

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

'[T]he question Mark Zuckerberg is dealing with is: Should my company be the arbiter of truth and decency for two billion people? Nobody in the history of technology has dealt with that.'

– Leslie Berlin, Project Historian, Silicon Valley Archives, Stanford

In 1989 Sir Timothy Berners-Lee invented the internet. An open-access platform where anyone could share and seek out information. In 2004, Mark Zuckerberg invented Facebook. Its ambition was similarly global but the network it offered was tightly controlled. Content that violates 'Community Standards' is taken down. Content that 'undermine[s] the authenticity of [the] platform' is subjected to reduced circulation.¹ As such, the internet is a far more 'regulated' place than it was in the early 1990s. If not in terms of state regulation, then at least in terms of being an increasingly controlled environment under the jurisdiction of a state-like entity. Indeed, this year Facebook revealed that they plan to institute their own 'Supreme Court'. Yet in a company like Facebook, with over two billion users, the likelihood of its corporate 'Community Standards' aligning with those of each nation state in which it functions is practically nil. This is the case in the United Kingdom and will only be remedied by an increase in government regulation of content online.

The UK would be unwise to leave Facebook as the sole arbiter of content's acceptability. First, the economic incentives of the company are geared towards less, not more regulation. As one journalist shadowing Facebook's Community Standards team

¹ Facebook, 'Q&A on Election Integrity', 24 July 2019, <https://about.fb.com/news/2018/07/qa-on-election-integrity/>.

observed, '[m]ore speech equals more users, and more users equals more ad revenue'.²

More broadly, the company is a creature of the country in which it was built. The exponential growth of Facebook has been likened to the exportation of America's First Amendment.³ This absolutist commitment to free speech, especially in a political context, means that Facebook will often leave up content that 'would otherwise go against ... Community Standards' where it is 'newsworthy and in the public interest'.⁴ Yet in the United Kingdom it is accepted that even political speech will be subjected to regulation. Indeed, it is the very lack of any regulation of online political speech that makes government intervention so critical. The Communications Act 2003 tightly regulates the permissibility of political advertising on TV and radio. However, no equivalent Act regulates political messaging online. All the while, the 2019 general election has seen Facebook renew its commitment to maintaining political advertising on the site.⁵ In 2017, this allowed politicians to spend approximately two-fifths of their advertising budget in a largely unregulated environment.⁶ It is an accepted tenet of UK elections that political campaigning requires regulation. As the objectives of Facebook will inevitably differ from those of the UK in ensuring the vitality of its electoral system, the government should take up the mantle in regulating this space.

² Simon Van Zuylen-Wood, 'Men are Scum': Inside Facebook's War on Hate Speech', *Vanity Fair*, March 2019, <https://www.vanityfair.com/news/2019/02/men-are-scum-inside-facebook-war-on-hate-speech#>.

³ Talking Politics, 'Talking Politics guide to... Facebook', 28 December 2018, <https://www.talkingpoliticspodcast.com/blog/2018/133-talking-politics-guide-to-facebook>.

⁴ Evelyn Douek, 'Facebook's Role in the Genocide in Myanmar: New Reporting Complicates the Narrative', *Lawfare*, 22 October 2018, <https://www.lawfareblog.com/facebooks-role-genocide-myanmar-new-reporting-complicates-narrative>.

⁵ Lauren Feiner, 'Twitter bans political ads after Facebook refused to do so', *CNBC*, 30 October 2019, <https://www.cnbc.com/2019/10/30/twitter-bans-political-ads-after-facebook-refused-to-do-so.html>.

⁶ 'Online campaigning: Trick or treat?', *The Economist*, 23 November 2019, print edition.

Unfortunately, however, such issues received minimal coverage in the government's April 2019 White Paper on tackling 'online harms'.⁷ The majority of the 'online harms' identified in this paper already constitute distinct offences under UK criminal law. Such harms include, by way of example, modern slavery, organised immigration crime and terrorism. While certainly important, it should be pointed out that society has had to contend with slavery, illegal immigration and terrorism long before the advent of social media. As such, this essay argues that the government has missed what is qualitatively different about the need for regulation in the age of the Social Media Giants. It is not the facilitation of old activities but the new-found dominance of just a few platforms in controlling citizen's access to information that is in urgent need of policy attention. This is especially so when these platforms have an approach to content regulation which is out of sync with the country's needs. For example, leaving social media platforms to self-regulate has led an exponential growth in the dissemination of misinformation. In keeping with its commitment to a distinctively American model of freedom of expression, Facebook has said that it will limit the distribution of 'false news' but will not remove it.⁸ This is challenging Western democracies in new and problematic ways. For example, in the 2016 US election, hostile entities targeted African Americans to discourage them from voting.⁹ In this context, Facebook's invocation of the importance of free speech in a democracy falls flat. On the contrary, it is only by regulating online 'speech' that the government can safeguard

⁷ 'Online Harms White Paper', April 2019, p. 31, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/793360/Online_Harms_White_Paper.pdf.

⁸ Facebook, 'Q&A on Election Integrity'.

⁹ BBC, 'Russian trolls' chief target was 'black US voters' in 2016', BBC News, 9 October 2019, <https://www.bbc.co.uk/news/technology-49987657>.

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democracy. This will require innovative solutions beyond the traditional harms contemplated by the White Paper.

In conclusion, it is time to revisit Leslie Berlin's analysis of Facebook and Silicon Valley. The question before Facebook is no longer whether it 'should' be the arbiter of truth for its two billion users. Given the increasing prominence of content control and 'Community Standards' on the platform, it has clearly turned its attention to 'how'. Yet this is not a desirable state of affairs. Facebook's system of self-regulation is rooted in commercial self-interest and an unrelenting prioritisation of free speech that is alien to the UK constitutional tradition. Leaving the regulation of online content to organisations like Facebook does not serve the UK's best interests or accord with its cultural values. This is particularly clear in the context of elections where political parties have been left to campaign on the platform largely without being checked. By regulating this area, as the Communications Act 2003 regulated the analogue sphere, the government can challenge the hegemony of the Social Media Giants in deciding the rules of the game. This should be prioritised over and above regulating more traditional 'harms' that social media facilitates. As Leslie Berlin says, 'nobody in the history of technology' has faced the questions currently before Mark Zuckerberg. That is because these questions are rightly answered by the democratically accountable machinery of the state.

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