones who don't speak English (including some in China) she uses cut-and-paste and Google's translator tool. Geography, to her, is much less of a barrier than it was in my childhood.

And the costs to governments of resisting this sort of thing are significant. Here's something from a bit later than 1893, though it's still ages ago in Internet time:

Information, more than most goods, is of considerable political importance, and governments since time immemorial have sought to control the flow of information, both among their citizens and between their countries and foreign lands, for political purposes. Until recently, the exercise of such control was, in an economic sense, largely free. . . . [But] information industries today are of considerably greater

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17. GOLDSMITH & WU, *supra* note 1, at vii.

importance.

Already this effect is beginning to be felt in small ways. Even in the Soviet Union, where copy machines are supervised by the KGB and even typewriters are licensed, we are beginning to see stirrings of reform. Similarly, Chinese students in the United States and elsewhere outside of the People's Republic of China made use of facsimile machines, computer bulletin boards, and China's modern, automatic telephone system to send in uncensored news of the Beijing massacre in Tiananmen Square. And in Panama, when the military government began censoring the news and barring the importation of foreign newspapers, news stories about the regime and its problems were sent via facsimile from foreign countries and photocopied for distribution. Such happenings are odd enough to be newsworthy now, but they will soon become commonplace. As information processing tools like computers, facsimile machines, laser printers, and electronic bulletin boards become more and more widespread, and more and more essential to the conducting of business, the ability of governments to limit their spread and use without bearing fearsome economic costs will be much less. Still more dramatic in its impact will be the spread (already imminent) of compact and inexpensive satellite up- and downlink equipment, which will make events in even the most remote regions fodder for worldwide television regardless of the efforts of governments to ensure otherwise.<sup>18</sup>

Those words were written before the advent of the Web, and yet they remain true. If the revolutionary impact of telecommunications technologies is sometimes overstated by their enthusiasts, the ability of governments to constrain people's communications is also overstated. The next few decades will likely be a contest in which the outcome depends on who is exaggerating more: those proclaiming the potential of new technologies, or those proclaiming the power of governments to constrain them. I know which side I hope is right.

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18. Glenn Harlan Reynolds, *Speaking with Forked Tongues: Mercantilism, Telecommunications Regulation, and International Trade*, 21 LAW & POL'Y INT'L BUS. 119, 138-39 (1989).