

Transformation of Government Roles Toward a Digital State

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INTRODUCTION

Information technologies (IT) and the new (virtual) space of dominion that they create can alter the order of the powers of the democratic states.

This article will discuss the idea that the digital state is becoming a *Virtual* state with less power of control over its territory, because the historic power of the state is being restricted by the rise of governance beyond the state. The process of globalization, as well as the larger use of digital technologies, challenges the Westphalian nation-state, changing the state's boundaries so that new forces and new actors acquire even larger space of dominion.

We will explain that the information society challenges, but does not eliminate, the effectiveness of the state. The Web, with its open spaces, extends the state's boundaries, creating new spaces of virtual dominion and changing governments structures: Actually, digital technologies affect functions of direction, control and organization of governments, and democracy quality, opening new areas of dominion for governments.

Even if some of the functions of the states, like those related to economics, are diffuse under the new globalized and virtualized world, the states still preserve most of their political and military power. And more, the regulatory role of the state is considered pivotal: In the future, national governments need to define a new code of regulation of the Internet to defend citizens' rights in the virtual space.

BACKGROUND

The Internet creates a new space for "virtual" power, where it is not completely possible to individualize classical concepts of state and nation, rights and laws. Some scholars think the power of the state can be compromised from the pre-eminence of information and communication technologies (ICTs) (Dyson, 1998; Tapscott, 1998), imagining catastrophic scenarios and losses of power of the states: They are considered incapable to keep up with information society's innovation. In the same way, Jerry Everard, in *Virtual State, The Internet and the Bound-*

aries of the Nation-State (2000), examines the impact of the global growth of the Internet and links it to the fragmentation of the unitary state intervenes. Everard emphasizes that the traditional realistic approach was geared towards the identification of the state as an individual actor, embracing the Cartesian idea of sovereign identity. In relation to this analysis, Nicolas Negroponte sees in the growth of the Internet, the end of the nation state. In *Being Digital*, he argues that the four cardinal virtues of the information society—decentralize, globalize, harmonize and authorize to do—are going to subdue the Hobbes' idea of the state as a Leviathan (Negroponte, 1995). The state was seen by Hobbes as the social personification of the *corpus* of the domestic polity. By analogy, the Prince was considered by Machiavelli like the captain of the ship of the state (Machiavelli, 1975). By extension, the social organs working were the arms or limbs of the state. Establishing such boundaries, rules and laws of the state defines the identity of a nation. Indeed, the identity is the result of the process of the construction of boundaries, a manner to identify oneself from others. But, today, the ability of the Internet to break through boundaries challenges the traditional structures based on the identity of the state. This new situation changes the nature of the state's boundaries, but does not erode them. In the new digital state, the point is to rethink the manner of the construction of national identity and the meaning of identity itself, which is no longer connected to territory.

THE STATE SOVEREIGNTY IN THE WEB

As Mattelart reminds us, "like it or not, the territory of the nation-state remains the place where the social contract is defined. It has by no means reached the degree of obsolescence suggested by the crusade in favor of deterritorialization through networks" (Mattelart, 2002, p. 609). The territory of the nation state is still the historical and functional painting of the democracy, the place of definition of the social contract. Therefore, it is quite distant from the obsolescence that the crusaders of the

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Web attribute him (Mattelart, 2002). Hence, the information society challenges—but does not eliminate—the effectiveness of the state, whether in the political domain rather than in the economical arena, which before was sovereign.

The nation states that between the 12th and the 19th centuries became sovereign in the economical field (making the boundaries of the economy the same boundaries of the state) have seen to change their powers. If, before, the economy had to take the state into account, now it is the state that has to take the economy in consideration. Even if the state is continuing to develop an important role, it has lost its economical sovereignty, because the boundaries of the state and of the economy do not correspond anymore (Cassese, 2002).

If one side the Web, with its open spaces, extends the state's boundaries, creating new spaces of virtual dominion; from the other side, the process of globalization and the larger international contest moves the economical activities out of the state's territory, and this ends with the exasperation of those states familiar with their boundaries and spheres of influence. Consequently, there is an imbalance between economy and state that the governments have tried to resolve in different manners the last few years. In Europe, this has occurred through cooperation between the authority of different nations, arranged from national laws or bilateral agreement, through the transfer of government tasks to trans-national organisms (constituted on multilaterals agreement) or through supra-national organisms that absorb state functions. The extension of the government's tasks and spaces created regulation on different levels. A different model replaces the Westphalia one, according to which states are the unique subjects of international law and the principles of their sovereignty and legal equality are absolute. The state redefines its own organization and renounces the actual functions in favor of smaller regions (the so-called "inside federalism") and greater regions (the so-called "outside federalism"). For that, "it is lost also the unitary political connection of the citizen with the state, in favor of a balkanization of the belonging and of the identity" (Cassese, 2002, p. 50). Also, technology has played a crucial role opening the financial world markets—liberalization and technological change are strictly interwoven—and some national monopolies, like telecommunications and electricity, were transformed in areas submitted to national and international competition.

Therefore, the proposition—supported by the Californian ideology—that the physical space in which the states live has been marginalized or lost its importance needs to be reconsidered. The withdrawal of the state relates to some areas (especially public management and welfare) and not the whole state, which is, instead, increasing in its dimensions.

ICTs are not depriving the states of the ability to govern and reduce their sphere of jurisdiction; instead, they are opening the jurisdictional space to competition, favoring the possibility of the expansion of the states.

In countries like the United States (U.S.) and France, for example, the increase of the jurisdiction outside their own boundaries emerges in some cases, in which some acts made outside the territory were sanctioned: As in the case of Johansen in the U.S. or the Yahoo case in France, that had effects to the inside of these states. In fact, in January 2000, the Norwegian Department of the Economical Crimes arrested Jon Johansen, who published on the Internet a program enabling Linux users to visualize DVDs, activity that broke the rules of the U.S. Millennium Copyright Act on the exchange of copies of protected systems. Although Johansen had not committed an offence under Norwegian law, he was judged to have done so according to American rules. In the same way, the French government undertook a legal action against Yahoo who allowed sold Nazi souvenir in some auctions on the Internet. Even though Yahoo was located in the U.S. and, therefore, not subject to French law, Yahoo was forced to eliminate that material from its Web site (May, 2002). These are examples of how we face up to two structures of government: the government *of the Internet* and the government *into the Internet*. With the expression "government of the Internet," we mean the technical management of it: The development of protocols, the allocation of Internet names and addresses; in short, all those procedures that guarantee the functions of coordination regulated from an independent organism, the Icaann. With the expression "government into the Internet," instead, we make reference toward the political management, to the governments' strategies in order to control, organize and regulate this new space of power: The government goes into the Internet to regulate it and acquire areas of dominion and control. Therefore, on one side there is a solid structure of government of the Internet—created by the American government and presumably independent—with coordination functions; and from the other side there are the national governments, whom try to enter in the government of the Internet to satisfy of the criteria of transparency and democracy.

As Rhodes reminds us, the central government is not supreme anymore. "We live in the centreless society, in the polycentric state characterized by multiple centres. The task of government is to enable socio-political interactions; to encourage many and varied arrangements for coping with problems and to distribute services among the several actors" (Rhodes, 1996, p. 653). This is why the state is called to intervene in the new dominion of the Internet, to defend citizens' rights and values. Indeed, looking at the attempts of e-democracy made up from many governments—such as e-petitions, e-voting or e-

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