

Internet Freedom and Digital Journalism in Transitional Contexts: A Comparative Legal–Communication Approach

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Abstract

This study examines the interactive relationship between the legal frameworks regulating internet freedom and the actual practices of digital journalism in transitional contexts, with a focus on the Maghreb region. It adopts an integrative legal–communication approach, employing a comparative method to analyze cases from Algeria, Tunisia, and Morocco. The findings reveal a structural gap between legal texts and real-world application, where ostensibly advanced laws are emptied of their content through indirect censorship mechanisms. The study also highlights the mutual adaptation dynamics between authorities and digital journalism, as well as the increasing role of global digital platforms and their algorithms in shaping the digital public sphere. It proposes a three-dimensional interpretive model (legal, practical, technological) to understand the specificity of transitional contexts, and emphasizes the necessity of moving beyond the mechanical transfer of Western models and building approaches that consider local and regional contexts.

Keywords: *Internet Freedom, Transitional Contexts, Digital Public Sphere, Legal-Communication Approach, Digital Censorship, Democratic Transition.*

Received: 02/07/2025 ; Accepted:02/11/2025 ; Published: 06/02/2026

Introduction

The last three decades have witnessed profound transformations in the structure of the public sphere, as the digital space has ceased to be merely a neutral technological medium and has become an arena for political and social struggles, subject to diverse legal regulations that reflect tensions between the logic of openness and the logic of control. While established democracies have developed relatively stable legal and institutional frameworks for regulating freedom of expression on the internet, transitional contexts—those undergoing a political transition from authoritarian or semi-authoritarian regimes toward more open forms, or those experiencing institutional instability—face complex challenges that go beyond the mere mechanical transfer of Western models.

The problem of this research lies in understanding how the relationship between legal texts regulating internet freedom and digital journalism, on the one hand, and actual communication practices in transitional contexts, on the other, is formed. Political transition does not necessarily entail a simultaneous legal and communication transition; laws that appear advanced on the surface may be adopted, but they are emptied of their content through indirect censorship mechanisms or through the persistence of a repressive political culture. Dynamic digital media practices may also emerge that surpass inherited legal frameworks, creating a gap between reality and law.

The importance of this research stems from three scholarly considerations: first, the need to transcend descriptive approaches that merely list legal texts without linking them to practice. Second, the necessity to develop analytical tools that account for the specificity of transitional contexts, where authoritarian legacies intersect with demands for openness. Third, contributing to the construction of an integrative legal–communication approach that addresses the interaction between the regulatory and practical dimensions.

This research will rely on the comparative method, focusing on models from the Maghreb region (Algeria, Tunisia, Morocco) as transitional contexts varying in degrees of political and legal openness, while incorporating selective comparisons with other Arab contexts (Egypt, Lebanon) and some international

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experiences (Eastern Europe, Latin America). The research will also employ textual legal analysis and socio-communication analysis of practices.

This study is divided into four sections: the first addresses the theoretical and conceptual framework, the second analyzes comparative legal frameworks for internet freedom, the third discusses digital journalism practices in transitional contexts, while the fourth provides an interpretive reading of the interaction between law and practice.

The Theoretical and Conceptual Framework

The Digital Public Sphere: From Habermas to Transitional Contexts

The concept of the public sphere, as developed by Jürgen Habermas (1989), serves as a fundamental theoretical starting point for understanding the role of the internet in democratic transformations. However, Habermas himself, in his original book (1962), focused on the bourgeois European public sphere in the eighteenth century, raising questions about the applicability of this concept in non-Western contexts, particularly in transitional contexts where the conditions of the classical public sphere have not yet been fully realized.

Contemporary researchers, such as Zizi Papacharissi (2010), argue that the internet does not create a single public sphere but rather "networked public spheres" that are multiple and overlapping, characterized by fluidity and decentralization. This conception seems more suitable for understanding transitional contexts, where diverse digital spaces coexist: some emulate the critical public sphere, others reproduce discourses of power, and some form hybrid spaces.

However, Evgeny Morozov (2011) warns of the "net delusion," emphasizing that digital technology is neither neutral nor inherently democratic but can be employed for repressive purposes. This warning is crucial in transitional contexts, where authorities use the internet for surveillance and counter-mobilization, not just to expand freedom of expression.

In the Arab context, several researchers have developed critical approaches to the concept of the digital public sphere. Mohamed Zayani (2019) argues that the "Arab digital public sphere" is characterized by three features: fragmentation between linguistic, sectarian, and ideological spaces; temporality, where discussion spheres emerge around specific events and then fade; and hybridity between traditional and digital forms of expression. These characteristics necessitate a reconsideration of Western theoretical approaches.

Freedom of Expression in the Digital Space: Conceptual Tensions

Freedom of expression is defined in classical liberal philosophy as a natural right of the individual, restricted only by the harm principle. However, applying this principle in the digital space faces significant difficulties, as defining "harm" in a virtual and border-transcending environment is challenging. Human rights literature distinguishes between three levels of restrictions on freedom of expression: legitimate restrictions (protecting national security, public order, public morals), problematic restrictions (defamation and libel laws, opinion crimes), and illegitimate restrictions (prior censorship, arbitrary website blocking). Transitional contexts often witness an expansion in the second and third levels, under pretexts of protecting stability or combating "fake news."

Jack Balkin (2018) proposes the concept of the "infrastructure of free expression," emphasizing that freedom of expression is protected not only by abstaining from censorship but also requires a technical, legal, and institutional infrastructure that ensures access, pluralism, and protection from monopoly. This concept is particularly important in transitional contexts, where the infrastructure is often weak or under authority control.

Digital Journalism: From Medium to Actor

Journalism has undergone a radical transformation with the emergence of the internet, moving from merely transferring print content to digital form to innovating new journalistic formats (data journalism, collaborative investigations, cross-border investigative journalism). However, this transformation has not been linear or uniform but has taken different forms depending on the contexts.

C. W. Anderson et al. (2012) propose a classification of digital journalism into four models: digitized traditional institutional journalism, independent alternative journalism, participatory journalism (citizen journalism), and hybrid journalism. In transitional contexts, alternative and independent journalism acquires particular importance, as it seeks to fill the void left by traditional journalism subject to authority.

However, Mark Deuze (2019) warns of "liquid journalism" in the digital age, where boundaries blur between professional journalists and citizen journalists, between news and entertainment, between fact and opinion. This liquidity creates regulatory and ethical challenges, especially in transitional contexts that lack established professional references.

Transitional Contexts: A Theoretical Approach

The term "transition" is used in political science literature to refer to the interim period between one political system and another. However, Samuel Huntington (1991) and Guillermo O'Donnell (1996) emphasize that transition is not a deterministic path toward democracy but may end in a hybrid regime that combines democratic and authoritarian elements.

In the media and legal context, three characteristics of transitional contexts can be identified: first, the coexistence of contradictory legal texts (modern laws and old texts), creating an interpretive vacuum. Second, the weakness of independent oversight institutions (judiciary, regulatory bodies), opening the door to selective application of the law. Third, the persistence of a repressive political culture despite constitutional changes.

Thomas Carothers (2002) proposes the concept of the "gray zone" to describe states that stall midway between authoritarianism and democracy. This concept applies to most Arab contexts post-2011, where progress is seen in some areas and regression in others.

Comparative Legal Frameworks for Internet Freedom

International Standards: Between Obligation and Recommendation

The International Covenant on Civil and Political Rights (1966), particularly Article 19, constitutes the primary reference for freedom of expression. However, this Covenant was drafted in the pre-internet era, necessitating the development of new interpretations. In General Comment No. 34 (2011), the UN Human Rights Committee affirmed that Article 19 applies to all forms of expression, including digital ones, and that any restrictions must be clearly defined, necessary, and proportionate. Additionally, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, developed guiding principles on the application of international standards in the digital space (2011). Key among these principles is the prohibition of prior censorship, the illegality of blocking websites except by judicial decision and for specified reasons, and the guarantee of fair access to the internet. Nevertheless, these principles remain non-binding recommendations, limiting their effectiveness.

At the regional level, the Council of Europe Committee of Ministers adopted Recommendation CM/Rec(2016)5 on internet freedom, which emphasizes principles of network neutrality, transparency in content management, and privacy protection. In contrast, the Arab region lacks a comparable regional framework; the Arab Charter on Human Rights (2004) provides weaker guarantees for freedom of expression and does not explicitly address the digital space.

The Moroccan Experience: Between Constitutional Openness and Legislative Restriction

The 2011 Moroccan Constitution represents a potential turning point, as Article 28 enshrines freedom of opinion and expression "in all its forms," a formulation interpretable to include digital expression. The Constitution also established the National Press Council (Article 165), theoretically an independent regulatory body. However, legislative practice has stripped much of these constitutional gains of substance. Law No. 88-13 on the Press and Publication (2016), while abolishing prison sentences for publication offenses, retained exorbitant financial fines and introduced Article 71, which criminalizes "assault on constants" in vague terms. Reports have documented the use of this article to prosecute journalists and digital activists.

Law No. 05-20 on Cybersecurity (2020) represents another point of contention. Despite its stated objectives (protecting digital infrastructure), it grants broad powers to authorities for data access and communication surveillance without sufficient privacy safeguards. Article 8 obliges service providers to retain user data for one year, exceeding European standards (maximum six months).

Institutionally, the National Press Council remains largely unimplemented more than a decade after its constitutional establishment. This institutional vacuum keeps electronic media regulation under executive authority, represented by the High Authority for Audiovisual Communication (HACA), which lacks genuine independence.

The Tunisian Experience: A Faltering Legal Revolution

While Morocco experienced limited constitutional reform, Tunisia underwent a full political revolution (2011), reflected in its legal framework for freedoms. The 2014 Constitution is among the most protective Arab constitutions for freedom of expression; Article 31 states that "freedoms of opinion, thought, expression, and media... are guaranteed," with an explicit ban on prior censorship.

Decree No. 115 of 2011, which abolished the Ministry of Information and established the Independent High Authority for Audiovisual Communication (HAICA), symbolized a break with the Ben Ali regime. Decree No. 116 regulating freedom of the press, printing, and publication established the principle of declaration instead of licensing, a significant achievement. However, the Tunisian path has seen serious regressions since 2021. Decree No. 54 of 2022, issued by President Kais Saïed, criminalizes the dissemination of "false news" online with penalties up to five years imprisonment. The decree's vague wording has raised international concerns, as it allows arbitrary interpretation. Reports indicate that over 60 activists and journalists have been prosecuted under this decree in the past two years.

Furthermore, the High Authority for Audiovisual Communication has faced increasing marginalization, effectively dissolved through non-renewal of its composition (2022), signaling a return of media oversight to executive authority. This regression reflects the fragility of legal gains in the absence of a deeply rooted democratic culture and strong institutions.

The Algerian Experience: Legal Continuity and Selective Openness

The Algerian case differs from Morocco and Tunisia, as it has not experienced a clear political transition but rather a series of constitutional and legal amendments that have not altered the regime's core. The 2020 constitutional amendment, while adding Article 54 on freedom of the media, retained elastic formulations permitting restrictions.

Organic Law 12-05 on Information (2012), amended in 2023, imposes prior licensing for establishing electronic media outlets (Article 28), conflicting with the internationally endorsed principle of declaration. It also grants the Minister of Communication broad powers to suspend or revoke licenses without adequate judicial safeguards.

The Law on Combating Cybercrimes (Law 09-04 of 2009), amended in 2020, contains problematic provisions. Article 20 bis criminalizes the dissemination of "false news affecting public order," with penalties up to three years imprisonment. This article has been widely used against journalists and bloggers during and after the 2019 Hirak movement.

Notably, the Algerian case features a wide gap between text and application. While the law theoretically permits independent electronic journalism, authorities employ indirect mechanisms of restriction: blocking websites without announced judicial decisions, pressuring advertisers to withdraw from certain sites, and prosecuting journalists under general criminal charges (e.g., "undermining state security").

Comparison with Other Transitional Contexts

To understand the specificity of the Maghreb region, comparison with other transitional contexts is useful. In post-communist Eastern Europe, countries like Poland and the Czech Republic adopted legal models close to European standards, establishing independent regulatory bodies and effective constitutional courts. However, others, such as Hungary under Orbán, have experienced legal backsliding, with authority control over digital media through economic mechanisms (acquisition of media outlets, control over government advertising).

In Latin America, Argentina's Audiovisual Media Law (2009) serves as an important reference, imposing limits on media concentration and ensuring pluralism. Yet, the experience faced resistance from major media corporations and was not fully implemented.

In the Arab Mashreq, Lebanon presents a unique case; it enjoys relative freedom of expression compared to the surrounding Arab environment, but this freedom stems more from the absence of a strong central authority and the sectarian system than from an advanced legal framework. Law No. 81/1991 on publications still imposes prison sentences in defamation cases, which has been used against journalists.

Digital Journalism Practices in Transitional Contexts

Models of Independent Digital Journalism

Since 2011, Arab transitional contexts have witnessed the emergence of hundreds of online news websites, ranging from professional journalistic institutions to individual blogs. These can be classified into three models:

- ***The first model:*** Externally funded investigative journalism. Represented by sites such as Inkyfada (Tunisia, though often associated with regional networks), Nawaat (Tunisia), and Mada Masr (Egypt). These platforms rely on funding from international organizations and cross-border investigative networks (such as ARIJ). Despite the high quality of their journalistic output, they frequently face accusations of dependency on foreign agendas, which undermines their local legitimacy.
- ***The second model:*** Commercial digital journalism. Represented by sites such as Hespress (Morocco) and Echorouk Online (Algeria). These depend on commercial advertising, making them more independent from government support but also more vulnerable to economic pressures. This model often resorts to "yellow journalism" (clickbait) to increase visitor numbers.
- ***The third model:*** Activist journalism. Represented by platforms such as Mamfakinch (Morocco) and the early version of Nawaat (Tunisia). These platforms typically emerge in protest contexts and blend journalism with human rights activism. They face challenges in financial and professional sustainability.

A field study conducted by the Arab Center for Research and Policy Studies (2022) on 120 Maghreb electronic websites showed that 65% lack a sustainable economic model, and 48% rely on voluntary or semi-voluntary work. This reality raises questions about the long-term viability of these sites.

The Relationship Between Digital Journalism and Authority: Adaptation Strategies

Digital journalism does not always face direct repression; rather, authorities in transitional contexts have developed more flexible mechanisms of control, ranging from co-optation to threats. James C. Scott (1985) proposes the concept of "weapons of the weak" to understand resistance by marginalized groups; this can be inverted to grasp the "weak weapons of the state" against digital media. Key among these mechanisms is:

- **Selective containment:** Authorities permit critical digital journalism within certain limits and may even support it at times to project a democratic image. However, crossing "red lines" triggers strong intervention. In Morocco, for example, the site Lakome enjoyed broad freedom in criticizing the government but faced judicial prosecutions when addressing topics related to the monarchy or the Sahara.
- **Economic strangulation:** Through control over the government advertising market or pressuring private companies to withhold ads from certain sites. Cases documented by the Freedom of Thought Foundation (Egypt, 2021) show numerous sites forced to close due to economic siege.
- **Defamation and discrediting:** Via organized campaigns on social media to tarnish the reputation of journalists or electronic sites, portraying them as agents or foreign-funded entities. In Algeria, the site Intelligence Online faced systematic defamation campaigns after publishing investigations on corruption.
- **Technical blocking:** Blocking sites without publicly announced judicial decisions. Access Now (2023) documented over 200 cases of blocking news sites in the Middle East and North Africa region between 2020-2023.

In response, digital journalism has developed adaptation strategies: self-censorship (avoiding sensitive topics), camouflage (publishing sensitive material via external platforms or personal blogs), and cross-border networks (publishing from abroad).

Citizen Journalism and the Digital Public Sphere

Alongside institutional journalism, citizen journalism has played a central role in transitional contexts, particularly during protests. In Tunisia in 2011, videos uploaded by citizens via Facebook and YouTube were the first to document security repression before being picked up by traditional media.

However, citizen journalism raises professional and ethical issues. A sociological study by Youssef Al-Siddiqui (2020) on Facebook posts during Morocco's Hirak Rif movement revealed that 62% of "news" content lacked source verification, and 35% contained misinformation or rumors. Moreover, authorities exploit the chaos of citizen journalism to justify legal tightening under the pretext of combating "fake news." This exploitation reflects what Foucault terms "productive power," whereby authority creates conditions that justify its intervention.

Algorithms and Platforms: New Actors in the Media Sphere

Contemporary digital journalism cannot be understood without considering the role of digital platforms (Facebook, Twitter, YouTube) and their algorithms. These platforms are no longer mere distribution channels but actors that determine what is visible and what is hidden.

Tarleton Gillespie (2018) introduces the concept of "algorithmic politics," emphasizing that algorithms are not neutral but reflect the values and priorities of their developers and are subject to commercial and political pressures. In transitional contexts, an additional dimension emerges: negotiation between global platforms and local governments.

In Tunisia, the government repeatedly requested Facebook to remove opposition pages and accounts, which the company partially complied with (Facebook Transparency Report, 2022). In contrast, in Morocco, authorities relied on "electronic armies" (cyber armies) to flood opposing content with pro-regime material rather than direct removal requests. Additionally, Facebook and YouTube algorithms prioritize "engagement," amplifying emotional and polarizing content over objective material. This algorithmic bias weakens the quality of the digital public debate.

Self-Censorship and Journalistic Professionalism

In the absence of entrenched legal guarantees, digital journalism resorts to self-censorship as a survival strategy. An ethnographic study by Yasmin Nada (2021) on digital newsrooms in Egypt and Tunisia showed that journalists develop a "mental map" of forbidden topics without needing explicit directives. This self-censorship takes multiple forms: avoiding certain names, using evasive language, delaying sensitive publications. However, it undermines journalism's watchdog role, transforming it from a fourth estate into a mere transmitter of safe news.

Conversely, some professional initiatives seek to develop codes of conduct and ethical standards for digital journalism. The ARIJ network offers training programs on investigative journalism and fact-checking. Yet these initiatives remain limited in impact, targeting a small journalistic elite and not reaching the vast majority of digital content producers.

The Interaction Between Law and Practice: An Interpretive Reading

The Gap Hypothesis: Between Text and Reality

The first observation emerging from the comparative analysis is the wide gap between legal texts and actual practice. This gap is not merely "poor implementation" but reflects a structural logic of transitional contexts. We propose here the concept of "façade law" to describe laws drafted in advanced rights language but designed to be easily disabled or emptied of content. Indicators of "façade law" include: vague formulations allowing arbitrary interpretation, absence of independent oversight mechanisms, excessive deterrent penalties, and broad exceptions in the name of "security" or "public order." Morocco's Law 88.13 and Tunisia's Decree 54 embody this concept.

This gap does not necessarily imply hypocrisy on the part of authority but may reflect real contradictions within the political system itself, between a reformist wing and a conservative one, or between the will for openness and fears of losing control. The legal-communication approach allows reading these contradictions without reducing them to a simple binary (democracy/authoritarianism).

The Mutual Adaptation Hypothesis: Dynamics of Power and Resistance

The second hypothesis proposes that the relationship between authority and digital journalism is not unidirectional repression but mutual adaptation. Authority learns from resistance and develops new tools, while journalism learns from repression and innovates new strategies.

This dynamic resembles what Michel de Certeau (1984) calls "tactics of the weak" versus "strategies of the strong." Authority possesses strategy (law, institutions, resources), but digital journalism possesses tactics (flexibility, speed, cross-border nature). For example, when Algerian authorities blocked the Radio M site, it shifted to an external domain (.org instead of .dz), used VPN networks, and disseminated content via multiple Facebook pages. In turn, authority developed more sophisticated blocking techniques (Deep Packet Inspection). This "technological race" reflects the nature of conflict in the digital age.

The Role of External Actors: Between Support and Exploitation

Understanding internet freedom dynamics in transitional contexts requires considering external actors: international organizations, cross-border media networks, global digital platforms, and Western

governments. These actors play contradictory roles. On one hand, they provide financial, technical, and legal support to independent journalism; networks like ARIJ and GIJN have offered training, tools, and funding to hundreds of journalists. On the other hand, local authorities exploit this support to discredit independent journalism as a "tool in foreign hands."

Moreover, global digital platforms (Facebook, Google) adopt contradictory policies: claiming to defend freedom of expression while cooperating with governments in content removal and yielding to commercial pressures that sacrifice freedoms for markets. This reality poses a fundamental question: Can sustainable internet freedom be built in transitional contexts if it remains dependent on external actors? The answer requires developing local economic and institutional models.

Toward an Integrated Interpretive Model: The Law–Practice–Technology Triangle

We propose an interpretive model that transcends traditional binaries (law/practice, freedom/repression, local/global) and relies on a three-dimensional approach:

- ***The legal-institutional dimension:*** encompassing legal texts (constitutions, laws, decrees), regulatory institutions (media regulatory bodies, judiciary), and control mechanisms (licensing, penalties, blocking).
- ***The practical-communication dimension:*** including patterns of journalistic production, adaptation and resistance strategies, professional culture, and relationship with the audience.
- ***The technological-algorithmic dimension:*** including digital infrastructure, platform policies, algorithms, and tools for censorship and technical circumvention.

These three dimensions interact dynamically, and none can be understood in isolation. For instance, a strict law (first dimension) may stimulate the development of circumvention tools (third dimension), creating new practices (second dimension), which in turn may push authority to develop more complex laws. This model allows moving beyond an instrumental view of law (as merely repressive) or technology (as merely liberating) and opens the way for a more precise understanding of transitional contexts.

The Maghreb Specificity: Between Similarities and Differences

Despite significant similarities among Maghreb contexts (shared colonial legacy, language, political culture), the comparison reveals important differences reflecting divergent transitional paths.

- ***Tunisia;*** represented a "revolutionary transition" case, producing a relatively advanced legal framework that faced implementation difficulties and serious regressions since 2021. The Tunisian experience confirms that political transition does not necessarily guarantee the sustainability of freedoms.
- ***Morocco;*** represented a "top-down managed transition," where the monarchy led limited reforms allowing spaces of freedom without touching the authoritarian structure. Moroccan specificity lies in the regime's ability to adapt and contain, making repression less blatant but more effective.
- ***Algeria;*** represented a "continuity despite crisis" case, where the 2019 Hirak did not produce substantial change in the legal or institutional structure but led to further tightening. Algerian specificity is the strength of the military institution and its control over the political path. These differences confirm that the "transitional context" is not a monolithic bloc but encompasses multiple patterns requiring differentiated analyses.

Conclusion

This research concludes with several theoretical and practical findings:

- **First**, on the theoretical level, the study has demonstrated the limitations of unilateral approaches (purely legal or purely communication-based) in understanding the reality of internet freedom in transitional contexts. The integrative legal–communication approach, which also incorporates the technological dimension, appears more capable of unraveling the complexities of these contexts.
- **Second**, the comparative analysis has shown that transitional contexts are characterized by three structural features: the gap between text and practice, the adaptive dynamics between authority and media actors, and the problematic reliance on external actors. These features are not transient flaws but structural traits that require long-term strategies.
- **Third**, at the level of legal texts, adopting "advanced" laws on paper is insufficient, as they can easily be emptied of content through interpretive mechanisms, the absence of independent institutions, and weak human rights culture. Good law requires a supportive institutional and cultural environment.
- **Fourth**, at the level of practices, independent digital journalism has demonstrated notable capacity for adaptation and resistance, yet it faces structural challenges related to economic sustainability, journalistic professionalism, and societal legitimacy. Developing local economic models and building regional professional networks appears essential.
- **Fifth**, the increasing role of global digital platforms and their algorithms poses new challenges that have not yet been adequately incorporated into local legal and political discussions. There is a need to develop public policies that regulate the relationship between these platforms and local communities.
- **Sixth**, the Maghreb experience confirms that political transition is not a linear path, and that democratic gains—including internet freedom—remain fragile and susceptible to regression in the absence of deep social and cultural transformations.

In terms of research prospects, several avenues are opened:

- In-depth ethnographic studies of digital newsrooms to understand editorial decision-making processes under legal and political constraints.
- Algorithmic analysis of content on digital platforms in transitional contexts to understand how algorithms shape the public debate.
- Comparative studies between Arab transitional contexts and other transitional contexts (Sub-Saharan Africa, Central Asia) to develop more inclusive theories.
- Applied legal research on the effectiveness of international mechanisms (regional human rights courts, UN mechanisms) in protecting digital freedom of expression.

Finally, the central question remains: Can Arab transitional contexts develop a distinctive model of internet freedom that is neither a pale copy of the Western model nor a continuation of the authoritarian model? The answer requires more than legal reforms; it demands a reimagining of the relationship between authority and society, between the state and the citizen, and between the local and the global in the era of the digital revolution.

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