

BOOK REVIEW ESSAY/COMPTE RENDU CRITIQUE

Rethinking Digital Politics in Canada: Challenges for Law and Policy

Digital Politics in Canada: Promises and Realities

Tamara Small and Harold Jansen, eds., Toronto: University of Toronto Press, 2020, pp. 328

Canadian Communication Policy and Law

Sara Bannerman, Toronto: Canadian Scholars Press, 2020, pp. 384

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Digital technologies are influencing almost every aspect of Canada's political life and posing new challenges for democratic governance. Recent bills have proposed to expand the powers of existing regulators and to create new ones.¹ Given the wide-ranging impact of digital technologies on Canadian politics and the potential for new legislation to consequentially (maybe even fundamentally) reshape this landscape, this is an area ripe for research by Canadian political scientists. Most of the research on digital technology and politics, however, is US-focused, and that which is concerned with Canada is largely taking place within the field of media and communication studies. Nevertheless, this literature should be of interest to political scientists because the questions it raises are amenable to research within analytical frameworks for the study of public policy.

Tamara Small and Harold Jansen's recent edited volume, *Digital Politics in Canada: Promises and Realities*, is an effort by two pioneering political scientists to bring together a multidisciplinary set of authors to examine how technology is changing politics in Canada. They set out to "take stock of two decades of digital technologies usage by Canadian political actors and institutions," which "has not been done before" (6). Given the lack of comparable texts in the field by political scientists, one can take them at their word. The book follows in the footsteps of work by media scholars such as the late David Taras (see Taras, 2015), the author of the book's preface. It aims to examine the ways in which digital technologies are reshaping the behaviour and strategies of political actors in Canada.

Digital Politics covers a range of relevant topics, including the delivery of government services, institutional transparency, voting, security and surveillance, political parties, and the role of civil society and social movements in Canadian politics. The unifying concept of "digital politics" is simply intended to mean the political uses of technology. The question asked by the editors, and indeed by each of the contributors, is whether we should regard the growing influence of digital technology on our political life as a boon to democracy or as a risk. This question is presented in relation to hypotheses of "cyber-pessimism" and "cyber-optimism." Cyber-optimists anticipate

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that the penetration of digital technologies into political life will expand opportunities for citizen mobilization and for greater equality of access to political institutions. Cyber-pessimists, on the other hand, expect that these technologies will reinforce existing hierarchies and patterns of political behaviour. It would be reasonable to presume that neither position will turn out to be true; instead, as Small and Jansen rightly observe, digital technologies create novel conditions of possibility for politics that in many cases offer new choices to political actors.

An overarching theme that comes across throughout the volume is that the promise of digital technology to improve democracy in Canada has been only partially realized. Most of the excellent chapters provide empirical support for this conclusion. However, underlying their analysis is the sense that if only political actors and institutions could better harness the latent potential of digital technology, we could have a more perfect democracy. Government would be more open, parties and parliamentarians would communicate more effectively with voters, and political engagement would improve. Instead, the editors write, “the evidence seems to suggest that digital technology has provided additional tools to those people already engaged in the political process” (290). The findings of the book, in other words, are that digital technologies have changed only “some aspects of the political process” and have not brought about a “wholesale change of the political landscape” (291).

The chapter by Christopher Parsons on electronic surveillance asks harder, and perhaps more fundamental, questions. Namely, how are the new powers created by digital technology—to control, manipulate and surveil, for example—subject to regulatory oversight? Has our governance regime kept up with the new capacities and political dynamics created by digital technologies? As Parsons observes, one can develop a more pessimistic view of the political influence of technology as a failure of governance rather than as simply the independent effect of technologies themselves: “The current impoverishment of surveillance accountability . . . is a direct result of successive governments introducing legislation that expands the state’s capabilities to intrude into private life without the legislation also including corresponding robust accountability regimes” (128). A similar question can be extended to other aspects of digital politics: What kind of regulatory regime is needed to safeguard democratic politics from the pernicious effects of digital technologies?

To probe this question, we can turn to a recent analysis of Canada’s regulatory regime that governs communications, privacy and the internet. Primarily intended for undergraduate students, Sara Bannerman’s book *Canadian Communication Policy and Law* provides a helpful overview of Canada’s current governance framework. It is a clear and direct introduction to the institutions and policies relating to speech, defamation, privacy, surveillance, and intellectual property, as well as the regulatory institutions governing telecommunications, broadcasting, the internet, and access to information. Many current policy debates are about reforms to these policies and institutions, with the aim of subjecting digital technologies to the constraints of democratic governance—or, if not the technologies themselves, the companies that profit by their uses.

Bannerman observes that much of the existing regulatory framework has developed within a paradigm of “technological nationalism,” which aims to harness the powers of new technologies to serve the project of national unity and development (27). She asks whether this project is the same as democratic governance. Is Canada’s regulatory regime the product of considered democratic judgment, or—as Darin Barney asserts—is it a reflection of “private interests” who have been able to translate their interests into law and policy? (Barney, 2007: 24). Bannerman considers the possibility that Canada’s communications law and policy has been generated to serve the public interest; however, she is primarily focused on the ways in which it reinforces existing privileges and social hierarchies.

The strength of Bannerman’s volume is the simplicity of its presentation of complex subjects—a positive quality for a book primarily intended to be an undergraduate textbook. Each chapter asks “who benefits” from a particular domain of law or policy. She describes pluralism as an approach to the study of politics that sees public policy as the balancing of interests

(14). Viewed from this perspective, she concludes that communications policy mostly fails to reflect the public interest. Her emphasis is instead on investigating the differential impacts of law and policy on marginalized groups, including women, racial minorities, people with disabilities, and Indigenous populations.

While Bannerman's critical approach is illuminating, it frequently sidesteps the question: Why is this the case? If the regulatory regime that governs communications tends to privilege some groups, what explains this? Indeed, a more thoroughgoing use of pluralist theory would provide an analytical framework to answer this question. Developments in pluralist thought—sometimes referred to as neo-pluralism or a political process approach—offer a theory of the policy process that points to the role of windows of opportunity (political timing), critical junctures, resource mobilization, framing, and coalition building when explaining political outcomes (MacFarland, 2007). It can allow us to understand why some groups and constituencies are more effective than others at translating their values and preferences into public policy than others. A more satisfactory account of differential policy outcomes, and one which political scientists may be better equipped to provide, would draw more effectively on the analytical tools of neo-pluralism and comparative public policy.

The current moment presents a unique opportunity to observe in real time how political actors are engaged in efforts to influence the development of a new legal and policy framework to govern digital content providers. Arguably the thorniest item on the government's agenda is its proposed legislation to create a new regulator to set standards, receive complaints and issue penalties to social media companies (Reevely, 2022). The debate over online harms in Canada has largely been generated within civil society, particularly by religious minorities, racial minorities and feminist groups. In response, the government has published discussion and technical papers that outline aspects of proposed legislation, and it sought public feedback ahead of an initial proposal to introduce legislation in fall 2021.² The feedback was so critical that in August 2022 the government initiated another round of public consultation to inform its approach.

One of the most illuminating contributions to this policy discourse was a report published by the Public Policy Forum's Canadian Commission on Democratic Expression, *Harms Reduction: A Six-Step Program to Protect Democratic Expression Online*. The Public Policy Forum brought together a council of experts and a Citizens' Assembly to present and consider proposals to "reduce harmful speech on the internet without impairing free speech" (2021: 5). The final report observes that the current regulatory framework is inadequate to exert meaningful democratic governance over the operation of digital media platforms. The consequence is that regulation is left to private actors. As Lawrence Lessig (2006) argued, without government oversight, the most salient regulator is code; in other words, the design of digital technologies becomes the primary determinant of their scope and limits.

The Public Policy Forum report makes recommendations that are similar to those that have appeared in government discussion papers. (The report was partially funded by the Government of Canada, and some individuals associated with the report have also advised the government on its proposed legislation). These recommendations include the proposal to create a new regulator to enforce a "Duty to Act Responsibly" and the creation of a Social Media Council that can be a forum to reduce harms and improve democratic expression on the internet. The report also recommends that Canada pursue a different approach to that which has been adopted by Germany through its Network Enforcement Act (NetzDG) and its associated "takedown" measures (social media platforms are given 24 hours to remove "clearly illegal" content from their platforms). Instead, it recommends holding social media platforms accountable for, in many cases, following their own community guidelines and "an industry Code of Conduct." It also recommends the creation of a dispute resolution body that can hear complaints by users who seek some form of recourse and remediation for the failure of social media companies to respond to complaints.

There are reasons to be optimistic that the mobilization of civil society groups and an attentive public will effectively inform the government's legislative agenda. The lobbying of the Canadian Coalition to Combat Online Hate, led by Jewish organizations and encompassing a range of religious, ethno-cultural, feminist, and other groups, exerted an early influence on parliamentary committee hearings.³ The engagement of the Public Policy Forum and outspoken academics has also been notable within media coverage and public engagement. However, business groups are also involved in shaping the government's approach to legislation. Facebook and TikTok (and until recently, Twitter) have hired lobbyists in Ottawa who are closely engaged with the legislative process on online harms, among others.

The unanswered questions about digital technologies that will need to be explored in the years ahead will have less to do with the ways in which new tools are used by political actors and more to do with how political actors shape the landscape within which digital technologies are used. Much of the research on technology and society is focused on normative questions about the ethical parameters our society ought to put on technological design and use. This is primarily the work of law and philosophy. Where political scientists can contribute is to explain why and how various jurisdictions, including Canada, are regulating technological use. Canada is, in some respects, catching up with countries such as Australia, the United Kingdom and Germany, which have already pioneered new regulatory approaches. How did we end up with existing regulatory regimes? How are past policy choices shaping and constraining current and future ones? Which political actors are embedded in policy networks that give them outsized influence on regulatory decisions? To what extent will newly created regulators be insulated from external political influence? This is an analytical research agenda that has not yet been pursued systematically and that will invite the work of graduate students and researchers in the years to come.

Notes

- 1 This proposed legislation includes Bill C-27 (Digital Charter Implementation Act, 2022), Bill C-11 (Online Streaming Act, 2022) and a proposed online harms bill.
- 2 See Government of Canada, "The Government's Commitment to Address Online Safety," <https://www.canada.ca/en/canadian-heritage/campaigns/harmful-online-content.html> (October 10, 2022).
- 3 To see the membership of the coalition, visit <https://combatonlinehate.ca/coalition/>. The House of Commons Standing Committee on Justice and Human Rights published its report "Taking Action to End Online Hate" in June 2019. It can be found here: <https://www.ourcommons.ca/Content/Committee/421/JUST/Reports/RP10581008/justrp29/justrp29-e.pdf>.

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