

*Taming the Social Media Giants: How far should the state go in regulating online content?*

The high priests of social media always had a rather woolly moral philosophy. “To save the world”, they told us, “you must connect the world”. They were wrong. More people are connected through social media than ever before, yet the world seems less safe and more anxious.

Social media has helped bring about a new unstable politics. Its contribution is three-fold. First, *The Misinformation Problem*: Social media platforms are conduits for the spread of vitriol and misinformation. Second, *The Entrenchment Problem*: Social media encourages ideological digging-in; it is difficult to change your mind when you are wrapped in the familiar opinions of those you follow, when your previous positions are there for all to see, and when you see others subjected to the rough justice of the online community. Third, *The Crime Problem*: Social media assists law-breaking. Telegram, for example, is a handy tool for ISIS and drug-dealers alike.

What, then, is the state to do? Our three problems stated above provide a helpful set out of outcomes for any regulatory framework. The state should seek to reduce social media’s enablement of misinformation, entrenchment, and criminality. But this is not enough. The liberal democratic state has to achieve these outcomes without unduly infringing upon certain rights – namely the right to freedom of expression.

As an example of how to balance rights with substantive outcomes, here is my own modest proposal for regulating online content in the United Kingdom. Before we begin, I should note that I am principally concerned with the ‘public square’ social media (community platforms, not private channels such as Whatsapp). My framework

is of two limbs. It would place limited responsibility for online content on the social media companies. It would regulate the *process* of online content distribution. It would not, however, out of concern for protecting freedom of expression, regulate the *substance* of the content produced on social media platforms beyond existing laws, such as those against hate speech.

The first limb is about responsibility. The law of defamation in England and Wales requires the social media platform to be connected in some way to a user's defamatory statement in order to face any liability for it. A failure to swiftly remove a defamatory post that has been reported by other users might amount to a liability-worthy 'connection'. This is a fair approach, acknowledging the impossibility of policing millions of users simultaneously, whilst still requiring the social media companies to have an effective system for removing troublesome content.

Similar powers should be given to a regulator. Should social media companies, despite reports from users, fail to remove abusive posts, posts facilitating crime and terrorism, and manifestly fake news stories, they should be fined in a manner proportionate with the 'reach' of those posts. The regulator will make mistakes, but the inevitable hand-wringing over what constitutes "fake news" and "abuse" should not get in the way of meaningful action on the spread of disinformation, criminality and abuse.

The rebuttals to the responsibility proposal run as follows: Why should we let a grey, faceless 'regulator' curtail our freedom of speech? Why should social media companies suffer for the actions of their users?

First of all, the regulator would be enforcing the terms of service of the social media companies themselves, all of whom forbid abusive language and the wilful sharing of fake news. Your freedom of speech is already curtailed on these platforms. Secondly, social media companies are responsible because they turn the statement of the user into something qualitatively different – where a comment would once have been muttered amongst friends, now, social media platforms hand you the megaphone and lead you to a crowd. That act of abetting, surely, bears some responsibility.

So far, nothing has been proposed that addresses our *Entrenchment Problem*. To do that, we need to change the way that content is shown to the user. The algorithms that order your content on Facebook and Twitter prioritise content that is similar to content that you have previously interacted with in a positive manner. This is intuitive. Facebook and Twitter want you to enjoy yourself; you spend more time on their platforms, their pitch to advertisers is stronger. This algorithmic pandering occurs alongside our own deliberate actions, such as joining groups that we like. And, before we know it, our social networks are Balkanised.

A dose of Luddism is required. Regulation should make chronological newsfeeds the default on social media platforms, making all content algorithmically equal, and exposing the user to content with which they would not usually interact. My evidence that this works is anecdotal, doubtless clouded by nostalgia. But there was a time when Facebook and Twitter had chronological timelines. And social media seemed a far more civil and spontaneous place for it. Finally, where sophisticated suggestion algorithms are offered to the user, they should be covered by Article 14 of General Data Protection Regulations, which grants individuals a right to “meaningful information about the logic involved”.

When it comes down to it, I suspect the social media giants' professed concern with freedom of speech is a stalking horse. The lobbyists on campaign in Washington and Brussels elide the issues of content regulation, data regulation and market dominance, turning any attempt to regulate the use of valuable data into a gross affront to freedom of speech. The tactic works because people *do* and *should* care about free expression when thinking about how to regulate social media. And we should ensure that any regulatory regime reflects this concern, balancing it against the pressing need for curbs on misinformation and abuse.

The consequences of getting the balance wrong are chilling. At one end stands Myanmar, where the wanton spread of fake news and abuse outstripped Facebook's pathetic abuse-reporting infrastructure. At the other stands China, where the CCP's suppression of online content is comprehensive. The UK will undoubtedly muddle and fudge its way between the two extremes, but, for once, we should do so in a deliberate manner, consciously balancing rights against outcomes.

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