REGULATION OF THE DIGITAL ENVIRONMENT

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COPENHAGEN | 11-16 MARCH 2017

WHAT IS CYBERSPACE?

- Cyberspace can be equated with the Internet. The Internet can be defined as the network of interconnected computers.

- Is it a 'place' - in other words a virtual space that consists of all the data and information that resides in the connected servers and databases that make up the Internet?

- Or is it a 'medium' of some sort?

- *The Problem of Perspecitive in Internet Law*, Orin S. Kerr (2003)

SHOULD CYBERSPACE BE REGULATED?

- Can it be regulated?
  - Cyberspace as a 'medium', Mike Goodwin (1995, 2003)
  - Cyberspace as a 'public space', Camp and Chien (2000)
- What exactly is meant by 'regulation'?
- Which aspects of the Internet should be regulated?
  - Regulating content, Federal Trade Commission
  - Regulating process, Food and Drug Administration
- Who should be responsible for carrying out the regulatory functions?

CYBERLIBERTARIANISM

- The original view was that cyberspace was unable to regulate.

- Key proponents

  ▪ *A Declaration of Independence for Cyberspace*, John Perry Barlow (1996)

  ▪ *Law and Borders*, David Johnson and David Post (1997)

- The key thesis was that as laws were constrained by borders (territoriality) and the Internet was not law could never be effective in cyberspace (regulatory arbitrage).

CYBERPATERNALISM

- A new school of thought developed in the USA led by a group of eminent law professors.

- Key proponents

- *Lex Informatica*, Joel Reidenberg (1997)
- *Code and Other Laws of Cyberspace*, Lawrence Lessig (2006)
- Yochai Benkler
- Jack Goldsmith

- The key thesis was that as cyberspace is controlled by the code used to create the environment and this was always effective.

CYBERPATERNALISM

The Four Modalities of Regulation

- Law

- Regulates by sanctions imposed ex post.
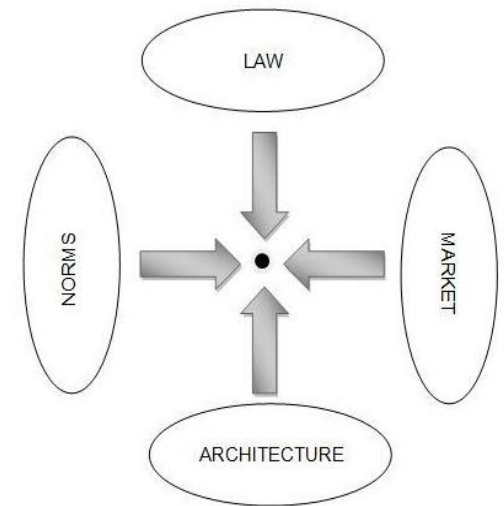
- Social Norms

- How one ought to behave.

- The Market

- Regulates by price and market signals.

- Architecture

- Constraint 'of the world as I find it, even if this world as I find it is a world that others have made'
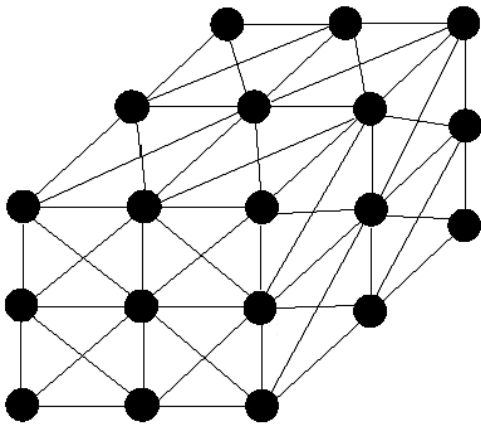

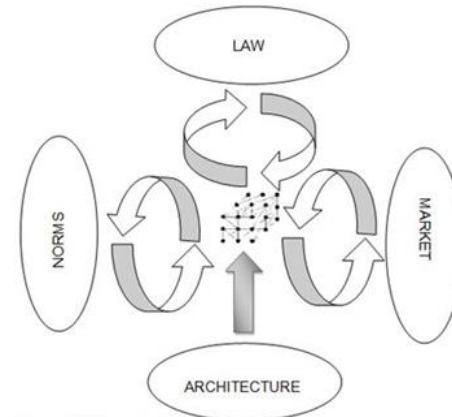Lawrence Lessig (2000)

NETWORK COMMUNITARIANISM

Andrew Murray's definition of network communitarianism is: *'All forms of social control, state and non-state, intended and unintended'*
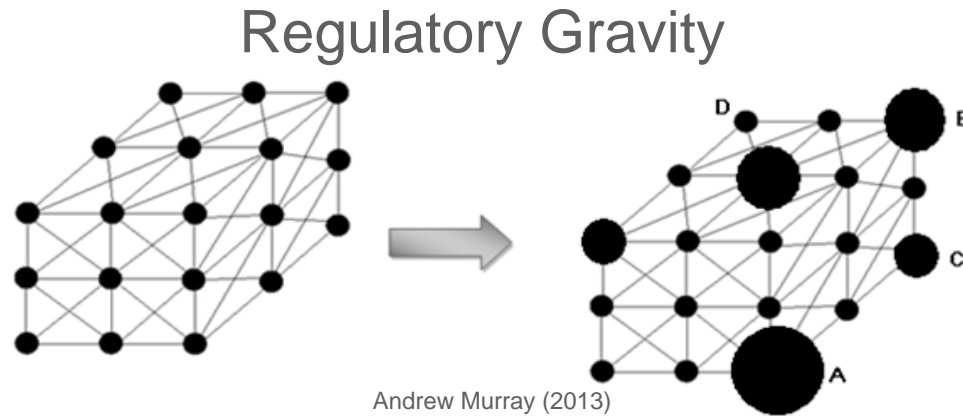
Active Dot

Andrew Murray (2013)

Symbiotic Regulation

Andrew Murray (2013)

NETWORK COMMUNITARIANISM

Regulatory Gravity

Andrew Murray (2013)

- Some dots have more authority than others and they are not all the same.

RESUME

- Andrew Murray and Colin Scott criticize Lawrence Lessig's theory for the fact that his definition of regulatory modality is too widespread and fails to capture the true essence of the regulatory modality.

- Lawrence Lessig's model missed the important influence of the Internet community.

- *CTB vs. News Group Newspapers Ltd. (2011)*

  - How court injunctions can be enforced?
  - 'Streisand effect' and the power of the Internet community.

THANK YOU!

QUESTIONS?

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