Lecture- 12

THE IMPACT OF THE INTERNET ON SOVEREIGNTY: UNFOUNDED AND REAL WORRIES

There is a growing debate about the Internet and its impact on sovereignty. A good example in the legal scholarship is the recent special issue of the Indiana Journal for Global Legal Studies. The major lines of the debate are increasingly polarized among those who believe that the Internet undermines state sovereignty and those who believe that it strengthens liberal democracy. Not unrelated to these two positions is the parallell debate between those who assert that it is impossible to regulate the Internet versus those who maintain that there are various legal instruments available to states for regulating Internet transactions.

I want to argue here that one of the reasons for the polarization in views evident in these debates has to do with, on the one hand, misconceptions about the architecture of the Internet and, on the other, an uncritical assumption that national sovereignty is a given, an unchanged feature of national states. In short, part of the problem is that both the conception of the Internet and that of sovereignty fail to incorporate the finer grain of each and their recent transformations. What has happened in this debate to some extent is a shaping of the interpretation of the Internet's impact on sovereignty in terms of two major long-standing positions in the political theory and legal scholarship on the nature of state power –the Realist and Liberal conceptions of state power. Left out of this debate are the specific features of the Internet, let alone the fact that the Internet itself is a dynamic entity. Left out also is the possibility that these two major theories are themselves inadequate to understand state power and national sovereignty in today's context of globalization.

I am concerned about the broader theoretical and political implications of the faulty characterization of the two fundamental concepts in the debate. Among the key issues I want

to focus on concerning the Internet are a) the confusion between privately owned digital networks and public digital space, b) the multiple meanings of commercialization of the Net, and c) the possibilities for regulating the Net. Very briefly, my argument will be that it is the enormous growth of private digital networks–especially the case of the global financial markets– rather than the Internet, which is having the greater impact on national sovereignty and indeed transforming it. Secondly, the rapid growth of commercial uses on the net is not necessarily a democratising dynamic, as is often argued under the assumption that markets are a condition for a free society. Commercialization may well create new forms of inequality in digital space –what one could think of as cybersegmentations. Finally, there are features of the Internet today which suggest that regulation is possible, and that it is not necessarily a space of total freedom, a sort of new wild west. But it is a radically different version of regulation from what we have associated with the modern state over the last half century.

When it comes to sovereignty, we see a tendency towards a somewhat unproblematicized acceptance of this category. Taking sovereignty as if it were a fundamental given is particularly inadequate in the current period when we are seeing some rather important transformations in that specific form of power and legitimacy we call state sovereignty. The uncritical acceptance of sovereignty as a given is evident both in so called Realist conceptions of the state, with their emphasis on the power of the state, and Liberal conceptions, with their emphasis on democratic mechanisms as explaining the power of the state. My argument is that economic globalization and technology have brought with them significant transformations in the authority of national states. Especially important here is the growth of new non-state centered governance mechanisms which have transformed the meaning of national territorial sovereignty independently from whatever impact the Internet has so far had, and furhter, the formation of partly digitalized global financial markets which can deploy considerable power against the will of national states.

In brief, we cannot take either of these two categories– the Internet and sovereignty– as givens. They are dynamic conditions subject to a variety of pressures. Even the Internet, with its young history, can already be thought of as having had two phases and entering a third one. Making problematic the two basic categories in the debate–the Internet and sovereignty– introduces a number of qualifyers into some of the dualities running through the debate, notably the realist/liberal opposition in theories of the sovereign state and the interpretation of the Internet as representing either a fundamental revolution or basic continuity in technologies of communication. Liberals have tended to view it as a revolution with enormous potential while Realists tend to take the second view and argue that the state will find ways of regulating the Net and indeed is already capable of doing so. This duality in a way misses the point: the specificity of the Internet in terms of sovereignty is going to have to do in good part with the kinds of uses and practices enacted in the Net and the extent to which commercialization and privatisation, including copyrighting, create new forms of concentrated power and inequality on the Net.