Crossroads in New Media, Identity and Law
The Shape of Diversity to Come

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1. Introduction

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1.1.   Culture and communication

Nations and national cultures are often treated as basic units of analysis, as primordial components of social life. According to the dominant view among historians and social scientists, however, this artless simplicity of nationhood and national identity is almost certainly illusory (compare: Anderson, 1983; Gellner 1983; Hobsbawm 1990). National cultures and nation states are historically contingent phenomena. As Saskia Sassen notes in this book: 'the current condition we see developing with globalization is probably by far the more common one, while the more exceptional period is the one that saw the strengthening of the national state'. Even though they are often thought to go back to the mists of time, nation states are of fairly recent origin and depend on a particular set of social, technological and economic circumstances to exist. Nation-states, in other words, are not a natural phenomenon, but an artifice, a socio-technical constructed form of complexity. And as evolved constructs, one could say, they are subject to the law of entropy. Effort and energy needs to be expended to maintain and reproduce their specific forms of complexity. Without such effort, or with countervailing forces overwhelming such energy, the complexity will take on potentially undesired new forms or revert to a disorderly state. With the momentous developments in information and communication technology of the 21st century, the nation state is mutating into something that no longer necessarily facilitates the reproduction of a shared national identity. Instead it is developing into something that is likely to support an altogether different outcome. What exactly this outcome will be, what shape diversity will take, is one of the overarching questions of this volume. Maybe it will bring about a

splintering of communication into playful expressions of genuine individuality; or the re-emergence of a tapestry of minority identities, or a disaggregation and polarization of opinion through 'filter bubbles;' or, perhaps, a strengthening of diaspora communities across national borders. On the other hand it could also lead to a rise of greater global consensus, or to a drab world-wide monoculture, or to the birth of a new civility fit for the digital age, or to some combination or another of these consequences. The chapters in this book all address the connection between identity and new information and communication technologies, and they all probe the question of what shape diversity will take as a result of the changes in the way we communicate and spread information.

1.2 Nation, culture and networked communication

There is a fair amount of agreement about which institutions and practices support the nation state. Though the nation state emerged and consolidated before the era of mass media, we can safely say that nations have thrived with a national mass media that informs people about the goings-on of the collective and that makes people feel that they are part of an unfolding story. Mass media seem to have fortified the process of national unification set into motion by such collective institutions as the state bureaucracy, national museums and a national school system; social institutions that standardize the curriculum, impose a shared legal code on the jurisdiction of the nation, canonize a shared history and a shared cultural tradition, and rub out local and regional distinctions to create a uniform spelling and a received pronunciation. Whereas the rise of the nation states correlates with the rise and consolidation of the printing press, its 20th century fortification is intimately tied to the institutions of modern industrial society, with a key role for modern communication technologies and the mass media.

In the last two decades, however, information and communication technology have undergone extraordinary change. As a result, one of the mainstays of the nation state has shape shifted into something novel and different. The local, hierarchical, one-to-many communication of the industrial age has given way to the uprooted, disintermediated many-to-many communication of the digital age. The question is how this will affect the way identity is reproduced in the 21st century. In the heyday of the nation state, the different socio-cultural domains — law, democratic politics, cultural institutions and industries, print and electronic mass media, education, economics — could be said to mesh together fairly well and to reinforce each other in the creation of a shared sense of nationhood and national belonging. Now these different domains seem to be out of step. To be sure, business and finance seem to have outgrown the nation state, and so have cultural institutions and industries to a certain extent, but law and politics — notwithstanding diligent efforts to create transnational legal and political institutions and projects — by and large remain rooted in the nation state. (Which

means, in turn, that business and finance at the end of the day still depend on *national* enforcement mechanisms, for instance in the case of international commercial arbitration.) Meanwhile, the internationalization of law and politics is met with increasing hostility by the publics of many of today's democracies. In short, the different spheres that used to interlock and reinforce each other to create our feeling of nationhood, now seem to be out of sync.

This volume brings together a number of contributions at the nexus of new media, diversity and law. The central intuition that ties these contributions together is that information and communication technologies, cultural identity, and legal and political institutions are spheres that coevolve and interpenetrate in myriad ways. According to a statement that is often mistakenly attributed to Herbert McLuhan, because it captures his perspective so succinctly: 'We shape our tools and thereafter they shape us.' Even though the true provenance of this insight remains unclear, it echoes Henry David Thoreau's observation in *Walden* that "men have become the tools of their tools." This insight is not only commonplace in media and ICT research, it is also implicit in the classic accounts of the nation and nationalism, which highlighted the importance of print media, radio and television for the development and consolidation of nationalism and the 'imagined community' of the nation state. Benedict Anderson uncovered how nations were not some primordial natural phenomena that eventually morphed into nation states in the modern age. Rather, 'print-capitalism' turned the aggregation of culturally and linguistically diverse groups that typically populated pre-modern kingdoms and empires into the nations we are familiar with today, with a shared and standardized language and a shared sense of self — his famous 'imagined community' of the nation (Anderson, 1983). Ernest Gellner pointed to the importance of industrial capitalism and social institutions like law, education and the cultural canon for the development of a sense of nationhood (1983). Eric Hobsbawm noted that in the 20th century, radio and television further boosted the development of a shared national identity among people who remained largely anonymous to each other (1990). In short, the socio-technical construction of the nation depended on the concurrent and interconnected emergence of print and later electronic mass media and on the concomitant development of national, cultural, political and legal institutions. These 'tools' created a sense of shared experience and shared national debate, a standardized national language, a national curriculum and a cultural canon.

Anderson, Gellner and Hobsbawm wrote on the nation state of the 19th and 20th centuries and the information and communication technologies of the industrial age. With the shift from analogue to digital and the enhanced communication enabled by Web 2.0, many of the connections they described between mass communication, cultural identity and the nation state have been pulled out of joint. Whereas, the institutions of the nation state were largely shaped in an environment of print and analogue media, in many ways these

institutions now lag behind the developments in information and communication technology; they no longer form a natural fit with their digital and networked communication environment. To aid in this challenge, Arjun Appadurai alerts us to the nuanced difference between the 'politics of possibility' and the 'politics of probability' when delving critically into the shaping of the nation state through so called new media, new nations and new social collectives (2014).This compilation takes stock of the present state of these shifting interrelationships and dis-equilibriums.

1.3 Global archipelago, global community, or a new civility

Discussing these shifting interrelationships, the pieces all address two large and contradictory consequences that have been attributed to the shift in information and communication technology. On the one hand, new ICTs have, in effect, turned mass communication into a cottage industry. As Manuel Castells notes in *Communication Power*, there has been a shift from 'mass communication' to 'mass self-communication,' a turn from a one-to-many, to a many-to-many model (Castells, 2009: 63–7). Information has seemingly become ubiquitous and democratized. Groups can express and maintain their own culture, or their own religious identity, without the help of the institutions that used to mediate and buoy the imagination of the nation state. Simultaneously, the experience of immigration is changing as a result of new ICTs. Immigration studies are rediscovering the notion of the 'diaspora' to capture the degree in which today's immigrants can stay in contact with their culture of origin and develop hybrid diaspora cultures that bridge their home and their host cultures. These diaspora communities are facilitated greatly by the ready availability of satellite television, mobile telephony and the Internet. New ICTs are thus helping to create a global archipelago of more or less insular communities, a new cultural geography that does not necessarily coincide with the territorial divisions of the nation state.

This purported trend is both embraced and condemned. Some see the disaggregation of the public into small groups with alarm. Filtering techniques allow people to communicate only with people like themselves, to read books that people like themselves read, and to listen to music that people like themselves listen to. This leads to the creation of the so-called 'filter bubble', resulting in homogeneous and inward-looking groups that no longer come into contact with dissenting voices and diverging lifestyles (Sunstein 2001, Pariser, 2011). This in turn leads to an invisible polarization of opinion and the splintering of the public sphere. Others see these nascent communities in more positive terms. The Internet opens the mass media up to everybody and undercuts the social and cultural elites that used to decide who was published and who got air time. Hence, the disaggregation of the public on the Internet should be considered a boost to civil society; it has afforded a development that allows for the articulation of a more diverse range of opinion. The literature

on diaspora communities, moreover, highlights how diaspora networks are sites for innovation, bridging cultures and mutual understanding.

A contrary effect of globalization and the spread of new ICTs can be detected in the processes of consolidation, standardization and centralization. From that perspective, the Internet is not so much fragmenting democratic publics around the world and boosting diaspora communities, as morphing into a space that is increasingly dominated by a global culture and global standards. New networked communication, thus, helps to institute a global community. Again, this trend is both valued and deplored. Some see the emergence of a cosmopolitan culture fit for an increasingly interconnected and interdependent world. Greater interconnectedness will breed greater understanding; it will supposedly enable everybody to comparison-shop for the best ideas and the best solutions. Others regret the lack of variance that results from the domination of the Internet by a small number of corporate giants: Google, Facebook, Amazon, Apple. These big companies are creating an Internet of standardized formats; a glimmering, global monoculture dominated by uniformity.

Moreover, the problem of the 'tyranny of the majority' is something that gains a new urgency on the Internet. To manifest yourself on the Internet, is to open yourself up to the scourge of mass opinion. Everything becomes subject to the glare of the connected. In his recent book *The Circle,* set on the campus of a high tech company in the near future, Dave Eggers presents the image of a translucent shark as a — somewhat heavy-handed — metaphor for social media and networked information technology. In the book, a newly discovered species of shark is displayed in a fish tank on the campus of The Circle, where it quickly devours all other creatures and transforms all diversity into amorphous excrement deposited on the floor.

> Though blind, it found its meals immediately, no matter how big or small, alive
> or dead, and digested them with alarming speed. One minute a herring or a
> squid would be dropped into the tank with it, and moments later the shark
> would deposit, on the aquarium floor, all that remained of that animal — a tiny
> grainy substance that looked like ash. This act was made more fascinating
> given the sharks translucent skin, which allowed an unfettered view into its
> digestive process (Eggers 2013, p. 308)

A world that is completely open and transparent may very well turn out to be a world where everybody will conform to the common denominators of mass taste and mass opinion, and where everything that is quirky, individual, or unusual will be devoured and processed into grey matter.

The purpose of this volume, however, is not only to provide incisive and critical accounts of these emerging trends. Some of the contributions do not reduce to merely describing the way novel ICT architecture and new forms of interconnectivity are currently

shaping the diversity of our social world; they also address the question of how these technologies can be designed to nourish a new *civility* and urbanity, how ICTs can be redesigned to support a form of networked public life that steers clear of the shortcomings and failings listed above. How can we avoid the 'filter bubbles' of excessive sorting, or the conformity of global networks? How can we imagine digital and geographical spaces that allow for interconnectivity without accepting the increased personalization that leads to unprecedented surveillance and social sorting in both the private and the public sphere? Can we engage in the global conversation that these new ICTs make possible, without succumbing to the narrow formats and built-in limitations that now characterize many Internet platforms? Some of the authors engage with these substantive questions and suggest solutions and policy alternatives.

1.4 Networked communication, law and politics

When it comes to charting the shifting relationship between new ICTs, cultural identity, and the nation state, this volume is divided into three sections that focus on different aspects of the association between these interdependent spheres. The first section stresses the legal-political dimension of the changing relations between identity and communication. Citizens increasingly engage with networked forms of civic life that transgress national borders. In today's hyperconnected world, the focus of political engagement often moves beyond the scope of the nation state, not only because the economic structures and the political questions have an international reach, but also because the affected groups and communities, even though they are dispersed and located in different countries, can now trace each other and organize despite their geographical dispersal. The chapter by Saskia Sassen addresses this aspect of increased interconnectedness and globalization. For Sassen the blurring of borders is a complex and multifaceted phenomenon. There are many facets to the borderings of the nation state. Borders are not just a geographical circumstance, they are a phenomenon that can be disaggregated into multiple components. Globalization and digitization affect these different dimensions of border-making in various ways. Her chapter affords a kaleidoscopic glance at a range of domains like corporate business, financial trading, legal regulation and cross-border activism, and discusses how they are affected by increased globalization and digitization.

Wouter de Been looks at the way identity and culture are reproduced in the dense digital communication networks of today from the perspective of political theory. He argues that this new networked environment is unlikely to produce the kind of autonomy, individual freedom and uncompromising authenticity that cyberspace gurus saw as the great promise in the initial wonder years of the Internet. This ideal, which is still important in shaping expectations about our new networked environments, assumes an implausible cultural

plasticity. De Been argues that rather than total freedom, new ICTs facilitate a more limited form of self-realization. Jazz improvisation is the metaphor he uses to capture what freedom is like for groups that organize through new ICTs. Like jazz musicians, people who experiment with their identity on digital networks do not make things up from scratch, but build on what they know. They make variations on familiar themes. Moreover, like jazz musicians, people's improvisations are further circumscribed by the collaborative setting in which they are produced — the jazz ensemble or the networked community are socio-technical settings that demand a certain degree of coordination to work. These limitations are not to be deplored, De Been argues. They make for the kind of freedom worth having.

Increased connectivity also raises more specifically legal issues. Julie Cohen addresses the normative question of how law can help foster a new civility. Cohen contends that the two great narratives about technological change are both wrong: that is, technological change will neither lead to a fragmented, disaggregated world of insular communities, nor to an enlightened, global, cosmopolitan community. The more likely outcome of technological change is modulation. New information and communication technologies, Cohen argues, shape the behaviour of people in much more subtle ways than the narratives of the emerging global archipelago or global community suggest. Modulation makes certain behaviors seem easier, more natural and logical, while others are made to seem more difficult, unnatural and inappropriate. Technologies shape our perception and nudge us — no link with behavioural economics implied — into behaving in certain ways rather than others. In order to disrupt this soft tyranny of our technological environment Cohen suggests affirmative measures like the creation of breathing spaces, disruptions of the smooth working of our technological environment to allow people to gain new forms of agency in their technological environment.

Sanne Taekema also addresses legal issues in her chapter. Taekema is concerned with questions of a more theoretical nature. For the construction of the nation state, a unified national legal system expressing the sovereign, democratic will of a single people was of course a crucial component. In legal scholarship there have always been perspectives that question the monolithic nature of this understanding of law, that see law as a more pluralistic phenomenon. Hence, in the recent debates about legal pluralism the Internet plays an important role. It is a place where the possibilities of state law may quickly run out. Taekema argues, however, that some versions of legal pluralism make more sense than others. Approaches to legal pluralism that see the diverse legal orders as closed and autonomous also have trouble making sense of our increasingly interconnected world. What is needed, Taekema contends, is an open, interactionist conception of legal pluralism.

1.5. New ICTs, identity and language

The second section addresses the relationship between cultural identity and new ICTs. New forms of communication are changing the way members of cultural groups and minorities experience and express their cultural identity. The one-to-many format of analogue media made it easy for cultural elites to define cultural and national identity for the many. The democratization that seems to adhere to developments in digital media is disrupting this model. Jos de Mul argues that new information and communication technology is helping to change the very nature of identity. He contends it is facilitating a change from a narrative to a database identity. Narrative identity is what has traditionally defined people. A narrative identity can be complex, multi-layered and dynamic, but it is strung out over a spatio-temporal continuum and has a certain logic and coherence through time. It forms a tissue of stories that makes a person, defining who she is. This narrative identity is giving way, increasingly, to a database identity. With a database identity a person's experience, qualities and characteristics all become entries in a database. These can then be called up, assembled and re-assembled in a never-ending set of combinations. Database identity is a post-modernization of identity. It is a playful pastiche of qualities and characteristics decoupled from their context of origin and from their role in a person's history.

The changing ways in which new information and communication technologies are impinging on people's lives are highlighted in the chapter by Eugenia Siapera and Mariangela Veikou and in the chapter by Leigh Llewellyn Graham. Both chapters take a close anthropological look at the way new technologies are used by Arab and North-African immigrants in Greece and by female students at an institution of higher education in Saudi Arabia. Siapera and Veikou show how new technologies accommodate a 'double presence' — an engagement with both Greek society and with the country of origin and the community they left behind. Llewellyn Graham provides a fine-grained look at the way Saudi women employ new technologies to subtly subvert the norms of Saudi society and to create a space for forms of creativity and expression that would have been impossible offline.

Central to the creation of the imagined community was also the standardization of language. It is difficult to feel a common bond with people that you cannot understand. Institutions like the Académie Française guarding the integrity of the French language are testimony to this link between identity and language. The issue of language is also highly relevant to the Internet and raises a number of important new questions. Although overall networked communication seems to have been a boon for the preservation of linguistic diversity, the Internet may also be biased in favor of certain dominant languages. Moreover it is host to a range of artificial languages, or code, like Java, that raise questions of their own. In his chapter, Thomas Petzold, describes the evolution of linguistic diversity at the intersection of human and computational power. He addresses the biases in favor of a number of dominant languages and the possibilities of translation. Petzold urges policy

makers, the digital technology industry and others to develop more innovative approaches to make languages more equal on the Internet and to serve more users in more meaningful ways.

1.6. Cultural industries, identity and networked communication

The last section deals with the nexus between the cultural industries, identity and new ICTs. A crucial aspect of the imagined community in the modern-industrial era was the invention and maintenance of a shared cultural tradition and cultural identity — both high and low-brow. When nation states were established in the 19th and 20th centuries, this went hand in hand with the foundation of national museums as repositories of the national cultural heritage, and with the invention and celebration of folk cultures as expressions of a unique national character. These efforts helped to define a cultural canon and a national folklore as expressions of the unique cultural tradition of the nation.

Of course this nationalist project in art and culture lost much of its force some time ago. Nevertheless, art and the cultural industries remain important aspects of the way identity is constructed. Indeed, there is a renewed interest in creating cultural and historical canons and national museums across the western world to provide people with a greater sense of belonging. Filip Vermeylen and Femke van Hest look at this prop of national identity from the perspective of global art markets. Art markets have experienced a great deal of change. Vermeylen and Van Hest discuss how they are evolving. Is the art scene in our hyperconnected world becoming more cosmopolitan, or is it disaggregating into a range of new local sites? What is the effect of emerging markets like China, India and Russia on the art world and to what extent is there a rising interest in indigenous art? Their chapter confronts the question of whether, and if so to what extent, globalization and increased communication have destroyed national markets and whether there is now a truly global art market?

The contributions by Nicola Bozzi and by Marc Verboord and Amanda Brandellero both focus on the different ways in which identity and community are influenced by the way popular culture is distributed though new information and communication technologies. Nicola Bozzi, to begin with, describes the way the new media engenders new cultural roles, or stereotypes. Cultural roles, or characters, can be a focal point of cultural identity. They are a kind of cultural shorthand for group characteristics. Nicola Bozzi highlights and describes four characters that are intimately connected to the rise of new information and communication networks: namely the Nerd, the Hipster, the Gangster, and the Believer. These recognizable characters embody a number of features that have attended the rise of the digital world. This does not mean, however, that they should be seen as some type of innocent and spontaneous folklore of today's interconnected and mediated world. On the

contrary, Bozzi argues, these stereotypes are intimately connected with commercial interests and mainly serve as branding tools.

Marc Verboord and Amanda Brandellero look at popular music through the prism of the pop charts. Clearly, the rise of new ICTs has had a momentous effect on the way popular music is distributed. The one-to-many transmission of music on radio, television, disc and record, has now largely been superseded by online distribution. Verboord and Brandellero do not find any evidence for a splintering of musical preferences, however. Instead, their study suggests that there is an increasing convergence of taste. Music lovers seem to display an increasing preference for Anglo-American popular music, providing more ammunition to those who warn of the Americanization of culture and society.

1.7. Conclusion: Gradualism or Punctuated Equilibrium

Above we implicitly employed an evolutionary approach to describe the emergence of the nation state, and to situate how novel ICTs put it under strain. The nation state was created in an 'environment' of print and analogue media, we argued. Now we have entered the digital era in which the mutually reinforcing spheres of mass communication, cultural identity and the nation state have been pulled out of joint. Since the institutions of the nation state were largely shaped in an 'environment' of print and analogue media, these other spheres now seem to lag behind. They no longer form 'a natural fit' with their digital and networked communication environment.

Evolution can take different forms, however. At the end of the last century the late Stephen Jay Gould and Niles Eldredge introduced the distinction between 'gradualism' and 'punctuated equilibrium' to describe two main ways to think about evolution (Eldredge & Gould 1972, Gould & Eldredge 1977). Gradualism is the slow accumulation of small changes and mutations leading to the gradual transformation of the natural world. Punctuated equilibrium, on the other hand, assumes long periods of relative stasis, punctuated by periods of rapid and dramatic change brought about by some rupture in the living environment. Gould's paradigmatic example was the so-called Cambrian explosion, a short period in which evolution seemed to have gone into high gear, while a large number of species came into being.

If we look at recent developments at the nexus of communication, diversity and law then the changes taking place fit more closely with the model of punctuated equilibrium than with gradualism. Although the revolution in ICTs is a relatively recent phenomenon, on the timescale of developments in nation states, cultures and legal systems, change has been extraordinarily rapid. The repercussions of this change are still in full flux, and some of their pivotal implications are on full display in the chapters of this compilation.

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