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Democracy in Flux

Order, Dynamics and Voices in Digital Public Spheres

The Making of Citizens

Democracy and children's rights in digital spheres

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1 BALANCING A RISK-BASED NARRATIVE OF CHILDREN'S PARTICIPATION ONLINE

Emerging digital spheres hold enormous potential and risks for children, both of which are increasingly understood and outlined. As many new phenomena, they have triggered discursive polarization. Generally, the participation of children in online environments is characterized by a risk-based narrative, emphasizing the dangers of digital media for the younger generations. Even in scholarly literature, those risks have been found grossly overstated (Holmes, 2009).

Beyond the legal realm, children's rights have functioned as a counterpoint to this narrative. In particular, they have served to formulate children's needs in a digital world from a socio-psychological and educationalist point of view (Livingstone, 2014; Kutscher & Bouillon, 2018). All around the world, children's rights are guaranteed by the UN Convention on the Rights of the Child (CRC). The CRC, despite turning 35 years old this year, holds great potential for the implementation of children's rights in digital spheres (Kaesling, 2021; Committee on the Rights of the Child, 2021). Notably, the CRC recognizes children as rightholders with individual agency (Dethloff & Maschwitz, 2012), which extends to their participation as independent actors in online environments (Graziani, 2012). Greater emphasis should be put on children's rights to participate in digital communication with a view to its importance in the making of democratic citizens.

2 COMMUNICATION AS LIFEblood OF A DEMOCRACY

Communication is the lifeblood of a democracy and a constitutional state (Hoffmann-Riem, 2002). The freedom of expression as guaranteed by Article 5 GG (Basic Law) was taken up by the Parliamentary Council in 1949 in order to safeguard political freedom against any paternalism (Hoffmann-Riem, 2002). The German Constitutional Court considers freedom of expression to be constitutive of the liberal-democratic order (BVerfG, 1958 and 1995). Public debate of citizens is seen as a vital element of democracy. Children generally have the same fundamental rights as adults. The German Constitution does not yet include a specific section on children's rights.

The CRC, ratified by Germany in 1992, contains a number of children's rights with particular importance for communication in the digital age. Article 13 CRC establishes the right to freedom of expression, which includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice. Article 13 (2) CRC allows for certain restrictions of the exercise of that right, but only if they are provided by law and are necessary for the attainment of the aims mentioned there, such as the respect of the rights or reputations of others or the protection of national security, public order, public health or morals. For example, limitations on the creation and consumption of user-generated content on social networks need to be legally justified with regard to these standards. According to Article 17 CRC, State Parties recognize the important function of the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources. Article 31 (1) CRC contains rights to rest and leisure and to participate freely in cultural life and the arts. Similar to what the German Constitutional Court has stated with regard to Article 5 GG, children's participatory rights like the freedom of expression have to be interpreted with regard to their purposes and links to democratic orders.

3 CHILDREN’S CIVIC ENGAGEMENT AND POLITICAL CONCEPTS

The inclusion of children in online sociality is also a question of civic education. Internet-based communication can counteract disengagement of young people from public life (Carpini, 2000; Benkler, 2006; Gottlieb-Robles & Larson, 2006; Bennett, 2007). Digital spheres offer opportunities for civic expression and participation (Shah et al., 2005; Kenski & Jomini Stroud, 2006). Long before children turn into voters, they form notions of normativity, authority, and justice. Children’s political concepts develop at an early stage through everyday experiences (Cullingford, 1992). They thus grasp concepts of fundamental rights, autonomy, and democracy (Helwig/Turiel, 2002). A substantive amount of their identity experimentation takes place online as part of the socialization with media (Schulz, 2010). Social media offers a rich environment for creative self-expression. Digital spheres become an important space for youth to develop and express their political selves (Lane, 2020).

Communication in the digital age encompasses not only messaging services, but also content creation on social media for the public or a selected audience (Thimm, 2017; Dittler & Hoyer, 2014). End-users interact privately and publicly, giving rise to online group exchanges and community building (Neumann-Braun, 2011). The use of social networking sites is so integrated into young people's everyday lives that it is practically out of the question for young people to reject this form of communication (Authenrieth et al, 2011). In the converging media landscapes with regular multitasking, multi-media theme repertoires are part of the everyday identity practices of young adults (Kleinen-von Königslöw & Förster, 2016).

4 INTERPRETING AND BALANCING OF CHILDREN’S RIGHTS

Children’s rights are human rights, but with special protections, which are warranted by the fact that their rights are particularly easy to encroach upon, in particular in the name of protection and parental responsibility. When interpreting and balancing children’s rights, in particular those of the CRC, links between participatory rights, public debate and civic engagement and democracy have to be considered. Consequences for the application of children’s rights are threefold:

- (1) Firstly, these links underline that children’s participatory rights are equally important as protective rights. Purely risk-based approaches to children’s online participation do not sufficiently take into account the magnitude of online sociality and its political dimensions in the 21st century.
- (2) Protective measures, destined to shield children from harm associated with their activities in digital spheres, have to be seen as limitations on children’s participatory rights. As such, their lawfulness depends on their justification with regard to their purpose. Participatory rights such as those guaranteed in Article 13 and 31 CRC therefore set limits to regulation in a number of legal areas including platform regulation, family law and tort liability, in particular with regard to copyright violations.
- (3) Thirdly, the interpretation of key terms has to be updated. In particular, characteristics of digital media landscapes have to be taken into account. The CRC already unequivocally extends freedom of expression to all types of media (Article 13 CRC). The interpretation of the term “mass media” in Article 17 needs to be extended beyond traditional media categories in the light of the convergent multi-media theme repertoires.

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