



THE CITY CLUB OF CLEVELAND

#Free Speech: Learning To Defending Democracy With Social Media

The most potent weapon against democracy can be found not in Russia or China, but in our phones, our iPads, and our computers. As recent years have demonstrated, social media, once the champion of free speech, has become a double-edged sword with the potential to threaten the very fabric of democracy. Investigations into the January 6th Capitol riots revealed, for example, that the insurrection spread through online social networks, from inflammatory tweets by the President to misinformation shared among neighborhood Facebook groups. This revelation has led many to call for mass online censorship and bans. But as we grapple with the consequences of the digital age, we must consider what sort of society we wish to live in. Those who participated in the Capitol riots sought to silence the voices of the American people. We cannot do the same. It is only by refusing to accept unwarranted censorship (by government and private companies alike) that we encourage open confrontation of the issues that plague our democracy: misinformation, hate, and deception.

The temptation to ban all forms of fake news and hate speech on social media stems from a belief that censorship is effective at stamping out harmful ideologies. This is patently untrue. Ignoring undesirable speech and sweeping it under the rug only drives it underground. In Germany, unlike in the US, hate speech is a crime that is banned and carries a sentence of up to five years (Sauerbrey). Despite these measures, Germany has seen a drastic increase in right-wing extremism. In recent years, the Alternative party, a right-wing group that “dabbles” in neo-Nazi beliefs just enough to skirt the law, has grown to receive up to 8% of votes in a national election, and there have been a spate of extremist attacks (Sauerbrey). Hatred and deception thrive in the dark, where there is no one to defy them. By contrast, freedom of speech allows for debate that directly challenges false or hateful speech. While failing to eradicate poisonous speech, government-imposed censorship would have unintended but devastating casualties. Repealing Section 230 of the Communications Decency Act, for example, would hold social media platforms accountable for all content posted on their site. It sounds appealing, but as Derek Bambauer from the University of Arizona explains, the repeal puts billions of posts at risk of being arbitrarily taken down as companies scramble to avoid legal liability for their content. This silencing of millions of Americans is completely antithetical to democracy. As Dr. Shoshana Zuboff from Harvard University writes, “We may have democracy, or we may have surveillance society, but we cannot have both.”

Simply counteracting government overreach, however, is not enough. Democracy must also be protected from private surveillance. Social media platforms practice “surveillance capitalism,” a

term defined by Dr. Zuboff, which rewards unethical behaviors, such as the “algorithmic amplification” of conspiracy theories and extremist posts. Because of their sensational nature, these posts are more likely to be pushed by the recommendation algorithms that power the platforms. As a result, Nature magazine reported that fake news spreads up to 20 times faster than truthful posts. The profit-driven “economy of eyeballs” drives the propagation of misinformation surrounding COVID-19, the 2020 election, QAnon, and hundreds of other conspiracy theories, sowing confusion, chaos, and violence across the country. At the same time, these algorithms censor, repress, and “shadow-ban” benign posts by ordinary citizens. In place of a marketplace of ideas is a monopoly that selectively promotes the speech of some while quashing others.

Stopping the assault on our democracy begins with stopping the machine of surveillance capitalism. In a world where the data reigns supreme, a comprehensive data privacy law ought to be passed. Much like the opt-in mandate recently passed in California, this would protect user data from companies like Cambridge Analytica, who use that data to unethically target voters through misleading ads. The government should also hold companies accountable for the consequences of hateful or false speech that was - crucially - *recommended* by the platform’s algorithm. While avoiding many of the problems with subjectivity and scale that come with holding them accountable for *all* posts, this measure disincentivizes the *promotion* of malicious content by the algorithm. Instead of prioritizing clicks, companies would prioritize avoiding the risk of a large-scale lawsuit in case the post they choose to recommend incites violence.

In case these safeguards fail, Congress ought to form a committee to draw up guidelines under which a platform may be compelled to take down a post that incites violence in the interest of public safety. The guidelines must follow the standard set in *Brandenburg v. Ohio*: is the speech *intended* to incite violence? Is the violence *likely*? And it is *imminent*? Only if these criteria are met can a post be removed, joining a small number of exceptions to Section 230 immunity. These exceptions, which include violations of wiretapping, intellectual property, and online sex trafficking laws, are necessary, but it is crucial that they remain narrowly defined and restricted to protect the speech of platform users.

Finally, funding should be provided for states to include media literacy in their K-12 curricula. Research shows that media literacy helps social media users distinguish between real and fake news, sponsored content and nonpartisan content, extremist dogma and open dialogue. Democracy is not about always making the right decision but about equipping people to decide for themselves. Social media is a weapon, but if used correctly, it is the most effective tool we have in helping restore our democracy. Through social media, Americans can participate in their government, educate themselves, and speak out for truth. As Supreme Court Justice Anthony Kennedy wrote in *United States v. Alvarez*, “The remedy for speech that is false is speech that is true” (15-16). Rather than hiding from the ugly parts of our nation, we must confront them. It requires courage, smart legislation, accountability, ethical business practices, and proper education. Most importantly, it requires the first, most basic right that this nation is founded on: freedom of speech.

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