

## Challenges to Authority, Burden of Legitimation: The Printing Press and the Internet

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### Abstract

*The Internet is often regarded as a challenge to the nation-state's ability to regulate flows of finance, information, and symbols. Rather than examining whether it is possible to enforce regulation on such a media, this paper addresses two additional fundamental questions: (1) what do regulatory discourses and attempts to regulate reveal about the nation-state's political authority under globalisation, and (2) how does this authority vary across social, political, and cultural contexts? In order to address these challenging queries we follow a unique path, both empirically and theoretically. Theoretically, we argue that political authority is a pivotal common denominator that undergirds diverse understandings of globalisation. We then critically examine different conceptions of political authority and construct a typology that orients our study. Empirically, we follow our typology by comparing two historical phenomena: attempts by the Catholic Church to regulate the printing press during the 15th and 16th centuries, and attempts by China, Malaysia and the United States to regulate the Internet. Despite certain important commonalities, we posit that each of these cases illustrates a different model of the legitimisation processes and transformations in political authority that occur under globalisation.*

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## **I. Introduction: The Internet and political authority**

The globalisation debate crosses disciplinary boundaries and transcends academic circles. Participants in this debate typically share a mutual interest in the scope of globalisation, its effects, and the expected outcomes. But different disciplines emphasise their specific perspective in this debate. Economists, for example, would most likely highlight questions of economy and finance, while anthropologists are more likely to view globalisation from the standpoint of culture and identity. Consequently, the terminologies employed in the study of globalisation often differ. Furthermore, the definition of globalisation, and its interpretation by students of globalisation, vary. The differences can be considerable.<sup>2</sup>

Despite greatly divergent conceptions of the studied phenomenon, some underlying common denominators can be found. Central to these are questions related to a nation-state's sovereignty, and more specifically, its capacity to regulate social, economic, and political activity within its defined territory. The relevance of sovereignty in this debate is evident considering that sovereignty is perceived as a chief marker of the modern territorial nation-state and the system of nation-states.<sup>3</sup> Therefore, an analysis of this debate would also include examination of the different views and their validity in relation to the sovereignty yardstick.

The most widely accepted view of sovereignty generally perceives it as a given condition of the post-Westphalian political arrangements, constituting territorial states that enjoy an exclusive authority inwardly and outwardly.<sup>4</sup> This categorisation, however, is problematic for analytical study because there are no determining criteria, and thus it is not clear how exclusiveness is measured. Another reason that sovereignty serves as a poor heuristic device for the study of globalisation is because sovereignty is not a "prime" unit of analysis. Alternatively, political authority<sup>5</sup> is a more elementary term that underlies definitions of sovereignty. For example, the most acceptable definition of sovereignty is that there is a "final and absolute authority in the political community... and that no final and absolute *authority* exists elsewhere".<sup>6</sup>

Other definitions of sovereignty also subsume authority. For example, some international relations scholars conceptualise sovereignty as "[the] highest form of recognized and legitimate *authority* over a community or a claim to rule."<sup>7</sup> Furthermore, political authority or the legitimacy<sup>8</sup> of political authority also underlies the conceptual definition of the state: Max Weber's famous definition of the modern state calls it "the *legitimate* monopoly over the use of violence within a recognized and bounded territory".<sup>9</sup> It is also a more historically contingent term used to analyse political systems

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<sup>2</sup> Cf., JAN AART SCHOLTE, GLOBALIZATION: A CRITICAL INTRODUCTION 13-47 (2000).

<sup>3</sup> JENS BARTELSON, A GENEALOGY OF SOVEREIGNTY 30 (1995).

<sup>4</sup> Eric K. Leonard, *Seeking Sovereignty: Gaining Understanding through Critical Analysis*, 23 NEW POL. SCI. 407-28 (2001).

<sup>5</sup> For the purposes of this article, political authority is defined as the capacity to reign over a polity.

<sup>6</sup> Leonard, *supra* note 4, at 411 (emphasis added). Quotation from F. H. Hinsley, SOVEREIGNTY 26 (Cambridge: Cambridge University Press, 1986).

<sup>7</sup> *Id.* at 421 (emphasis added)

<sup>8</sup> In this article, legitimacy is defined as the feelings, attitudes, and trust that the ruled have for their rulers.

<sup>9</sup> MAX WEBER, ECONOMY AND SOCIETY 904-05 (Guenther Roth &

prior to modern political arrangements,<sup>10</sup> and thus it opens up possibilities for historical comparisons that extend beyond the modern state system. Therefore, rather than analysing globalisation through sovereignty, in this article we will assess the different views in the globalisation debate through the prism of political authority.

Three major approaches to globalisation that address political authority can be identified. If we were to stretch a line between two poles, we would find at one end those who say that the alleged challenges to the nation-state's political authority, associated with globalisation, are insignificant— and that in fact, historically, the nation-state system has successfully dealt with even stronger instantiations.<sup>11</sup> These challenges can be considered as normal deviations from the modern nation-state's political authority. In other words, globalisation is not new and not significant insofar as the state's authority is concerned.<sup>12</sup>

At the other pole are those who claim that political authority is challenged by globalisation in ways that constitute a drastic shift from the Westphalian system. The argument is that the nation-state loses much of its authority due to processes such as the expansion of the marketplace and the intensification of technological change to the point of no return. These scholars conclude that such processes herald the end of the nation state.<sup>13</sup> Some students associated with this perspective consider the overlapping political authority of the European medieval world before the 16<sup>th</sup> century as the epitome of the changes in current political authority. This view conceptualises a shift from the modern, Westphalian, state-centered political authority to an increasing leak of authority on all fronts to supra-state, sub-state, and non-state actors, and specifically to the global civil society.<sup>14</sup>

An additional school of thought posits that there is a significant shift in political authority, but avoids the causal link between changes in political authority and the future of the nation-state. These scholars view globalisation as a process of deterritorialisation and reterritorialisation of political authority from the distinct, fixed territorial boundaries – typical to the nation-state system – to transnational and sub-national spaces. Saskia Sassen, for example, argues that the “new geography of power” is deterritorialising and denationalising specific portions of the modern state's political authority, namely the historic authority to regulate economic activity within national boundaries.<sup>15</sup> Along the

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Claus Wittich eds., Ephraim Fischhoff et al. trans., 1978) (emphasis added).

<sup>10</sup> Cf., Hannah Arendt, *What is Authority?*, in AUTHORITY 81-112 (Carl J. Friedrich ed.) (1958).

<sup>11</sup> See generally, i.e., PAUL HIRST & THOMPSON GRAHAME THOMPSON, GLOBALIZATION IN QUESTION (1996).

<sup>12</sup> Cf., Stephen D. Krasner, *Globalization and Sovereignty*, in STATES AND SOVEREIGNTY IN THE GLOBAL ECONOMY (David A. Smith et al. eds., 1999).

<sup>13</sup> Jessica T. Mathews, *Power Shift*, 76 FOREIGN AFF. 50-67 (1997).

<sup>14</sup> Cf., Ronnie Lipschutz, *Reconstructing World Politics: The Emergence of Global Civil Society*, 21 MILLENNIUM 389-420 (1992). Global civil society is comprised of non-government organisations (“NGOs”) and other groups creating transnational links in promoting mutual political goals such as the environment, human rights, and indigenous peoples' rights.

<sup>15</sup> Saskia Sassen, *Digital Networks and the State: Some Governance Questions*, THEORY, CULTURE & SOC'Y, Aug. 2000, at 19-34. The new geography of power, according to Sassen, is the dispersal of economic activity, the ascent of a new legal regime for governing cross-border economic transactions, and the growing number of economic activities in the digital space. See *id.*

same lines, Arjun Appadurai demonstrates the deterritorialisation of the “iron cage” typical of the modern national state that confines authority within a fixed territory.<sup>16</sup> This cage is gradually opening up due to migration and “translocal spaces” – tourist zones, free trade zones, and refugee camps. Similarly, James Mittelman diagnoses a shift of states’ political authority in globalisation, or a “historical transformation...in politics, a loss in the degree of control, exercised locally – for some, however little to begin with – such that the locus of power gradually shifts in varying proportions above and below the territorial state.”<sup>17</sup>

The digital space, and primarily the Internet, is key to the debate on sovereignty and globalisation. The Internet is unique in its capability to instantaneously transmit information across the globe. Information thus sent disregards the national territorial borders by which a modern state is identified.

The Internet, which was originally developed by the United States Department of Defense during the Cold War to address the possibility of a nuclear attack, is a decentralised network without a central command. These characteristics make the Internet a very good illustration of globalisation as defined by globalisation theorists, namely the compression of time and space with a global reach.<sup>18</sup>

Scholars from the “nothing new” camp posit that this medium is not different from previous information technologies, such as the television, the radio, or even the submarine telegraph cable installed in the 1860s. According to such views, these technologies did not undermine the state’s political authority, and therefore the Internet does not have a significant effect over the state’s authority.<sup>19</sup> A useful example is the public attitude in the late 19th century towards the radio, believing that it would serve as a powerful tool for furthering democratisation and decentralisation of communication.<sup>20</sup> Therefore, it is possible to argue that due to the novelty of the Internet – a technology that is still developing – the medium could be regulated and confined to territorial boundaries in a manner similar to its technological predecessors.

Conversely, there are those who advocate that there is an apparent change in the state’s authority, and regard the Internet both as a tool and as evidence of this transformation.<sup>21</sup> Those in this camp argue that the Internet is not comparable to other information technologies because it combines global scope with very low barriers of entry, while older information technologies (the telegraph, radio, and television) were, by and large, confined within the nation-state’s borders and control, and thus subject to physical national regulatory regimes.

According to this view, in cyberspace it is no longer possible to account for the “where” question with a satisfactory answer. Legal authority, which is confined to

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<sup>16</sup> Arjun Appadurai, *Sovereignty Without Territoriality: Notes for a Postnational Geography*, in *THE GEOGRAPHY OF IDENTITY* (Patricia Yaeger ed. 1996).

<sup>17</sup> JAMES H. MITTELMAN, *THE GLOBALIZATION SYNDROME: TRANSFORMATION AND RESISTANCE* 6 (2000).

<sup>18</sup> See generally, *i.e.*, DAVID HARVEY, *THE CONDITION OF POST MODERNISM* (1989).

<sup>19</sup> Giovanni Arrighi, *Globalization, State Sovereignty, and The “Endless” Accumulation of Capital*, in *STATES AND SOVEREIGNTY IN THE GLOBAL ECONOMY* 53-73 (David A. Smith et al. 1999).

<sup>20</sup> Eszter Hargittai, *Radio’s Lessons for the Internet*, 43 *COMM. OF THE ACM* 50, 51 (2000).

<sup>21</sup> See, *e.g.*, Sassen, *supra* note 15, at ch. 9.

territorial borders and physical space, is based on the “where”.<sup>22</sup> Jurisdiction presumes that all interactions take place in some territory, or physical space, regulated by a certain authority. Cyberspace blurs these notions of “here” and “there”, since it is not “physical, geometric or geographic”.<sup>23</sup> Once Internet users type in their personal access code they enter the domain of cyberspace. The users are still located in the physical world, and hence under the authority of a certain government, but as they enter cyberspace they cast off citizenship, and are not confined to the nation-states’ authority. They can enjoy the faceless anonymity of cyberspace to put on new identities and peel off old ones.<sup>24</sup> The fact that cyberspace is present beyond national borders creates legal ambiguities that are derived from conflicting jurisdictions. This conflict of jurisdiction also poses a threat to government authority.<sup>25</sup>

These characteristics of the Internet also facilitate the global connectivity of civil society activists. In Jessica Mathews’ words, the Internet is “the most powerful engine of change in the relative decline of states and the rise of non-state actors”.<sup>26</sup> This type of communication also aids in shaping new global scale identities, transcending national identities, and leading to a decline of the state’s authority.<sup>27</sup> Furthermore, much of this electronic space is used as a platform for global finance and capital accumulation. These discreet portions of the Internet space escape the national regulator and thus challenge its authority.<sup>28</sup>

As we have seen, the main unit of reference in this debate is the state, and the basic question is whether globalisation challenges the state’s political authority. This question is then tested with the different representations associated with globalisation. In this paper we bring the same inquiry to the case of the Internet. We examine government reactions to the Internet to test the validity and the explanatory capacity of the different views in the globalisation debate. We address this broader issue by examining a more

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<sup>22</sup> G.I. Zekos G I., *Internet or Electronic Technology: A Threat to State Sovereignty*, 3 J. INFO. L. & TECH. § 1 (1999), at [http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/1999\\_3/zekos/](http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/1999_3/zekos/).

<sup>23</sup> Stephen J. Kobrin, *Back to the Future: Neomedievalism and the Postmodern Digital World Economy* 5-6 (1999), at <http://www-management.wharton.upenn.edu/kobrin/Research/hartrev2.pdf>.

<sup>24</sup> See, e.g., SHERRY TURKLE, *LIFE ON THE SCREEN: IDENTITY IN THE AGE OF THE INTERNET* (1995)

<sup>25</sup> David R. Johnson & David G. Post, *The Rise of Law on the Global Network*, in *BORDERS IN CYBERSPACE: INFORMATION POLICY AND THE GLOBAL INFORMATION INFRASTRUCTURE* 3-47 (Brian Kahin & Charles Nesson eds. 1997). Two of the best-known illustrations of this perspective are the French and the German lawsuits against the U.S. accusing online giants Yahoo! and Amazon of selling Nazi memorabilia on their websites. These sales made the purchasing of such items possible for local residents, contradicting local laws. At first, the online companies lost and Amazon removed such items from its websites. Yahoo! continued to battle in the U.S., arguing that the French government does not have authority over U.S.’ based operations, and eventually won. See Shelly Souza, *Outside the Box: A Fundamentalist Internet?*, *OPTIONETICS.COM*, June 22, 2001, at [http://www.optionetics.com/articles/archive/article\\_archive\\_full.asp?idNo=4090](http://www.optionetics.com/articles/archive/article_archive_full.asp?idNo=4090); Nora Macaluso, *Yahoo! Rejects French Authority in Nazi Dispute*, *E-Commerce Times*, December 22, 2000, at <http://www.ecommercetimes.com/perl/story/6262.html>.

<sup>26</sup> Mathews, *supra* note 13, at 51.

<sup>27</sup> MANUEL CASTELLS, *THE POWER OF IDENTITY: THE INFORMATION AGE, ECONOMY, SOCIETY AND CULTURE* (1997).

<sup>28</sup> Sassen, *supra* note 15.

specific question, which is why governments choose to regulate the Internet the way they do.

However, because much of the criticism of “nothing new” scholarship is directed at the lack of historicity in the other camp’s analysis, and because the Internet is indeed an incipient technology that risks making far-reaching conclusions about states’ authority premature and potentially exaggerated, a historical comparison might be useful.

Therefore, we will compare the reaction of governments – or to use a more historically contingent term, the central authorities<sup>29</sup> –to what is seen by many as the Information Revolution’s historic predecessor, the Print Revolution. More specifically, comparison can be made between reactions to the printing press and the current responses of central authorities to the Internet.<sup>30</sup>

There is another reason to conduct a historical comparison reaching back to the 15th and 16th centuries, rather than comparing the Internet to a more contemporary example. We would like to consider the validity of the claims that view the Internet as an illustration of the return to the vague and ambiguous political authority of the medieval political order. The printing press, or the print revolution of the 15th and 16th centuries, was arguably a major agent in bringing change to the legitimacy of the central authorities’ political authority, and consequently in contributing to the transformation of the political system – from the feudal system to the modern state.<sup>31</sup> Therefore, if the claims about the current transformation are correct and the comparison to the medieval political order is valid, then we should expect to find significant similarities that would support this proposition.

Nonetheless, as with every historical comparison involving such remote periods, this comparison might suffer from the fact that society, technology, and, more importantly, political authority, have changed to the point of nullifying such an assessment. For example, the printing press provided one of the only sources of written information available for the literate, non-ecclesiastic public (a dramatically smaller proportion than today’s literacy rates), while the Internet is just one of the various information sources – visual, verbal or printed – available to the public. Such a comparison, however, is viable in our more limited scope, which does not concentrate on the *effects* of these technologies, but rather on the *reactions of the central authorities* to the potential challenges to their political authority.

We argue that in order to understand political authority, and transformations in political authority, it is important to understand the processes of the legitimation utilised

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<sup>29</sup> Central authority is defined here as an array of political institutions that have the authority to govern a certain polity.

<sup>30</sup> Many have compared the Internet with the printing press (*cf.* RONALD J. DEIBERT, PARCHMENT, PRINTING, AND HYPERMEDIA: COMMUNICATION IN WORLD ORDER TRANSFORMATION (1997); James A. Dewar, *The Information Age and the Printing Press: Looking Backward to See Ahead* (1998), available at <http://www.rand.org/publications/P/P8014/>). These studies, however, have paid little or no attention to the central authority’s reaction to these technological developments.

<sup>31</sup> Elizabeth L. Eisenstein, *An Unacknowledged Revolution Revisited*, 107 AM. HIST. REV. 87, 87-105 (1979). In the past few years the debate over the role of the printing press has reopened after several decades during which the historical paradigm, which perceived the printing press as a major cause for the decline of the Catholic Church, ruled. *See, id.*; Adrian Johns, *How to Acknowledge a Revolution*, 107 AM. HIST. REV. 106, 106-125 (2002).

by central authorities to retain their political authority. We further posit that Max Weber's theory of legitimacy or authority relations, which is the dominant approach for this field of study, is not useful in accounting for these changes. Consequently, this paper suggests an alternative conceptual framework for the study of legitimating political authority that can explain these transformations within a more historically contingent perspective that might also contribute to the globalisation debate.

In the main case that we examine, we have concluded that during the Protestant Reformation the Catholic Church sensed that it was losing its authority and reacted in various ways to retain its legitimacy and to control challenges to its authority. This is illustrated by the Church's regulatory practices towards the printing press. The examined cases of the Internet illustrate similar transformations (insofar as challenges to the authority of central authorities and their struggle to retain it). We demonstrate that this reaction has led to a shift in central authorities' legitimation practices, which consequently has caused tension between the central authorities' sources of authority. We also show that due to the different legitimation practices employed by the modern nation-state, such tension would not necessarily result in a similar undermining of political authority as witnessed during the Protestant Reformation.

The first part of this paper reviews conceptions of legitimating authority, especially through Weber's approach. In this section we criticise the Weberian typology for authority relations and offer alternative categories and an overall alternative framework. The second part examines central authorities' reaction to the printing press in the first two centuries after its invention, with a special focus on the Catholic Church, which suffered from a drastic shift in its authority at that time. The last section examines central authorities' regulatory practices vis-à-vis the Internet by examining three cases – China, Malaysia and the U.S. Each illustrates a certain type of central-authority reaction to this technology, and are models for the different legitimation processes and transformations in political authority occurring today under globalisation.

## **II. Conceptualising Political Authority**

There is wide agreement among scholars that no political authority can rule by solely relying on coercion.<sup>32</sup> Such an authority will be unstable, and there are no historical examples to support such an option.<sup>33</sup> Rule must be based on legitimacy, which, as Hannah Arendt argues, can be found even in the most coercive regimes.<sup>34</sup> When coercion or violence is used it needs to be legitimised legally or ideologically. For example, the violence Mao applied against his subjects in the Cultural Revolution would not have been possible without a prior process of legitimising these actions. When a person is sent to

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<sup>32</sup> Hannah Arendt argues even further, stating that "...authority precludes the use of external means of coercion; where force is used, authority itself has failed. Authority, on the other hand, is incompatible with persuasion, which presupposes equality and works through a process of argumentation. Where arguments are used, authority is left in abeyance." Arendt, *supra* note 10, at 82.

<sup>33</sup> See generally, e.g., *id.* at 81-112; Herbert C. Kelman, *Reflections on Social and Psychological Processes of Legitimation and Delegitimation*, in *THE PSYCHOLOGY OF LEGITIMACY* (John T. Jost & Brenda Major eds. 2001).

<sup>34</sup> Arendt, *supra* note 10, at 83.

jail in a democracy for taking a bribe it is legitimate for the government to use coercion against him, because such a move is legitimised. In order to rule, *every* central authority has to rely on a strong basis of legitimacy.<sup>35</sup> Therefore, to understand political authority and transformations in political authority it is necessary to examine the central authority's legitimacy and the ways in which the central authority achieves that legitimacy and maintains its authority.

Max Weber, probably the best-known scholar of legitimacy, supports the above proposition.<sup>36</sup> Weber perceives legitimacy as a necessary condition for a systemic order and for order maintenance.<sup>37</sup> There are three ideal types that Weber proposes for authority relations. These are (a) traditional, the belief in the sanctity of ancient traditions and customs; (b) charismatic authority, which is the conviction in a certain person that holds certain extraordinary leadership qualities; and (c) legal-rational, the virtue of the belief in the validity of existing rules and political institutions.<sup>38</sup>

Weber's analysis of authority and legitimacy is important and creative.<sup>39</sup> However, as we demonstrate in the next section, Weber's theory does not account for transformations of political authority, nor is it historically contingent, and the categories Weber utilises are ambiguous and problematic. Alternatively, we suggest a different analytical categorisation for authority relations: performance-based legitimacy, constructed legitimacy, and legal-formal legitimacy. Before explaining these categories, we wish to clarify our critique of Weber's theory.

First, it is not sufficient – contrary to Weber's argument – for a person to hold extraordinary leadership qualities in order to become a charismatic leader. The charismatic leader also has to appeal to certain *emotions* (as opposed to rationality) that exist *a priori* in certain social groups, and by so doing, gains legitimacy.<sup>40</sup> For example, today many far-right leaders in Europe appeal to traditional and moral emotions and avoid using rationalistic rhetoric.<sup>41</sup> These leaders focus on idealism and provide their listeners with a sense of “spirituality” that is not acceptable to the traditional politicians of the left or right. Thus the charismatic leader appeals to preexisting emotions, or

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<sup>35</sup> We accept that different social groups and different individuals respond differently to legitimation efforts and to variant political and economic conditions in accordance to their identities. *See*, PRASENJIT DUARA, *RESCUING HISTORY FROM THE NATION: QUESTIONING NARRATIVES OF MODERN China* 7-10 (1995); David Easton, *The Perception of Authority and Political Change*, in *AUTHORITY* (Carl J. Friedrich ed. 1958). However, in this paper we attempt to assess the central authority's reaction to a perceived threat to its legitimacy and authority; such research does not necessitate reference to different social groups and their specific attitudes towards political authority.

<sup>36</sup> WEBER, *supra* note 9, at 31-32.

<sup>37</sup> Weber complicates the understanding of such order by arguing that there are different interpretations for the meaning of such systems of order, not only in different social groups, but also in the same social group and even within the same person. *Id.*

<sup>38</sup> *Id.* at 215-16.

<sup>39</sup> Hannah Arendt, for example, also understands that authority depends on various sources of legitimacy such as ancient customs, laws of nature, but, as other scholars, she does not view charisma as an element to ensure legitimacy. In that sense Weber is distinguished from other scholars. Arendt, *supra* note 10, at 83.

<sup>40</sup> Kelman, *supra* note 33, at 59.

<sup>41</sup> Weber himself supports this conceptualisation saying that “... charismatic authority is sharply opposed to rational”. WEBER, *supra* note 9, at 244.



*traditional* beliefs, which are associated with a separate Weberian category – traditional authority.

Another characteristic of charismatic political leaders is that they usually successfully emerge under specific socio-economic or political *conditions*, especially poor conditions. We can assume that under certain conditions the success of these leaders should be much higher than in prosperous times. For example, it is possible to assume that Hitler would not have been so successful in mobilising Germany if there had been no economic depression at that time. Therefore, this category is useful in accounting for the success of charismatic leaders in only very specific situations. Overall, the category of the charismatic source of authority is limited to explaining very specific circumstances and appears to be somewhat redundant to alternative Weberian categories.

Secondly, the chronological differentiation Weber makes between traditional authority and legal-rational authority is, to a great extent, historically myopic and somewhat unclear. The traditional category in Weber's typology refers to "immemorial" or ancient traditions,<sup>42</sup> and generally Weber associates this type of authority with all systems of government predating the modern state.<sup>43</sup> However, it is not clear why, for example, we cannot fit such a category more "modern" forms of political authority that exist in the modern nation-state, such as those exercised under Communism or under parliamentary liberal-democracies. Tradition does not need to be "ancient" so long as the individual is socialised to accept the political authority as some sort of historical truth. A person who grew up in a 50-year-old democratic country is more likely to accept this type of regime as *traditional* because he or she was socialised by such agents as the media and the education system.

Moreover, the difference between a rational basis for authority as a one-to-one relationship with legal authority and Weber's traditional category is not apparent. Weber defines the rational basis for authority as "resting on a *belief* in the legality of enacted rules and the right of those elevated to authority under such rules to issue commands (legal authority)",<sup>44</sup> and he connects this type to modern systems of governance. Nonetheless, the meaning of rational insofar as political authority is not sufficiently clear. Weber clearly does not follow the utilitarian tradition of rationality.<sup>45</sup> The keyword here is "belief". This word restricts Weber's own understanding of rationality to a subjective, and therefore not universal, interpretation. However, Weber does not clarify *how* this belief is achieved. Is it natural, pre-given, or constructed?

Michael Foucault dwells on this point in his work focusing on the ways in which this belief is constructed.<sup>46</sup> He finds that modern central authorities *force* rationality on

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<sup>42</sup> *Id.* at 215.

<sup>43</sup> Peter M. Blau, *Critical Remarks on Weber's Theory of Authority*, 57 AM. POL. SCI. REV. 305, 307 (1963).

<sup>44</sup> WEBER, *supra* note 9, at 215 (emphasis added).

<sup>45</sup> See, AMITAI ETZIONI, *THE MORAL DIMENSION: TOWARD A NEW ECONOMICS* (1988) (providing a review and a critique of this interpretation of rationality).

<sup>46</sup> Michael Foucault, *Governmentality*, in *THE FOUCAULT EFFECT: STUDIES IN GOVERNMENTALITY* (Graham Burchell et al. eds. 1991). Foucault uses a periodisation similar to Weber's. He distinguishes between modern systems of governance and pre-modern – the watershed being the fifteenth and sixteenth centuries with the Reformation and the Counter-Reformation and the departure from feudalism towards the modern state, which emerged in the eighteenth century.

their subjects. Foucault argues that the modern state legitimises its rule by exercising its disciplinary authority through a variety of techniques, such as surveillance, policing, institutions (*i.e.* schools and factories), and procedures or laws. He calls this system of modern legitimation of authority “governmentality”. Therefore, although Weber was correct that modern political arrangements stress more bureaucratic-rational dimensions and employ more seemingly rational methods than in previous political arrangements, rationality’s principal function is to legitimise and to enable rule.

On a more general historical understanding, which is not restricted to modern times, social order must be based on conscious rather than rational agreement. This agreement is achieved through rituals that shape cognition and form symbols to which we react, depending on our socialisation process. When these symbols are violated or the rituals undermined, coercion increases and authority weakens.<sup>47</sup> In this perspective, rationality should be understood as another tool to establish conscious agreement. Laws serve the same purpose. Laws are also means for justification, legitimising and maintaining this specific agreement. This is the reason why most laws vary so much relative to historical and political context. In other words, the hyphenation of legal-rational is not self-evident.

This interpretation of rationality, however, also applies to Weber’s category of traditional authority. Rituals and symbols are not limited to modern times. And if a person believes in a “traditional” basis for authority it does not mean that he is irrational, no more than someone that trusts the validity of a certain legal system and believes the rationality of a political system is doing so from a natural and absolute rational basis free of social influences.

Lastly, Weber’s categories cannot account for changes and transformations. Laws change in accordance with certain pressures, both internal and external. Internal demands, which result from certain shifts in legitimacy and authority, and the following exchanges and negotiations between rulers and ruled, put pressure on the central authority to alter laws to accommodate these transformations. Accordingly, external pressures can also be applied to one political authority as it interacts with other political authorities. Examples of such pressures are wars, economic pacts, and environmental treaties. They each apply external pressure on a political authority to adapt its laws to a certain international situation and influence other sources of authority.

Weber does not stress this aspect of maintaining authority and order. In fact, as Peter Blau suggests, Weber takes the existence of legitimate authority for granted and thus neglects to systematically conceptualise a theory of the conditions that created transformations.<sup>48</sup> This aspect of authority is crucial not only in modern states but also in ancient states. For example, in ancient China, if the ruler was unsuccessful in providing for the basic needs of his subjects, his authority was questioned, challenged, and even rebelled against.<sup>49</sup> Similarly, when French peasants were starving in the 18th century, they rebelled and transformed the entire political system. Therefore, we have added

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<sup>47</sup> Randall Collins Randall, *Stratification, Emotional Energy, and the Transient Emotions*, in RESEARCH AGENDAS IN THE SOCIOLOGY OF EMOTIONS (Theodore D. Kemper ed. 1990).

<sup>48</sup> See, Blau, *supra* note 43.

<sup>49</sup> DINGXIN ZHAO, THE POWER OF TIANANMEN: STATE-SOCIETY RELATIONS AND 1989 BEIJING STUDENT MOVEMENT 21, 40 (2001).

another category to the analyses of authority relations, that of legitimating authority by performance, or performance-based legitimacy. It appears that this type of legitimation is very significant for modern political authorities, probably even more so than in previous times. Today, most political authorities might lose their authority prior to the point of starvation. The reason for this change, that is, the emphasis on provision (economic and security), derives from the changing role of the state, and especially since the French Revolution.

### A. Performance-based legitimacy and the changing role of the state

While accepting the arguments of Michael Mann<sup>50</sup> and Prasenjit Duara<sup>51</sup> that the history of the state is not linear, it appears that the states' role regarding their populations has changed, especially in the past 100 years. As Gianfranco Poggi says: "It is a safe generalisation, applying to all Western states, to say that over that period [since the 19th century] as a whole, the scope of state action increased."<sup>52</sup> This process, which was initiated in the French Revolution when most European states started to apply direct rule over their subjects,<sup>53</sup> also promoted the provisions that the state guaranteed its citizens. In other words, since the French Revolution the modern nation-state emphasises performance. Under this political order, rulers bargain with their citizens for collective citizen's rights, guaranteed by the state in exchange for duties. In return for regularly paying taxes and participation in wars, the provisions of security, education and welfare are assured.<sup>54</sup>

A major milestone of this historic trend is the establishment of the modern welfare state at the end of the 19th century. Bismarck increased the Prussian state's legitimacy by guaranteeing to citizens rights such as national health benefits, accident insurance, old-age and disability insurance, and housing.<sup>55</sup>

Some systems of governance put more emphasis on this type of legitimation, with liberal democracies being the most significant. In liberal democracies much of the stability of the political system is achieved by actual performance.<sup>56</sup> However, performance-based legitimacy is not reserved for this type of regime. For example, as Samuel Huntington demonstrates, one of the primary challenges to political authority, one that led to a breakdown of legitimacy in modern authoritarian regimes, was an inability to cope with military defeat or poor economic performance.<sup>57</sup>

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<sup>50</sup> MICHAEL MANN, *THE SOURCES OF SOCIAL POWER: A HISTORY OF POWER FROM THE Beginning to A.D. 1760* 37-39 (1986).

<sup>51</sup> DUARA, *supra* note 35, at ch. 1.

<sup>52</sup> GIANFRANCO POGGI, *THE STATE, ITS NATURE, DEVELOPMENT AND PROSPECTS* 67 (1990).

<sup>53</sup> CHARLES TILLY, *COERCION, CAPITAL, AND EUROPEAN STATES, A.D. 990-1992* 25, 103, 107-14 (1992).

<sup>54</sup> *Id.* at 110, 115.

<sup>55</sup> MICHAEL MANN, *THE SOURCES OF SOCIAL POWER: A HISTORY OF POWER FROM THE Beginning to A.D. 1760* 674-75 (1993). According to Mann, Bismarck provided these benefits to legitimate his political authority and prevent class-based mobilisation against his authority. *Id.*

<sup>56</sup> Seymour M. Lipset, *Social Conflict, Legitimacy, and Democracy*, in *LEGITIMACY AND THE STATE* 88-92 (William Connolly ed. 1984).

<sup>57</sup> *See generally*, SAMUEL P. HUNTINGTON, *THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY* (1991).

## B. Constructed legitimacy and unifying myths

The second category we suggest is constructed legitimacy. Following our critique of Weber, traditional authority is not restricted to a certain historical period, but is based on morality, which, because it is achieved through socialisation, is constructed. The term “constructed” also implies the embedded dynamism of the process that makes subjects believe in the rightness of this authority. Crucial components of maintaining constructed legitimacy are “unifying myths”. Unifying myths are not a modern invention; they are as old as political authority itself. They anchor parts of a certain individual’s identity vis-à-vis a certain cosmic reality,<sup>58</sup> they order history, and they establish a collective past and tradition (viz. national, religious or parochial identity).<sup>59</sup> Unifying myths must be maintained. Their preservation is carried out through influence of the various channels of communication, such as the education system and the media<sup>60</sup> or, in previous times, religious ceremonies and mythology. As John Schaar argues, “Over time, if the rulers manipulate symbols skillfully, symbolic rewards alone may suffice to maintain supportive attitudes.”<sup>61</sup> If the unifying myths are not maintained, they erode and legitimacy declines.<sup>62</sup>

An example of this in modern political arrangements is nationalism, or the national unifying myths that are essential to ensuring and maintaining constructed legitimacy. In Anthony Smith’s words, “Nationalism... is primarily a cultural doctrine or, more accurately, a political ideology with a cultural doctrine at its center. It seeks to attain and preserve ‘the *autonomy, unity, and identity* of a nation’.”<sup>63</sup>

Change or transformation primarily occurs when the unifying myths of one system break down, vis-à-vis alternative unifying myths that validate a different political authority. Such alternative unifying myths – or in Peter Berger and Thomas Luckmann terms, “symbolic universes” – “pose a threat because [their] very existence demonstrates empirically that one’s own universe is less than inevitable”.<sup>64</sup> Nazism, for example, which introduced its own set of unifying myths that challenged previously accepted ones, led to the collapse of the legitimate authority of Weimar Germany.<sup>65</sup>

One way of examining these transformations is by viewing the social and economic conditions that facilitate such a shift.<sup>66</sup> A circumstance such as an economic crisis, a famine, or war, might lead to a challenge to the legitimating order as a result of discomfort caused by a dissonance or tension between the projected unifying myths and

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<sup>58</sup> A person has multiple identities; some might even conflict with each other in certain conditions. Cf., DUARA, *supra* note 35, at 7.

<sup>59</sup> PETER L. BERGER & THOMAS LUCKMANN, *THE SOCIAL CONSTRUCTION OF REALITY: A TREATISE IN THE SOCIOLOGY OF KNOWLEDGE* 103 (1967).

<sup>60</sup> KELMAN, *supra* note 33, at 58.

<sup>61</sup> John H. Schaar, *Legitimacy in the Modern State* 21 (1981).

<sup>62</sup> BERGER & LUCKMANN, *supra* note 59, at 105.

<sup>63</sup> Anthony D. Smith, *National Identity* 74 (London: Penguin, 1991), *quoted in* Erica Benner, *Is There a Core National Doctrine?*, 7 *NATIONS & NATIONALISM* 155, 158 (2001).

<sup>64</sup> BERGER & LUCKMANN, *supra* note 59, at 108.

<sup>65</sup> Arendt, *supra* note 10, at 83.

<sup>66</sup> Easton, *supra* note 35, at 171-74.

economic/political reality.<sup>67</sup> Another example is the Cold War, during which both sides demarcated boundaries of “us versus them” and “good versus evil”. Liberal democracies stressed the “darkness” and the “backwardness” of communism, while communist regimes mocked the “corrupting” capitalist system. During this period the focus was on constructing these unifying myths on both sides by controlling the media, and writing history books that reflected these myths. As the communist ideology became increasingly less credible due to a poor economic reality combined with ideologically disillusioned party leaders, the unifying myths were not maintained and eventually the Soviet Union collapsed.<sup>68</sup>

### C. Legal-formal legitimacy

The third and last type of legitimacy we utilise is the legal-formal category. Legal-formal include the laws and rules that *appear* to be formal. The sword “appear” is emphasised because formality is also an acquired process, achieved by the socialisation process. Laws written in a certain book do not make them legitimate. Certain socialisation processes that make the subjects believe in the formal validity of these laws legitimates them. The legitimation of this source of authority provides the central authority with the legitimacy to use coercion and violence. The legal-formal category supports both performance-based legitimacy and constructed legitimacy. For example, if a U.S federal law obligates every naturalised immigrant to swear his or her allegiance to the U.S., then this is one instance of a legal-formal way to legitimate constructed legitimacy. If there is a law that allows a government to cut or increase taxes as it wishes, it supports the performance-based legitimacy. At the same time, constructed and performance-based legitimacy support each other, as well as the legal-formal. These three types are facilitated by central authorities in different conditions and influence each other.

These three ingredients of legitimacy are apparent in every regime, but the legitimating recipe varies. Some regimes, and especially more authoritarian ones, might emphasise constructed over legal-formal legitimacy or performance-based legitimacy (*i.e.* Mao’s China, or the Taliban), while others explicitly stress performance-based legitimacy (*i.e.* post-Mao China – see Zhao 2001).

We now examine the conceptual framework that accounts for transformations in the political authority, and the reaction of central authorities to the printing press.

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<sup>67</sup> Christian S. Crandall & Ryan K. Beasley, *A Perceptual Theory of Legitimacy: Politics, Prejudice, Social Institutions, and Moral Values*, in *THE PSYCHOLOGY OF LEGITIMACY* 78-79 (John T. Jost & Brenda Major eds. 2001). Of course, personal identity shapes the ways in which the unifying myths are perceived (gender, religion, socioeconomic status, ethnicity etc.). See Easton, *supra* note 35, at 189. Also, different social groups might be affected differently by certain conditions. Thus, they will legitimate or deligitimate if affected differently by these conditions.

<sup>68</sup> Leszek Kolakowski, *Mind and Body: Ideology and Economy in the Collapse of Communism*, in *CONSTRUCTING CAPITALISM: THE RE-EMERGENCE OF CIVIL SOCIETY AND LIBERAL ECONOMY IN THE POST-COMMUNIST WORLD* (Kazimierz Z. Poznanski ed. 1992).

### III. The Printing Press

The political system in the Europe during the Middle Ages differed from the modern manifestation of the national territorial state. Although monarchs ruled over certain territories, political authority remained vague and ambiguous. It was shared by the king and his lords, who in turn shared authority with the church. This political arrangement is known as the feudal order.<sup>69</sup>

Despite the vagueness of political authority, under the feudal order all territorial units were seen as some sort of an ideal, united, political arrangement of *Respublica Christiana*, or the Christian state. The highest authority in this state, as the name implies, was bestowed on (or, more accurately, *taken* by) the Catholic Church. As Samuel Finer says, “The church was not only a state, it was *the* state: it was not only a society, it was *the* society.”<sup>70</sup> The empire was ruled by “two swords”: the temporal sword of the king, or feudalism; and the spiritual sword of the Pope, or the church, which enjoyed uncontested constructed legitimacy. Although the church was a crucial element of the feudal order it was not exactly a part of it. Some church officials served under monarchs, but at the same time the church exercised a wholly independent jurisdiction over a wide area of civil matters.<sup>71</sup> In this system the king did not enjoy full political authority, but the church did. This is not surprising when we consider the legitimation process by which the church validated its authority, which was basically achieved by the church’s “penetration into all the relations of life”.<sup>72</sup>

One of the central legitimating devices was education. Prior to the invention of the printing press, central authorities, and especially the Catholic Church, were not too concerned about books undermining their authority, although the church did ban books that were considered heretical. This practice began as early as 150 A.D. with the condemnation of an unauthenticated history of the life of St. Paul.<sup>73</sup> Another major instance of censorship by the Catholic Church was Constantine’s decree from 325 A.D. censoring Jewish books.<sup>74</sup> These books were few in number with limited circulation, and did not pose a serious threat to the church’s nearly absolute constructed legitimacy.<sup>75</sup> It had almost complete control over the spread of knowledge and ideas at that time, as it monopolised the production of books. Monks manually duplicated books, so that the number of titles and their subjects remained relatively limited, since copying a book was a slow process. Likewise, because libraries were inside monasteries, very few non-ecclesiastics had access to books. Even if they gained access, it is very doubtful that they would have been able to read them, since literacy rates were near zero. Furthermore, the

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<sup>69</sup> 1 SAMUEL FINER, *THE HISTORY OF GOVERNMENT FROM THE EARLIEST TIMES* 867-68, 874 (1997).

<sup>70</sup> *Id.* at 857.

<sup>71</sup> *Id.* at 888; POGGI, *supra* note 52, at 38.

<sup>72</sup> FINER, *supra* note 69, at 857.

<sup>73</sup> GEORGE H. PUTNAM, *THE CENSORSHIP OF THE CHURCH OF ROME: AND ITS INFLUENCE UPON THE PRODUCTION AND DISTRIBUTION OF LITERATURE* v, 1 (1906).

<sup>74</sup> WILLIAM A. M. POPPER, *THE CENSORSHIP OF HEBREW BOOKS* 2 (1968).

<sup>75</sup> PAUL F. GRENGLER, *THE ROMAN INQUISITION AND THE VENETIAN PRESS: 1540-1605* 63-5 (1977).

church was the absolute educational authority, for the simple fact that only few outside the church were educated.<sup>76</sup> In short, the church regulated public opinion, the unifying myths it presented were perceived as “Godly truths”, and its constructed legitimacy was rarely questioned.

### A. The invention of the printing press

The production of books spread like wild fire in Western Europe following the invention of the printing press in 1450.<sup>77</sup> It is estimated that during the *Incubala*<sup>78</sup> alone, approximately 15,000 different texts were printed in 20 million copies,<sup>79</sup> and in the 16th century 150,000-200,000 different books and book editions were printed, totaling more than 200 million copies. As Benedict Anderson argues, business entrepreneurs realised the benefits of the new medium, and contributed a great deal to the rapid spread of the book.<sup>80</sup> This increase in the supply of books eventually led to a drop in their prices, so more people than the most affluent could purchase books.<sup>81</sup> The growing demand was not just for religious publications, but also for secular literature in vernacular languages.<sup>82</sup> The numbers of libraries, and the amount of volumes within these libraries grew as well. Both libraries and books became accessible to a wider segment of the population. The proliferation of book-distributed knowledge was not restricted to Catholic religious materials as before, but also included classical literature, new ideas in science, political philosophy, and most importantly information about religious reformations.<sup>83</sup>

Within a relatively short period of time the Catholic Church lost its hegemony over public opinion and the traditional socio-political structure began to transform. While the spread of books was not the only cause for the demise of the church,<sup>84</sup> the printing press did erode the its authority by assisting to spread new ideas and competing myths.

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<sup>76</sup> PUTNAM, *supra* note 73, at 10.

<sup>77</sup> Johann Gutenberg invented the first printing press in 1450 in the city of Mainz, Germany, and he printed the first book in 1454. MIRIAM ELIAV-FELDON, *THE PRINTING REVOLUTION* 29 (2000)

<sup>78</sup> *Incubala* is the period of time from Guttenberg’s invention to 1500.

<sup>79</sup> LUCIEN FEBVRE & MARTIN HENRI-JEAN, *THE COMING OF THE BOOK: THE IMPACT OF PRINTING 1450-1800* 248 (1976).

<sup>80</sup> *See generally*, BENEDICT ANDERSON, *IMAGINED COMMUNITIES* (1994). For example, from an average of about 400 to 1,500 copies per book in 1480, by 1491 books averaged 2,000 copies. FEBVRE & MARTIN, *supra* note 79, at 218. In 1527, Erasmus’s *Colloquies*, probably one of the earliest bestsellers, not including the Bible, sold 24,000 copies. *Id.*

<sup>81</sup> FEBVRE & MARTIN, *supra* note 79, at 218, 249.

<sup>82</sup> *Id.* at 249-50, 255. Latin lost its primacy as an international language by the seventeenth century. *Id.* at 274.

<sup>83</sup> ROBERT A. HOUSTON, *LITERACY IN EARLY MODERN EUROPE: CULTURE AND EDUCATION 1500-1800* 166 (1988).

<sup>84</sup> The transformation in the Catholic Church’s authority started before the Fifteenth Century and gained salience especially following the Sixteenth Century. The printing press was not the only cause for the decline in the authority of the Catholic Church. Others include the Black Plague, the Hundred Years War, and perhaps the gunpowder that was introduced to Europe, which facilitated wars. Therefore, we do not argue a one-to-one causality between the printing press and the loss of authority of the Church. We do argue, however, that the spread of books and printed materials eroded the Catholic Church’s constructed basis of authority and especially its unifying myths.

These new myths contested the church's unifying myths and weakened its constructed legitimacy.

In order to appreciate the contribution of the printing press to the political transformation,<sup>85</sup> it might be useful to have a "before and after" evaluation regarding the printing press. We therefore turn to a comparison between John Huss and his follower Luther. In 1415, the Council of Constance condemned and then burned the writings of Huss, who had criticised and demanded to change some of the core principles of the Catholic Church. The Church burned Huss at the stake a year later.<sup>86</sup>

Martin Luther made similar accusations and claims about the church to those made Huss, but Luther wrote *after* the printing press was invented. His pamphlets and sermons translated from Latin to vernacular languages were instantly reprinted and sold in the thousands. It took exactly seven days for the first edition of his famous pamphlet *To the Christian Nobility of the German Nation* to be sold out, and within two years twelve more editions had been printed.<sup>87</sup> Overall, Luther's writings represented "more than one third of the total number of German books sold between 1518 and 1525".<sup>88</sup> Luther's ideas proliferated and reached a large audience of readers, and soon after many Christians, following his doctrine, departed from the Catholic Church.<sup>89</sup>

### **B. Central authorities' policies towards the printing press**

It took the Catholic Church 75 years to orchestrate its censorship policies to accommodate the new technological and political realities. At first, the printing press was perceived as a useful tool for the church to promulgate its doctrine, and limited steps were taken to address the transformations. However, as the church began to perceive the potential and practical threat to its unifying myths and view its undermining of constructed legitimacy, church authorities gradually escalated their intervention and censorship. The initial regulatory measures were not adequate to contain the spread and influence of printed books.

In 1479, Pope Sixtus IV authorised the University of Cologne to use ecclesiastical censures against printers, purchasers, and readers of heretical books. The focus was directed at suppressing heretical writing.<sup>90</sup> In 1487, Pope Innocent III published a bull that decreed excommunication, fines, and book burning as punishments for those dealing with heretical books. In 1501, Pope Alexander VI issued an additional bull, authorising universal censorship with the desired goal of homogenising censorship throughout Christendom. By that time the Roman Church was "shaken to its foundations by the Protestant Reformation, and alarmed at the increasing power which the secular state

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<sup>85</sup> In the past few years the debate over the role of the printing press has reopened after several decades during which the historical paradigm, which perceived the printing press as a major cause for the decline of the Catholic Church, ruled. See AM. HIST. REV. (2002) (providing a good review of the different opinions on this matter).[Need to ID volume etc for Feb 2002 edition]

<sup>86</sup> PUTNAM, *supra* note 73, at 70.

<sup>87</sup> HOUSTON, *supra* note 83, at 167.

<sup>88</sup> FEBVRE & MARTIN, *supra* note 79, at 291.

<sup>89</sup> *Id.* at 295.

<sup>90</sup> GRENDLER, *supra* note , at 71; HENRY S. STEINBERG, FIVE HUNDRED YEARS OF PRINTING 186 (1959).



arrogated to itself”.<sup>91</sup> This decree was written in the traditional form of guidelines, which were general, vague, and inefficient at preventing the circulation of books disapproved by the church.<sup>92</sup>

In 1515, as the Catholic Church witnessed the rapid dissemination of heretical books and Protestant ideas that threatened to undermine its authority, reached the conclusion that more drastic measures should be taken to contain the danger. At the time it was already clear that “[it was] the church whose authority and existence had been assailed and the contest was fought out over creeds and not political platform”.<sup>93</sup> In that year, Pope Leo X issued a bull forbidding the printing of any book without the church’s authorisation.<sup>94</sup> The Roman Inquisition was established in 1542, and in 1543 it was ordered that no book, regardless of its contents, should be published or sold without the permission of the Inquisition. The first detailed list of banned books was printed in Venice and comprised 70 titles. Larger lists were issued in Florence (1552) and Milan (1554), and from 1559 the *Index Librorum Prohibitum* – the index of banned titles– was published by the church and updated periodically.<sup>95</sup>

In the Catholic states of Western Europe, censorship was in the hands of the church. However, despite strict regulation, little or no enforcement was taking place.<sup>96</sup> Only after the 1550s did Catholic states such as Venice and Spain assume exclusive control over the printing press with the guidance of the church’s index.<sup>97</sup> In most cases, however, printing press regulation was not consistent. Books prohibited in one index did not appear in another published elsewhere, and extra-territorial enforcement was uncommon.<sup>98</sup> Even in Italy, the geographic area where the Roman Church probably enjoyed the highest levels of legitimacy, authorities were not able to fully manage the circulation and production of books.<sup>99</sup> For example, Luther’s writings were smuggled into and sold to the highly regulated city-state of Venice soon after they were published.<sup>100</sup> All over Italy, and even in Rome itself, it was not too difficult to acquire a condemned book.<sup>101</sup>

Censorship in France is another case in point. Although the country was under the auspices of the Catholic Church, it was more influenced by the French (Gallic) Church, and papal indexes were not accepted as binding unless the Gallic Church approved them. The Gallic Church, however, wanting to demonstrate its authority, usually did not accept the papal indexes, and instead created its own.<sup>102</sup> This resulted in relatively loose regulation and enforcement, which can also be tied to the French kings’ interest in increasing print production for economic purposes more than protecting the doctrines of

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<sup>91</sup> STEINBERG, *supra* note 90, at 186-87.

<sup>92</sup> GRENDLER, *supra* note , at 71.

<sup>93</sup> PUTNAM, *supra* note 73, at 9.

<sup>94</sup> FEBVRE & MARTIN, *supra* note 79, at 244.

<sup>95</sup> *Id.*

<sup>96</sup> GRENDLER, *supra* note , at 74-86.

<sup>97</sup> HOUSTON, *supra* note 83, at 163, 165.

<sup>98</sup> PUTNAM, *supra* note 73, at 4.

<sup>99</sup> *Id.*

<sup>100</sup> GRENDLER, *supra* note , at 72.

<sup>101</sup> PUTNAM, *supra* note 73, at 37-38.

<sup>102</sup> *Id.* at 31.

the Catholic Church.<sup>103</sup> The outcome of these regulatory practices was that French booksellers, in many cases, sold banned books to meet the great demand for them. The risk was very low, as long as they adopted some simple techniques to circumvent censorship. These included omitting the publisher's location from the title, using false imprints,<sup>104</sup> assuming pseudonyms, falsifying places of publication,<sup>105</sup> and inventing small volumes or "pocket books" intended to escape the censor's eye. From a broader perspective this demonstrates the socio-political reconstruction of political authority in Europe at that time.

In polities where the church had already lost its political authority (e.g. Protestant territories), printing press regulation was rather different. Most Protestant territories (England, Holland, and North Germany) also regulated the printing press, but unlike the Catholic states were not under a single central religious authority. Thus censorship was a tool in the hands of monarchs, who used it to shape and control public opinion for their own purposes and to increase their constructed legitimacy.<sup>106</sup>

In England, even before the split from the Church of Rome under Henry VIII, the Roman Church never gained control over printing press regulation. The crown regulated the press by using non-ecclesiastical censors, which followed its unifying myths.<sup>107</sup> In 1529, Henry VIII became the first monarch to publish a list of banned books, and royal permits were required in order to establish a printing press. In 1538, when English authorities realised that many forbidden books were being imported, they forbade imported English books. In 1543, the English Parliament legislated the "Act of the advancement of true religion" in order to prevent "non-reliable" people (e.g. women, artisans, and labourers) from reading books and reaching their own judgments. However, enforcement was not very strict, and readers could buy, for instance, pornographic literature imported from France.<sup>108</sup>

In the Protestant city-states of northern Germany, every polity adopted its own print regulations, which were prepared by both Protestant ecclesiastics and by civil authorities under the absolute authority of the State. As in England, various political, economic, and religious interests shaped the regulation. In general, the penalties were much less severe than those in Spain or Rome, and the enforcement less strict. Due to the fragmented geopolitical structure of this region, books prohibited in Berlin, for example, were printed in Leipzig, and if a specific title was also condemned in that city, then it was produced in Leyden or Amsterdam,<sup>109</sup> since the Dutch regulation was probably the least restricted in Europe.<sup>110</sup> In fact, Dutch printers used the various techniques mentioned above to escape foreign censors in efforts to capture a share of the foreign book

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<sup>103</sup> *Id.* at 27, 40.

<sup>104</sup> FEBVRE & MARTIN, *supra* note 79, at 307-08, 311.

<sup>105</sup> STEINBERG, *supra* note 90, at 189.

<sup>106</sup> PUTNAM, *supra* note 73, at 48.

<sup>107</sup> *Id.* at 41-42; STEINBERG, *supra* note 90, at 186.

<sup>108</sup> HOUSTON, *supra* note 83, at 165; PUTNAM, *supra* note 73, at 42.

<sup>109</sup> PUTNAM, *supra* note 73, at 48-52.

<sup>110</sup> HOUSTON, *supra* note 83, at 165.

market.<sup>111</sup> The local regulation aimed solely at the Dutch press banned criticism of Dutch authorities.<sup>112</sup> In many cases the indexes and restrictions only drew public attention to banned books. For example, it is said that in 16<sup>th</sup>-century Holland the index was used as a *recommended* book list.<sup>113</sup> Consequently, the demand for the banned titles increased and so did their prices.<sup>114</sup>

In Muslim territories outside Christian Europe the printing press was completely banned due to the belief that Arabic letters, the letters of the Koran, were sacred and that only qualified people could recreate them. As early as 1485, the Ottoman Sultan, Byazid II, issued an order forbidding the printing of Arabic letters by machines. This order was reissued by his successors. The centralised structure of the Ottoman Empire made certain that the decision was strictly and efficiently enforced. Only in 1728 was the first printing press established in Istanbul, but religious objections led to its closure in 1742. The first Koran was printed in Istanbul in 1875.<sup>115</sup>

The printing press contributed significantly to transformations in the political authority of central authorities at this time. The Internet, the modern historical parallel to the printing press, is much faster and has broader territorial coverage. It thus poses not only similar dilemmas for today's central authorities, but new ones as well.

#### **IV. Internet Regulation**

No country is required to connect to the Internet, but almost every government *chooses* to.<sup>116</sup> By connecting to the Internet a government adheres to specific rules, norms, and standards (e.g. communications protocol, networking standards, etc.) In other words, they join a specific regime. One of the most important reasons for countries – especially developing ones – to connect to the Internet is because these countries' governments see information technology generally, and the Internet specifically, as a “magical” stepping-stone to the 21st century (global) economic reality. Countries believe that by connecting

<sup>111</sup> STEINBERG, *supra* note 90, at 190. Thus it is possible that John Hobbes's *Leviathan* may have been issued in Amsterdam, and not in London as the imprint indicates; the same is true for nearly all French enlightenment literature. *Id.*

<sup>112</sup> HOUSTON, *supra* note 83, at 163.

<sup>113</sup> *Id.* at 166.

<sup>114</sup> STEINBERG, *supra* note 90, at 191.

<sup>115</sup> Manfredo Maciotti, *Innovation and Diffusion of Technology: an Example of the Printing Press*, 154 *IMPACT OF SCI. ON SOC'Y* 143, 146 (1989). The Koran was printed prior to that in Europe, and in European colonies. *Id.* at 146.

<sup>116</sup> There are no indications of international coercion from any source for connection to the Internet. As of 1999, Iraq, Libya and Myanmar were completely disconnected from the Internet. Human Rights Watch. 1999. The Internet in the Mideast and North Africa: Free Expression and Censorship. Online. [www.hrw.org/hrw/advocacy/internet/mena/](http://www.hrw.org/hrw/advocacy/internet/mena/) last accessed: June 03, 2003.; *Internet Remains Prohibited in Myanmar*, ASSOCIATED PRESS, May 3, 2000, available at [http://www.nua.com/surveys/index.cgi?f=VS&art\\_id=905355752](http://www.nua.com/surveys/index.cgi?f=VS&art_id=905355752). Today, Iraq, Myanmar and Syria, though connected to the Internet, limit access only to governmental use. *As Internet Grows, Censorship Follows*, NUA.COM, April 28, 2000, at [http://www.nua.com/surveys/index.cgi?f=VS&art\\_id=905355747](http://www.nua.com/surveys/index.cgi?f=VS&art_id=905355747). Afghanistan, under Taliban rule, was connected to the Internet but in July 2001 the government decided to disconnect. *Taliban Outlaws Net in Aghanistan*, REUTERS, July 17, 2001, available at [http://www.nua.com/surveys/index.cgi?f=VS&art\\_id=905356983](http://www.nua.com/surveys/index.cgi?f=VS&art_id=905356983). It can be assumed that with the displacement of the Taliban Afghanistan ed to the reconnection to the Internet.

to the Internet they connect their citizens to the “Information Revolution”, and as such might enhance their human capital and improve their economic position. In this respect, the Internet is seen as a fast train headed in one direction – towards economic growth. Since this train is always accelerating, these countries fear that if they do not jump on they will never be able to catch up. The other reason is that if they do not do so, other neighbouring countries will, and thus they might lose their competitive advantage or even go backwards in terms of relative development.

For example, in the Asian region, Singapore is competing with Malaysia and China to become the regional hub for the Internet and the Information Revolution. For this purpose, Singapore officials argue that they have to improve their technological connectivity, Internet user rates, infrastructure, and knowledge as quickly as possible. Minister of Information and Arts, George Yeo, has been very explicit about Singapore’s goal:

Geography will matter less in the future. We must therefore think of new ways to retain our position as a hub... if we will succeed, we will be one of a number of great cities among the Pacific Century. If we fail, other hubs will displace us and we will be relegated to a backwater.<sup>117</sup>

#### A. China

China has taken the spirit of Yeo’s statement seriously. The country joined the Information Revolution late<sup>118</sup> but with great determination. During the 1990s the Chinese oligarchy realised that “China must vigorously promote the development of information technology”.<sup>119</sup> Information technologies, and especially the Internet, are crucial elements for China’s economic development. However, China began with a low starting point. The *lingua franca* of the Internet is English, and China possessed a poor telecommunication infrastructure, resulting in high telecommunication prices. Its cumbersome administration was not suitable to address the nimbleness of new technologies.

Chinese officials recognised that bureaucratic complexity might inhibit technological innovations and Internet development. Consequently, the new Ministry of Information Industry was introduced in 1998. The government devoted US\$28 billion to pave more than 100,000 kilometers of fiber optic cable linking many parts the country.<sup>120</sup> To further encourage Internet growth, the Chinese government started a project aimed at putting all government and its affiliated agencies online. By 1999, most government departments had some sort of online presence.<sup>121</sup> There has also been impressive growth in Chinese Internet users. In 1996, a year after the Internet was publicly introduced in

<sup>117</sup> Garry Rodan, *The Internet and Political Control in Singapore*, 113 POL. SCI. Q. 63-89 (1998).

<sup>118</sup> The first Internet transaction in China was in 1986 when an email message sent out using the Chinese Academic Network (CANET). However, the Internet was not public in China until 1995. *China’s Internet Development Timeline*, CHINAONLINE.COM, Dec. 29, 2004.

<sup>119</sup> Dali L. Yang, *The Great Net of China* (2001), at [http://home.uchicago.edu/~daliyang/new\\_page\\_1.htm](http://home.uchicago.edu/~daliyang/new_page_1.htm).

<sup>120</sup> Georgette Wang, *Regulating Network Communication in Asia: a Different Balancing Act?*, 23 TELECOMM. POL’Y 277, 284 (1999).

<sup>121</sup> Yang, *supra* note 119.

China, the number of users was less than 100,000; two years later, in 1998 there were 1.2 million users, and this number has doubled every year since.<sup>122</sup> Today, following the U.S., with China has the second largest number of home Internet users in the world, about 56 million.<sup>123</sup>

However, the Internet poses a threat to the Chinese oligarchy's unifying myths and authority that conflict with the government's pro-Internet programmes. As in other countries, the Internet is not used, by and large, for carrying political content,<sup>124</sup> and China has been gradually reforming media censorship since the 1980s.<sup>125</sup> Chinese government officials perceive the Internet as a political risk to its authority. This was the primary reason for China's late promulgation of the Internet. As the official party paper *The People's Daily* put it, the Internet is a "battlefront to infiltrate China."<sup>126</sup> Therefore, until adequate technologies might contain this battlefront, the government banned unfettered public Internet usage. China's Minister of Post and Telecommunications at the time stated, "China as a sovereign state is putting this type of information under control."<sup>127</sup> Bill Gates' statement that the Chinese government is trying to "have their cake and eat it too"<sup>128</sup> captured the tension between the desire to promulgate the Internet and at the same time control much of its content. In other words, the tension between performance-based legitimacy and constructed legitimacy is easily recognised.

China's government devotes immense resources to the censorship of Chinese Internet usage.<sup>129</sup> The Ministry of Information Industry, the same administration that was established to promote the Internet in China, also maintains constant surveillance over online activity.<sup>130</sup> For example, the government blocks websites that include 'Western decadent culture' content (*i.e.* porn sites), and sites with undesired political and "counter-revolutionary" content.<sup>131</sup> Blocked sites include those of Taiwanese and Tibetan dissidents and American newspapers.<sup>132</sup> Censorship is not limited to websites; it is also active in chat-rooms and Usenet groups, where the government allows access for only computer- and science-related Usenet groups.<sup>133</sup> On some occasions the government has taken the drastic measure of intentionally stalling Internet traffic to hamper trans-border-dissident online information exchange.<sup>134</sup>

Other than managing censorship with technological means, Chinese authorities also require self-censorship of ISPs, which are mostly government owned. Strict

<sup>122</sup> LESLIE D. SIMON, NETPOLICY.COM: PUBLIC AGENDA FOR A DIGITAL WORLD 49 (2001).

<sup>123</sup> *China Number Two in Home Net Usage*, REUTERS, April 22, 2002.

<sup>124</sup> Yang, *supra* note 119.

<sup>125</sup> ZHAO, *supra* note 49, at 325.

<sup>126</sup> Yang, *supra* note 119.

<sup>127</sup> Wang, *supra* note 120, at 283.

<sup>128</sup> *Id.* at 285.

<sup>129</sup> Yang, *supra* note 119.

<sup>130</sup> Rupert Wingfield-Hayes, *China Loses Grip on Internet*, BBC NEWS, June 5, 2002, at <http://news.bbc.co.uk/1/hi/world/asia-pacific/2027120.stm>.

<sup>131</sup> Yang, *supra* note 119.

<sup>132</sup> Wang, *supra* note 120, at 280; Peng Hwa Ang, *How Countries Are Regulating Internet Content* (1997), at [http://www.isoc.org/isoc/whatis/conferences/inet/97/proceedings/B1/B1\\_3.HTM#s12](http://www.isoc.org/isoc/whatis/conferences/inet/97/proceedings/B1/B1_3.HTM#s12).

<sup>133</sup> Peng Hwa Ang & Chee Meng Loh, *Internet Development in Asia* (1997), at [http://www.isoc.org/isoc/whatis/conferences/inet/96/proceedings/h1/h1\\_1.htm](http://www.isoc.org/isoc/whatis/conferences/inet/96/proceedings/h1/h1_1.htm).

<sup>134</sup> Yang, *supra* note 119.

enforcement is applied when these regulations are breached. Websites are shutdown, many webmasters and Internet users are put on trial, and some are even jailed.<sup>135</sup> For example, government officials closed as many as 17,000 cyber cafés, which were operating without suitable filtering software.<sup>136</sup>

Despite keen regulatory and enforcement efforts the Internet still poses a “genuine challenge to the ruling elite”, or, more accurately, a challenge to the ruling elite’s unifying myths, as the government admits it cannot fully control Internet usage.<sup>137</sup> As the Internet expands, it is more difficult to enforce censorship, especially when that censorship occasionally changes. In some instances, the Chinese have even relaxed censorship. For example, when the Internet was introduced in China, all users had to register with the police. This requirement was subsequently waived.<sup>138</sup> These conditions have enabled civil groups, such as the Falun Gong, to make extensive use of the Internet to mobilise their members. Even non-dissidents utilise the Internet to criticise the government on issues such as corruption,<sup>139</sup> human rights and democracy.<sup>140</sup>

In the race between Internet development and its censorship it appears that Internet development prevails. Lin Quan, secretary-general of China’s State Science and Technology Commission, announced that official censorship would not be allowed to stop the growth of Internet use.<sup>141</sup> Some conclude from this that “the Internet is changing China profoundly, breaking down the stranglehold on information held by China’s communist rulers”.<sup>142</sup> These views are most likely exaggerated. It would be more probable that the Internet reflects, and also contributes to, long-term transformations that occur in the Chinese regime.

One of the effects the Internet has is to pressure the Chinese government towards more liberalisation of other media. An example is the Chinese state-run television station that reported a catastrophic mine incident in which 81 miners were killed. The government did not want the news to spread, but hours after the incident the information had disseminated over the Internet. Since the story had already gotten out and been largely circulated, the authorities allowed for coverage on the more regulated forms of media.<sup>143</sup> Stories like this illustrate how the Internet contributes to more governmental transparency and the liberalisation of traditional media.<sup>144</sup> Furthermore, a different kind of pressure is coming from above. China was forced to change its policies as a condition to its acceptance to the World Trade Organisation. Now China allows foreigners to own 49 percent of Internet companies that operate in China; by agreement, after two years this number will increase to 50 percent.<sup>145</sup>

<sup>135</sup> Wingfield-Hayes, *supra* note 130.

<sup>136</sup> Bobson Wong, *China closes 17,000 Internet cafes*, DIGITAL FREEDOM NETWORK Nov. 21, 2001.

<sup>137</sup> Yang, *supra* note 119.

<sup>138</sup> Ang, *supra* note 132.

<sup>139</sup> Yang, *supra* note 119.

<sup>140</sup> Wingfield-Hayes, *supra* note 130.

<sup>141</sup> Wang, *supra* note 120, at 283.

<sup>142</sup> Wingfield-Hayes, *supra* note 130.

<sup>143</sup> *Id.*

<sup>144</sup> Yang, *supra* note 119.

<sup>145</sup> Shanthi Kalathil, *China’s Dot-Communism*, 122 FOREIGN POL’Y 74 (2001).

Malaysia, one of China's regional economical competitors, chose a different path than China; it turned almost completely to legitimation by economic performance.

## B. Malaysia

Malaysia provides a case illustrating a major reliance on legitimising government's authority by economic performance. Since 1970, a few years after the establishment of the country and its independence from colonial forces, the Malaysian government declared its goals of "building a progressive society which shall be oriented to modern science and technology".<sup>146</sup> And indeed, during 1970, Malaysia started to industrialise and to move towards becoming an export-orientated economy. The primary export products, however, remained primarily natural resources.

When Mahathir Mohamed was elected Prime Minister in 1981 he sought to materialise his predecessors' aspirations with fervor. Following his nationalist ideology, his 1969 book *The Malay Dilemma* called for Malaysia to break out of the marginalisation of the colonial era through economic development. Mahathir was determined to transform Malaysia into an Asian tiger, a leading producer and exporter of cars, steel, and high-technology goods. Malaysia continued its industrialisation at an increased pace. Symbolising this process, substantial construction began and massive office buildings and hotel appeared, including the Petronas Towers, the world's tallest building.<sup>147</sup>

In 1996 the Malaysian government published "The Way Forward – Vision 2020" ("Vision 2020"), declaring a very ambitious goal: to increase eightfold the country's economy by reaching an annual GDP growth rate of seven percent in the year 2020, thus completing the "hightechisation" of the country in that time.<sup>148</sup> This target was to be achieved specifically by developing human capital and by sponsoring sophisticated telecommunications infrastructure.<sup>149</sup> As in China and Singapore, Malaysia's government aspired to surpass its neighbouring countries in terms of "hightechisation" and economic performance.<sup>150</sup> In 1997 Mahathir, still acting as Prime Minister, tried to motivate Malaysians to achieve these goals as soon as possible, warning: "if we wait, we will be backward and will not understand the spread of knowledge and technology, past, present and future. Our race will be a primitive race, to be fooled, humiliated and oppressed by others."<sup>151</sup>

It appears that the ultimate goal of Vision 2020 was to gain legitimacy through economic performance. Uniquely, it was also an attempt to increase constructed legitimacy by doing so. As Mahathir himself declared, the programme's goal was to institute "a united Malaysian nation with the sense of common and shared destiny", or a

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<sup>146</sup> Tim Bunnell, *Multimedia Utopia? A Geographical Critique of High-Tech Development in Malaysia's Multimedia Super Corridor*, 34 *ANTIPODE* 266-95.

<sup>147</sup> Jerry Everard, *Virtual States: The Internet and the Boundaries of the Nation-State* 59-63 (2000).

<sup>148</sup> Bunnell, *supra* note 148, at 267.

<sup>149</sup> Robert W. Blanning et al., *National Information Infrastructure in Pacific Asia*, 21 *DECISION SUPP. SYS.* 215, 221 (1997).

<sup>150</sup> Bunnell, *supra* note 148, at 265.

<sup>151</sup> *Id.* at 263.

“national unity which goes beyond the singular defense of narrow ethnic interests”.<sup>152</sup> With this unifying myth constructed by the Malaysian government, Malaysia was to become unified into a single information society. Such a model was chosen because of the Prime Minister’s recognition that in the 20th Century nation-states should be “less as sovereign bastions than as nodes in a network of information flows”.<sup>153</sup>

The jewel in the crown of this vision is the establishment of the Multimedia Super Corridor (MSC) that models Malaysia’s efforts, and is intended to push the country into the 21st century.<sup>154</sup> The MSC is a 50 by 15 kilometer zone, extending from the capital Kuala Lumpur to the international airport at Sepang in the south. The MSC was planned to be a regional high-tech hub both for local activities and for foreign investors. This high-tech space, aimed to duplicate the Silicon Valley, including high-tech cities and Cyberjaya, or an “intelligent city,” where the foreign and local high-tech companies were intended to operate from, and in which a multimedia university was established (with the intention that local graduate students will find their way to foreign companies and, by doing so, will increase indigenous expertise). Putrajaya is the electronic city of the Federal Government Administrative centre, a chief user of MSC outputs, and a centre for digitalising all government activities.<sup>155</sup>

The inhabitants of this “space” are over-privileged compared to the rest of the country. New laws were enacted specifically for this zone to provide intellectual property rights protection for innovations developed within the MSC, unrestricted employment of knowledge workers (both foreign and local), relaxation of migration and profit repatriation rules, a unique set of tax breaks, and further economic incentives, in addition to freedom of communication regulation.<sup>156</sup> It is clear that Mahathir also planned the MSC to achieve primacy over Singapore and China as the regional high-tech hub.

Convenient labour and tax regulations, and the MSC innovation, were not enough for the Malaysian government. It realised that it had to offer something that both China and Singapore would not be able to match, and by so doing achieve a competitive advantage in the race to attract foreign high-tech firms. So the Malaysian government declared that the MSC is to be *fully exempt* from Internet censorship. Excluding the MSC, the rest of the country remained subject to the prior Internet censorship regime, which was on similar levels and concept to China and Singapore. While publicly expressing concern at the availability of pornography and dissident voices on the Internet, Mahathir announced that the MSC is to be exempt from such censorship.

The Internet-haven model could not manifest itself in terms of two-tier Internet censorship. When the MSC was built it was realised that it would be almost impossible to have discriminatory Internet regulation. There were two available options, to either raise the barrier for the MSC, or lower it for the rest of the country. The latter was chosen,<sup>157</sup> and in 1999 the Prime Minister announced that there would be no Internet censorship in

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<sup>152</sup> Tim Bunnell, *(Re)positioning Malaysia: High-Tech Networks and the Multicultural Rescripting of National Identity*, 21 POL. GEOGRAPHY 105, 113.

<sup>153</sup> *Id.* at 106.

<sup>154</sup> Blanning, *supra* note 149, at 221.

<sup>155</sup> Everard, *supra* note 147, at 59-61.

<sup>156</sup> Bunnell, *supra* note 148, at 267. SIMON, *supra* note 122, at 317.

<sup>157</sup> SIMON, *supra* note 122, at 317.



Malaysia. Unlike Mahathir's statement, however, it appears that there is still tension between the unifying myths of the Malaysian information society and maintaining these myths given the unregulated flow of information.

Malaysia has not changed its official regulation policies, but it has declared that Muslims who post Internet content insulting to Islam will be prosecuted. Access to pornographic materials is still highly debatable, but the government cannot tolerate sacrilegious content.<sup>158</sup> This echoes previous grievances made by Mahathir about the fact that too much of the information on the Internet is Western and mainly from the U.S., compared to insufficient Asian information. As a result, he called Association of Southeast Asian Nations members to have a more assertive presence on the Web.

The U.S. has a longer tradition of emphasising performance-based legitimacy than Malaysia. This tradition, however, does not mean that the American government is overlooking other categories of legitimising authority.

### C. The United States

At first, it seemed that the U.S., Internet pioneer and the most active Internet user,<sup>159</sup> had chosen a laissez-faire approach to the Internet. In 1997, President Bill Clinton's administration published a framework document for the government's regulatory approach to the Internet. The administration declared that it did not intend "to interfere with the essentially free nature of the Internet".<sup>160</sup> This approach presumed that the private sector would lead Internet development and that the government could simply step aside and collect the economic harvest, and, more importantly, the political return.<sup>161</sup>

Government usually favours the invisible hand only when they direct it and when it works to increase their performance-based legitimacy. For instance, in balancing economic and national security, the U.S. has to a great extent decided to deregulate its export laws on encryption. The advantage would be e-commerce proliferation, which, overall, is supposed to increase economic growth. The downside is that as encryption becomes more widespread, it is easier to use encrypted messages for criminal and terrorist purposes that might be directed against the U.S..<sup>162</sup> Therefore, the economic aspect of the performance-based legitimacy trumps the security aspect of performance-based legitimacy.

However, when the security aspect of the performance-based legitimacy was actually challenged, the central authorities altered their policies and turned to tighten regulation. Following the September 11<sup>th</sup> attacks, the U.S. Senate reopened the

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<sup>158</sup> *Malaysian Gov. Assures Net freedom—for Some*, ZDNET, Dec. 12, 2000, available at [http://www.nua.com/surveys/index.cgi?f=VS&art\\_id=905356246](http://www.nua.com/surveys/index.cgi?f=VS&art_id=905356246).

<sup>159</sup> The U.S. is the leading country insofar as absolute number of Internet users. With 164.14 million Internet users, which account for more than 30 percent of Internet users, and 58.5 percent of the U.S. population, the U.S. is indeed the leading Internet actor. *How Many Online*, NUA.COM, Jan., 2002, at [http://www.nua.com/surveys/how\\_many\\_online/n\\_america.html](http://www.nua.com/surveys/how_many_online/n_america.html).

<sup>160</sup> Koblin, *supra* note 23, at 1.

<sup>161</sup> GREGORY F. FREVORTON & LEE MIZELL. THE FUTURE OF THE INFORMATION REVOLUTION IN LATIN AMERICA: PROCEEDINGS OF AN INTERNATIONAL CONFERENCE 33 (2001)

<sup>162</sup> René Marlin-Bennett *ICANN and the Global Digital Divide: Questions of Democracy Participation* (2001) (on file with author).

encryption export laws for discussions, targeting a restriction of encryption export and use, as well as requiring a backdoor for every encrypted message. These legislative acts resulted mainly because the Senate believed that Al Qaeda had used encrypted messages to correspond with the attackers. However, this information, which was available to the Senate, did not facilitate legislation before the attack.<sup>163</sup> The U.S. also cut Internet connections to Somalia. The government shut down Somalia's only ISP (the Somalia Internet Company), which was suspected of having connections with Al Qaeda.<sup>164</sup> This act was in direct contradiction to U.S. policy to globally allow the proliferation of the Internet.

Even prior to September 11<sup>th</sup>, U.S. legislators decided that a hands-off approach was harmful to U.S. legal-formal legitimacy and that Internet content should be regulated. In 1995, the Communications Decency Act was passed. This regulation held ISPs responsible for exposing minors (that is, under 18 years old) to Internet content of a sexually explicit nature.<sup>165</sup> The U.S. Supreme Court generally objected to these innovative Internet regulations.<sup>166</sup> It stated: "The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship."<sup>167</sup>

The other perceived threat to U.S. legal-formal legitimacy is online gambling, which poses a threat to the current regulated gambling monopolies, and is a problem due to the tax haven such online operations offer.<sup>168</sup> In 1998, the Senate passed the Internet Gambling Prohibition Act banning unauthorised parties from operating online gambling sites. However, as law enforcement authorities admit, it would be impossible to enforce such regulation due to the Internet's structure and the fact that these online gambling sites operate overseas in countries that have legal online gambling.<sup>169</sup>

A greater challenge to both legal-formal as well as performance-based authority is the financial marketplace, which mainly takes place in cyberspace. Many online financial transactions escape state regulations by not breaking the law, but by "transcending" the law. The volume of these financial activities only grows. For example, it is estimated that online exports (e-commerce transactions) will increase to about \$1.4 trillion by 2004; this would account for approximately 20 percent of global exports. Taxing these transactions

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<sup>163</sup> Jack Kelley, *Terror groups hide behind Web encryption*, USA TODAY, Feb. 5, 2001, available at <http://www.usatoday.com/tech/news/2001-02-05-binladen.htm>. Other terrorist organisations such as Hamas, and Hezbollah are believed to utilise the same communication techniques. *Id.*

<sup>164</sup> John DeSio, *Somalia's Internet is casualty of war on terrorism*, DIGITAL FREEDOM NETWORK. Nov. 29, 2001. It is not clear how exactly the U.S. did this; some sources indicate that it was done by cutting off Somalia's international communication gateway. *Id.*

<sup>165</sup> Everard, *supra* note 147, at 136. The Online Privacy Protection Act was passed in the Congress in 1998 and effective from April 24 2000. This act regulated Internet sites directed toward children. SIMON, *supra* note 122, at 316-17.

<sup>166</sup> Wang, *supra* note 120, at 279.

<sup>167</sup> Janet Osen, *In the Battle of the Bits – Final Score: Internet 1, Congress 0*, NETWORK SECURITY, Sept., 1997, at 12-16.

<sup>168</sup> The pressure on U.S. central authorities to regulate Internet gambling is greater than maintaining legal-formal legitimacy because the offline gambling industry donates millions of dollars to both political parties (Bell 1999). Tom Bell, *Internet Gambling: Popular, Inexorable, and (Eventually) Legal*, CATO INSTITUTE (1999), at <http://www.cato.org/pubs/pas/pa-336es.html>.

<sup>169</sup> *Id.*

is almost impossible given the current territorially based taxation regimes. As a result, real income from tax has significantly declined in the OECD countries, and especially in the U.S.<sup>170</sup>

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<sup>170</sup> Kobrin, *supra* note 23, at 9-16.

## **V. Conclusion**

This paper demonstrates, from a historical perspective, Max Weber's well-known theory of authority relations is of limited use in examinations of transformations in political authority. The ideal types Weber utilises are vague and redundant, and, in general, their potential for analytic use is limited. The static nature of Weber's theory and its neglect of the legitimisation practices of central authorities make it especially inadequate for the study of transformations in political authority. The alternative framework for studying political authority that we introduce in this paper correlates the reactions of central authorities to the printing press with their contemporaries' reactions to the Internet. We have demonstrated that analysing political authority and the legitimisation practices of central authorities in a more historically contingent manner is significant in accounting for political transformations, and enables a broader historical understanding.

In applying this framework to the study of central authorities' reaction to the printing press, we discover the pressures that the alternative unifying myths of Protestantism had on the constructed legitimacy of the Catholic Church and the legitimisation efforts the Catholic Church took to mitigate this pressure. The Catholic Church sensed that the Protestant alternative eroded its unifying myths and thus undermined its constructed legitimacy, which was the primary basis of the Catholic Church's authority under the feudal order. Consequently, the Church and other central authorities, such as the Ottoman Empire, that dreaded the perils of an uncontrolled dissemination of knowledge to their constructed legitimacy, started to more strongly and strictly regulate the printing press. This regulation, as we saw, was not equal in terms of goals and scale in all places.

However, it was too difficult for the Church to contain the damage already done to its unifying myths. Gradually the blanket of *Respublica Christiana*, which until that time had covered most parts of Europe, was full of holes and eventually torn to pieces. Print-capitalism, the diffusion of literacy in a growing segment of the population, and the proliferation of alternative myths facilitated by alternative central authorities, spurred alternative identities and national identities. Thus, political authority increasingly shifted from God to the nation-state<sup>171</sup>.

Although the Internet operates in a different political order – as territorial nation – states are the primary and legitimate political authority. The framework we suggest is also applicable in clarifying the reactions of central authorities to the Internet, and more generally to globalisation. In answering the attempt to account for government's regulatory practices vis-à-vis the Internet, the cases reviewed in this paper demonstrate that the motivation is primarily led by an emphasis on legitimisation by performance (typical for globalisation) and a compromise between other sources of authority (legal-formal and constructed legitimacy).

The Internet could have remained in the darkness of the laboratories of the U.S. Department of Defense, but, with the end of the Cold War, the Internet's original use was transformed from martial to mainly commercial. This signifies a broader process that

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<sup>171</sup> As Prasenjit Duara notes, "few have emphasised how this same technology [the printing press] also enables rivals of a nascent nation-state to construct alternative representations of the nation." DUARA, *supra* note 35, at 9-16.

began prior to end of the Cold War. The unifying myths of Communism gradually declined, symbolically crumbling with the collapse of the Berlin Wall. This transformation increased the pressure on governments to shift their legitimisation efforts to an emphasis on performance, not only in the U.S., but also in China, and elsewhere. Malaysia is an extreme example of such alteration. However, governmental regulatory reactions are not identical. They vary in accordance to the regime type, and, more specifically to sources of authority and legitimisation practices that the government employs.

The Chinese case illustrates an authoritarian country that has shifted its focus from constructed legitimacy towards performance-based legitimacy. China's connection to the Internet and its encouragement of Internet use symbolises this transformation. However, much of the Chinese government's legitimacy still relies on its constructed legitimacy and socialist unifying myths. Therefore, similar to the Catholic Church more than half a millennium ago, the spread of the unregulated word is undermining the Chinese constructed legitimacy, and is perceived as an overall threat to the stability of the political regime. And like the Catholic Church, Chinese authorities have invested great efforts and resources to minimise the damage by employing various censorship technologies. Their efforts are not fruitless but are far from being complete, as the Internet, even in its regulated form, facilitates existing transformations in China's political order. However, unlike most central authorities in times of the Protestant Reformation, the Chinese government's shift to performance-based legitimacy provides them with an alternative source of legitimacy to rely on, and to some extent mitigate, the potential damage to the government's political authority.

The constructed legitimacy of the U.S. is not greatly threatened by the Internet, but its legal-formal legitimacy and some elements of its performance-based legitimacy are. The Internet reveals some of the inherent tensions in sources of authority and political structure. The U.S. relies rather exceptionally on the legal-formal source of authority.<sup>172</sup> Therefore, online gambling, pornography, and especially tax evasion challenge this source of authority, and can be perceived as an overall threat to the government's political authority. Legislators find it problematic to moderate these challenges due to embedded systemic tensions in the various sources of authority. For example, it is problematic to censor pornography due to a conflicting legal-formal principle, which is one of the American unifying myths – freedom of speech.

The proliferation of the Internet and Internet-related technologies (such as computer encryption), which were actively encouraged by U.S. central authorities to increase their legitimation by performance, have proven that such emphasis can also damage other aspects of the same source of authority. The inherent tension in the different aspects of performance-based legitimacy was blatantly revealed in the September 11<sup>th</sup> attack, which was orchestrated in part by using the Internet.

Malaysia is a model for an almost complete reliance of the central authority on performance-based legitimacy. The government is directing its efforts toward the construction of myth of a Malaysian information society that would bring ethnic groups closer and would bridge existing cleavages so as to produce economic prosperity. The

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<sup>172</sup> See MANN, *supra* note 55, at 646-54.

MSC, as a high-tech space, with a different legal-formal legitimacy than the rest of the country, is a test bed for this endeavour. However, maintaining laboratory conditions is difficult as far as political authority is concerned. Therefore the Malaysian government had to compromise its legal-formal legitimacy – and consequently its current constructed legitimacy – by deregulating the Internet in the entire country.

In conclusion, central authorities are not passive to the potential and actual challenges to their political authority, and more specifically, governments are active participants in globalisation.<sup>173</sup> The fact that states support, and even encourage, globalisation does not necessarily mean that states' authority, as “nothing new” scholars claim, remains stagnant regarding globalisation processes. On the contrary, their legitimation processes have shifted towards emphasising performance. And, as the deterritorialisation camp argues, this transformation undermines other sources of authority.

Nonetheless, such transformations do not inevitably foretell the demise of the modern nation-state, as they did with the political hegemony of the Catholic Church in Europe. Current transformations in legitimation processes are different from the condition of the Church, which relied almost solely on its constructed legitimacy, and when this source of authority was undermined the Church lost its rule. Under globalisation, however, similar challenges to central authorities' unifying myths have a different significance because of the shifting reliance on alternative sources of legitimacy, namely performance-based legitimacy. These transformations should be understood as yet another historical stage in an ongoing cyclical process that alters the state and its legitimation practices.

Lastly, the conception that is introduced in this paper is merely an incipient one. In order to develop and enhance this framework, more instances of globalisation and/or other historical political transformations should be examined. The reaction of central authorities to immigration, and to economic and financial challenges, would be interesting subjects for further study.

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<sup>173</sup> See William Sites, *Primitive Globalization? State and Locale in Neoliberal Global Engagement*, 18 SOC. THEORY 121-44 (2000) (providing a similar argument about the active role that states take in globalisation).