

Communication and Democracy in a Digital Age

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Abstract: Ethical and epistemic standards for communication have been discussed since antiquity. And since antiquity they have periodically been disrupted by technological innovations, then revised and reinforced by cultural and latterly by legal and regulatory measures. However, the transformations produced by the mushrooming growth of digital technologies in the late C20, which has coincided with growing globalisation and the declining regulatory capacities of states, may prove particularly challenging. These technologies were initially seen as extending possibilities for communication in ways that would support democracy and wider civic participation. The promise has not been sustained. I shall comment on some reasons for this disappointing result, including the dominant position of 'freedom of expression' in contemporary discussion of norms that bear on speech acts; the ease with which anonymous speech can bypass normative standards, and the difficulty of identifying legally or institutionally robust ways of securing or enforcing standards for digitally transmitted content. Cultural, legal and regulatory approaches to these problems are all likely to prove difficult and controversial.

Part I: Speech Acts and Speech Content

1. Successful communication connects agents to one another. It is achieved by action—in the main by speech acts—that articulate and pattern symbols (words, letters, digits, characters, sounds, gestures, images, pixels, etc) and present them to others, who can understand and interpret them. In some cases those others can respond, and two-way communication can be achieved. ¹ Successful communication can link speakers to listeners, writers to readers, performers to audiences, and so on.

2. However, some speech acts do not aim to communicate with any audience and are merely self-expression, ² and many that aim to communicate fail to reach intended audiences—or indeed any audience.

Moreover, speech acts that communicate successfully with intended audiences may nevertheless be inadequate in

¹ This patterning has a very long history. See Rens Bod, *A New History of the Humanities: the Search for Principles and Patterns from Antiquity to the Present*, Oxford University Press, 2016, on the fundamental importance of juxtapositioning and patterning simpler elements.

² Which John Stuart Mill, in my view rightly, saw as raising different normative issues from those raised by speech acts that aim at discussion or communication. See *On Liberty* Ch I and Ch II respectively.

many ways. They may mislead or deceive, distract or damage, defraud or intimidate their intended audiences, and in some cases wider audiences. These damaging possibilities show why speech acts need to respect a plurality of ethical and epistemic standards or norms.

Part II: Norms for Speech Acts: Ancient Histories

3. Norms and standards for speech acts, including those that communicate, are nothing new. A range of ethical and epistemic standards for speech acts has been discussed since antiquity. At least two of the Ten Commandments assert standards for speech acts: *Thou shalt not take the name of the Lord thy God in vain* and *Thou shalt not bear false witness against thy neighbour*.³ Since then a huge variety of ethical, epistemic and other norms for speech acts has been discussed, ranging from ethical norms such as honesty, sincerity, truthfulness and civility, to norms of justice such as free speech, press freedom, and rights to privacy, to epistemic norms such as accuracy and respect for evidence and truth. Further norms, among them technical, cultural,

³ I am not sure about *Thou shalt not make unto thee any graven image*

ceremonial and aesthetic norms, may be important for specific sorts of speech acts.

4. The implications of technological innovations for normative requirements on speech acts have also been discussed since antiquity. Plato tells us that Socrates thought that writing (which many could not then decipher) was a deceptive and defective way of communicating, and so relied entirely on the spoken word:

When it has once been written down, every discourse roams about everywhere, reaching indiscriminately those with understanding no less than those who have no business with it, and it doesn't know to whom it should speak and to whom it should not. And when it is faulted and attacked unfairly, it always needs its father's [i.e. its author's] support; alone, it can neither defend itself nor come to its own support".⁴

Socrates' complaint was that written words can be separated from their authors—that *speech content* can be separated from *speech act*—and that readers who lack information that is conveyed by tone, gesture and context in face-to-face speech, which they can interrogate, may not be

⁴ Plato, *Phaedrus* 275d-e, tr. W. Hamilton, Penguin Books, Harmondsworth, 1973.

able to follow or assess the written word. The separation of reader from writer weakens and may undermine abilities to interpret, explicate, defend or vouch for the meaning, the truth or the trustworthiness of written words. Readers often need some grasp of sources, of evidence and transmission, of context and culture, in order to judge whether written material is true or false, plausible or far-fetched, evidence-based or imagined, hostile or helpful, and much more. To assess others' claims and commitments we need to take a view not of the *ipsissima verba*, but of the *acts* – centrally the speech acts— that incorporate, shape and control speech content.

5. The powers that be have often tried to control, suppress or prevent certain types of speech acts. Some have tried to do so by emphasising norms and standards for speech *content* rather than for speech *acts*, for example by prohibiting specific words or topics, or treating them as taboo. But reliance on content-focused norms for speech often backfires, and the failure is instructive. Montesquieu side-stepped the censorship of the *ancien regime* by presenting his biting political criticisms as a comment on the ancient

Persian court; satirical magazines (e.g. *Private Eye*) do much the same; while the booksellers of prerevolutionary France evaded censorship of erotic literature by marketing their wares under the widely understood euphemism *livres philosophiques*.⁵ Content that is prohibited by censorious regimes, and words that are taboo in certain cultures or religions, may be used ironically, or quoted, or replaced with widely understood euphemisms, as in contemporary China. Human ingenuity makes it hard to control speech content. (By the way this may account for some problems with data protection approaches to securing privacy: we lack a clear definition of *personal content*, and even if we had one would need to deal with the fact that personal content may sometimes be inferred from supposedly *non-personal content*. But that is not my topic today. Thankfully.)

⁵ Robert Darnton, *The Forbidden Bestsellers of Pre-Revolutionary France*, 1996, Norton, NY, NY.

Part III: New Technologies: Print, Radio, Film

6. Socrates' worries about the written word were eventually answered. Indeed, writing came to be seen as a particularly reliable way of communicating that provides lasting records and allows claims to be cross-checked. However, further questions about the written word arose with the introduction of printing in the early modern period, which enabled the production of multiple copies, authorised or unauthorised, whose origins, authority and indeed legality might be obscure or deceptive. Gradually across the following two centuries ways of ascertaining authorship and checking the truth and trustworthiness of printed claims were improved by a range of cultural, legal and regulatory measures.

7. Many of these measures clarified the respective roles and responsibilities of authors, printers and publishers. Copyright was introduced; plagiarism and passing off became easier to spot; conventions of attribution and acknowledgement were developed. A range of intermediary roles and practices was introduced: think of the

work of publishers, editors, translators, librarians, archivists; think of indexes and catalogues; think of their professional and legal underpinnings.⁶ These structures made it possible to combine press freedom with free speech for individuals, and increased prospects of securing redress for speech acts that defamed, plagiarised, breached copyright or wronged in other ways.⁷ In the twentieth century analogous measures were extended from the printed word, to broadcast speech and to film by developing complex, often internationally accepted, regimes requiring compliance with a range of ethical, epistemic and technical norms.⁸

Part IV: Problems with digitised speech

8. However, it is still unclear whether and how measures to secure respect for ethical and epistemic norms and standards

⁶ For evidence of the effects of disrupting traditional forms of intermediation see Franklin Foer, *World Without Mind: The Existential Threat of Big Tech*, Penguin, 2018.

⁷ Although copyright was written into law as early as 1710, with the passing by the British Parliament of 'The Statute of Ann' (8 Ann. c. 21), the law was often ineffective: when Charles Dickens undertook a literary tour in the United States in 1842 (check year) American printers were busy plagiarising and selling his books.

⁸ Not without controversy. See for example David Goodman, *Radio's Civic Ambition: American Broadcasting and Democracy in the 1930s*, 2011 for an overview of the culture wars over the regulation of broadcasting in the US in the 1930's; also Adrian Chen 'The Fake News Fallacy', *The New Yorker*, Sept 4 2017,

can be introduced, let alone required or enforced, for
digitally mediated speech. The topic is complex, and
today I shall comment only on *three* groups of
considerations that make it hard to secure respect for ethical
and epistemic norms in a digital world; there may be further
difficulties.

9. The **first** source of difficulties that I shall discuss has
nothing to do with digital technologies, but arises from the
surprising narrowness of many C20 and C21 discussions of
ethical and political norms, and consequently of their
bearing on speech. Many contemporary discussions of
normative principles and standards focus centrally on *rights*,
and in particular on the human rights set out in the leading
C20 Declarations and Conventions, seeing the counterpart
duties as corollaries that are required to respect those rights.
The most discussed speech right included in the human rights
documents is the right to *freedom of expression*, a liberty
right with corollary duties not to prevent others from
speaking, writing, or expressing themselves. These
counterpart duties fall very far short of duties to

respect the range of norms and standards that matter for successful communication.

This narrowness does not present a problem for the use of digital technologies, which are much better suited to supporting freedom of expression than they are to supporting communication that must meet more, and more demanding, standards. Digital technologies are ideal for *disclosure, dissemination, transparency* and *openness*, for placing content in the public domain, and for directing it to (or at least towards) specified recipients. However, digitally distributed and targeted content may not be intelligible to or assessable by those whom it reaches, may not respect many epistemic and ethical standards, and may not communicate effectively. ⁹

A second set of reasons why it is hard to secure respect for ethical and epistemic norms in a digital world arises because

⁹ All audiences, whether expert or inexperienced, are short-changed by mere, unqualified openness, and need information that is actually *accessible, intelligible* and *assessable* for them. See *Science as an Open Enterprise*, Royal Society, 2012. See https://royalsociety.org/topics-policy/projects/science-public-enterprise/report/?gclid=Cj0KCQiAh9njBRCYARIsALJhQkG1nzD7RgDbctvX0-zEwQGtjLagzE5B-ncX5Yhy7i-RGr1sz1UM-r4aAp0DEALw_wcB

these technologies are often used in ways that fail to provide anonymity for individuals whose speech they transmit,¹⁰ while providing highly effective anonymity for many of the intermediaries who develop, control, purchase and fund the organisation, dissemination or suppression of digitised content. In consequence it is doubly (or multiply) hard to ensure that digitised speech acts respect ethical or epistemic standards. Unlike many of the older intermediaries, the new ones are often neither professionally organised nor subject to effective regulation. Existing regulators of communication are often ill suited to regulating material that is digitally transmitted, and many have remits that do not include concern for all of the norms that matter for communicating. ¹¹

¹⁰ In fact they often fail in this. Even when anonymity and privacy are promised to those who consent to conditions for using their data, this is not always respected. See House of Commons, Select Committee for Department of Culture, Media and Sport, *Disinformation and 'fake news': Final Report*, <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomeds/1791/1791.pdf>, and in particular its discussion of the *Cambridge Analytica* scandal pp xx-yy

¹¹ For a few comments on current communications regulators in the UK, see section IX, below. For recent discussion of possible approaches to regulation see *Analyzing 20 ideas to regulate the internet* Draft White Paper Senator Mark Warner, <https://medium.com/@jberloff/analyzing-20-ideas-to-regulate-the-internet-28c46a68a2b7> and House of Lords, Select Committee on Communication, *Regulating in a Digital World*, Feb 2019, <https://publications.parliament.uk/pa/ld201719/ldselect/ldcomuni/299/299.pdf>

A third set of reasons why it will be hard to secure respect for ethical and epistemic norms in a digital world, which I shall discuss more briefly, is that digital technologies are mainly controlled either by powerful tech companies with global reach or by autocratic states. These corporate and state actors may have limited reasons to meet ethical or epistemic standards in the ways in which they obtain, control and distribute digitised content.

Part V: Narrowing Ethical Horizons: Expression vs Communication

9. As I see it, we need to start by recognising that speech acts need to meet a *plurality* of ethical, epistemic and other standards. Yet during the past century increasingly narrow accounts of the norms that matter for all activities, including speech, have been widely accepted. I believe that this narrowing of ethical horizons can be traced in part to an assumption in the post WW2 world that normative

See also <https://www.parliament.uk/business/committees/committees-a-z/lords-select/communications-committee/news-parliament-2017/internet-regulation-report-publication/>

issues, and in particular issues of justice, are best articulated in terms of *rights* rather than (as had been traditional in Western cultures) in terms of *duties*. The traditional agent's question—'what ought we do?'—was increasingly replaced by the recipient's question 'what ought each of us receive?' or 'what rights do I have?'. 13

This momentous change had many sources. One is surely the (understandable) discrediting of narrow versions of the ethics of duty, centring on excessive conceptions of patriotic duty, which were favoured during WWI.¹² Between the wars scepticism about duty received collateral support not only from the excesses of logical positivism, but a wide range of writers who criticised and rejected duty.¹³ In the 1940s this sceptical trend was stemmed, *but only in part*, by seeking international agreement on the norms and standards incorporated in the canonical human rights documents.¹⁴

¹² I have discussed these themes in 'Liberal Justice: Kant, Rawls and Human Rights', *Kantian Review*, 23, 641-59, 2018, and 'Ethical and Political Justification in the Twentieth century', the Berggruen Lecture, *Proceedings and addresses of the American Philosophical Association*, 92, 296-309, 2018. Also 'Justice Without Ethics', in John Tasioulas, ed., *Cambridge Companion to the Philosophy of Law*, Cambridge University Press, forthcoming.

¹³ W. B. Yeats; E.M. Forster; Stefan Zweig;

¹⁴ UDHR ECHR

10. Rights matter: but they are not all that matters, nor even all that matters for justice. Human rights approaches to norms and standards ignore much that had formed part of the ethics of duty. They have nothing to say about *imperfect duties* which leave agents discretion over what to do in particular cases (e.g. beneficence, solidarity), so lack counterpart rights. They are also silent about those perfect *duties* that they permit no exceptions, yet are not duties of justice since they cannot be enforced by public authorities, among them duties such as truthfulness and honesty. And they are silent about those duties of justice that cannot be claimed as rights because relevant claimants are not specified (e.g. duties to future generations; duties of fairness).¹⁵ Many duties that had long been taken seriously become invisible once rights are taken as foundational.

11. This narrowing of perspectives is also evident in contemporary accounts of speech rights. Many long-recognised norms and standards for speech —among them

¹⁵ John Rawls is a notable exception: he saw justice as combining *two* distinct fundamental principles, the first a principle of equal rights and the second a principle constraining distributions to secure a form of fairness. Hence ‘Justice as Fairness’.

honesty and truthfulness, civility¹⁶ and decency, sincerity and accuracy—lack counterpart rights. Yet they traditionally counted as *perfect* duties that personal choice or discretion could not set aside.¹⁷ Only the two human rights that bear on speech – freedom of expression and the right to privacy— are seen as supporting claims in all contexts.

12. *Freedom of expression* matters, but it is not all that matters for speech. This demanding and important standard acquired a central role in the new human rights declarations of the mid C20, and has now largely replaced older approaches that used to distinguish a range of more specific speech rights such as *freedom of the press, free speech, academic freedom, artistic freedom* and indeed *freedom of religion*. The revised terminology can seem compelling

¹⁶ Civility may be making a comeback, but mainly in historical writing. See recently Teresa Bejan, *Mere Civility: Disagreement and the Limits of Toleration*, 2017; Keith Thomas *In Pursuit of Civility: Manners and Civilization in Early Modern England*, 2018.

¹⁷ ‘Üb immer treu und redlichkeit’ not ‘Üb manchmal treu und redlichkeit’. Truth telling was seen as duty whose demands arose in all contexts (like other qualified rights their demands could not actually be satisfied in all situations, for a range of reasons).

because it is both technology and topic neutral.¹⁸ However, viewing freedom of expression as the preeminent speech right has profound implications. Doing so marginalises other long recognised norms and standards for speech —such as honesty and truth telling, civility and decency, sincerity and respect for evidence — that had once been seen as *perfect* duties (although not as duties of justice) rather than as matters of personal choice or discretion.¹⁹ These and other duties that bear on speech acts that had once been taken as central were often reconstrued as institutional or professional requirements that make claims only in specialised contexts. Only the two human rights that bear on speech – freedom of expression and the right to privacy— were seen as making claims in all contexts. I may tweet what I like...

¹⁸ Superficially freedom of expression is in tension with the only other human right that bears mainly on speech acts¹⁸ included in the human rights canon, namely the right to *privacy*. Although protection for individual privacy supports effective rights to freedom of expression *up to a point*, tension between these two rights, as between other pairs of qualified rights, has been recurrent and the ways in which each should and may qualify the other receives a great deal of attention from lawyers, political philosophers and policy makers; I shall leave those debates aside.

¹⁹ ‘Üb immer treu und redlichkeit’ not ‘Üb manchmal treu und redlichkeit’.. Truth telling was seen as duty whose demands arose in all contexts (like other qualified rights their demands could not actually be satisfied in all situations, for a range of reasons).

13. Contemporary discussions of the rights that matter for speech are also often narrow in a further way. *Freedom of expression* is a right for *producers* of speech content, but silent about the rights, entitlements or needs of *audiences*. Rights to freedom of expression are seen as protecting *all* speech acts, including those that are unintelligible, false, unevidenced, tendentious, misleading or provocative, unless they breach some other human right or inflict serious harm (or legal requirement?). Hence, I believe, our current preoccupation with showing that with a bit of a stretch various speech acts that we think unacceptable can be construed as violating rights—for example, because they are hate speech, or sexist or racist speech. Doing so offers reasons to condemn and punish speech that a too limited focus on freedom of expression condones.

These tendencies reflect the fact that rights to freedom of expression are in many ways *over broad*. They ignore standards that are basic to engaging with the capacities of supposed or intended listeners, readers or audiences, and they ignore speech wrongs that do not amount to rights violations. Although there have been suggestions for rights for audiences—e.g. rights to freedom of

information and versions of a so-called ‘right to know’ – these are understood as requiring no more than action to make information ‘available’—i.e. as rights to transparency or openness rather than as rights that speech acts *actually* communicate with audiences. Absent professional and regulatory measures, rights to freedom expression allow standards that are necessary for communication to be ignored provided *no other right is breached*. This has the effect that many of the traditional duties of civil society that addressed speech are eclipsed by a new emphasis on the importance of protecting individuals’ speech acts, even when they are uncivil, dishonest, false or provocative, provided they do not breach others’ rights. You may tweet what you like...

Part VI: Disintermediation, Public Reason and Democracy

14. Only a decade ago many assumed that digital technologies would support (various conceptions of) public reason, and thereby democracy, by sweeping away institutional barriers that limited communication, so enabling more and better communication among members of the public. It is true that digital technologies enable and support forms of *disintermediation* by making it possible to disseminate content widely, rapidly and cheaply, to deliver it to distant others, and to bypass traditional gate-keepers. They seemed to be ideal for eliminating or reducing privilege and exclusion.

15. That was perhaps the hope behind Mark Zuckerberg's famously provocative injunction to 'move fast and break things.' I take it that his thought was that the things that would get broken were useless or even harmful, for example because they imposed unjustifiable constraints and exclusions or because they were maintained by some

malign or ossified state or corporate apparatus, or because they ignored or damaged the interests and rights of some or many citizens or consumers. If that had been the whole story, disintermediation might have offered net gain.

16. But it was not the whole story. Not everything that digital technologies broke or bypassed was without value. The title of Jonathan Taplin's 2017 book encapsulates the contrary claim: *Move Fast and Break Things: How Facebook, Google and Amazon Cornered Culture and Undermined Democracy*. Cultures have been 'cornered' by diverting much of the funding for and thereby losing or reducing the contributions of traditional intermediaries, among them writers, journalists, editors, publishers, newspapers and broadcasters. Their work used to discipline, curate, simplify and diversify much of the content that members of the public read, heard and viewed, and support public reception and assessment of written, broadcast and other material.²⁰ The declining audiences and

²⁰ *The Cairncross Review: a sustainable future for journalism*, February 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779882/021919_DCMS_Cairncross_Review_.pdf

revenues of writers and musicians, of publishers and of the print media, show that these changes are systematic. ²¹

17. When traditional intermediaries performed their tasks well, they supported rather than damaged public abilities to judge others' claims and action, typically by providing or requiring a context of assessable evidence and argument, supporting the possibility of reasoning with others and sustaining standards and practices of public reason and its cultural and political benefits.²² Democracy has depended in many ways on the work of a range of traditional intermediaries.

18. It is true that these intermediaries sometimes failed. Some damaged, suppressed or censored public discourse, rather than respecting and ensuring respect for ethical and epistemic norms and standards. That is why disintermediation tempts. Disintermediation that destroyed *only* damaging or unjust restrictions and constraints would

²¹ *The Cairncross Review: a sustainable future for journalism*, February 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779882/021919_DCMS_Cairncross_Review_.pdf. See also Taplin *op. cit.* on the effects of digital technologies on musicians and writers; Authors' Copyright and Licensing Society on the decline in professional writers' earnings; Franklin Foer, *op. cit.*, on some implications of removing intermediaries; Alan Rusbridger, *Breaking News: the Remaking of Journalism and Why it Matters Now* on the effects of digital technologies on journalism.

indeed be ideal: but it may not be feasible. Yet simply breaking or bypassing the imperfect systems of legal, regulatory, professional and cultural quality control that had been devised across some centuries to enable, support and discipline public debate, political life and media practices, so allowing for the possibility of democracy that is not mob rule, may not be entirely a change for the better.

19. The extent of the damage is considerable. Some recipients of digitised content encounter little high quality evidence; some are targeted with selected and seductive bogus content— now often dignified with the oxymoronic accolade ‘fake news’— and others enter echo chambers that shield them from evidence that might challenge their current views.²³ However, the most telling evidence that getting rid of the old intermediaries has not been as beneficial as was imagined is that they been replaced by different powerful intermediaries, whose control of information and communication neither support nor secure

²³ Cass R. Sunstein, *# Republic: Divided Democracy in the Age of Social Media*, Princeton University Press, 2017; Gillian Tett, *The Silo Effect: Why Every Organisation Needs to Disrupt Itself to Survive*, Simon and Shuster, 2016, followed by a torrent of books in 2018, including Roger McNamee, *Zucked: Waking Up to the Facebook Catastrophe*, HarperCollins, 2018.

respect for ethical and epistemic norms, but rather inflict cultural and political damage.

Part VII: The New Intermediaries and Hidden Persuasion

Martin Moore concludes in his recent work *Democracy Hacked*²⁴ that “politics has not merely migrated online, but onto a handful of transnational digital platforms”. He suggests, I think convincingly, that the problems arise not from the technologies themselves, but from their control by new intermediaries that are dominated by corporate interests in democratic states, and by state power in certain autocratic states. This subordination of digital technologies to corporate or state power permits interventions—often anonymous interventions—in democratic politics not only by wealthy individuals (who

²⁴ Martin Moore, *Democracy Hacked: Political Turmoil and Information Warfare in the Digital Age*, 2018. See also Soshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*; Jamie Bartlett, *The People v Tech: How the Internet is killing democracy (and how we save it)*, Penguin Books, 2018, and Manuel Castells, tr. Rosie Marteau, *Rupture: The Crisis of Liberal Democracy*, Polity Press, 2018. All offer interesting accounts of what is going on, but are light on effective remedies.

need not be (citizens) but by state actors, including hostile state actors. ²⁵

These new intermediaries²⁶ can obtain and orchestrate potent advantages. Some provide *platforms* for others to post material, thereby avoiding the responsibilities and liabilities of publishers, then sell on the data their users provide when they post, or use them to organise and target advertisements and so to exert influence. Data gathering that might traditionally have been done and paid for by businesses is then done without payment by the *users* of the platforms, then used to target advertisements that are sold by the owners of platforms to their commercial and political *customers*. The platforms take no responsibility for the content posted—they are not publishers—and may not provide effective anonymisation for individuals whose data they collect, compile and sell on, while providing highly effective anonymisation for those who control and purchase the

²⁵ On the latter see Gordon Ramsay and Sam Robertshaw, *Weaponising News: RT, Sputnik and Targeted Disinformation*, <https://www.kcl.ac.uk/policy-institute/research-analysis/weaponising-news>, February 2019

²⁶ See Nick Srnicek, *Platform Capitalism*, Polity Press, Cambridge 2017, esp. ch 2. Quote p43

targeting of commercial and political messages. Traditional electoral regulators—for example, in the UK Electoral Commission—lack powers and capacity to regulate anonymous interventions in elections and referenda by those who represent no citizens and no political parties. 27

20. The moment of optimism, when some thought that digital technologies would support greater participation, and help spread democracy, turned out to be brief. Removing traditional intermediaries and giving power to a range of less identifiable, less accountable yet more powerful intermediaries, who need have little concern for the public interest, hands the power to target citizens to undeclared state and non-state actors, of whom some may act in pursuit of private interests, and others with malign or anti-democratic political intent.²⁸

Part VIII: New and Anonymous Intermediaries

21. The consequences for democracies may be profound. Barely a decade ago, it was widely believed that online

²⁷ See the report of the UK Electoral Commission https://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/244594/Digital-campaigning-improving-transparency-for-voters.pdf See also DCMS Select Committee Report

²⁸ Roger McNamee, *Zucked: Waking Up to the Facebook Catastrophe*, 2019, Harper Collins.

technologies would benefit public life and democracy by enabling everyone to post content, which would be accessible to and interpretable by a potentially unlimited audience, thereby achieving a version of the fuller communicative and democratic society that Jürgen Habermas had envisaged when these technologies were in their infancy. The new technologies seemed to be perfect for expanding freedom of expression, extending the public sphere and supporting democracy.

This was the hope that Sir Tim Berners-Lee initially had for the World Wide Web. But by September 2018 he was expressing deep concern about what has actually happened:

I've always believed the web is for everyone. That's why I and others fight fiercely to protect it. The changes we've managed to bring have created a better and more connected world. But for all the good we've achieved, the web has evolved into an engine of inequity and

division; swayed by powerful forces that use it for their
own agendas... 29

22. With hindsight we can see that some aspects of these changes undermine rather than support democracy, and may damage the quality of public reasoning. As the old intermediaries were bypassed or eliminated, new unregulated and unprofessionalised intermediaries gained power. They included coders, data analysts, ‘influencers’, bloggers, the practitioners of adtech, the customers of the tech companies, and above all the tech companies themselves which provide platforms and organise others’ use of them. These firms were in a position to ignore established ethical and epistemic norms and standards, to circulate fake, false and flaky content³⁰ and to target whomever their customers and controllers hoped to influence.³¹ Today we can look back on the cyber-romantic fantasy that disintermediation would foster democracy with

²⁹ See Tim Berners-Lee, <https://inrupt.com/blog/one-small-step-for-the-web> Sept 2018. He has since launched *The Contract for the Web* -- “an initiative to bring governments, companies, civil society and web users together to build a roadmap for how we build a web that serves humanity and is a public good for everyone, everywhere.”

³⁰ See Onora O’Neill, *Facebook’s trust rankings can’t be trusted* https://www.washingtonpost.com/news/theworldpost/wp/2018/09/25/facebook-2/?noredirect=on&utm_term=.07b9c74834b6

³¹ Cf *Zucked*

amusement tinged with bitterness. But it is hard to identify remedies.

23. If we are to understand how digital technologies are changing politics, and to work out what could be done to stabilise matters, we could start by being upfront about the fact that these are not simply “communication technologies”. James Williams has pointed out that “we persist in describing these systems as “information” or “communication” technologies, despite the fact that they are designed neither to inform us nor to help us communicate”.³² He suggests that many of them are used to produce an “infrastructure of industrialised persuasion ... and to open a door directly onto our attentional faculties”.³³ My own view is that these technologies, and the businesses that provide them, aim to do something rather less uplifting than

³²James Williams, *Stand Out of Our Light: Freedom and Resistance in the Attention Economy*, Cambridge University Press, 2018, p 87.

³³*Ibid.* See also Tim Wu, *The Attention Merchants: The Epic Struggle to Get Inside Our Heads*, who writes “As an industry, attention merchants are relatively new. Their lineage can be traced to the nineteenth century when in New York City the first newspapers fully dependent on advertising were created; and Paris, where a dazzling new kind of commercial art [e.g. posters created by Henri de Toulouse-Lautrec] first seized the eyes of the person in the street. But the full potential of the business model by which attention is converted into revenue would not be fully understood until the early twentieth century, when the power of mass attention was discovered by any commercial entity but by British war propagandists.”

‘organise attention’. Their underlying use, and the source of their commercial success, is that they can be used to influence, manipulate, and exercise some control over others’ action, and that these activities can be marketed for the benefit of the tech companies, rather than in the public interest. ‘Hidden persuasion’ is a pervasive feature of marketing and using online technologies, and can be deployed to disrupt norms and standards for acceptable communication and to damage democracy.³⁴

24. Although it is has become easy, all too easy, for more people to express themselves and to transfer content digitally, this may not improve communication since recipients may be unable to assess the claims they encounter. This should not surprise us: digital technologies are excellent for *expressing and disseminating content*, but not for *receiving and judging content*, hence not for communication, or for meeting the ethical and epistemic standards that matter for communication. All too often content is posted anonymously, thereby short-changing audiences, who cannot tell who is responsible for speech acts that

³⁴ See Jonathan Taplin, *op.cit.*; Martin Moore, *op cit.* DCMS Report; See Roger McNamee *Zucked: Waking Up to the Facebook Catastrophe* 2019, Harper Collins.

were distributed by unknown algorithms, whose inventors and controllers remain anonymous, and whose specific uses may have been paid for variously by state and non-state actors who also remain anonymous. Unsurprisingly those who remain anonymous remain unaccountable.

25. It is hardly surprising that recipients of online content often cannot tell whether the claims they encounter are accurate, honest or reliable, or discern who or what may be ‘promoting’ (or inventing) a given ‘message’—or suppressing, mocking or deriding other ‘messages’. At present recipients of digital content may be unable to tell *who* produced specific claims, *what* they aimed to achieve, *how* they were funded or *what* their underlying aims and agenda were. Digital content—unlike the published content provided by the print and broadcast media—need have no imprint. Its readers, listeners and viewers may be unable to identify sources, or to seek redress for harms such as defamation or deception. It may be wholly unclear when content is created or circulated by interested parties who are not identified, and whose wider agenda and funding are hidden.

The large tech companies are not the only beneficiaries of this lack of clarity about what is being done and who is doing it, and there are many lesser players. Bloggers and ‘influencers’ may use these technologies to post content while dispensing with journalistic standards. Digital media can ignore the disciplines of editorial standards and journalistic responsibility, while reaching enormous audiences.³⁵ Social media can be exploited to gather data and distribute paid-for content without the knowledge of users and without recipients realising how they are being targeted. They provide gigantic networks for unidentified agents to harvest data, to differentiate user profiles, and to target and spread content whose originators and credentials remain hidden. Many recipients will be unable to tell when they are meeting evidenced claims and when they are receiving fake, false, or flaky content. We find ourselves facing a new version of the predicament that led Socrates to shun writing.

³⁵Franklin Foer, *World without Mind: The Existential Threat of Big Tech*, Jonathan Cape, London, 2017; *Overview of recent dynamics in the UK press market*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/720400/180621_Mediatique_-_Report_for_DCMS, April 2018.

27. Anonymity is a central source of many of these problems, and is indeed sometimes acceptable and even necessary. It is valuable where repressive regimes or powerful corporations seek to prevent reporting of their action and policies. Investigative journalists may need anonymity in such cases not merely to protect their sources, but to protect themselves. But technologies that spread the cloak of anonymity *indiscriminately* for *undeclared* or *covert* purposes can damage and undermine public discourse and thereby also cultural, social and democratic life. Anonymity is not an unconditional good.

Part IX: Remedies?

28. These problems may seem to have obvious remedies. We need, it is constantly said, to use the familiar disciplines of law and regulation to ensure that norms and standards for speech are respected. Yet it is not obvious how this can be done. This is not because regulation of communication inevitably fails. In the UK there are a number of regulators for communication, each focused on securing respect for *some* norms and standards in *some* contexts. For example,

the *Electoral Commissioner* regulates electoral campaigns and expenditure by political parties.³⁶ The *Advertising Standards Authority* regulates advertisements and requires an imprint that reveals that they are ads and their source.³⁷ The *Information Commissioner* regulates compliance with data protection principles.³⁸ *Ofcom* regulates the television, radio, telecoms and postal sectors and has a statutory duty “to represent the interests of citizens and consumers by promoting competition and protecting the public from harmful or offensive material”.³⁹

29. None of these regulators is adequately equipped to regulate speech that is either anonymous or controlled from other jurisdictions. Nor are any of them equipped to regulate in ways that will secure respect for the full range of norms and standards that matter for communication.

Content that appears plausible and even reputable may

³⁶ For the Electoral Commission see <https://www.electoralcommission.org.uk/our-work/who-we-are>

³⁷ For the Advertising Standards Authority see <https://www.asa.org.uk/>

³⁸ For the data protection principles that ICO oversees see <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/>. For a recent report see *Democracy Disrupted: Personal Information and Political Influence*, ICO, 2018. <https://ico.org.uk/media/2259369/democracy-disrupted-110718.pdf>

³⁹ For OFCOM see <https://www.ofcom.org.uk/home>

have been invented, or circulated and targeted by unknown interested parties. Algorithmic recirculation of content may hide originators, paymasters and beneficiaries and may serve undeclared purposes— not least among them boosting the profits of the tech companies, whose concentrated wealth, dexterity in avoiding taxation and libertarian tendencies are proving potent. *Some* of the content that is made available without identifying sources or authors indeed recirculates content that individuals have posted on social media, and what those individuals post deserves the same—but only the same— protection as the other speech acts of individuals. But the amplification, distribution and microtargeting of selected content has other sources, that reflect the business interests, advertising targets, technical standards, and political agendas of those who organise, fund and profit from the dissemination and direction of content. The case for according them anonymity, and in consequence exempting them from accountability, is far from obvious.

27. Can public policy provide redress, as it did when earlier technological changes disrupted practices and norms for communication? At present, despite moves in the EU

and worries in many quarters, the feasibility of achieving legal and regulatory disciplines that will limit damage to culture and democracy remains unclear. It has been widely suggested that what is needed is to bring the tech companies under the same requirements as publishers, and to ensure that they are not treated in law as platforms for others to express themselves, while evading responsibility for the action they enable and from which they profit. For it is this that permits them to evade a range of legislation and regulation that applies to publishing and broadcasting. However, this is easier said than done. The leading tech companies combine vast wealth with minimal physical infrastructure. The ease with which they can shift jurisdictions and the difficulty they would have in meeting the responsibilities of publishers suggest that we should not assume that change will be easy. But if we want to retain democracy it is necessary.

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28. This has been a pessimistic talk, and I think we are in a lot of trouble. But I am not entirely pessimistic. In my view it is quite likely that the leading tech companies will themselves find reasons to take some steps to address some

of the *private* harms that their business models produce.

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They will have reason to address the private harms for which social media have provided so much opportunity—and impunity. Distributing extreme porn, facilitating fraud and turning a blind eye to cyber bullies, are not optimal tactics for earning good commercial reputations, and may lose both users and customers.

I am much less sure whether the tech companies will find reasons to limit the public harms to culture and democracy that anonymised uses of digital technologies enable and promote. For these activities are central to their business models. Digital technologies have yet to earn an honourable place in the public life of democracies, and without profound changes may not do so. But let me end on an optimistic note. This week on the 30th anniversary of the World Wide Web and Sir Tom Berners Lee spoke about a new ‘Contract for the Web’, reaffirming his belief that “the web is for everyone and collectively we hold the power to change it. It won’t be easy. But if we dream a little and work a lot, we can get the web we want.”⁴⁰

⁴⁰ <https://webfoundation.org/2019/03/web-birthday-30/>

NOTES

“The end of history is not the triumph of democratic capitalism, but the triumph of bureaucracy.” Jesse Norman MP **‘World Wide Weber’** *Hisotry Today* June 2019 now both reinforced and distorted by digital technologies.

Further books; [Paul Bernal](#), *The Internet, Warts and All: Free Speech, Privacy and Truth* CUP 2018 On line review includes the following: “The message here is that however messy and unruly the internet becomes, we have to accept all that, says the author ‘if we are to make any progress’. Well, er – no we don’t, not necessarily! Many of us would prefer the internet to be ruled by the rule of law. However, to say that the possibility of such an outcome is remote is a monumental understatement for a range of reasons detailed in the text. Trying to reform or regulate a global system which spreads its tentacles across a diverse range of countries and jurisdictions with different cultural norms, different value systems and different laws – constitutes an inhibiting factor, you might say. But just possibly there may – or might – be a way forward, based on a variety of solutions carefully and gradually implemented. ...”

Gordon Ramsay and Sam Robertshaw, *‘Weaponising News: RT, Sputnik and Targeted Disinformation*, <https://www.kcl.ac.uk/policy-institute/research-analysis/weaponising-news> February 2019

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The internet has already revolutionized the nature of the forums we use for deliberation. For ordinary citizens, a growing proportion of political news-gathering and debate takes place on digital platforms owned and controlled by private entities. This has its benefits, but the risks are also becoming clear: algorithmic polarization resulting in social fragmentation and the proliferation of "fake news." Another source of growing unease is the growing (and normally privately-held) power to decide who may participate in the deliberation process — who is blocked or banned — and what may be said or prohibited. Every time a controversial public figure is exiled from a social network, the prohibition is met with equal choruses of derision and approval, usually along predictably partisan lines.

Nicholas Berggruen and Nathan Gardels "Renovating Democracy: Governing in the Age of Globalization and Digital Capitalism," forthcoming