

Western Democracy in the Information Age: Online Discourse and the Infeasibility of Regulation

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Abstract

With reference to social media platforms, this paper examines both the codependent nature of online communication and political processes in Western democracies and the consequences this relationship has for the health of democracy. It will go on to assess the necessity for the regulation of cyberspace, should governments want to preserve the benefits and minimise the disadvantages these mass-communication tools offer. It will then argue why, although necessary, any regulation of discourse is infeasible, as it fundamentally contradicts one of the cornerstones of any Western democracy: the freedom of expression. It will conclude with my own proposal on the form a solution could take that would overcome this regulatory paradox.

Introduction

Technological developments throughout the Information Age have made communication possible on a previously unparalleled scale. From electronic mailing capabilities through to the swathe of modern social networks currently available, understanding which effects these new found opportunities for mass-communication have on society is vital if we are to exploit the benefits, whilst simultaneously guarding against the negatives, they present. Focused on (but not limited to) social media platforms, this article will examine why communication facilitated by the internet and democratic processes in the West have become irreconcilably intertwined, given the perceived advantages it offers to the health of a representative democracy, coupled with the consequent value placed on these communication tools by the political establishment. It will then explore the necessity for the regulation of cyber-space, should the acknowledged West want to exploit the benefits these communication tools could offer their democracies. This paper will go on to argue why, on both a practical and a constitutional level, regulation of online discourse is at present infeasible, and will assess alternative approaches suggested to create a symbiosis between online communication and healthy democracy, concluding by proposing my own solution to the issue.

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The Mutual Inclusivity of Politics and Online Communication

The wide availability of these mass-communication platforms, in conjunction with the role they play in influencing the electorate in a democracy (Bos et al., 2011), clarify why such platforms are now influential factors in the outcomes of democratic processes in the West. With these advances, traditional barriers to democratic participation have been eliminated. Whereas previously the ability to organise (inter)national political movements was inaccessible for those not part of the media establishment, provided one now has an internet connection and the appropriate hardware, anyone can create, consume and shape international and domestic political discourse on demand.

These platforms also afford political actors unprecedented access to the electorate, an indicator as to why they cannot be separated from the modern political landscape. With reach and influence on a scale which traditional media could never match (Lewis, 2017), social media networks serve political parties of all orientations as an economical and efficient method for disseminating their political ideology to their electorate, thereby enhancing their chances of political success. As of December 2021, Facebook recorded 2,800,000,000 monthly active users worldwide (Facebook, 2021). This number, amongst the billions of users on numerous other social networks, illustrates that, given the documented influence social media content has on the political opinion of its users (Bos et al., 2011; Schwanzholz et al., 2018; Rambukkana, 2015), political parties can, and more importantly, have not overlooked social media as a tool that can be exploited for political gain.

Barack Obama's electoral success in the 2008 Presidential Election has been credited to his exploitation of the Internet as a tool to convince and mobilise voters, in so doing establishing Twitter, Facebook, Youtube, MySpace and other social media services as indispensable weapons in any political campaign's armoury (Williams and Gulati, 2008). This reality is reflected in the disparity between spending on digital and traditional advertising in Western elections in recent years. Political parties participating in the 2017 General election in the United Kingdom spent a total of £3,016,000 million on Facebook advertising alone, compared to just £239,000 on traditional advertising in national and regional media outlets (Dommett and Power, 2019).

The Necessity of Regulation

When one considers the quality of the aforementioned democratic participation, brought about by the presence of social media, the necessity for the regulation of politically influential discourse becomes clear, especially if governments are intent on harnessing social media to better their democratic systems of government, rather than using the benefits to achieve political success.

To that end, a study (Tumasjan et al., 2010) analysing 104,003 tweets in the run-up to the 2009 federal elections in Germany found that 4 percent of all accounts contributed more than 40 percent of the election-related discussions. In this instance, while more people having access to the political debate as a consequence of social media platforms is empirically true, a minority of actors still control the content of political discussion, similar to the position enjoyed by editors of traditional print media. A further study (Rambukkana, 2015) analysed 2,608 relevant tweets over a 3-day period that corresponded with the 2013 budget announcement in Alberta, Canada. 46 percent of

those tweets were shared further by other users. However, 27.1 percent of the data set originated from accounts controlled by established figures from traditional media, government, politicians, labour unions, and political parties, rather than empowered voters who would not have otherwise engaged with the issues in question. As Rambukkana (2015) notes in his analysis, Twitter grants the public access to an environment in which they may access discourse that is still controlled by dominant traditional media outlets. In addition, he (2015, p. 261) observes the contrast between the democratic ideal of mass-communication tools stimulating the meaningful participation of the masses, and the opposing reality experienced in modern Western democracies:

‘[Traditional media, government, politicians, labour unions, and political parties] already control powerful platforms from which to communicate and influence the general public and public opinion. When Twitter is used in this way, it serves primarily as an echo chamber for those ideas already in the popular press, further problematizing the critiques leveled by [scholars at social media].’

A further problem for those who participate in the democratic process through social media is the requirement to contribute through the pre-determined framework created by the service provider. This raises the question: Is the service provided conducive to meaningful debate between members of the electorate who hold divergent views? Democratic emancipation can be considered as a byproduct, rather than a primary aim, of current social network services. At time of writing, Facebook is the fifth most valuable company based on market capitalisation in the world (YCharts, 2021). With such extreme economic success, alongside a clear absence of pro-democratic political motivation in its mission statement (Facebook, 2019), one can logically assume that Facebook and other social media platforms, will prioritise optimising their service for generating the most profit for its shareholders, even if that is at the expense of the perceived benefits it provides western democracy.

In the case of Twitter, the prerequisite framework for the contribution and the consumption of content is not conducive to productive democratic debate. The ability to articulate an opinion coherently and comprehensively, a fundamental component of political discourse in a successful consensus democracy, as outlined in article 10 of the European Convention on Human Rights (European Court of Human Rights, 2010), has been noted as a marked challenge when character limits are imposed on user contributions (Rambukkana, 2015). Further, any increased accessibility to democratic discourse empowers anyone with access to the hardware and an internet connection, regardless of their desire to contribute constructive or destructively to meaningful debate, rendering democracies vulnerable to manipulation by the online activity presence of everyday citizens (Schwanzholz et al., 2018).

The Practical and Theoretical Infeasibility of Regulation

It is clear that social media acts as a proverbial double-edged sword when it comes to the future of democracy. There is a plethora of practical challenges that must be overcome to ensure democracy is a net beneficiary of social media's existence. If governments want to ensure these services benefit democracy, rather than utilising them as an efficient tool to get re-elected, regulation of communication in the digital space will be needed.

As Spinello (2002, p. 21) notes, it is impossible to ‘separate regulatory regimes for the Internet from its technology and underlying architecture’. With its ‘techno-utopian’ (Hoffman, 2012) origins and the ‘decentralised’ nature of its evolution (Spinello, 2002), the internet has developed in such a way as to ensure its resilience to regulation from governing bodies. Recognised ‘Cyber-Libertarian’ (Goldsmith, J., and Wu, T., 2006) John Perry Barlow and founder of the Electronic Frontier Foundation (EFF), a non-profit organisation created to ‘champion user privacy, free expression, and innovation through impact litigation, policy analysis, grassroots activism, and technology development’ (EFF, 2021), explained the desire for the internet to be remain an ungoverned cyberspace nearly a decade before social media moved into the societal mainstream:

‘[Governments] have no sovereignty where we gather. We have no elected government, nor are we likely to have one, so I address you with no greater authority than that with which liberty itself always speaks. I declare the global social space we are building to be naturally independent of the tyrannies you seek to impose on us. [...] We are creating a world that all may enter without privilege or prejudice accorded by race, economic power, military force, or station of birth. We are creating a world where anyone, anywhere may express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity.’

This disregard the internet, and its functionality, has for traditional land borders renders it difficult to both implement and police regulation. As Johnson and Post (1996, p. 1367) note, ‘global computer-based communications cut across territorial borders, [...] undermining the feasibility and legitimacy laws based on geographic boundaries’. Legal precedent states that societies use geographical lines in the physical space to determine where (and which) legal rights and responsibilities are applicable (see: Justia, 1991), a method that is not transferable when regulating digital space. The location of the material on which information is written can be tracked in the physical space. The contrary is true for actions in the digital sphere, however, as Johnson and Post (1996, p. 1372) note:

‘Individual electrons can easily, and without any realistic prospect of detection, "enter" any sovereign's territory’.

Authorities in the West have already encountered this issue in their attempts to regulate the digital space. The Russian communications watchdog (Roskomnadzor) was forced to ban, rather than regulate, access to LinkedIn, ‘the world's largest [online] professional network’ (LinkedIn, 2020) in 2016, citing that ‘Russian law requires websites that store the personal data of Russian citizens to do so on [...] servers [on Russian soil]’ (Tsvetkova and Osborne, 2016). Furthermore, Roskomnadzor prohibited the use of the messaging service Telegram in 2018. Despite the company themselves not having access to the encryption keys used to keep messages private from third parties, the companies’ inability to ‘give Russian state security services access to its users’ messages’ (Stubbs, J, and Ostroukh, A, 2018) resulted in the service being banned. Given the ability for users to mask their locations to their internet providers, Russian authorities reversed this ban which ‘failed to stop the widely-used programme operating despite being in force for more than two years.’ (Reuters, 2020).

Above the practical issues, however, the most pertinent when explaining why this regulation of the digital space in Western democracies is the threat regulation poses to a fundamental aspect of democracy: Freedom of expression. A regulatory paradox exists if attempts are made to control both access to and users' ability to shape any content. In western democracies, freedom of expression acts as a cornerstone of their democracy; be that the fifth article of German Basic Law (German Bundesrat, 2020) or the first amendment of the United States Constitution (National Constitution Centre, 2021). To regulate who is permitted to contribute to democratic discourse, or to censor what a population may create and consume in the hope of preserving the advantages of these mass-communication tools, would be to directly contradict their commitment to freedom of expression.

One must also consider who is responsible for creating the form of, implementing and policing any regulation. Multi-billion-dollar technological companies have unilateral, untempered control over their platforms, thereby having unilateral, untempered control over the democratic discourse that takes place on their given platforms. In the aftermath of the storming of Capitol Hill in Washington D.C. in January, Twitter responded by blocking Donald Trump's access to their services on the basis that, in their judgement, his twitter activity incited violence (Twitter, 2021). Encouraging issues to be resolved through dialogue and compromise rather than violence is an aim of democracy, yet world leaders were critical of this action. Angela Merkel commented that, if freedom of expression is to be limited for the benefit of democracy, this must be done within a framework defined by a democratically elected legislature, rather than due to the desire of an unelected boardroom. (Dillmann, 2021). It is inherently undemocratic for private organisations to decide what forms unacceptable discourse, taking this power away from those with a mandate from the masses to make such decisions on their behalf.

As previously mentioned, attempts to regulate have been met with significant resistance. In Germany, the Network Enforcement Act (NetzDG) (Bundesministerium der Justiz und für Verbraucherschutz, 2017), implemented in 2017, was designed to, amongst other aims, oblige the platforms to be responsible for unlawful content on their sites. This move drew wide condemnation in Germany and beyond (Human Rights Watch, 2018; Reporter Ohne Grenzen, 2018; Kaye, D, 2017; Deutscher Journalisten-Verband, 2018) due to its unconstitutional nature and its implications for the freedom of expression in Germany. Wolfgang Schulz, Professor at the Leibniz Institute for Media Research and member of the Committee of Experts on Internet Intermediaries of the European Council, went as far as to say that the NetzDG serves as a model which authoritarian regimes can, and in the case of Russia, have copied (Markert, R. 2020) in their attempts to limit freedom of expression.

Overcoming the Regulatory Paradox

At present, the paradox of effectively regulating communication in the digital space without encroaching on the values that make democracies what they are, seems insurmountable. Some have suggested the necessity to treat Cyberspace as an entirely distinct "space" from the physical, with rules and regulations applying only to those who 'pass over the electronic boundary' (Johnson and Post, 1996). Laidlaw (2015, p. 280) suggests that cooperation between business and

government within an ‘administrative structure of speech protection’ is required. Others see the maintenance of the positives and the elimination of the negatives lying with the users directly; a result of members of the cyber-community deciding to engage with the Internet in an ethical manner, aware of its vulnerability to abuse (Spinallo, 2002).

Given the ‘absence of mediation’ (Lewis, 2017) on the Internet, it is clear that to introduce a nuanced mediatory force, whichever form that may take, would be to fundamentally undermine freedom of expression. I, therefore, suggest the following approach as an initial solution that national governments can implement as a credible, if theoretical, solution to this issue.

Building on the sentiment presented by Spinallo (2002), governments must ensure that their citizens, through increased investment in digital education, are in a position to proactively decide to contribute to online political discourse in a constructive manner, rather than reactively penalising those who do not conform to a complex regulatory framework. Examples of this emphasis on digital literacy already exist. In recent years, the Council of Europe has commissioned a series of reports (Derkashan, H., and Wardle, C., 2017; Committee of Experts On Quality Journalism in the Digital Age, 2020; Tomljenović, R., 2018) that lay the theoretical foundation on which governments can act to help guard democracy from the aforementioned negative effects as the Information Age progresses. This includes, but is not limited to, suggestions based on how to preserve high quality journalism through increased Media Information Literacy (MIL), a fundamental avenue of accountability in western democracies, through to integrating critical media literacy into curricula across different nations. This would empower future generations to exploit the benefits online communication presents for democratic participation due to their ability to critically assess rhetoric they propagate and/or consume online. Most importantly, however, this improvement would *not* be at the expense of the democratic ideal of freedom of expression. It would become a free and active choice to combat and eradicate dis- and misinformation, rather than being left to the responsibility from politically motivated government agencies and departments.

While this acts as a theoretically feasible solution, it must be considered in conjunction with the practical implications that come with its potential implementation by governments. Many western democratic governments (Department for Digital, Culture, Media and Sport, 2021; Ministry of Education and Culture, 2019; Ministry of Digital and Economic Affairs, 2021) of different political orientations have published action plans regarding media literacy. While this is the foundation from which positive change can be enacted, with the multitude of issues western democracies are facing at present, from enacting their Covid-19 recovery strategy, through to responding to the ongoing climate emergency, parliaments across Western Europe may lack the political oxygen necessary to make comprehensive progress in this regard.

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