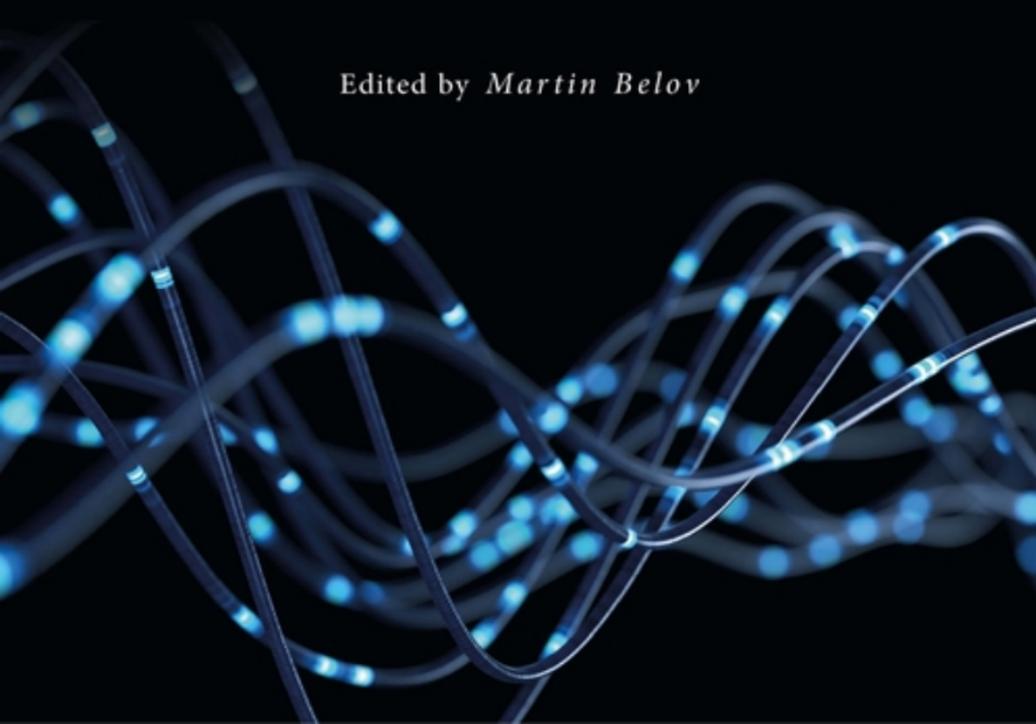




The
IT REVOLUTION
and its
IMPACT *on* STATE,
CONSTITUTIONALISM
and PUBLIC LAW

Edited by *Martin Belov*



2

Constitutional Dimensions of Information Revolution

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I. *Pro Domo Sua*

When I started working on this chapter, I was uncertain as to what conclusions I would reach at its end. But I promised myself to follow a cautious and careful train of thought, regardless of where it would take me. At the time, I was re-reading a compilation of texts by Umberto Eco (an author who has always impressed me not only with his humbling erudition, but also with the directness on his theses) and there I came across an article of his regarding Norberto Bobbio.¹ In this article, Eco analyses an essay by Bobbio from the 1950s and, more precisely, he focuses on one impressive quote: ‘the task of men of culture, today more than ever, is rather to sow doubts than to reap persuasions.’² According to Eco, what is impressive is not the idea itself, which nowadays (the article was published in 2004) has an evident truthfulness, but rather the fact that Bobbio conceived it in the 1950s – ie in the years of severe political struggles and acute ideological antagonism in Italy.

In spite of my great reverence for Eco (he is among the 10 or so intellectuals who have most strongly influenced my way of thinking), in this case I will not agree with him. I think that the widespread opinion – 15 years ago as well as today, is different – men of culture ought not to sow doubts. In an environment of increasing chaos, in the ever-growing competition for prominence through profanation or denial, within an inarticulable informational amalgam of facts, opinions and pure publicity, many believe that intellectuals are responsible for the maintenance of the correct collective beliefs.

¹ U Eco, ‘Bobbio gli intellettuali e la missione del Grillo parlante’, *La Repubblica* (28 September 2004).

² ‘Il compito degli uomini di cultura è più che mai oggi quello di seminare dei dubbi, non già di raccogliere certezze’: N Bobbio, *Politica e Cultura*, ed F Sbarberi (Turin, Einaudi, 2005; first published 1955).

In short, within the current text, I will not induce arguments in favour of liberal democracy, I will not lament its future, nor will I give recipes for its survival and development in the age of information. For, as Bobbio claims in the same essay, ‘above the duty for cooperation stands the right to research.’ This gives me the self-confidence to be objective in my examination without this necessarily implying that I am neutral in my views.

What I will do is consecutively: (i) present my point of view regarding what happened in the field of access to information and the possibility of spreading information in the last few decades and how it came to be; (ii) induce arguments in favour of the belief that what happened should be defined precisely as information revolution; and (iii) put forward my opinion on how this information revolution affects the contemporary constitutional paradigms, and in particular how it affects the tension between national sovereignty and global constitutionalism, as well as the safeguarding of the representative democracy and the normative ideology of rights.

II. What Happened in the Field of Information and How did it become Possible?

The scientific discoveries and the technological breakthroughs that we have witnessed in the last couple of decades are so frequent and varying, but also in a way interrelated, that without a certain historical distance, they are hard to rationalise, conceptualise and rate with regard to their significance. That is not to say that we are lacking in such attempts. It suffices to recall Rifkin’s *The Third Industrial Revolution*³ and *The Zero Marginal Cost Society*,⁴ or the society of the future drawn by Harari in *Homo Deus: A Brief History of Tomorrow*.⁵ Albeit very different, these two attempts are somewhat alike and, to a certain degree, are representative – the authors proceed from the basis of facts, on which they build up expectations mixed with widespread fears and hopes, and finish the whole construct with predictions based on formal logic with a noticeable moral aftertaste.

By no means underestimating the significance of the mentioned authors and the described approach, in this chapter I will make an effort to do something a little different. I will try to stay close to the scientific, respectively technological, facts and to their ascertainable influence on the social environment. On the basis of these findings, I will try to sketch the existing tension in the liberal democratic paradigms. Finally, I will allow myself the liberty of making certain forecasts, which – I would like to strongly stress this point – will be the fruit of my intellectual speculation.

³ J Rifkin, *The Third Industrial Revolution* (Palgrave Macmillan, 2011).

⁴ J Rifkin, *The Zero Marginal Cost Society: The Internet of Things, the Collaborative Commons, and the Eclipse of Capitalism* (Palgrave Macmillan, 2014).

⁵ Y Harari, *Homo Deus: A Brief History of Tomorrow* (Harvill Secker, 2016).

An information-focused historical retrospective would reveal that, within human societies, there has been a gradual expansion of the access to information, on the one hand, and of the number (and also the percentage) of people who were able to spread information, as well as the number (percentage) of those among whom information could be spread, on the other.

It is known that within the earliest societies the capability to preserve, reproduce and disseminate information was initially related to human beings – through the properties of human memory and with the assistance of language. The chain of memorising and retelling was, for a long period of time, the only manner of intentional preservation, reproduction and dissemination of information (not counting cave paintings). Handwriting profoundly changed this status quo. Thanks to written language, it became possible to permanently store information outside the human memory with the help of a formalised sign system, and with its help, again, to repeatedly reproduce the stored information in a relatively uniform way. Regardless of what the hard drive was – Umberto Eco speaks of vegetal and mineral memory⁶ – as a rule, information was restricted to a small intellectual, political or economic elite. The physical bearer of the information was usually unique and hard to copy (usually by rewriting), and often access to it was subject to various considerations and rigid control – Eco himself describes this in a marvellous way in *The Name of the Rose*.⁷

The invention of the printing press dramatically changed this status quo – the access to information rapidly expanded. Even though, during the Renaissance, the manual copying of books had become a lucrative activity, with the introduction of the printing press (the mid-fifteenth century), the number of books in Europe was measured in thousands. In just a few decades after the beginning of book printing, the number of books in Europe had reached between 10 and 20 million.⁸ Furthermore, after the end of the Middle Ages, and especially during the Age of Enlightenment, the thirst for books of any nature sharpened, more and more people began writing, and controlling the topics and content became increasingly difficult. There was, of course, control over the writers (from publishers' policy to pure censure), and to a certain extent control over the dissemination (not everyone owned a publishing house, a newspaper or a printing press). However, with the development of printing technology and the simultaneous liberation of writers from their dependence on various ideological frames, as well as with the development of competition, the possibilities of disseminating, as well as receiving, information were further democratised.⁹

⁶ U Eco, *Vegetal and Mineral Memory: The Future of Books* (Bibliotheca Alexandrina, 2005).

⁷ U Eco, *Il nome della rosa* (Bompiani, 1980).

⁸ D Boorstin, *The Discoverers. A History of Man's Search to Know His World and Himself* (Random House, 1983).

⁹ Lynn Hunt recognises the printed books of the 18th century, especially novels, as a significant factor in the adoption of the idea of human rights: L Hunt, *Inventing Human Rights: A History* (WW Norton & Company, 2008).

In the mid-twentieth century, probably many believed that the third leap in the access to information (after the written language and the printing press) would involve the electronic dissemination of information with the support of analogue technology (telephone, radio, television). Today, however, we can confidently claim that the huge leap, both in the spreading of information and in the number of people who are able to disseminate it, came thanks to digitalisation, combined with the permanent development of technologies.

Digitalisation is based on the possibility (based on a binary code) to digitise, store, compute and communicate a large volume of information. To put it in simple terms, each thing in the world can be described if we can pose and answer an infinite number of questions whose answer is either yes or no. The concept of digitalisation in and of itself is not new. The Pythagoreans claimed that everything in the world could be expressed by dots and free space as early as in antiquity. It is said that Pythagoreans, again, were the ones who discovered the connection between the length of the string of the lyre and the pitch of the musical tone. Elements of digitalisation can be traced through different eras – it is enough to recall Descartes's coordinate system, which allows for different geometric figures to be expressed (practically designed) through figures,¹⁰ or Leibniz's work on the mechanical calculator.

But what radically increased the significance of the binary code, and digitalisation as a whole, was the development of modern technologies. From today's perspective, we could claim that the two most important technological breakthroughs concerning information are the invention and perfection of the computer – a device for storage, processing and reproduction of information based on a binary code and semiconductors (mainly silicon); and the creation of the Internet, and subsequently the social media based on it.

III. What is Revolution and Are We Witnessing an Information Revolution?

When I was a student and my views of the world were being formed, the term 'revolution' was a part of the official propaganda rhetoric in Bulgaria and was presumed to denote something positive by default – there is no such thing as a bad revolution; if it is bad, then it is a counter-revolution. In the countries of the Eastern bloc, the revolution had already taken place and further revolutions were not possible (at least, not in our countries). We were told that history had not yet ended because after the stage of socialism would come the stage of communism (and only then it would end), but it was clear that it was coming to its end.

¹⁰M Livio, *Is God a Mathematician?* (Simon & Schuster, Inc, 2009).

Imagine my surprise when, after the changes of the early 1990s, a similar thesis emerged once more – this time it was Francis Fukuyama who openly declared the end of history.¹¹ Furthermore, Fukuyama's thesis contains the well-known view that there is no prospect of upcoming revolutions anymore (to Eastern Europeans – ever again). If anyone should urge for an abrupt and profound change in society, this is not a call to revolution, but rather a common urging of revolt. Of course, we could always talk about branch revolutions (in transport, in technology, in education, in family life after the invention of the washing machine or in the life of mothers after the introduction of single-use nappies), but not about a revolution in a general social sense.

Within this chapter, I will use the term 'revolution' to denote any abrupt, profound and complete social change with long-term consequences. By no means denying anyone's right to speak of revolutions in a different context (whether this should be at the expense of the abruptness, the profundity, the completeness of the change or the durability of its consequences) or in a metaphorical sense, I will try to induce arguments in favour of the thesis that the information revolution is indeed a revolution in the adopted sense.

The information revolution is a revolution for several reasons. As previously noted, the word revolution is by default charged with a positive connotation – revolution is something which, despite being capable of causing certain temporary inconveniences due to its abruptness, profundity and completeness, has lasting consequences which will change life for the better. It would be hard to deny that the information revolution, viewed as an abrupt expansion of the access to information and the possibilities of storage, computing and dissemination of information, profoundly and widely affected societies. Within just one generation, the information that is stored and processed by computers and shared via the Internet (including the social media) has managed to transform completely the professional, social and personal lives of the majority of people. This change is not only regarded as something positive by default, but it seems likely to endure.

As a result of the information revolution, today the lack of information is much more seldomly spoken of than certain characteristics of the available information. This can be witnessed easily in the field of education. When I studied at the Faculty of Law, finding textbooks and other literature used to be one of the greatest challenges for students. Sometimes, it would take us days to get our hands on a certain library book. Today, accessing the information a certain book contains is no trouble at all for my students. They have access to a huge volume of information from various sources that exceeds by far each one's capacity to rationalise it. The big question is how today's education could help

¹¹ F Fukuyama, *The End of History and the Last Man* (Free Press, 1992).

young people cultivate a critical thinking that would allow them to distinguish the relevant from the irrelevant, the true from the false, the significant from the insignificant and the speculation from the facts.

The problem with the huge volume of information is by no means relevant to students alone. Outside the educational institutions we witness an impressive change – the amount of information the average Bulgarian in the nineteenth century would receive in his entire life can now probably be received from one or two Sunday editions of the *New York Times*. This practically unlimited access to information and the unlimited possibilities for storing, computing and disseminating information not only creates huge opportunities for manipulating public opinion, but is also on the verge of becoming its very own antithesis – a lack of information. Present-day people cannot absorb, let alone rationalise, all the information that is being offered to them. They are less and less motivated to seek the original source of information and more and more prone to settle for somebody else's selection, interpretation, opinion or judgement. This leads to the cultivation of public attitudes, which not only did not emerge as the result of a critical contemplation of facts, but are sometimes completely lacking in sense. It suffices to recall that the huge amount of information surrounding the debate about genetically modified foods in the USA resulted in 80 per cent of US citizens endorsing the opinion that the label of every food product containing DNA should indicate that the said product contains DNA.¹² This example, although curious, is not directly related to the current topic. It nevertheless demonstrates that the quantity of information is not in direct proportion to the level of public awareness and, beyond a certain point, it can even lead in practice to a lack of information or the emergence of evidently false or unclear opinions verging on the absurd.

Along with the impossibility of rationalising the huge amount of information, the information revolution entails at least three additional problems for society, which I will only mention: new opportunities for the spreading of untruths; new life forms of myths; and previously unknown opportunities for the creation of an entire parallel reality.

All these questions premise, and will provoke, research interest in various scientific fields, and probably will inspire debate. What we ought to acknowledge nevertheless is that information never was and is not a direct and perfect reflection of reality. It has always been one side, one fraction, one aspect of reality, altered by the intervention of those who gather it and pass it on. Even a photographic image of a natural landscape does not convey reality, but shows only certain sides, fractions and aspects of it, intentionally selected or not by the photographer (in order to confirm this, one need only browse through a couple of tourist advertisements). Thus, every piece of information contains elements of personal attitude, and within information concerning public phenomena and processes, such elements

¹² P Howard, 'Oxford Martin School Inaugural Lecture', www.youtube.com/watch?v=J1kXdA61AQY.

of personal attitude are always considerable and often dominant. The information revolution neither creates, nor eliminates this status quo; it merely enhances it.

It is known that describing a social phenomenon or process is much easier than comprehending it. Comprehension, apart from knowledge of the phenomenon, requires putting it in a certain context. For the current topic, this would mean putting what was referred to as information revolution within a broader view of society, which would include a declared central thesis; necessary, allowed and prohibited mental operations; and a set of defined interrelated notions.

I will proceed from Carl Schmitt's understanding of the development of Western societies in the last few centuries. According to Schmitt, the concepts of the spiritual sphere are contextual insofar as every era has its own domain and, correspondingly, its own idea of culture. While the sixteenth-century Western world was dominated by theology, and during the next couple of centuries it was replaced by the metaphysics of rationalism and related moral paradigms, the central domain of the nineteenth century became economy. As the centre shifts towards a new domain, the domain the centre leaves behind is neutralised.¹³ If we follow Schmitt's logic, we could pose at least two questions. The first one is whether the twenty-first century promoted a new domain, through which social phenomena could be contemplated; the second one is whether certain notions and institutions (that embody these notions), which were charged with a certain meaning during the eighteenth and nineteenth centuries, could be contextually maintained in the twenty-first century.

In my opinion, the beginning of the twenty-first century failed to promote a new central domain, different from that of the second half of the nineteenth and the entirety of the twentieth century – economy. Thus, in the Western world, notions such as democracy, constitution, sovereignty and rights (whose meaning was conventionalised during the eighteenth century) still coexist in tension with the aspiration for market growth and the expansion of access to goods – which emerged as early as the nineteenth century – together with the ideology of liberalism, which lies as the basis of their legitimation. The incidentally emerging networks, which contest the hierarchies established within liberal democracy, indeed lead to their partial adjustment. These hierarchies, however (all conditionalities aside), remain within the frame of the same paradigm – hierarchical political models of a liberal democratic type, based on a predominantly network-type economy.

Applied to the current topic, this means considering the state of contemporary liberal democratic constitutional models within the same central domain – economy – and through the prism of information revolution, accentuating (as I have already declared): (i) the tension between sovereignty and global constitutionalism; (ii) the upholding of the representative democracy

¹³ C Schmitt, *The Concept of the Political*, expanded edn, trans George Schwab (University of Chicago Press, 2007).

paradigm; and (iii) the preservation of the ideology of rights as a leading normative ideology in the Western world.

IV. The Influence of Information Revolution on Existing Tensions in Liberal Democratic Constitutional Paradigms

When speaking of law and revolution, many will recall Harold J Berman's two volumes, dedicated to the two (according to him) revolutions that were instrumental to the development of Western legal systems – the Papal revolution and the Protestant revolution.¹⁴ Would it be justified to claim that the information revolution will result in a sort of third revolution in Western-type legal systems and especially in the democratic constitutional models on which they are based?

Whatever definition of democracy we may give, there is no way to avoid the statement that it is governance based on majority support. Every denial of this statement not only leads to a lexical paradox, but also problematises many of the basic parameters of contemporary Western political models (eg universal suffrage with a secret ballot and constitution of the main governing bodies through elections). Furthermore, it is undeniable that today's concept of democracy has a sustainable connection with individual freedom – individual freedom not as a right of participation in the resolution of common matters, as it was perceived in antiquity and also by more recent authors, such as Rousseau (according to Benjamin Constant¹⁵), but rather as a protected personal perimeter of thought and behaviour, protected from the state and from the moods of the majority that direct the state's policy.

In my opinion, today's concept of democracy can be expressed in the following manner: a governance founded on elections, which is, for the sake of protecting individual freedom, restrained by procedures, bodies of professional elites and a normative ideology.¹⁶ Therefore, contemporary liberal democracy contains a fundamental internal contradiction – it is based on the concept of the people's will (ie the collectivist concept of the dominating role of arithmetical majorities), but also involves a strong individualistic distrust in the decisions of these majorities and thus restrains them with procedures, elite bodies and individualistic normative ideology.

¹⁴ H Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Harvard University Press, 1983); H Berman, *Law and Revolution II: The Impact of the Protestant Reformations on the Western Legal Tradition* (The Belknap Press of Harvard University Press, 2003).

¹⁵ B Constant, *De la Liberté des Anciens Comparée à Celle des Modernes* (Mille et Une Nuits, 2010).

¹⁶ D Valchev, 'Democracy and Courts beyond the Ideological Banality' in M Belov (ed), *Courts, Politics and Constitutional Law* (Routledge, 2019).

Procedures underwent a lengthy process of evolution – from the direct restrictions to suffrage and the vast legislative powers of bodies constituted without elections, to the limitations in the subject and the special procedure for holding of referendums. The second group of restraints consists of bodies with high professional qualifications – governing boards of central banks, constitutional control jurisdictions, etc. Normative ideology is the link between the universally accepted moral views within a society and its legal order. It consists of moral theses that are considered general legal principles and may serve as a standpoint for the courts' interpretation of a legal situation, and in certain (politically sensitive) cases can be used as justification for legal validity.

The tension between global constitutionalism and sovereignty was not caused by the information revolution. It became visible as early as the beginning of the 1990s, when the turn towards a unipolar world gave rise to expectations for the end of the Westphalian model of international relations and even the end of history, in a political sense. An expectation was created of the upcoming end of the national state and, therefore, of its two main legitimising pillars – nation and sovereignty.¹⁷

The information revolution, indeed, did not give birth to, but rather sharpened, this contradiction and rendered it more vivid. On the one hand, thanks to the information revolution, millions of people came to understand that, in order to achieve a better life sooner, it would be easier to replace their country, rather than their government.¹⁸ On the other hand, the internet-based social networks (Facebook and the like) created a supranational identification based on belonging to a certain group, and gave birth to the feeling of supranational status – nowadays, photography aficionados or vegan cyclists may often find more common ground than, for instance, Belgian citizens among each other. There are probably multiple reasons for this – from geographical emancipation to the imposing of banalised mass culture value concepts, which are beyond the scope of this chapter.

The emergence of cosmopolitan convertible economic and expert elites, in combination with the ever-greater alienation of decision-making from local communities, which led to an increasing degree of uncertainty, nevertheless proved to have the opposite effect – it once again promoted the importance of the concept of sovereignty. One example of this is the Brussels elite, the distrust in whom, despite their meritocratic nature, is not decreasing, but perhaps even increasing. All of this emerged rather boldly amidst the COVID-19 crisis. In spite of the sporadic gestures of international and European support, and of the obvious proofs of how globally interconnected we have all become, the crisis demonstrated that societies are perceived mainly as national state-organised communities. It was no coincidence that one of the first measures for social distancing, even in countries such as the USA, was the closing of national borders.

¹⁷ J Habermas, *The Crisis of the European Union: A Response* (Polity, 2012).

¹⁸ I Krastev, *After Europe* (University of Pennsylvania Press, 2017).

With the decline in expectations for a unipolar world, and with the increasing technological potentials of China, Russia and other countries, the Internet's claim for the status of a global network without an alternative may prove to be unrealistic. The parallel autonomic functioning of two, three or more similar networks could catalyse the formation of several geopolitical unions with a low degree of mutual cultural penetration.

Ultimately, the information revolution does have an influence towards a supranational constitutionalism, albeit one that is perceived as a mutual (not necessarily unidirectional) influence that, at least for now, is not expected to become global. This conclusion is confirmed by the continuing erosion of Western moral, and therefore political, leadership. One cannot ignore the fact that the COVID-19 crisis is the first full-scale crisis since World War II, in which the Western world, and especially the USA, not only does not assume a leadership role, but gives clear signs of confusion and withdrawal.

The second big question concerns the future of representative democracy. It can be formulated thus: almost a century after the rise of the great totalitarian ideologies and regimes, the mistrust in representative democracy in its liberal form is once again increasing. The crisis of liberal democracy and the success of totalitarian ideologies between the two world wars have demonstrated that the combination of a rapidly expanding suffrage and the increasing economic and social anxiety give rise to angry and radical majorities who have very little loyalty to the democratic institutions and the democratic legal order. Indeed, the complicated procedures, the increased weight of the bodies of professional elites, and the passing off of the normative ideology of rights as self-evident and universally valid helped keep this situation under control for almost seven decades. However, today, amidst an expanding information revolution, this seems more and more problematic.

As early as 50 years ago, Marshall McLuhan pointed out that the electronic means of information render the society 'acoustic'.¹⁹ In order to suppress his uncertainty and fears, electronic man, overwhelmed by information, finds refuge in the consumption of goods. It seems that, to him, what is said on television is not as important as the fact that he owns a TV set. The COVID-19 crisis has made evident how these very 'acoustics' are the reason why fear has increased to levels that forced many governments to undertake reluctantly (at least at the very beginning) certain measures that limited important rights, and that will probably prove, in the fullness of time, to have been somewhat different from what was necessary.

It is no secret that the various techniques for recommendation of voters have always gone hand in hand with democracy. But the very logic of liberal democracy increasingly alienates the exercising of power from the paradigms described

¹⁹ M McLuhan, 'Living in an Acoustic World', public lecture (University of South Florida, 1970).

by Foucault (order, numbers, hierarchy, discipline),²⁰ by replacing making one do something with making them want to do it. For a long time, the printing press was instrumental in exercising such influence. Radio and then television managed to sensibly decrease the influence of, but failed to completely replace, newspapers. However, this is what the internet and social media are about to do. More and more people (at least in the Western hemisphere) receive information through a double intermediary – the person (or computer) that selected and designed the news, and the preferences of the respective Facebook group.

This makes it possible for relatively small political groups relying on expert teams to make successful claims for political power. Political elites are alienated from society, more and more successfully maintaining their relationship with the people through manipulation techniques built on marketing and publicity. At first glance, they adjust themselves to the preferences of the majority in exchange for the majority's recognition that they are authorised to speak on behalf of said majority. In reality, however, relying on the experts, the elites communicate their views to the voters and wait to 'acoustically' hear them echoed. Thus, political elites, in a paradoxical manner, connect the faceless mass of voters to the semi-anonymous expert elites.

Briefly, I do not think the information revolution itself will alter the paradigm of representative democracy, but it will render it less stable. Political elites perforce shorten the horizon of the policies they run; electorates become more and more suggestible and demonstrate a decreasing adherence to long-term goals; and experts become increasingly instrumental, with a narrow specialisation.

Of course, it should be considered that the facilitated communication might entail expectations for direct decision-making by voters. It would stand to reason to ask ourselves – as long as Europeans vote for a Eurovision song every year; TV viewers decide who shall remain in Big Brother on a weekly basis; and Facebook users are daily urged to 'like' or 'dislike' various posts – why should voters only cast a ballot once every four or five years in order to choose representatives, and not participate directly in the decision-making? Would one such call be 'acoustically' increased enough to cause change?

At first glance, whether the information revolution stimulated a transition from representative to direct democracy is a valid question. But in reality, it is hardly likely to precipitate the replacement of representative democracy – at least in the foreseeable future. There are at least two groups of arguments in favour of this conclusion. On the one hand, the average person's willingness to participate in policymaking should not be overestimated. The majority of people expect democracy to allow them to hold decision-makers responsible, rather than to make decisions themselves. Authors such as Rousseau put forward the question of the people's detachment from the common matters as early as the Enlightenment.

²⁰ M Foucault, *Discipline and Punish: The Birth of the Prison*, 2nd edn (Vintage Books, 1995).

With the informationally overwhelmed person, the step from ‘I want my opinion to be asked more’ to ‘I don’t want to be bothered’ is even shorter. Furthermore, the general logic of societal development witnesses that the network has a greater capacity to generate change, but the change never leads to a network-based government – it merely crystallises a new hierarchy.²¹

People of my generation are used to considering human rights as unconditional normative ideology. During the decades after World War II, this ideology proved to be rather resilient thanks to its being hierarchically imposed, on the one hand, and developed in judicial practice, on the other hand. Once again, the information revolution, without directly causing the stability of the normative ideology of rights, exerts additional influence on it in such a way that, in a short term, will probably have perceivable results.

It is well known that the ideology of human rights is a product of Western cultural tradition. Like any ideology, it is a system of consistent assertions grounded on value-related reasoning. Although value-related reasoning is by default irrational,²² it is usually claimed to be provable.²³ Samuel Moyn is correct in pointing out that rights were nationally perceived at least until World War II.²⁴ The ideology of rights promoted the national idea, and also, in the eighteenth century, served as a means for the creation of the nation and perception of the national idea. It was not until after the war that this ideology started being presented as a means for the creation and perception of a global constitutional order. The problematisation of this global constitutional order is, to some extent, a problematisation of the normative ideology of rights, as well.

The concept of individual freedom, which is the basis of human rights, was put to the test by the rise of terrorism, through the tension between freedom and security. After the 9/11 attacks, the question of limiting freedoms (therefore rights) for the sake of security was persistently put forward. As of now, the ideology of rights stands the test, but this may easily change in the face of new challenges. Once again, I refer to the COVID-19 crisis, which confirms that these concerns are not groundless.

Furthermore, it should be pointed out that the technological revolution does not appear to be slowing down or becoming more predictable. The constant changes in the labour market (new professions and need for frequent retraining) and the rapid changes in the physical environment, in everyday communication and in leisure activities all create a favourable environment for new anxious

²¹ N Ferguson, *The Square and the Tower: Networks, Hierarchies and the Struggle for Global Power* (Penguin Books, 2017).

²² I Kant, *Groundwork of the Metaphysics of Morals* (Cambridge University Press, 2012).

²³ According to Lynn Hunt, ever since human rights assumed a place among the concepts legitimising legal order, they have been considered self-evident. She illustrates this with the American Declaration of Independence and the UN Universal Declaration of Human Rights: Hunt (n 9).

²⁴ S Moyn, *The Last Utopia: Human Rights in History* (The Belknap Press of Harvard University Press, 2010).

majorities. The situation is quite similar to man's anxiety at the end of the Middle Ages, described by Fromm – men gain economic and spiritual freedom, but lose the security formerly provided by belonging to a certain economic and spiritual constellation.²⁵ Similarly, individuals today have more freedom in terms of day-to-day life and information but are much lonelier in a world of shaken value hierarchies, of informational oversaturation and of growing economic uncertainty.

The migration crisis in Europe and the debates about migration in the USA revalidated Hannah Arendt's critique of rights.²⁶ It turned out that democracy can serve not only as an effective means for political inclusion, but also as an effective means for political exclusion. The increasingly popular concept of human dignity, which may look like a source or a continuation of the ideology of rights,²⁷ might paradoxically prove to be a denial of rights' claim to universal validity. Whether it would be possible to reach a situation where rights remain national and legally instrumentalised, whereas the concept of human dignity replaces them on a global scale as a philosophical postulate, is a question that seems less and less absurd.

V. Closing Remarks

Claiming that the information revolution has a direct influence on constitutional paradigms would be an exaggeration and, in the end, untrue. But it did exert a strong influence on the social environment, which on the other hand puts traditional liberal democratic models to the test. The information revolution increases the fear of rapid change, which people are unable to comprehend and which arouses in them ever-growing doubts that they will be able to fulfil their life plans. Much like what was described by Fromm, the information revolution intensifies the fear of loneliness and insecurity, as well as creating an additional worry of the incapability to comprehend what is happening.

Of course, the information revolution promotes the idea of humanity seen as a global community. It could be instrumental to the uniting around common values, as long as the proclaimed values are not in a significant contradiction with the conduct based on these values and thus emanate hypocrisy. The visibility of such a contradiction between proclaimed values and reality is enhanced manifold in an open information environment. The late nineteenth and early twentieth centuries provide a sinister but instructive example. The tension between the values declared

²⁵ E Fromm, *Escape from Freedom* (Farrar & Rinehart, 1941).

²⁶ H Arendt, 'The Rights of Man: What Are They?' (1949) *Summer Modern Review* 24; later part of *The Origins of Totalitarianism* (Schocken Books, 1951).

²⁷ J Habermas, 'The Concept of Human Dignity and the Realistic Utopia of Human Rights' (2010) 41 *Metaphilosophy* 464.

during the Age of Enlightenment and the social reality of the late nineteenth and early twentieth centuries gave rise to the two main totalitarian ideologies – communism and fascism. Communism offered a solution to this antagonism by denying reality and promising to replace it with a new one, based on the declared values. Fascism did the opposite – it attempted to replace the values in order to justify reality. We all know what these two experiments caused and how they ended.

Whether it is true that the only thing we learn from history is that people never learn from history, we are about to find out.