

Jack Goldsmith and Tim Wu, **Who Controls the Internet? Illusions of a Borderless World**, Oxford University Press, 2006, 226 pp., \$18.50 (hardcover).

Reviewed by

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Jack Goldsmith and Tim Wu's *Who Controls the Internet? Illusions of a Borderless World* focuses on state responses to the Internet's challenge to national sovereignty. The main argument is that national governments, through coercion and control over local intermediaries, still exert regulatory control in the realm of the Internet. Thus, Goldsmith and Wu question the popular notion that the Internet is erasing national boundaries and rendering geography obsolete.

Goldsmith and Wu explore three main arguments. First, the Internet is a medium like any other, and national governments continue to exercise control over the Internet by enforcing state law. Second, geography and governments retain their central importance in the Internet despite continued globalization. Third, an increasingly "bordered" Internet is a positive development.

The first claim, that the Internet is just one more in a series of technologies stands in contrast to the widely held view that the Internet is inherently different from previous technologies. According to Goldsmith and Wu, the Internet is an incremental technological change and is not a revolutionary break from the past. They are skeptical that recent technological changes "have had a lasting effect on how nations, and their peoples, govern themselves" (180). They suggest communication technologies "did not displace the central role of territorial government in human governance," and neither will the Internet.

In order to give background to their argument, Goldsmith and Wu describe expectations of the Internet when it first emerged. They rightly challenge the idea that the Internet will erode national authority. However, the authors have abstracted previous debates, and the bulk of their arguments are premised on an oversimplified and extreme vision of the Internet's potential. Using John Perry Barlow and his libertarian "Declaration of Cyberspace Independence" (<http://homes.eff.org/~barlow/Declaration-Final.html>) as a straw man mischaracterizes what has been a nuanced debate, albeit one that has played down the importance of state power. The authors argue against the cyberlibertarian dream of a completely borderless Internet, but have arguably gone too far in the other direction, putting too much emphasis on the state. Goldsmith and Wu also caricature theories in discussing globalization which predicts the "inevitable homogenization of everything." On the contrary, a number of studies by Hannerz, Kraidy, Lull, Robertson, and Tomlinson to name a few, explore how globalization leads to diversity, hybridity, and heterogenization. Such generalizations weaken the authors' analysis of globalization and of the historical development of the Internet. Nonetheless, the inclusion of this history is important in understanding the current state of affairs. For those interested in further analysis, John Naughton's *A Brief History of the Future: The Origins of the Internet* (1999) is an accessible history of the Internet and Janet Abbate's *Inventing the Internet* (1999) provides a sophisticated history and an academic account of the evolution of the Internet.

Goldsmith and Wu cite the well-known Yahoo France case to encapsulate “the Internet’s transformation from a technology that resists territorial law to one that facilitates its enforcement” (10). They provide a thorough account of this legal case, and show that despite Yahoo’s protests and defense, French law won and Yahoo was forced to change their larger purpose. However, this case does not best illustrate this transformation of technology that the authors describe, since arguably it was not *technology* per se that facilitated the enforcement of French law. The French judge ordered Yahoo to block access to Nazi sites by French citizens through the use of IP-identification technology. Yahoo bypassed the technology, taking down *all* Nazi content to viewers worldwide, despite contrasting national laws – such as in the United States, where users could legally view and purchase such items. The consequence of the Yahoo France case is that Yahoo complied with the strictest law. This undermines Goldsmith and Wu’s rejection of the “race to the bottom” idea. Nevertheless, their main point that the Internet technologies’ evolution from supporting freedom to potentially facilitating control is a valuable contribution to the field. Perhaps a stronger example which illustrates this transformation is the arena of privacy and surveillance on the Internet, where technologies that first supported anonymity and liberty have evolved to facilitate surveillance and control.

The second argument is that states remain central political actors in the Internet era. Goldsmith and Wu focus on national law as a driving force behind global Internet regulation. They document how Ebay’s “self-governing community” depended on U.S. government coercion and the rule of law to protect against fraud and enforce its contracts. They recognize the constraints of competing legal systems and cite the Gutnick libel case - where the Australia High Court ruled that the place where a person downloads material is the place where defamation is committed. This highlights the conflict of laws problem, which has come to recent prominence with the EU and U.S. conflict over transborder data flows for passenger flight records.

The strength of Goldsmith and Wu’s theoretical approach is that it cuts against the grain of much previous Internet governance study by presenting a legal, state centric approach. The weakness of such state-centrism is that it neglects contributions to our understanding of Internet governance from other theoretical frameworks, such as globalization theories, regime theory, and neo-liberal internationalism. Far from disputing the power of the state in international politics, such perspectives explore the power of a broader range of actors. Although the majority of Internet governance scholarship to date includes such approaches, Goldsmith and Wu play down their importance. For instance, while scholars such as Milton Mueller stress the centrality of non-state actors and forums such as ICANN and WSIS, the authors gloss over the topic. Goldsmith and Wu emphasize the role of the U.S. government in ICANN’s formative years, but neglect debates such as country code top-level domains (ccTLD). In regards to WSIS meetings in Tunisia and the debate over control of the naming system, the authors conclude that this battle “is not between governments and private cybercommunities.... Rather, it is indisputably between national governments” (171).

The third argument emphasizes the “largely hidden virtues of government control of the Internet” (130). The authors disagree with William Dutton, the head of the Oxford Internet Institute, who views the splintering of the Internet as problematic, particularly when issues which transcend the state are neglected. Goldsmith and Wu’s claim is based on the notion that “...on the whole decentralized rule by

nation-states reflects what most people want" (ix). They note the significance of "individuals whose attitudes and preferences differ sharply by geography" (184), and argue that national governments use coercion to enforce national laws, which are reflective of these differences. However, since the birth of the modern state, there has been a debate about the size of the leviathan. When such differences lead to restrictions of human rights as in the case of China, then these regulations *should* be questioned, not simply accepted.

Although Goldsmith and Wu argue that the bordered Internet is on the whole a positive evolution, they recognize the downsides and "vices" of a heavily bordered Internet, in a chapter on China. They highlight the paradox of China and explain China "is trying to create an Internet that is free enough to support and maintain the world's fastest growing economy, and yet closed enough to tamp down political threats to its monopoly on power" (89). The authors acknowledge that technologically savvy users can circumvent Internet controls imposed by the Chinese government, but they dismiss this point since they argue that "governmental controls need not be perfect to be effective" (103). But the fact that some users can avoid controls can also be viewed as an important, and even crucial, point in understanding government control of the Internet, changes in power balances, and actors empowered by the Internet. Therefore, a deeper engagement with how individuals use the Internet would paint a different picture of control and enforcement. The China case illustrates that downsides of the bordered Internet exist, but accepts them as a consequence of the Chinese system. While such conservatism and cultural relativism are important, this argument fails to address normative issues such as universal human rights.

Goldsmith and Wu conclude that in the coming decades, factors of geography and the coercive power of governments to enforce national laws will continue to be important and that the "struggles between nations and their national network ideologies, will do much to determine how life on the bordered Internet is lived" (184). Issues of Internet governance are far from over, and the question of who controls the Internet has not yet been answered.

With the regulatory environment of the Internet in a state of flux, theirs is a compelling, if incomplete, story. Goldsmith and Wu make one of the clearest arguments to date that the decentralized technology of the Internet alone does not translate to impossibility of control. They contribute much needed evidence of the role that governments play in exercising control over the Internet, but it also leaves out some key aspects, such as people circumventing such limits and instances of the Internet empowering users and challenging government.

Who Controls the Internet? Illusions of a Borderless World appeals to graduate and undergraduate students, as well as anyone interested in Internet regulation, politics of global governance, international law, and the intersection of globalization and technology. It is extremely well written in a clear and engaging style. The authors, who are both lawyers, avoid legal jargon and do a remarkable job of explaining complicated legal cases and concepts to readers. The book opens up important debates and raises serious questions. The authors have slowed down the rush to pronounce the end of governments and corporations, as they repeatedly demonstrate the continuing power and importance of these institutions. This moment in the Internet's evolving history allows scholars and practitioners an

opportunity to debate, discuss, and consider these issues. The Internet can be seen as an entry into the entire communication system, and its regulation and control will have far-reaching effects on society.

References

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