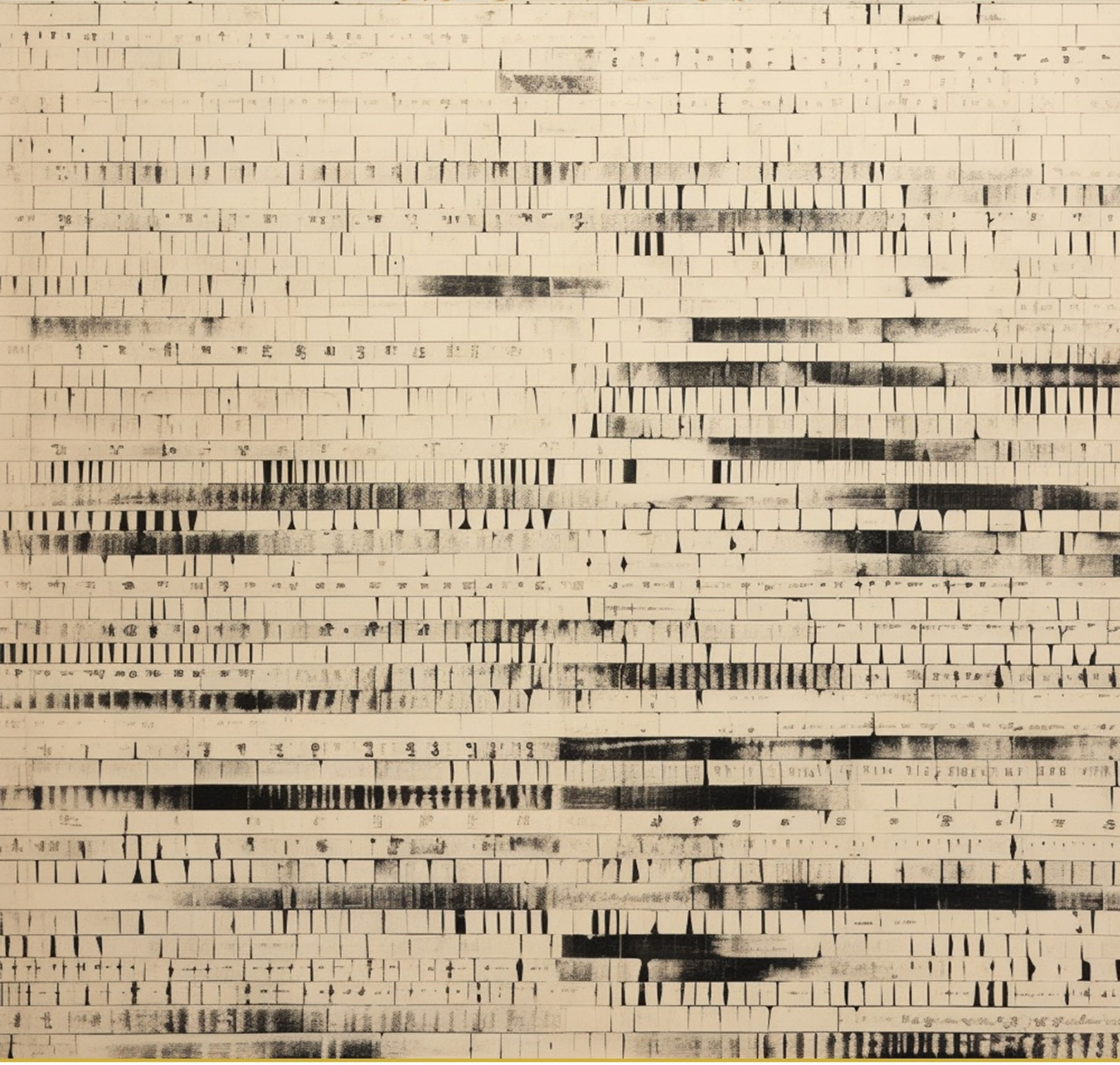


Freedom of Speech and Big Tech: Liability and Regulation

Michael Shellenberger

Executive Summary

The Right to Speak Freely Online

The advent of the internet gave us a dual-edged sword: the greatest opportunity for freedom of speech and information ever known to humanity; and the greatest danger of mass censorship.

Thirty years on, the world has largely experienced the former. However, the tide has, in recent years, been gradually turning as governments and tech companies become increasingly fearful of what the internet has unleashed. In particular, regulation of speech on social media platforms such as Facebook, X (Twitter), Instagram, and YouTube has increasingly escalated in attempts to prevent "hate speech", "misinformation", and online "harm".

Yet, these pieces of pending legislation across the West represent a fundamental shift in our approach to freedom of speech and censorship. The proposed laws explicitly provide a basis for the policing of *legal* content, and in some cases, the deplatforming or even prosecution of its producers. Beneath this shift is an overt decision to eradicate speech deemed to have the *potential* to "escalate" into something dangerous—essentially prosecuting in anticipation of crime, rather than its occurrence.

The message is clear: potential "harm" from words alone is beginning to take precedence over free speech—neglecting the foundational importance of the latter to our humanity. However, this shift also matters deeply regarding the power of the state and Big Tech companies in society. If both are able to moderate which views are seen as "acceptable" and have the power to censor legal expressions of speech and opinion, their ability to shape the thought and political freedom of citizens will threaten the liberal, democratic norms we have come to take for granted.

Citizens should have the right to speak freely—within the bounds of the law—whether in person or online. Therefore, it is imperative that we find another way, and halt the advance of government and tech regulation of our speech.

Network Effects and User Control

There is a clear path forward which protects freedom of speech, allows users to moderate what they engage with, and limits state and tech power to impose their own agendas. It is in essence, very simple: if we believe in personal freedom with responsibility, return content moderation to the hands of users.

Social media platforms such as Facebook, X, Instagram, and YouTube could offer users a wide range of filters regarding content they would like to see, or not see. Users can then evaluate for themselves which of these filters they would like to deploy, if any. These simple steps can allow individuals to curate the content they wish to engage with, without infringing on another's right to free speech.

User moderation also provides tech companies with new metrics with which to target advertisements and should increase user satisfaction with their respective platforms. Governments can also return to the subsidiary role of fostering an environment in which people flourish and can freely exchange ideas.

These proposals turn on the principle of regulating social media platforms according to their "network effects", which are generated when a product or service delivers greater economic and social value the more people use it. Many network effects, including those realised by the internet in general and social media platforms in particular, are public goods—that is, a product or service that is non-excludable, where everyone benefits equally and enjoy access to it. As social media platforms are indispensable for communication, the framework that regulates online discourse must take into account the way in which these private platforms deliver a public good in the form of network effects.

A Bill of Rights for Online Freedom of Speech

1. This paper provides a digital "Bill of Rights", outlining the key principles needed to safeguard freedom of speech online:

2. Users decide their own content moderation by choosing “no filter”, or content moderation filters offered by platforms.
3. All content moderation must occur through filters whose classifications are transparent to users.
4. No secret content moderation.
5. Companies must keep a transparent log of content moderation requests and decisions.
6. Users own their data and can leave the platform with it.
7. No deplatforming for legal content.
8. Private right of action is provided for users who believe companies are violating these legal provisions.

If such a charter were embraced, the internet could once again fulfil its potential to become the democratiser of ideas, speech, and information of our generation, while giving individuals the freedom to choose the content they engage with, free from government or tech imposition.

Table of Contents

Freedom of Speech and Big Tech:

Liability and Regulation

Michael Shellenberger

Foreword

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."[1]
> — First Amendment to the Constitution of United States of America, 1791

> "Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people…
> "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."[2]
> — Preamble and Article 18 of the United Nations Universal Declaration of Human Rights

The Idea

No person should decide for another adult what they should be allowed to read or write, save for existing legal limits (e.g., fraud, incitement to violence, and child exploitation). We do not let politicians, big corporations, or Non-Governmental Organisations ("NGOs") decide who is allowed to preach atop a soap box in the town square. Why should we allow them to decide what we should be allowed to read, see, or hear online?

We should not. Happily, there is an alternative.

Imagine an internet search engine or social media platform that asks, "How would you like your content filtered?" Before searching in Google, you could choose a filter suggested by the Anti-Defamation League ("ADL"). Before logging into Facebook, you could choose a filter suggested by Elon Musk.

There are no technological or financial obstacles to user control, nor any good moral argument for depriving citizens of their fundamental rights. Your content will be filtered. The question is not just how it will be filtered. It is also *who* will filter it. We, as individuals? Or someone else?

The Debate

Progressives and conservatives across the Western world are divided over whether and how governments should regulate internet companies for the content they host. Progressives tend to want Google, Facebook, X (formerly named Twitter), and other internet search and social media platforms to moderate more content, and conservatives tend to want them to moderate less. The former are inclined to believe that internet companies should remove or reduce the flow or "reach" of what they call "hate speech" and "misinformation". Whereas the latter more often believe that social media companies should engage in less of what they consider ideologically based censorship.

A better solution is to let users, not Big Tech, decide how content is delivered to them through internet searches or social media. User control of content is the only effective and sustainable way to protect freedom of speech online while empowering citizens to decide for themselves on what basis they will filter their content. While user control over content moderation is fundamental for the realisation of free speech and thus non-negotiable, such an arrangement is also in the financial interests of social media platforms, which are hobbled by social and political risk, uncertainty, and growing public distrust. We are thus in a political moment that is particularly ripe for returning the freedom to filter one's own content to the individual.

Some progressives, conservatives, and internet companies will object to giving users control rather than leaving control in the hands of Big Tech companies. Progressives may fear that giving users control over their own content will not be enough to prevent the spread of "hate speech" and "misinformation" and may reinforce tribalism. Conservatives may fear that requiring internet companies to let users decide their own content will be an unconstitutional violation of the right of individuals and businesses to *not* host speech to which they object. And internet companies may fear the mandate to let users control their content filters will create an onerous regulatory burden and reduce consumer use of their platforms and search engines.

None of these objections are well-founded. Giving users control over what content they see and do not see is the solution most consistent with freedom of speech. Requiring people to affirmatively choose their filters will require more reflective and intentional thinking about their content choices. Internet companies need not let users control their own content, but then they cannot be freed of liability, as the Unites States' Section 230 allows. As for the business prospects of internet companies, they rest centrally on network effects, which would remain in place even with user-moderated content. And user control over content, allowing for better targeting, is more likely to increase rather than reduce user satisfaction with platforms, which would have an interest in creating desirable filters.

Google, Facebook, and X are internet utility monopolies. Like the railroads, electric companies, and sewage systems, internet companies are powerful because of network effects. Decades of taxpayer investment and laws, including Section 230, allowed for these private entities to capture the natural efficiencies of being a network. Now, the public has a duty to regulate these entities so that they maximise rather than infringe upon human freedom and flourishing, just as governments established regulations on past monopoly utilities.

In the early years of social media, the focus was on hooking users, but today, we are all hooked. We rely heavily on technology for news, entertainment, and our social lives. Facebook and X/Twitter are monopolies because we have all invested so much time into them. The new problem Facebook and X/Twitter face is how to deal with cultural and political conflicts, and giving users control over their own content moderation cuts the Gordian Knot (i.e., it would solve an otherwise complicated problem without an apparent solution). It would free the companies from responsibility over content without threatening their monopolies.

We have regulated monopolies that deliver public goods in the form of networks for over a century. We required the railroads, telegraph lines, telephones, electrical systems, sewage systems, and cable internet to be "common carriers" available to everyone, regardless of their race, religion, or political identity. It is time to do the same with social media platforms, given the nature and proliferation of networks and social media users.

Conservatives have been divided and confused over how to deal with demands by liberal politicians, journalists, and NGOs for greater censorship by social media companies. Some have supported liberal calls to make Section 230 dependent on Big Tech cracking down on "hate speech" and "misinformation." Others have called for mandating greater transparency by the internet companies about their content moderation decisions. And still, others have called for abolishing Section 230 altogether. But the majority of conservatives have opposed taking any action, understandably fearing that any opening up of Section 230 would result in more censorship, not less, and hoping for intervention by the Supreme Court.

But Facebook's dramatic de-amplification of news and controversial social or political content, the private advertiser boycott on X, and the increasingly apparent limits of the courts for preventing censorship all suggest there should be new openness on the political Right for mandating user control of content as a condition for the sweeping liability protections provided by Section 230. After years of being attacked for promoting "misinformation" and "hate speech", Facebook decided to mitigate its political risk by reducing news overall on its platform—and blocking news altogether in Canada.[3] However, having users rather than Facebook executives decide what content they see would resolve the political controversy this poses, and result in people spending more, not less, time on Facebook. The 60 to 70% reduction of advertising revenue to X—as a result of an NGO-led boycott—creates a similarly strong incentive for putting content moderation in the hands of users, not X executives. And the recent Fifth Circuit Court of Appeals decision—which blocks overtly coercive demands for censorship by the American government, but allows ostensibly non-coercive requests for content moderation—suggests that the courts are limited in what they can and will do to protect free speech.

As such, while Google, Facebook, X/Twitter, and other social media giants might have rejected such a proposal out of hand as recently as three years ago, both—for different reasons—might now embrace it.

While such an approach may not stop government officials from clashing with social media companies about what is on their platforms, it would prevent these companies from taking heavy-handed action against the free speech of users. The change that needs to be made is not to the censorial instincts of government officials or NGOs like ADL. Rather, it is in the law. Once the law places users in charge of their own content, neither government nor Big Tech can assume this role.

User control of content moderation on its own may not be sufficient to protect the human right to freedom of speech, nor capable of addressing other challenges created by the internet. In this paper, I address user control of content for adults only and do not address potential restrictions for children. I focus on the question of how to control *legal* content and assume no change to how governments and internet companies police illegal content.

Introduction

Free speech is an important means to the end of democracy and free markets, many believe. It is instrumental, enabling, and foundational to the functioning of democracy. The argument for free speech as a crucial enabler of civilisation has been one of its strongest for centuries.

But freedom of speech is also a fundamental human right, not just a means to an end. We tend to think of food, shelter, and basic security as fundamental human rights, the base of Maslow's hierarchy. But without free speech, we cannot guarantee the provision of food, shelter, or security—such capacity is downstream from the abundance that freedom supplies. Indeed, people who are denied those basic needs are often first denied their freedom of speech.

This is not to deny the essential, instrumental purpose of free speech. Without food, shelter, and basic security, we cannot live. But without freedom of speech, we cannot be fully human. To be able to express oneself freely without fear of punishment or censure is a fundamental freedom—what Thomas Jefferson called, in the Declaration of Independence, an "inalienable right." Today, we simply call it a human right, and we call free speech our first freedom.

Speech is fundamental to our humanity because of its inextricable link to thought. One cannot think freely without being able to freely express those thoughts and ideas through speech. As people, we use thought and speech as the dominant means for sharing our identities, building relationships with others, exploring and searching for truth, and innovating. It is a misconception to sacrifice speech, believing limits on speech to have little cost to citizens when competing rights clash with the right to expression. Speech, thought, and expression are far more vital to our being than many of the "protected characteristics" currently promoted in the public square.

Today, this fundamental right is under attack. Governments and powerful private interests around the world are demanding, often successfully, the right to decide what we can read and say online. The specifics of the free speech crackdown vary by nation. At the same time, the crackdowns share several similarities, particularly the justification of "reducing harm" and "mis- and disinformation," and the frequent involvement of heads of state and the intelligence community.

These steps damage not only individual expression but also the relationship between state and citizen—and service provider and user. If the state, or large tech companies, are given power over the legal speech of citizens, these actors will possess unprecedented levels of influence over the thoughts, opinions, and accepted views circulated in society. Such a shift would distort their role of creating an environment conducive to free expression and human flourishing to one of choosing and enforcing which ideas are "right" and which are "wrong". Such impositions prevent thinkers and innovators bringing forth new ideas for debate, the crucial foundation of society's growth and ability to discern truth. The argument that this level of regulation is necessary to prevent harm also does not withstand scrutiny. Amending our definition of "harm" in the public square to conflate the historic distinction between speech and action is itself a harmful step—the former remains only an idea, necessary to free debate and individual identity. Yet, if governments and tech companies are allowed to continue along this trajectory of limiting the speech and opinions of individuals, our ability to foster a society of liberty and innovation will be under threat.

Lovers of free speech must fight back, particularly since many of its former defenders have been coopted by those who view the right as secondary to "preventing real-world harm" and "countering misinformation." The question is how. The Alliance for Responsible Citizenship ("ARC") invited me to share my thoughts in this paper. It builds upon and extends much of my thinking over the last year, including two testimonies before Congress related to censorship, social media, and Section 230.

While the paper is focused on American law, its contents should be relevant to many other nations. This is first and foremost because Section 230 governs the behaviour of social media platforms worldwide, but also because the fundamental ethical dilemma is the same around the world.

The War on Free Speech

The Crackdown

The Twitter Files gave the public a window into how government agencies, civil society, and tech companies work together to censor social media users. Now, key nations are attempting to enshrine this coordination into law explicitly. Around the world, politicians have either just passed or are on the cusp of passing sweeping new laws, which would allow governments to censor ordinary citizens on social media and other internet platforms. Under the guise of preventing "harm" and holding large tech companies accountable, several countries are establishing a vast and interlinked censorship apparatus.

Politicians, NGOs, and their enablers in the news media claim that their goal is merely to protect the public from "disinformation." However, vague definitions and loopholes in new laws will create avenues for broad application, overreach, and abuse. Under the RESTRICT Act in the United States, the government may soon have the authority to monitor the internet activity of any American deemed a security risk. In Canada, a state agency can filter and manipulate what Canadians see online. In Britain, Parliament is moving toward a crackdown on free speech on social media platforms.[4]

In Ireland, propositions are even more concerning. Lawmakers advanced legislation that criminalises the possession and preparation of material with the "potential" to cause violence or hate. Under this law, even if individuals do not communicate or distribute material from their devices, they will be presumed guilty until proven innocent. They can face up to five years in prison. "Keeping hate speech from escalating into something more dangerous" is precisely the justification for censorship that politicians in Ireland and Scotland are making to be able to invade people's homes and confiscate their phones and computers, as one Irish reporter described it.[5] The logic is twisted. Irish police must invade people's homes in order to make sure that their hate materials do not escalate into something that could be illegal. That is a totalitarian move toward the police enforcing "precrime," as depicted in the dystopian thriller, "Minority Report."

Meanwhile, the United Nations ("UN") is now building a "digital army" of censorship activists around the world to wage war on "wrongthink", or what it calls "deadly disinformation." According to the UN, "misinformation" is "deadly" and poses an "existential" threat to "health, security, stability".[6] The UN's effort matches that of the World Health Organisation, which views speech it disagrees with as a kind of pathogen.

Governments and allied NGOs intend to force tech companies to comply with their rules. British lawmakers have threatened to imprison social media managers who do not censor enough content. And Brazil has introduced severe penalties for platforms that fail to remove "fake news".

In Australia, Meta-Facebook had been paying activists to serve as neutral fact-checkers while, in reality, using their power to censor their political opponents. In Europe, the Digital Services Act demands internet companies "Address any risk they pose on society, including public health, physical and mental well-being."[7]

One key area of action is the European Union ("EU"). It is seeking sweeping new powers to regulate social media companies. And if it acts, it may change how social media companies operate worldwide, given the EU's economic power and influence globally. Under the EU's Digital Services Act, large tech companies must share their data with "vetted researchers" from non-profits and academia, which would cede content moderation to NGOs and their state sponsors. The EU courts have already ruled that American Big Tech companies must police their platforms to protect European users from "hate speech", "disinformation", and other "harmful" content online, and further crackdowns have already been proposed.[8]

In Germany, a court ordered the American writer C.J. Hopkins must either face imprisonment or pay a €3,600 fine for comparing the COVID-19 lockdowns to the Nazis. The government claimed Hopkins was promoting Nazism, when he evidently intended the opposite. While some may take offense at the comparison, it is clear that Hopkins has a negative, not positive, view of Nazism.
The Brazilian law proposes censorship to protect institutions from violence and institutional de-legitimation following last year's attack on Congress, which was eerily similar to the 6th January security failure in Washington, D.C.

In Canada, politicians are advocating censorship in the name of promoting Canadian culture and content, but some critics of the proposed law speculate that it was crafted in response to the trucker "Freedom Convoy" in 2021. The convoy was celebrated on YouTube and social media and inaccurately maligned as "racist" in the mainstream Canadian press.[9]

The EU is seeking far-reaching powers to censor disfavoured views and turn content moderation decisions over to private NGOs, who would be able to regulate social media companies effectively. The law would "give right of collective action to NGOs", said one of the lead European lobbyists for the proposed legislation at an event at the Stanford Internet Observatory.[10]

In the United States, a nonprofit organisation called the Center for Countering Digital Hate—whose former communications director worked for the Central Intelligence Agency ("CIA")—has successfully led a boycott against X, formerly named Twitter, for not being more censorious. As a result, advertising revenue to X has declined by between 60 and 70%.[11] This experience showed the limits of X's commitment to free speech. After the advertiser boycott, X CEO Linda Yaccarino, announced a new censorship program, called "Freedom of speech not freedom of reach," meaning Twitter would stop content from going viral that advertisers did not like.

In July 2023, leaked internal emails from Facebook revealed that executives at the company felt pressured by the Biden administration to censor content related to COVID-19.[12] The very same month, a report by the Select Subcommittee on the Weaponization of the Federal Government disclosed how Facebook has been censoring the free speech of American citizens on behalf of the Ukrainian government, with the help of the Federal Bureau of Investigation.[13]

There has been no moment similar to this in the roughly 30 years of widespread public internet usage in Western societies. Officials have introduced these policies mostly in the background with little publicity or outcry. There has been a virtual blackout of what is happening by mainstream news media corporations, with many appearing to support the new laws.

As shown with the Twitter Files, the Censorship Industrial Complex is as much about discrediting accurate facts, true narratives, and content creators who threaten its power while boosting the ones that do. We are thus witnessing the emergence of a governmental apparatus with the power to control the information environment in ways that determine what people believe to be true or false. As such,

it is no exaggeration to say that the West is on the cusp of a new and much more powerful form of totalitarianism than either Communism or Fascism, which were limited in their reach by geography.

Why it is Happening

The timing of the global crackdown on free speech does not appear to be coincidental. Last year, the Biden administration tried to create a department of censorship (the "Disinformation Governance Board") at the Department of Homeland Security, which triggered a strong enough backlash to shut the attempt down. The censorship board was the brainchild of "former" CIA Fellow Renee DiResta of the Stanford Internet Observatory and her allies, including Senator Warner, The Atlantic Council, the University of Washington, and Graphika.[14]

What is happening now appears to represent the re-grouping of censorship advocacy that occurred after that defeat. With some notable exceptions, the demand for censorship is being driven by centre-Left parties, with NGOs playing a subservient role.

Politicians often seek censorship in the name of protecting children. In the United States, politicians have snuck sweeping surveillance measures into legislation to ban Tik Tok and thus expand spying to prevent the Chinese spying on children. The United Kingdom is similarly focused on expanding the censorship powers of the state to protect children.

Politicians are invoking a progressive defence of "preventing harm" against "vulnerable communities." The push is based on perceived paradigms of power and discrimination. For example, in Australia, citizens will vote in a special national election this Autumn—the Australian Indigenous Voice referendum—on whether to give special political powers to native peoples. Facebook funded those in favour of the referendum to censor its opponents by mislabelling them as "racists".

And yet surveys show that people in Western societies have been becoming more tolerant for decades. For example, the percentage of Americans who approve of marriages between white and black Americans has risen from 4% in 1958, to 87% in 2013, and to 94% in 2021.[15] If the direction of travel has consistently been greater tolerance, it is counterintuitive to claim that there is a sudden need for increased censorship.

Politicians and Big Tech also give the justification of "medical misinformation" for their crackdown on free speech. On the 15 August 2023, YouTube revamped its medical misinformation guidelines.[16] Under its new policy, YouTube will censor content that contradicts the official stance of local health authorities or the World Health Organization, which reflects mainstream scientific opinion.

The problem is that mainstream scientific opinion is often wrong and only made right thanks to content that contradicts it. Indeed, much of the history of medical progress is a history of outsiders, fringe scientists, and "cranks" successfully challenging the dominant paradigm. Bloodletting, leeches, thalidomide, lobotomies, and sterilising the mentally ill were all officially recommended remedies until the public, and the medical profession, turned against them. In banning criticism of the official view, YouTube will thus impede scientific, medical, and moral progress. The result risks being the preservation of today's medical inaccuracies and inefficiencies.

YouTube's updated medical misinformation guidelines are only the latest example of private social media companies doing the bidding of governments and their agencies. Such censorship creates an environment where politicians, bureaucrats, and unelected tech bosses decide what information is

"safe" for the public to know. But these often-self-motivated decisions compromise the public's ability to make informed decisions about all aspects of their lives, from their health to their voting intentions.

What is behind all of these changes? Part of the motivation is elite panic. Elites attributed Brexit and the election of Donald J. Trump in 2016, in part, to the power of social media. While elites have exaggerated social media's role in those elections, few doubt it could be as disruptive politically as the printing press, the radio, and the television. The result is a backlash by elites seeking digital totalitarianism. As Big Brother Watch Director Silkie Carlo notes, "The internet gave us the possibility to have the greatest democratization of speech and information ever...It also opens up the possibility for the greatest ever control—surveillance, monitoring, and censorship."

The shift towards greater censorship is made possible by progressive foundations and NGOs, some of which are funded by governments. The American and British governments fund the Institute for Strategic Dialogue and the Centre for Countering Digital Hate ("CCDH"). Progressive donors—including the Knight Foundation, Ford Foundation, Robert R. McCormick Tribune Foundation, Peter and Carmen Lucia Buck Foundation, Tides Foundation, Tides Center, Omidyar Network Fund, Carnegie Corp. of New York, Annie E. Casey Foundation—along with the American government's National Endowment for Democracy, Google, and Facebook, all fund the Poynter Institute, which founded Politifact and the International Fact-Checking Network, to create pretexts for censorship.

Secret Filters

There is a widespread belief that users already choose their own content on social media platforms. They choose who to follow, and see their posts on their Facebook, X, Instagram, Facebook, and YouTube feeds.

In truth, social media platforms decide a significant portion of what users see. YouTube's recommendation algorithm, for example, determines 70% of what people watch on the platform, a share that did not change between 2018 and 2022.[17,18]

The amount of recommended content is lower on other platforms. Meta said last year that just 15% of total Facebook feed content is recommended content from non-followed accounts,[19] while 40% of Instagram's feed content is recommended by the algorithm.[20] However, Meta CEO Mark Zuckerberg said last year that he expects Facebook will double the percentage of recommended content by the end of 2023.

Furthermore, users have little to no control over what is recommended to them. In fact, research published in late 2022 found that users have little control over the videos that YouTube feeds them.[21] On every other platform, the algorithms are hidden from users.

Studies show that Google's search results change depending on the user's profile, and that Google searches can affect voter behaviour.[22] The power of Google to secretly shape opinions and behaviours thus may simultaneously be the most powerful and the least discussed of all Section 230 internet company tools. This power rests on the fact that the company, not the user, decides its search algorithms, which are kept secret.

California and the European Union have promised and failed to regulate Google's secret filter systems. Part of the problem is that neither place has a system for monitoring compliance. California has a data protection law that Google and other companies routinely ignore, in part due to this lack of compliance monitoring capacity.

User Control

How it Would Work

Across the Western world, liberals and conservatives are divided over how internet companies should handle content moderation. "The Left wants platforms to moderate more, and the Right wants platforms to moderate less," notes Stanford University law professor Evelyn Douek, "Nobody's really happy with what platforms are doing, but we don't really know what the endpoint should be. And that's a pretty fundamental question we must answer before we know what laws should look like."[23]

The obvious solution is for Congress to require that social media companies allow users to moderate their own content in exchange for Section 230's sweeping liability protections, which allow them to exist. It is simple to see how this would work. When you use Google, YouTube, Facebook, X/Twitter, or any other social media platform, the company would be required to ask you how you want to moderate your content. Would you like to see the posts of the people you follow in chronological or reverse chronological order? Or would you like to use a filter by a group or person you trust? On what basis would you like your search results to be ranked?

Users would have infinite content moderation filters to choose from. This would require social media companies to allow them the freedom to choose. Private individuals, NGOs, and anyone else could create content filters. The point is that users ages 18 and over would take that decision, not the government or the corporations. (Parents or guardians would decide for their children). For this to work, users must know what the filters are doing, which will require transparency by the companies.

Some free speech absolutists may object to people having filters at all, but just because somebody has the right to speak in the town square does not obligate the citizenry to listen. Today, social media algorithms already filter users from each other, and platforms allow us to mute and block people we do not want to hear. What is needed now is to fully shift control over moderating content from the company to the user.

Some may reasonably worry that opening up Section 230 to reform will result in more, not fewer, restrictions on free speech. After all, most Congressional proposals to reform Section 230 demand greater censorship of content, not less.
However, implementing user moderation eliminates the possibility of mass censorship because mass censorship is only possible when social media companies or government bodies moderate content for users. Once content moderation is in the hands of users, social media companies would have no mechanism for censoring content.
Some say we would be better off returning to the pre-Section 230 world—before 1996—of emails and blogs. The argument for doing so is that the social media platforms have become organs of government "disinformation", spreading inaccurate information about COVID-19, climate change, and energy, and censoring users on the basis of that wrong information.

The problem with this argument is that doing so would come at the cost of significantly reducing freedom of speech. Eliminating Section 230 would destroy the network effects that make Google, YouTube, X, and Meta such valuable companies which deliver high-value products and services to users, institutions, and society. Blogs and emails do not deliver network effects or, if they do, they are so weak in comparison to Google, YouTube, X, and Facebook that their impact is negligible.

Some might object that such a proposal would violate the First Amendment's prohibition on compelled speech, but such a standard should only apply to publishers, not to social media platforms, whose entire legal basis—Section 230—is in service of being platforms, not publishers. Implementing user-

determined content moderation in place of liability limitations is not compelling speech; it is giving a permit to companies to profit from network effects in exchange for protecting public access to network effects, not just freedom of speech but also freedom of reach.

Already, Section 230(c)(1) of the 1996 Communications Decency Act, distinguishes between information provided by an interactive computer service and "information provided by another information content provider." It thus draws a common and reasonable distinction between a company's own speech and the speech of others for which it provides a conduit.[24]

Another objection might be that user-moderated content online would subject people to views and individuals they want to avoid. But already users can block people if they wish. The question is not whether users should be able to moderate content; nobody disagrees that they should. The question is whether governments and Section 230 companies should be allowed to moderate legal content for users.
And under a user-moderated system, users could choose from an infinite number of content filters, including ones designed by organisations or individuals they trust. Users highly sensitive to anti-Semitism could choose for their content to be moderated by a filter created by CCDH. Users highly opposed to climate scepticism could choose for their content to be moderated by Greenpeace. And users highly opposed to gender-sceptical thinkers could choose for their content to be moderated by the Gay and Lesbian Alliance Against Defamation ("GLAAD").

What neither the government, Section 230 companies, nor other users could decide would be which filters people use. CCDH, Greenpeace, and GLAAD should be free to offer their filters to users who want them. But individuals should retain the choice of whether to use those filters in the first instance.

It is possible that the cluster of government agencies, NGOs, and advertisers would still demand that certain users be de-platformed entirely. Therefore, putting content moderation in the hands of users would also require that companies which sought Section 230 status not be allowed to deplatform them for any legal activity or expression.

Companies should still be able to deplatform users who break the law. But if the courts find in favour of the de-platformed individuals, social media companies must allow them back online. Some may fear that such an approach would allow more bullying or harassment, but users could select content moderation filters that muted or blocked specific behaviours or individuals in addition to simply using the existing "block" button.

It is reasonable to wonder whether the owners of Facebook or X/Twitter would support such a proposal. There is reason to think they would, eventually, as they considered the benefits. What is in the interests of those platforms is to keep users on them and engaged for as long as possible. Users who decide their own content could be more likely to stay engaged. The platforms could continue to offer entertaining and appealing content tailor-made for specific users. Platforms might suggest, based on who you follow and the other information you decide to share, that you add a "cat video filter" or a "shuffle dance filter." Social media platforms can continue to mesmerise us; they just have to get our permission first.

User Enforcement

Giving users control over their content also requires giving them the tools they need to enforce the law. This starts with the inability of platforms to deplatform users for legal content, and a "private right of action," so users can sue Section 230 companies for violating the law.

All content moderation must occur through filters whose classifications are transparent to users. If users have reason to believe that a company is not being fully transparent, then they can sue the company and force discovery. Companies may object to such a process in the belief that it would result in the loss of propriety knowledge, but such knowledge could be shielded through legal proceedings, and protected through patent laws.

To reduce costs and ensure transparency, firms must keep a transparent log of all content moderation requests and decisions, as well as all government requests for information, including subpoenas.

This digital "Bill of Rights" is essential to empowering users to control their own content:

1. Users decide their own content moderation by choosing between "no filter" and content moderation filters offered by platforms.
2. All content moderation must occur through filters whose classifications are transparent to users.
3. No secret content moderation would be permitted.
4. Companies must keep a transparent log of content moderation requests and decisions.
5. Users own their data and can leave the platform with it.
6. No deplatforming for legal content would be allowed.
7. Private right of action is provided for users who believe companies are violating these legal provisions.

A Win-Win

The underlying business model for all social media companies is selling advertisements and consumer data. Advertisers have a financial interest in increasing public exposure to their products and improving their ability to target potential and existing customers. Some advertisers also have a financial interest in influencing the policies of publishers and social media platforms. For example, the current participation of advertisers in the X boycott—waged by the UK-based CCDH—demonstrates the willingness of advertising companies to engage in policy-shaping activity.

Network effects make the tech giants among the most valuable, influential, and powerful companies in the world. Network effects are generated when a product or service delivers greater economic and social value the more people use it. The cost of building the first railroad, electrical, and sewage system is expensive, but adding every additional user is cheap. What is more, the individual and the system both benefit tangibly from the system growing larger.

Many network effects, including those realised by the internet in general and social media platforms in particular, are public goods. We define public good as a product or service that is non-excludable—meaning everyone has access to it—and non-rivalrous—meaning nobody is harmed by the public good being extended to others. Indeed, as noted above, the expansion of network effects to others increases the value of the network.

Because so many people use social media platforms for communication, they have become indispensable to leading a normal life, which makes Facebook, X (formerly Twitter), and YouTube (owned by Google) exceedingly valuable. It is not just that internet companies make it easy to publish and consume large amounts of content. It is also that they connect and intensify social and informational density in ways that are simply unrivalled by the pre-Section 230 internet. While these platforms are private, they deliver a public good in the form of network effects.

In exchange for controlling these “natural monopolies,” governments regulate them so that they cannot exclude customers or engage in price gouging. An energy provider cannot deny electricity to a consumer because of their political views. Likewise, a train company cannot deny a passenger service because of their views on religion or the economy. But now a person’s social and political opinions leave them vulnerable to social media companies, who can remove this essential good through direct censorship.

Some argue that social media companies like Meta and X are not natural monopolies, because another company could create new technology and disrupt them. After all, before Facebook, there was MySpace, and before Google, there was Yahoo. Already, there are competitors to Meta, X, and YouTube, including Gab, Truth Social, and Rumble.

However, competitor social media start-up companies have failed to seriously challenge Facebook, Instagram, and X because they lack network effects. After Facebook and X, then-Twitter, deplatformed President Donald Trump, in January 2021, many thought his supporters, Republicans, and conservatives would move to Gab, Parler, and then Truth Social, and some did. But none of those rivals ever challenged Facebook and Twitter because they could never gain the critical mass of users that enables network effects.

And if there were ever a moment that a rival might seriously challenge X, it would have been in the summer of 2023, when Meta and Substack rolled out Twitter clones— Threads and Notes, respectively—and aggressively courted users angry with X owner Elon Musk. Meta, in particular, had a major advantage in allowing for an easy transporting of followers to Threads from Instagram. Instead, Threads traffic declined by 82% during the 30 days following its initially promising launch and shows no sign of recovering.

The continuing denial of the significance of network effects is motivated by particular financial and ideological interests. Competitors to Meta and X have a financial interest in persuading investors that they pose serious threats to internet search and social media monopolies. Individuals with underlying libertarian, small-government leanings tend to deny the monopoly status of Meta and X and downplay network effects, fearing that doing so will support demands for government regulation.

However, social media company executives themselves refer to their companies as utilities. Twitter founder and former CEO Jack Dorsey, said, “Social for us is only one part of what people use Twitter for, and we see the service more as an information utility.”[25] According to Facebook founder and Meta CEO Mark Zuckerberg, Facebook is a "social utility,” adding, “I think there's confusion around what the point of social networks is. A lot of different companies characterized as social networks have different goals—some serve the function of business networking, and some are media portals. What we're trying to do is just make it really efficient for people to communicate, get information, and share information. We always try to emphasize the utility component.”[26] Zuckerberg even compared Facebook to an electric utility. “Maybe electricity was cool when it first came out, but pretty quickly people stopped talking about it because it’s not the new thing. The real question you want to track at that point is are fewer people turning on their lights because it’s less cool?”[27]

Neoliberal and libertarian thinkers have long sought to deny or downplay the existence of natural monopolies in other domains of life, including railroads, telecommunications, electric utilities, and policing, or seek to break them up through government action. In some instances, they appeared right to do so. Breaking up the telecommunications monopoly allowed for long-distance phone plan competition and breaking up the monopoly on energy generation allowed for cheaper natural gas producers to sell to electric utilities.

But breaking up monopolies does not solve all or even most of the problems created by network effects. The breaking up of the telecommunications monopoly did not result in the game-changing innovation of the internet and cell phones and may have delayed the advent of high-speed internet service. The breaking up of the monopoly of energy generation contributed to energy crises in California in 2000 and Texas in 2021, when there were not enough power plants in general or weatherised plants, respectively.

There is no serious proposal today to break up the social media monopolies, nor is it clear how it could be done, beyond perhaps requiring Meta and Google to spin off Instagram and YouTube, respectively, as separate companies. And doing so would not address their infringement on freedom of speech, government-compelled or not.

Social media owners should welcome user-determined content moderation. While some companies would resist the loss of the marginal powers to censor, and while some politicians with an excess of self-regard may resist these proposals, we believe that the majority of people around the world, their representatives in government, and their discerning justices would see the wisdom of affirming access to the internet as a public good.

Some social media companies note that certain experiments show that allowing user control reduces engagement, but such experiments were never given time to work. A report found that turning off the Facebook algorithm for a subset of Facebook users, and showing posts in the order they were posted, led to a "decline in engagement drops". This has become Facebook's go-to justification for its ranking algorithm. But Facebook never gave those users the time or the tools to curate their feeds for themselves in thoughtful ways.[28]

Such an arrangement could be a net benefit to advertisers. The corporations who want to demonstrate their commitment to the values of CCDH, Greenpeace, and GLAAD could target their advertisements to people who choose those filters, and avoid targeting those who choose filters created, for example, by the Daily Wire and Environmental Progress.

Already, Facebook has been moving in this direction. In July, Meta introduced a handful of new Facebook settings allowing users to change the frequency of sensitive, controversial, and conspiratorial content in their news feeds. Under the new effort, users can opt out of Meta's policy of reducing the distribution of content that independent, third-party fact-checkers have rated as false. The new settings do not yet apply to Instagram or Threads. But the change shows that the move to user-determined content has support at the highest levels of the social media industry, and, to some extent, is already happening.[29]

Conclusion

Western societies have made extraordinary progress thanks to network effects. The railroads allowed for the development of cities and radical increases in agricultural productivity, freeing 98% of the developed world from the drudgery of farm life. Electric and water systems dramatically reduced air and water pollution, among forms, in cities, creating the public health revolution and the practical elimination of smoke and easily preventable infectious diseases from contaminated water.

Over that same period, we have witnessed multiple communication revolutions that have made societies freer. The movable type printing press catalysed the publicization of multiple points of view and aided the rise of liberal democracies. Newspapers provided platforms for freedom of thought. The radio connected communities, and television then created powerful immersive experiences, helping to build empathy for various civil rights movements.

But now we are at a crossroads with the emergence of the internet. An expansion of freedom similarly marked its first quarter century, but now governments and industrial elites are attempting to abridge freedom of speech and, in some cases, compel speech.

The highest courts in the United States and other developed countries have an opportunity to address this infringement on our freedoms and establish that the internet and network effects are for the public good, which is why they must clarify this reality in a ruling. But that will not be enough. We need legislatures around the world to establish that these are public goods that realise freedom.

As such, leaders in the US Congress, the British Parliament, the European Parliament, and other legislative bodies should not wait for the courts in their nations to act. Rather, they should act to make a deal: liability protection for internet companies in exchange for giving users control over their content filters.
It is possible that Congress is too dysfunctional to consider such a proposal and that Republicans and Democrats will continue to be divided between wanting less censorship and wanting more of it. And Big Tech firms may resist. Facebook has lobbyists for each house of Congress and for each party. Facing trouble, social media companies can outspend their rivals at the state, national, and international level.[30] It is unlikely that lawmakers would do much to change the core businesses and profit centres of these rich and powerful entities.

However, giving users the control to moderate their own content should appeal to both sides and to most Americans. It is hard for people, given our culture of free speech, to defend censorship of other people's content. That is why advocates of censorship have had to hide behind the claims that such speech is "causing real-world harm" or "disinformation." Putting a user-determined content moderation model on the table should reveal which actors really support freedom of speech.

As a result, conservatives are making what have long been considered liberal arguments for internet regulation in service of free speech. US Supreme Court justice, Clarence Thomas, for example, floated the idea that social media companies should be regulated like public utilities due to their network effects.[31] As such, the public and Congress should consider Section 230 reform now in anticipation of a decision by the Supreme Court in the near future.

The leaders of nations, representatives of international organisations, and philanthropists say they are committed to creating free and open societies. Meta CEO Mark Zuckerberg says Facebook has independent fact-checkers, is open to all perspectives, and does not interfere in elections. And George Soros's Open Society Foundations insist that they support free speech. After saying, "Addressing hate speech does not mean limiting or prohibiting freedom of speech," the spokesperson said, "It means keeping hate speech from escalating into something more dangerous, particularly incitement to discrimination, hostility, and violence, which is prohibited under international law" [emphasis added].[32]

Overcoming overwhelming elite support for censorship will not be easy. The simultaneity of the crackdown, the extent to which pro-censorship advocates have taken power in institutions, and the amount of money they have is shocking. The good news is that free speech advocates are fighting back, finding each other, and building a new free speech movement. And user control could be the tool to help free speech transform online discourse.

Appendix A: Section 230 law

U.S. Code § 230—Protection for private blocking and screening of offensive material

(a) Findings: The Congress finds the following: (1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens. (2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops. (3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for Intellectual activity. (4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation. (5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) Policy: It is the policy of the United States—

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media; (2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation; (3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services; (4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and (5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.
© Protection for "Good Samaritan" blocking and screening of offensive material

(1) Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) Civil liability

No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).[1]

(d) Obligations of interactive computer service

A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e) Effect on other laws

(1) No effect on criminal law

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal criminal statute.

(2) No effect on intellectual property law

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) State law

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4) No effect on communications privacy law

Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar state law.

(5) No effect on sex trafficking law

Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit—

(A) any claim in a civil action brought under section 1595 of title 18, if the conduct underlying the claim constitutes a violation of section 1591 of that title;(B)any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 1591 of title 18; or(C)any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 2421A of title 18, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted.

(f)Definitions

As used in this section:

(1) Internet

The term "Internet" means the international computer network of both Federal and non-Federal interoperable packet-switched data networks.

(2) Interactive computer service

The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) Information content provider

The term "information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

(4) Access software provider

The term "access software provider" means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A) filter, screen, allow, or disallow content; (B) pick, choose, analyze, or digest content; or (C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content. (June 19, 1934, ch. 652, title II, § 230, as added Pub. L. 104–104, title V, § 509, Feb. 8, 1996, 110 Stat. 137; amended Pub. L. 105–277, div. C, title XIV, § 1404(a), Oct. 21, 1998, 112 Stat. 2681–739; Pub. L. 115–164, § 4(a), Apr. 11, 2018, 132 Stat. 1254.)

Appendix B: Overview of Content Moderation and Section 230

Ideas and proposals related to improving content moderation

"Switching costs" is a concept that you give up a lot by leaving a service. For example, switching phone providers does not have a cost, but leaving Facebook does

- The idea of "switching costs," the things you have to give up when you switch away from one of the big services - if you resign from Facebook, you lose access to everyone who is not willing to follow you to a better place.
- Switching costs aren't an inevitable feature of large communications systems. You can switch email providers and still connect with your friends; you can change cellular carriers without even having to tell your friends because you get to keep your phone number.
- The high switching costs of Big Tech are there by design. Social media may make signing up as easy as a greased slide, but leaving is another story. it is like a roach motel: users check in but they are not supposed to check out.

Interoperability would mean that even if you leave Facebook you could continue to connect with people on the platform. Leaving Facebook would then become much simpler

- The practice of designing new technologies that connect to existing ones. Interoperability is why you can access any website with any browser, and read Microsoft Office files using free/open software like LibreOffice, cloud software like Google Office, or desktop software like Apple iWorks.
- An interoperable social media giant - one that allowed new services to connect to it - would bust open that roach motel.
    1. If you could leave Facebook but continue to connect with the friends, communities and customers who stayed behind, the decision to leave would be much simpler.
    2. If you do not like Facebook's rules (and who does?) you could go somewhere else and still reach the people that matter to you, without having to convince them that it is time to make a move.

An ACCESS Act would allow people to connect to an app using a different service, meaning a user can choose a content moderation policy they like

- That is where laws like the proposed ACCESS Act come in. While not perfect, this proposal to force the Big Tech platforms to open up their walled gardens to privacy-respecting, consent-seeking third parties is a way forward for anyone who chafes against Big Tech's moderation policies and their uneven, high-handed application.
- Some tech platforms are already moving in that direction. Twitter says it wants to create an "app store for moderation," with multiple services connecting to it, each offering different moderation options. We wish it well! Twitter is well-positioned to do this - it is one tenth the size of Facebook and needs to find ways to grow.
- But the biggest tech companies show no sign of voluntarily reducing their switching costs. The ACCESS Act is the most important interoperability proposal in the world, and it could be a game-changer for all internet users.

Meta was previously against turning off algorithms for its feeds as it reduced engagement. But Facebook never really gave it a fair shot

- A separate report from 2018, first described by Alex Kantrowitz's newsletter Big Technology, found that turning off the algorithm unilaterally for a subset of Facebook users, and showing them posts mostly in the order they were posted, led to "massive engagement drops."

- Notably, it also found that users saw more low-quality content in their feeds, at least at first, although the company's researchers were able to mitigate that with more aggressive "integrity" measures.
- That last finding has since become Facebook's go-to justification for its ranking algorithm.
- But because the algorithm has always been there, Facebook users haven't been given the time or the tools to curate their feeds for themselves in thoughtful ways. In other words, Facebook has never really given a chronological news feed a fair shot to succeed.

Facebook allows users to change the frequency of sensitive or controversial content that they see in their news feeds

- But Meta and other social media companies have already started to give users more choice in what they see.
- For instance, Meta recently introduced a handful of new Facebook settings allowing users to change the frequency of sensitive, controversial and conspiratorial content in their news feeds.
- Under the new effort, users can opt out of Meta's policy of reducing the distribution of content that independent, third-party fact-checkers have rated as false. The new settings do not yet apply to Instagram or Threads.
    - "We feel we've moved quite dramatically in favor of giving users greater control over even quite controversial sensitive content," Clegg said.

With the launch of Threads, Meta is also joining the decentralised social networking movement. Users can move servers and interact with members of those communities if they wish

- The company has said it plans to ensure Threads supports ActivityPub — the open, decentralised social networking protocol that powers Mastodon and other social media platforms.
    1. On Mastodon, content moderation is not controlled by a single company or person. Instead, a network of thousands of sites — called instances or servers — often run by volunteers, set their own rules for the type of content that is allowed.
    2. Users can see posts on other servers and interact with members of those communities. That means if users do not like the rules on one server they can hop on over to a different instance.

Supreme Court cases against government intervention in the internet

Reno v. ACLU 1997: The Supreme Court tells the government to keep its hands off the internet

- Twenty-five years ago, the Supreme Court told the government to keep its hands off the internet.
    1. Reno v. American Civil Liberties Union, 521 U.S. 844 (1997), was a landmark decision of the Supreme Court of the United States, unanimously ruling that anti-indecency provisions of the 1996 Communications Decency Act violated the First Amendment's guarantee of freedom of speech.
    2. This was the first major Supreme Court ruling on the regulation of materials distributed via the Internet.
    3. When faced with the first significant case about online expression, justices went in a completely different direction than Congress, using the Reno case to confer the highest level of protections on online expression.

- The federal government tried to justify these restrictions partly by pointing to a 1978 opinion in which the court allowed the FCC to sanction a radio station that broadcast George Carlin's "seven dirty words."
    - Justices dismissed these arguments. They saw something different in the internet and rejected attempts to apply weaker First Amendment protections to the internet. Justices reasoned the new medium was fundamentally different from the scarce broadcast spectrum.
- Stevens also rejected the government's argument that regulating online indecency was necessary for the internet to grow.
    - "The dramatic expansion of this new marketplace of ideas contradicts the factual basis of this contention," Stevens wrote. "The record demonstrates that the growth of the Internet has been and continues to be phenomenal. As a matter of constitutional tradition, in the absence of evidence to the contrary, we presume that governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it."
    - It was a romanticised view of the internet. Justices looked into the future and saw a technology that could create the elusive, all-inclusive marketplace of ideas they had imagined for decades. Justices saw a wide-open space, where every citizen could take part in democracy.

Reno v. ACLU 1997: the case protects the internet from government control, this includes giving platforms the freedom to moderate their content

- The precedent's relevance is not in the case's dated facts or romanticised predictions. Its enduring value is in the idea the internet should generally be protected from government control.
    - Without the Supreme Court's lucid and fervent defence of online free speech, regulators, legislators, and judges could have more easily imposed their values on the internet.
- Thanks to Reno and other key First Amendment rulings, the United States cannot follow the path of authoritarian countries that have passed "fake news" laws in recent years and used those new powers to suppress criticism and dissent.
- Nor can the government limit the ability of private platforms to remove content that the platforms believe is harmful.
    1. In December, a federal judge granted a preliminary injunction blocking a Texas law that restricted social media companies' ability to moderate content.
    2. He pointed to Reno in rejecting Texas's argument to apply the lower First Amendment protections that broadcasters receive. (The case is on appeal to the 5th Circuit, which temporarily reinstated the law until the Supreme Court vacated the 5th Circuit's decision, but a full ruling from the 5th Circuit on the merits is still to come).

Citizens United v. Federal Election Commission ruled that corporations have a First Amendment right when it comes to campaign financing

- Citizens United v. Federal Election Commission, 558 U.S. 310 (2010), is a landmark decision of the Supreme Court of the United States regarding campaign finance laws and free speech under the First Amendment to the U.S. Constitution.
- The court held 5–4 that the freedom of speech clause of the First Amendment prohibits the government from restricting independent expenditures for political campaigns by corporations, including nonprofit corporations, labour unions, and other associations.

Supreme Court cases in favour of an individual's free speech rights

Heart of Atlanta Motel v. U.S. held that Congress could adopt laws barring discrimination by private parties

- A similar common-law heritage regarding public accommodations underlay the Supreme Court's decision in Heart of Atlanta Motel v. U.S. (1964), holding that Congress could adopt laws barring discrimination by private parties.
- The 14th Amendment empowered Congress to bar state discrimination, but it was the power over interstate commerce that let Congress prohibit private discrimination.

Abrams vs. United States, 1919. Dissent by Justice Oliver Wendell Holmes Jr. and later largely overturned Brandenburg v. Ohio. "The ultimate good desired is better reached by free trade in ideas"

- In 1919, Justice Oliver Wendell Holmes Jr. invoked the First Amendment to dispute the legality of prosecuting five anarchists for distributing leaflets that called for workers to strike at munitions factories. "The ultimate good desired is better reached by free trade in ideas," Holmes wrote.
    1. One of Holmes's chief influences was the British philosopher John Stuart Mill, who argued in his foundational 1859 treatise "On Liberty" that it is wrong to censor ideas, because knowledge arises from the "clearer perception and livelier impression of truth, produced by its collision with error."
    2. In the process, the capacity of citizens to weigh policy questions is strengthened. The government should not censor false or harmful speech because its judgment might be wrong.

New York Times v. Sullivan allowed that errors were "inevitable in free debate" and must be protected

- In the foundational case New York Times v. Sullivan, the court made it difficult for a public figure to sue a newspaper for libel that included false statements. Errors were "inevitable in free debate," the court said, and "must be protected if the freedoms of expression are to have the 'breathing space' that they 'need,'" quoting a previous ruling.

The Supreme Court ruled in Bantam Books Inc. v. Sullivan (1963) that the "informal censorship" violated the 14th Amendment. "People do not lightly disregard public officers' thinly veiled threats to institute criminal proceedings against them if they do not come around"

- In the late 1950s, the Rhode Island legislature created a commission "to encourage morality in youth."
    1. One of its practices was to send notices to out-of-state distributors and retailers of publications it deemed obscene, asking for "cooperation" in suppressing them.
    2. The notices warned that the commission had circulated lists of objectionable materials to local police departments, and that it would recommend prosecution against those found to be purveying obscenity.
- Four publishers sued. The case went to the Supreme Court.
    1. With one dissent, the justices in Bantam Books Inc. v. Sullivan (1963) held that the "informal censorship" violated the 14th Amendment.
    2. They also noted that it didn't matter that the Rhode Island commission had no real power beyond "informal sanctions."
    - "People do not lightly disregard public officers' thinly veiled threats to institute criminal proceedings against them if they do not come around," noted Justice William Brennan, a fierce liberal, in his opinion. "It would be naïve to credit the state's assertion that

these blacklists are in the nature of mere legal advice, when they plainly serve as instruments of regulation independent of the laws against obscenity."

- Brennan's warning is worth keeping in mind when considering last week's ruling in Missouri v. Biden.

Brandenburg v. Ohio set a high bar for punishing inflammatory words, namely to stop the government from using its power to silence its enemies

- It wasn't until the 1960s that the Supreme Court enduringly embraced the vision of the First Amendment expressed, decades earlier, in a dissent by Justice Oliver Wendell Holmes Jr.: "The ultimate good desired is better reached by free trade in ideas."
- In Brandenburg v. Ohio, that meant protecting the speech of a Ku Klux Klan leader at a 1964 rally, setting a high bar for punishing inflammatory words.
- Brandenburg "wildly overprotects free speech from any logical standpoint," the University of Chicago law professor Geoffrey R. Stone points out. "But the court learned from experience to guard against a worse evil: the government using its power to silence its enemies."

1992 R.A.V. v. City of St. Paul: St. Paul could not punish the burning of a cross as hate speech

- In 1992, the Supreme Court unanimously said that the City of St. Paul could not specially punish, as a hate crime, the public burning of a cross or the display of a swastika.

Snyder v. Phelps 2011: Hurtful speech, even the picketing of military funerals by the Westboro Baptist Church, must be protected

- In 2011, in an 8-to-1 vote, the court said the government could not stop members of the Westboro Baptist Church in Kansas from picketing military funerals across the nation to protest what they perceived to be the government's tolerance of homosexuality by holding signs like "Thank God for Dead Soldiers."
- Speech can "inflict great pain," Chief Justice John G. Roberts Jr. wrote for the majority. "On the facts before us, we cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course — to protect even hurtful speech on public issues to ensure that we do not stifle public debate."

United States v. Alvarez 2012: The "mere potential" for government censorship casts "a chill the First Amendment cannot permit if free speech, thought and discourse are to remain a foundation of our freedom."

- In 2012, by a 6-to-3 vote in United States v. Alvarez, the court provided some constitutional protection for an individual's intentional lies, at least as long as they do not cause serious harm.
- The majority said that the "mere potential" for government censorship casts "a chill the First Amendment cannot permit if free speech, thought and discourse are to remain a foundation of our freedom."

Supreme Court cases related to the free speech rights and personhood of corporations

Corporations are treated as "persons" who are covered by the Equal Protection Clause (and Contracts Clause among others), but they are excluded from the definition of "citizens" under the Comity Clause

- Courts have been willing to grant expansive rights to corporations, but they have not granted corporations and people identical rights.
- To this day, the Supreme Court has been of at least two minds when it comes to corporations—they are treated as "persons" who are covered by the Equal Protection Clause (and Contracts

Clause among others), but they are excluded from the definition of "citizens" under the Comity Clause.

Mohamad v. PLO held that an individual is a natural persona does not impose any liability against organisations

- Mohamad v. PLO, which held the word "individual" in the Torture Victim Protection Act means a natural person and does not impose any liability against organisations

PruneYard Shopping Center v. Robins, Rumsfeld v. FAIR, and Turner v. FCC all compelled private entities to host speakers, despite none of them being common carriers

- Private entities such as shopping centres (in Pruneyard Shopping Center v. Robins in 1980), private universities (Rumsfeld v. FAIR in 2006), and cable television companies (in Turner Broadcasting System v. FCC, in 1994 and 1997) can be required to host speakers whose messages they would not otherwise choose to convey.
    1. Proponents of regulating social media companies as common carriers argue that these rulings support their position.
    2. Opponents argue that they are distinguishable, as Pruneyard and Rumsfeld didn't implicate the private entity's own speech, and Turner involved broadcasting, a domain where First Amendment protections are lower.
- It is also worth noting that shopping centres, private universities, and cable companies are not common carriers.
    - That the government was nonetheless able to compel them to host speakers helps underscore that common carrier status, as important as it is to determine, is not the whole story. The First Amendment rights of non-common-carrier private entities can involve shades of grey.

But opponents of the common carrier position say the Turner case doesn't support Clarence Thomas. Social media firms are content-based, there are alternative sites, and they have content moderation expectations

- As TechFreedom laid out in its amicus brief, both cases come with caveats.
- For one thing, in the Turner case, the Court found that the law requiring cable companies to carry broadcast channels was actually content neutral, because the requirement wasn't based on the substance of the programming on those channels, but on the manner in which they were broadcast, which made them free to the public.
    - A law like the one in Florida, by contrast, that deals specifically with political speech, would almost certainly be content-based and, therefore, would be subject to strict scrutiny.
- The Turner case also hinged in part on the idea that cable companies deploy actual physical infrastructure, giving "the cable operator bottleneck, or gatekeeper, control over most (if not all) of the television programming that is channeled into the subscriber's home."
    - The same cannot be said for social media companies, TechFreedom argued. Facebook might be gigantic, but even someone who's banned from Facebook has plenty of other social media platforms to pick from and very little barrier to entry to join them.
- In the Turner case, the court also considered how closely associated a cable company is with the messages broadcast on the channels it carries.
    - The court decided in that case that "there appears little risk" that cable viewers would think the cable operators were endorsing every message carried by every channel. As TechFreedom pointed out, the same cannot be said for tech companies, who are

regularly asked to answer for the messages that do and do not appear on their platforms.

The PruneYard case also undermines Thomas as malls would not likely be associated with shoppers' beliefs. Malls are also allowed to impose regulations to minimise interference with their commercial functions

- The PruneYard case raised a similar point, with the court finding that the student protesters' beliefs would not likely be associated with the mall itself. And while the court found that the mall could not kick the students off its property, it did emphasise that the mall could impose "time, place, and manner regulations" to "minimize any interference with its commercial functions."

Cincinnati v. Discovery Network, Inc. ruled that the city could not take down advertisers' news racks in the interest of aesthetics, as all news racks are culpable. We could argue that you cannot take down some speech for being false for commercial interests when all speech is potentially culpable of being false

- The reasonable fit standard has some teeth, the Court made clear in City of Cincinnati v. Discovery Network, Inc., striking down a city's prohibition on distribution of commercial handbills through freestanding news racks located on city property.
- The city's aesthetic interest in reducing visual clutter was furthered by reducing the total number of news racks, but the distinction between prohibited commercial publications and permitted newspapers bore no relationship whatsoever to this legitimate interest.
- The city could not, the Court ruled, single out commercial speech to bear the full onus when all news racks, regardless of whether they contain commercial or non-commercial publications, are equally at fault.

Twitter v. Taamneh, No. 21-1496 & Gonzalez v. Google, No. 21-1333: The Supreme Court ruled in twin cases that platforms were not liable for content posted by their users

- The Supreme Court handed twin victories to technology platforms on Thursday by declining in two cases to hold them liable for content posted by their users.
    1. In a case involving Google, the court for now rejected efforts to limit the sweep of the law that frees the platforms from liability for user content, Section 230 of the Communications Decency Act.
    2. In a separate case involving Twitter, the court ruled unanimously that another law allowing suits for aiding terrorism did not apply to the ordinary activities of social media companies.
- The platforms' algorithms did not change the analysis, he wrote.
    - "The algorithms appear agnostic as to the nature of the content, matching any content (including ISIS' content) with any user who is more likely to view that content," Justice Thomas wrote. "The fact that these algorithms matched some ISIS content with some users thus does not convert defendants' passive assistance into active abetting."

Buckley v. Valeu concluded that "[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike[.]"

- As the Supreme Court once concluded, "[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike[.]" Buckley v. Valeo, 424 U.S. 1, 97–98 (1976). And this seems particularly apt, when corporations and humans are being balanced on the scales of justice.

Justices like Elena Kagan say the First Amendment is being used to protect the powerful

- The Supreme Court has also taken the First Amendment in another direction that had nothing to do with individual rights, moving from preserving a person's freedom to dissent to entrenching the power of wealthy interests.
    1. In the 1970s, the court started protecting corporate campaign spending alongside individual donations. Legally speaking, corporate spending on speech that was related to elections was akin to the shouting of protesters.
    2. This was a "radical break with the history and traditions of U.S. law," the Harvard law professor John Coates wrote in a 2015 article published by the University of Minnesota Law School.
    3. Over time, the shift helped to fundamentally alter the world of politics. In the 2010 Citizens United decision, the court's conservative majority opened the door to allowing corporations (and unions) to spend unlimited amounts on political advocacy, as long as they donated to interest groups and political-action committees rather than to campaigns.
- By requiring the state to treat alike categories of speakers — corporations and individuals — the Supreme Court began to go far beyond preventing discrimination based on viewpoint or the identity of an individual speaker.
    1. "Once a defense of the powerless, the First Amendment over the last hundred years has mainly become a weapon of the powerful," MacKinnon, now a law professor at the University of Michigan, wrote in "The Free Speech Century," a 2018 essay collection.
    2. Instead of "radicals, artists and activists, socialists and pacifists, the excluded and the dispossessed," she wrote, the First Amendment now serves "authoritarians, racists and misogynists, Nazis and Klansmen, pornographers and corporations buying elections."
- In the same year, Justice Elena Kagan warned that the court's conservative majority was "weaponizing the First Amendment" in the service of corporate interests, in a dissent to a ruling against labour unions.

Social media platforms and their First Amendment rights

Section 230 draws a clear distinction between the speech of the user and platform. Thus, compelling a platform to host speech is not the same as compelling their speech

- This sort of distinction has long been ingrained in federal law—including Section 230(c)(1) of the 1996 Communications Decency Act, which distinguishes between information provided by an interactive computer service and "information provided by another information content provider."
- Whatever the shortcomings of that statute, it draws a common and reasonable distinction between a company's own speech and the speech of others for which it provides a conduit.
    - This distinction doesn't apply in the case of a newspaper. Its pages are not open to the public to post their views, and so it is speaking for itself when it makes editorial decisions about letters and other outside contributions.

Antidiscrimination laws protect against censorship: you have a right to speech, but not to discriminate

- Another reason to doubt the First Amendment claim: Antidiscrimination laws are familiar limits on speech.
- The U.S. has a range of local, state and federal antidiscrimination laws with significant speech consequences, and courts haven't held that they violate the First Amendment.

- One has a First Amendment right to bigoted speech, but not, according to the courts, in circumstances that, for example, amount to discrimination in employment or public accommodations.

Citizens United v. Federal Election Commission treats corporations the same as individuals when it comes to campaign contributions. But the law treats all kinds of individuals differently

- The current Court in Citizens United claimed to be choosing between a system in which corporations would have no free-speech rights and one in which corporate "persons" must have precisely the same free-speech rights as natural persons do.
- There surely is a middle position. In fact, our laws treat many kinds of "persons" differently for various purposes:
    1. Citizens differently from non-citizens
    2. Minors differently from adults
    3. Members of professions are different from non-members.
- Each group's rights--even important rights like free speech--are treated differently for some purposes.
    1. High-school students do not have the right to criticise their school administrations; college students do.
    2. Minors do not have the right to purchase sexually explicit entertainment; adults do.
    3. Non-citizens cannot contribute to federal political campaigns; citizens can.

Citizens United makes no reference to corporate personhood or the Fourteenth Amendment

- The Citizens United majority opinion makes no reference to corporate personhood or the Fourteenth Amendment, but rather argues that political speech rights do not depend on the identity of the speaker, which could be a person or an association of people.

Buckley v. Valeu concluded that "[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike[.]"

- As the Supreme Court once concluded, "[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike[.]" Buckley v. Valeo, 424 U.S. 1, 97–98 (1976). And this seems particularly apt, when corporations and humans are being balanced on the scales of justice.

Corporations are not individuals which is why they should be regulated. They never die, they can influence events indefinitely, and they control vastly more money

- That a corporation is a "person" does not mean that its participation in politics has to be completely free of regulation.
- Any sane system of laws would take into account the facts that corporations control vastly more money than individuals; that they never "die," and thus can influence events indefinitely; and that, by law, they must (and do) concern themselves with one thing and one thing only--making profits for their shareholders.

Corporations do not have democratic legitimation. But a person does, that is why the person's free speech triumphs

- Somewhere along the way, the conservative majority has lost sight of an essential point: The purpose of free speech is to further democratic participation.

1. "The crucial function of protecting speech is to give persons the sense that the government is theirs, which we might call democratic legitimation," says the Yale law professor Robert Post.
2. "Campbell Soup Company can't experience democratic legitimation. But a person can. If we lose one election, we can win the next one. We can continue to identify with the democratic process so long as we're given the opportunity to shape public opinion. That's why we have the First Amendment."

Justices like Elena Kagan say the First Amendment is being used to protect the powerful

- The Supreme Court has also taken the First Amendment in another direction that had nothing to do with individual rights, moving from preserving a person's freedom to dissent to entrenching the power of wealthy interests.
    4. In the 1970s, the court started protecting corporate campaign spending alongside individual donations. Legally speaking, corporate spending on speech that was related to elections was akin to the shouting of protesters.
    5. This was a "radical break with the history and traditions of U.S. law," the Harvard law professor John Coates wrote in a 2015 article published by the University of Minnesota Law School.
    6. Over time, the shift helped to fundamentally alter the world of politics. In the 2010 Citizens United decision, the court's conservative majority opened the door to allowing corporations (and unions) to spend unlimited amounts on political advocacy, as long as they donated to interest groups and political-action committees rather than to campaigns.
- By requiring the state to treat alike categories of speakers — corporations and individuals — the Supreme Court began to go far beyond preventing discrimination based on viewpoint or the identity of an individual speaker.
    3. "Once a defense of the powerless, the First Amendment over the last hundred years has mainly become a weapon of the powerful," MacKinnon, now a law professor at the University of Michigan, wrote in "The Free Speech Century," a 2018 essay collection.
    4. Instead of "radicals, artists and activists, socialists and pacifists, the excluded and the dispossessed," she wrote, the First Amendment now serves "authoritarians, racists and misogynists, Nazis and Klansmen, pornographers and corporations buying elections."
- In the same year, Justice Elena Kagan warned that the court's conservative majority was "weaponizing the First Amendment" in the service of corporate interests, in a dissent to a ruling against labour unions.

Missouri v. Biden Censorship Lawsuit and the Facebook files

The judges laid into the Biden administration for its strongarm tactics

- The judges did not hold back.
    1. One judge suggested the government "strongarms" social media companies and that their meetings had included "veiled and not-so-veiled threats."
    2. Another judge described the exchange between the Biden administration and tech companies as the government saying, "Jump!" and the companies responding, "How high?"
        - "That's a really nice social media company you got there. It'd be a shame if something happened to it," the judge said, describing the government's coercive tactics.

3. Attorney John Sauer, representing Louisiana, masterfully argued that the government had repeatedly violated the First Amendment. He pointed to specific evidence of coercion in the Facebook Files.

The administration brazenly engaged in an unlawful censorship campaign and instrumentalised private companies to do its bidding

- "You have a really interesting snapshot into what Facebook C-suite is saying," Sauer explained. "They're emailing Mark Zuckerberg and Sheryl Sandberg and saying things like… 'Why were we taking out speech about the origins of covid and the lab leak theory?'" The response, Sauer said, was, "Well, we shouldn't have done it, but we're under pressure from the administration."
- He also cited an email from Nick Clegg, Facebook President of Global Affairs, that pointed to "bigger fish to fry with the Administration - data flows, etc."
- On Monday, Public reported that these "data flows" referred to leverage the Biden administration had over the company; Facebook needed the White House to negotiate a deal with the European Union. Only through this deal could Facebook maintain access to user data that is crucial for its $1.2 billion annual European business.

There was no smoking gun, rather the trove of emails illustrates ongoing pressure from officials at the White House

- The trove of emails, obtained through legal requests, contain no single smoking gun. Instead they illustrate ongoing pressure from officials at various US government agencies to pressure YouTube, Twitter, and – in particular – Facebook parent Meta to act faster and more aggressively on anti-vaccine posts, conspiracy theories and the lab-leak theory.
    1. Officials were also active in encouraging Twitter and YouTube to remove content, according to the order. In the early weeks of the administration, Flaherty emailed Twitter asking them to remove a parody account linked to Biden's granddaughter, writing: "Please remove this account immediately." It was gone 45 minutes later.
    2. Humphrey asked the company to remove an anti-vaccine tweet by Robert F. Kennedy Jr. Later that year, Christian Tom, a deputy director of digital strategy, asked Twitter to remove a digitally altered video of Jill Biden that made it appear as if the First Lady was swearing at children. Twitter initially said it did not violate its policies, but later removed the clip.

The administration pressured Facebook to remove posts by Tucker Carlson and referenced the January 6 attack on the Capitol to apply pressure

- In one phone call between Murthy and Sir Nick, the surgeon general asked Meta to do more to tackle misinformation. In another email in 2021, Andy Slavitt, the White House's senior Covid-19 adviser, emailed Sir Nick complaining about a post from the Fox News host Tucker Carlson expressing scepticism about vaccines.
    1. "Number one on Facebook. Sigh," Slavitt wrote, according to legal documents. Sir Nick responded saying the post did not break Facebook's rules, but was being demoted so that fewer people would see it in news feeds. Rob Flaherty, the White House's director of digital strategy, responded saying: "There's 40,000 shares on the video. . . How effective is that?"
    2. He added: "Not for nothing but last time we did this dance, it ended in an insurrection," referring to the January 6 attack on the Capitol. In other emails, Sir Nick apologised for not responding to posts that broke Facebook's rules more quickly, the documents say.

Joint activity between the White House and social media platforms would also be unconstitutional.

- But Sauer also made it clear that coercion was not the only basis on which the court could rule against the Biden administration. Joint activity between the White House and social media platforms would also be unconstitutional.
- Sauer compared what the government had done to book burning. “Imagine a scenario where senior White House staffers contact book publishers… and tell them, ‘We want to have a book burning program, and we want to help you implement this program… We want to identify for you the books that we want burned, and by the way, the books that we want burned are the books that criticize the administration and its policies.”

The DOJ tried to argue that it was the “premises of the Great Barrington Declaration” they were trying to take down. He also lied in saying no true content was removed (ironically, Biden’s Instagram was throttled for spreading vaccine misinformation)

- Daniel Tenny, the attorney for the Department of Justice, was left nitpicking and misrepresenting the record. In one instance, he denied that Anthony Fauci and Francis Collins had hatched a plan to orchestrate a “takedown” of the Great Barrington Declaration. Why? Because, Tenny said, according to their emails, they actually planned a takedown of “the premises of the Great Barrington Declaration.”
- Tenny also stated that social media companies had not removed any true content. From the case’s discovery as well as the Facebook Files we know that is far from true. Facebook, against internal research and advice, did remove “often-true content” that might discourage people from getting vaccinated. Facebook’s own emails clearly suggest that the company only did this due to pressure from figures within the Biden Administration.
- Tenny also claimed that when Rob Flaherty, the White House director of Digital Strategy, dropped the F-bomb in an exchange with Facebook it was not about content moderation. In fact, it was precisely about content moderation and occurred during a conversation about how Instagram was throttling Biden’s account. Ironically, the account could not gain followers because Meta’s algorithm had determined that it was spreading vaccine misinformation.

The ruling bars many officials in the Biden Administration from contacting social media companies to report misinformation

- On Tuesday – the Independence Day timing may or may not have been a coincidence – a judge appointed by Donald Trump issued a stunning injunction forbidding a lengthy list of White House officials from making contact with social media companies to report misinformation.
- The order bars individuals including Xavier Becerra, the US health secretary, Vivek Murthy, the surgeon general, and Karine Jean-Pierre, the White House Press Secretary, among dozens more officials, from “urging, encouraging , pressuring, or inducing in any manner the removal, deletion, suppression, or reduction of content containing protected free speech posted on social-media platforms”.
- In a 155-page ruling, the judge, Terry Doughty, said the case “arguably involves the most massive attack against free speech in United States’ history” and compared the administration’s actions to the “Ministry of Truth”, the repressive censorship authority in George Orwell’s Nineteen Eighty-Four.

Left-wing reaction to Missouri vs. Biden

Critics of the ruling say it is too broad and problematic, especially because it applies to government efforts to encourage action by companies, not force it

- "It can't be that the government violates the First Amendment simply by engaging with the platforms about their content-moderation decisions and policies,"

The Missouri Case and Facebook emails leak are an example of 'jawboning', the government using public appeals or private channels to induce change or compliance from businesses.

- I agree with Judge Doughty that the apparent pressure that the Biden administration placed on the platforms is questionable. But the degree to which those demands were heeded or coercive is uncertain.
- They seem to be classic examples of what political scientists call jawboning: the government's use of public appeals or private channels to induce change or compliance from businesses.
    1. Jawboning is not a tool unique to any one political party and it is a dubious tactic no matter who uses it.
    2. Recent Republican administrations and government officials have used the same tactic to try to control online speech and speech by private companies. Multiple former employees of Twitter testified in Congress that officials in the Trump administration pressured the platform to remove speech that insulted or derided Mr. Trump.

The ruling tells us nothing about how to distinguish permissible government pressure from impermissible government coercion. The law needs this clarity desperately

- It is undoubtedly disconcerting when a White House official, whether Democrat or Republican, sends a stern email to a social media company about speech on its platform.
- But what is unclear from Judge Doughty's clunky opinion is how the government crossed the line separating a widely accepted if sometimes scurrilous practice from outright censorship.
    - He tells us nothing about how to distinguish permissible government pressure from impermissible government coercion. The law needs that clarity desperately.

Several researchers said the government's work with social media companies was not an issue as long as it didn't coerce them to remove content, and they were only flagging "harmful" content

- Instead, they said, the government has historically notified companies about potentially dangerous messages, like lies about election fraud or misleading information about Covid-19.
- Most misinformation or disinformation that violates social platforms' policies is flagged by researchers, nonprofits, or people and software at the platforms themselves.
    - "That's the really important distinction here: The government should be able to inform social media companies about things that they feel are harmful to the public."

Why can't you broadcast nudity at the Super Bowl but social media firms can broadcast Nazi propaganda?

- "It's bananas that you can't show a nipple on the Super Bowl but Facebook can still broadcast Nazi propaganda, empower stalkers and harassers, undermine public health and facilitate extremism in the United States," Mr. Ahmed said.
- "This court decision further exacerbates that feeling of impunity social media companies operate under, despite the fact that they are the primary vector for hate and disinformation in society."

Left-wing legal reaction to Missouri vs. Biden

The plaintiffs in the case may not even have standing, in which case the court should've dismissed the case. it is not clear the social media companies would not have censored the information anyway

- One error is whether the plaintiffs in the case even have standing (i.e., whether the plaintiffs have established a sufficient risk of future injury to them that is attributable to the government conduct being challenged here).
- States lack standing to just assert the interests of their citizens. So the district court was forced to assert that the Republican-leaning states nonetheless had standing because they were "being excluded from the benefits intended to arise from participation in the federal system."
    - Apparently, the Constitution intended to secure to the states the benefits of existing in a cesspool of disinformation about election denialism and covid, or so the district court would have it if this opinion stands.
- As the court goes on to say, it is not clear the social media companies would have chosen to keep the misinformation on their platforms without the government's involvement.
    - But if that is right, then the plaintiffs' supposed "injuries" weren't caused by the conduct they are challenging, and they are also not redressable by an injunction barring the government from communicating with the social media companies.
- Botching the standing analysis is not just a theoretical or formalistic error: the Constitution only gives federal courts the power to consider cases that involve actual disputes (also known as cases or controversies) and to redress actual injuries.
    - If the plaintiff lacks standing, the federal court is supposed to dismiss the case. Full stop.

The ruling misapplies the First Amendment. The government is allowed to respond to speech and in some cases is allowed even to compel it

- Another serious misstep in the opinion occurred when the court analysed whether this case involves First Amendment violations that require an injunction.
    1. Just to reiterate: there may be circumstances where the government runs afoul of the First Amendment by effectively forcing private companies to remove protected speech – or, for that matter, forcing those companies to say what they do not believe.
    2. But the district court's analysis does not even purport to seriously engage with the issue of when that might occur. Instead, the opinion seems to maintain that the government cannot even politely ask companies not to publish verifiable misinformation.
- The introduction to the opinion announces that "the purpose of the Free Speech Clause of the First Amendment" is "to preserve an uninhibited marketplace of ideas … rather than to countenance monopolization of the market, whether it be by the government itself or private licensee."
    1. To support that proposition, the district court cited Red Lion Broadcasting Co, a case where the Supreme Court upheld the Federal Communication Commission's decision to require a private entity (a radio company) to provide airtime to persons who were criticised in a previous broadcast.
    2. That decision, far from supporting the district court's peculiar ruling, points in the opposite direction: it supports the government's authority to regulate speech – and indeed to compel speech – on private platforms in certain circumstances.

The government should be allowed to request that some speech be removed. The First Amendment is not a wall to stop a valuable exchange of information and ideas

- There is also considerable precedent that recognises that the government can ask private parties to remove content. That precedent exists for a reason; if it didn't, the government could not communicate with private parties about their content moderation policies, or whether (hypothetically) foreign governments were trying to make certain content go viral in order to reduce voter turnout, inflame divisions, or make the country less safe.
    1. There are myriad legitimate and indeed compelling reasons the government might have to ask social media companies to remove content. And the First Amendment certainly doesn't prevent them from merely asking.
    2. To treat the First Amendment as creating something like a wall of separation between government and powerful private actors is utterly bizarre. It would turn the Constitution's protection of free expression in an open society into an obstacle course for some of the most valuable exchanges of information and ideas we can imagine.
- The district court cited all the precedent supporting this public-private dialogue before cavalierly dismissing it, in part by declaring that "what is really telling is that virtually all of the free speech suppressed was 'conservative' free speech."
    1. As if the cases that supported the government all of a sudden didn't matter because this case involves conservatives?
    2. (One side note: Several of the allegations in the complaint occurred during the Trump administration. Communications between social media companies and government officials happen no matter who's in power, and the First Amendment is not supposed to lean right or left.)

there is no evidence that the government coerced tech platforms into doing anything

- There is also the fact that the district court made no effort to identify circumstances where the government came even close to coercing social media companies into doing something they didn't want to do.
    1. Take the allegations concerning hydroxychloroquine. On pages 52-53 of the opinion, the district court recites the very serious allegation that the Department of Health and Human Services "suppressed speech on hydroxychloroquine" by having Dr. Anthony Fauci make "statements on Good Morning America and on Andrea Mitchell Reports that hydroxychloroquine is not effective." The next sentence then reports that, after this apparently very coercive Good Morning America appearance, "social-media platforms censored" videos and material that were pro-hydroxychloroquine.
    2. That must have been quite the Good Morning America appearance. But joking aside: A government official appearing on a television show and stating that certain speech is disinformation does not come even remotely close to the government coercing social media companies into removing that speech.
- More generally, the district court's theory seems to be that tech companies were "coerced" to take action simply by virtue of having meetings with the government. (No really, on page 93, the court declares that "Defendants used meetings and communications with social-media companies" and "flagged posts and provided information" about concerning posts. We're meant to find that shocking!)
    1. The district court even maintained that it doesn't matter "what decision the social-media company would have made, but whether … the decision is essentially that of the government."
    2. What does that even mean? If the social media companies would have removed the speech no matter what the government did, then the government did not coerce

anyone into doing anything, and the social media companies' decisions would not be those of the government's.

- There are difficult questions out there about when messages – on license plates, say, or in the pronouncements of agricultural industry associations – constitute government speech as opposed to private speech. Suffice it to say this case doesn't remotely pose such questions.

The injunction is egregious in its scope. Supreme Court precedent interprets the deferral statute to prohibit only the purposeful solicitation of specific acts that violate federal law

- But if we had to choose, the most egregious facet of the decision would probably be the breathtaking scope of the district court's order. The injunction would insulate social media companies from criticism about their content moderation policies, not just from coercion.
    1. The district court blithely announces that it "believes that an injunction can be narrowly tailored to only affect prohibited activities," but then goes on to issue an injunction that does no such thing.
    2. Among other things, the district court's order prohibits the myriad government defendants from "emailing, calling, sending letters, texting, or engaging in any communication of any kind with social-media companies urging, encouraging, pressuring, or inducing in any manner for removal, deletion, suppression, or reduction of content containing protected free speech."
    3. It also prevents government defendants from "meeting with social-media companies" about the same. They are not allowed to flag certain content or posts, or notify companies to be on the lookout for certain posts. (Nothing in the Supreme Court's recent decision in United States v. Hansen, which upheld a federal law discouraging unauthorised immigration, supports this result. Hansen interpreted the federal statute to prohibit only the purposeful solicitation of specific acts that violate federal immigration laws.)
- And who are the government defendants that are enjoined from communicating or meeting with social media companies?
    1. That is where things get even crazier. The district court wrote its injunction to include the "Department of State" (all of it!), and the "Department of Homeland Security" (all of that one too!). Oh, and the Federal Bureau of Investigations and Department of Justice.
    2. It calls to mind the Chief Justice's accusation from the Texas S.B.8 case argued last term that the United States was "seeking an injunction against the world."

Right-wing (not all) reaction to Missouri vs. Biden

The Supreme Court ruled in Bantam Books Inc. v. Sullivan (1963) that the "informal censorship" violated the 14th Amendment. "People do not lightly disregard public officers' thinly veiled threats to institute criminal proceedings against them if they do not come around"

- In the late 1950s, the Rhode Island legislature created a commission "to encourage morality in youth."
    3. One of its practices was to send notices to out-of-state distributors and retailers of publications it deemed obscene, asking for "cooperation" in suppressing them.
    4. The notices warned that the commission had circulated lists of objectionable materials to local police departments, and that it would recommend prosecution against those found to be purveying obscenity.
- Four publishers sued. The case went to the Supreme Court.

3. With one dissent, the justices in Bantam Books Inc. v. Sullivan (1963) held that the "informal censorship" violated the 14th Amendment.
4. They also noted that it didn't matter that the Rhode Island commission had no real power beyond "informal sanctions."

- "People do not lightly disregard public officers' thinly veiled threats to institute criminal proceedings against them if they do not come around," noted Justice William Brennan, a fierce liberal, in his opinion. "It would be naïve to credit the state's assertion that these blacklists are in the nature of mere legal advice, when they plainly serve as instruments of regulation independent of the laws against obscenity."

- Brennan's warning is worth keeping in mind when considering last week's ruling in Missouri v. Biden.

Biden's White House didn't merely encourage Big Tech to censor, it threatened legal consequences if they didn't

- The legal line between a government official encouraging or discouraging private conduct versus engaging in behaviour that amounts to coercion is a blurry one. But it is also a line that, in this case, the administration seems to have repeatedly crossed. Two examples:
    1. In a July 20, 2021, interview on MSNBC, the anchor Mika Brzezinski asked Kate Bedingfield, who was then the White House communications director, whether the White House would amend Section 230 of the Communications Decency Act so that social media companies would be "open to lawsuits" for hosting Covid misinformation. Bedingfield replied, "We're reviewing that, and certainly they should be held accountable." Social media companies soon began to remove the pages and accounts of the so-called Disinformation Dozen, referring to notorious vaccine sceptics.
    2. On Oct. 29, 2021, Surgeon General Vivek Murthy tweeted that "we must demand Facebook and the rest of the social media ecosystem take responsibility for stopping health misinformation on their platforms." That day, according to Doughty's ruling, Facebook requested that the government provide a "federal health contract" to determine "what content would be censored on Facebook's platforms."
- Neither of these cases is an example of the administration merely encouraging Big Tech to remove ostensibly harmful content. On the contrary, it is multiple federal agencies yelling "jump" and threatening dire legal consequences and Big Tech replying, in effect, "How high?"

The government cannot use an end-run around its constitutional obligations. If private-sector action becomes so closely interwoven with the government that it becomes functionally indistinguishable from state action, it sensibly becomes subject to First Amendment constraints

- The constitutional principle should be obvious.
    1. "Government should not be able to do an end-run around its constitutional obligation to protect freedom of speech by delegating censorship to private-sector actors," Nadine Strossen, a former president of the American Civil Liberties Union, told me on Tuesday.
    2. "If private-sector action becomes so closely interwoven with the government that it becomes functionally indistinguishable from state action, it sensibly becomes subject to First Amendment constraints."
- That is true irrespective of whose speech is being curtailed.

Ironically, complaints that the Biden officials cannot be expected to navigate the line about when they can contact Big Tech is reminiscent of the content censorship debate

- "The result is this incredibly broad injunction that seems to prevent huge swaths of the executive branch from communicating with the platforms about speech," she said.
- "Are government officials supposed to figure out for themselves what's the serious enough threat that they can communicate about it to the platforms, or not serious and then they cannot?" she said. "How are they going to draw this line?"

Left-wing pushback to Section 230 and social media

Biden Administration is urging the Supreme Court to hear cases on social media laws in Texas and Florida, arguing that they violate the First Amendment

- The administration argued that the laws, enacted by Florida and Texas to prevent removal of posts amid conservative complaints about censorship by tech platforms, violated the First Amendment.
- "To generalize just a bit," he wrote, the Florida law "prohibits all censorship of some speakers," while the Texas law "prohibits some censorship of all speakers" when based on the views they express.

As the Federal District Court judges ruled, the Texas and Florida laws seem to violate the tech companies' own First Amendment rights to host or not host certain content

- The laws could prompt lots of frivolous lawsuits from people who feel they've been treated unkindly by tech companies.

The laws' texts seem to prohibit tech companies from removing or down-ranking all kinds of content that have nothing to do with electoral politics

- Groups that oppose the laws say that tech companies would not be able to remove posts promoting suicide, animal abuse, non-obscene nudity and much else that most users simply do not want to see when they open up Facebook in the morning.
    - No law is perfect, dummy.

Republicans and Democrats seem to have latched on to repeal of this law as if it were a silver bullet for fixing the internet. It is not, because many content decisions by tech companies are protected by the First Amendment

- But many legal scholars say Section 230's repeal would have terrible chilling effects, intimidating platforms into pulling down lots of controversial content just to avoid litigation.

Both sides are advocating the same mechanism: give judges and agencies power over tech companies

- Even though Democrats and Republicans have opposing goals for moderating online content — one side wants more rules, the other wants fewer — both sides are advocating the same basic mechanism for fixing the internet: They want to give judges, government agencies and other officials the power to decide what tech companies and their users can and cannot do online.

New legislation from Senators Coons, Klobuchar, and Portman would require platforms to provide data to certain researchers to shed light on networks' content decisions (obviously researchers aren't neutral)

- There are much less rash legislative ideas to try first — for instance, mandating greater transparency from social media companies so that we can better understand how and to what degree they are influencing the culture.
- Legislation introduced last year by Senators Chris Coons, Amy Klobuchar and Rob Portman would require social networks to provide data to certain researchers that could shed light on social networks' content decisions and their effects.
- This could allow outside researchers to determine, say, whether platforms are applying their rules consistently across the political spectrum, or how the companies' algorithms are promoting — or downplaying — misinformation, extremist content and other toxic stuff online.

A Texas Court ruled that the platforms are not newspapers and that their censorship is not speech

- "We reject the platforms' attempt to extract a freewheeling censorship right from the Constitution's free speech guarantee," Judge Oldham wrote for the majority. "The platforms are not newspapers. Their censorship is not speech."

Social media sites are not public squares, they are privately owned malls

- Social media sites effectively function as the public square where people debate the issues of the day. But the platforms are actually more like privately owned malls: They make and enforce rules to keep their spaces tolerable, and unlike the government, they are not obligated to provide all the freedom of speech offered by the First Amendment.
    - Like the bouncers at a bar, they are free to boot anyone or anything they consider disruptive.
- Amazon Web Services stopped hosting Parler, effectively cutting off its plumbing. Parler, having promised the streets of New York, was actually bound by the rules of a kindergarten playground.
    - "We couldn't beat you in the war of ideas and discourse, so we're pulling your mic" — that is how Archon Fung, a professor at Harvard's Kennedy School of Government, put it, in expressing ambivalence about the moves.

Packingham v. North Carolina: opinions expressed during the trial

- The Court held that social media was a "protected space" for lawful speech under the First Amendment. (wiki)

Social media sites are important parts of the country's culture and a part of the marketplace of ideas

- Justice Elena Kagan suggested that social media sites like Facebook and Twitter were "incredibly important parts" of the country's political and religious culture. People do not merely rely those sites to obtain virtually all of their information, she emphasised, but even "structure their civil community life" around them.
- Justice Ruth Bader Ginsburg echoed those sentiments, telling the North Carolina official defending the law that barring sex offenders from social networking sites would cut them off from "a very large part of the marketplace in ideas."

Criminals use the internet all the time to commit crimes and yet we do not ban their access to the internet

- Justice Sonia Sotomayor questioned the premise that the law is necessary to prevent sexual abuse of minors.
- She told Montgomery that he was building "layer upon layer of speculation" or statistical inferences. The law doesn't apply only to people who used the Internet to commit a sexual offense, she stressed, but instead applies to everyone.
- Where is the basis, she queried, for the inference that a sex offender like Packingham would use the Internet to commit another crime?
    - These restrictions are particularly problematic, she continued, when would-be criminals can use the Internet for "almost anything," including finding a bank to rob.

People have the right to say dangerous things, you cannot cut off their speech altogether

- Breyer joined the fray, telling Montgomery that legal texts are filled with cases upholding the right to say dangerous things.
- Here, he asked dubiously, when faced with a scenario in which people might say something dangerous, the state's remedy is to cut off the speech altogether?
    - It seems to be well-settled law, he concluded, that the state cannot do so unless there is a "clear and present danger."

Some prophylactic rules are necessary when the state lacks the resources to engage in monitoring

- Kagan noted that it is "not unheard of in First Amendment law" to have prophylactic rules when – as here – North Carolina argues that it lacks the resources to engage in such monitoring.

The government may be allowed to narrowly tailor laws in their interest (also in wiki)

- Even assuming that the statute is content neutral and thus subject to intermediate scrutiny, the provision is not " '"narrowly tailored to serve a significant governmental interest." ' " McCullen v. Coakley, 573 U. S.
- The Court assumes that the First Amendment permits a State to enact specific, narrowly-tailored laws that prohibit a sex offender from engaging in conduct that often presages a sexual crime, like contact.

Packingham v. North Carolina: Kennedy's majority opinion and Alito's opinion

Everyone should have access to places where they can speak and listen. Cyberspace and social media are clearly the most important places for the exchange of views

- And even if once it may have been hard to determine which places are "the most important" "for the exchange of views," Kennedy concluded, it is not hard now. Instead, he reasoned, it is "clear" that the Internet and, in particular, social media provide such opportunities, with "three times the population of North America" now using Facebook.
- A fundamental principle of the First Amendment is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more.
    1. The Court has sought to protect the right to speak in this spatial context. A basic rule, for example, is that a street or a park is a quintessential forum for the exercise of First Amendment rights. See Ward v. Rock Against Racism, 491 U. S. 781, 796 (1989).
    2. Even in the modern era, these places are still essential venues for public gatherings to celebrate some views, to protest others, or simply to learn and inquire.

- While in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear.
    1. It is cyberspace—the "vast democratic forums of the Internet" in general, Reno v. American Civil Liberties Union, 521 U. S. 844, 868 (1997), and social media in particular. Seven in ten American adults use at least one Internet social networking service. Brief for Electronic Frontier Foundation et al. as Amici Curiae 5–6.
    2. One of the most popular of these sites is Facebook, the site used by petitioner leading to his conviction in this case. According to sources cited to the Court in this case, Facebook has 1.79 billion active users. Id., at 6. This is about three times the population of North America.

This is the modern public square, to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights

- But North Carolina's law goes too far, he explained, because it stifles "lawful speech as the means to suppress unlawful speech."
- By barring sex offenders from using social-networking sites, he continued, the state "with one broad stroke bars access to what for many are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge."
    - Foreclosing access to social media altogether thus prevents users from engaging in the legitimate exercise of First Amendment rights.
- "In sum," Kennedy concluded, "to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights."

Social media is needed for an array of protected activities, like finding work and engaging with politicians

- 'By prohibiting sex offenders from using those websites, North Carolina with one broad stroke bars access to what for many are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge.
    - These websites can provide perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard. They allow a person with an Internet connection to "become a town crier with a voice that resonates farther than it could from any soapbox." Reno, 521 U. S., at 870.'
- Social media offers "relatively unlimited, low-cost capacity for communication of all kinds." Reno, supra, at 870.
    1. On Facebook, for example, users can debate religion and politics with their friends and neighbours or share vacation photos.
    2. On LinkedIn, users can look for work, advertise for employees, or review tips on entrepreneurship.
    3. And on Twitter, users can petition their elected representatives and otherwise engage with them in a direct manner. Indeed, Governors in all 50 States and almost every Member of Congress have set up accounts for this purpose. See Brief for Electronic Frontier Foundation 15–16. In short, social media users employ these websites to engage in a wide array of protected First Amendment activity on topics "as diverse as human thought." Reno, supra, at 870 (internal quotation marks omitted).

The law applies to social networking sites commonly understood, that is, sites like Facebook, LinkedIn, and Twitter

- 'The Court need not decide the precise scope of the statute. It is enough to assume that the law applies (as the State concedes it does) to social networking sites "as commonly understood"—that is, websites like Facebook, LinkedIn, and Twitter. See Brief for Respondent 54; Tr. of Oral Arg. 27.'

Governmental interest cannot always be insulated from constitutional protections

- However, the assertion of a valid governmental interest "cannot, in every context, be insulated from all constitutional protections." Stanley v. Georgia, 394 U. S. 557, 563.

The state can enact narrowly tailored laws regarding speech in the interest of safety

- Kennedy agreed with the state that sex offenders should not be able to have access to "vulnerable victims" like children – the stated purpose of the law. And he took as a given, for the sake of argument, that states could "enact specific, narrowly tailored laws that prohibit a sex offender from engaging in conduct that often presages a sexual crime."
- 'Second, this opinion should not be interpreted as barring a State from enacting more specific laws than the one at issue. Specific criminal acts are not protected speech even if speech is the means for their commission. See Brandenburg v. Ohio, 395 U. S. 444, 447–449 (1969) (per curiam).'
- 'Though the issue is not before the Court, it can be assumed that the First Amendment permits a State to enact specific, narrowly tailored laws that prohibit a sex offender from engaging in conduct that often presages a sexual crime, like contacting a minor or using a website to gather information about a minor.'

The law must not burden substantially more speech than is necessary to further the government's legitimate interests

- "Even making the assumption that the statute is content neutral and thus subject to intermediate scrutiny, the provision cannot stand. In order to survive intermediate scrutiny, a law must be "narrowly tailored to serve a significant governmental interest." McCullen v. Coakley, 573 U. S. ___, ___ (2014) (slip op., at 18) (internal quotation marks omitted). In other words, the law must not "burden substantially more speech than is necessary to further the government's legitimate interests." Id., at ___ (slip op., at 19) (internal quotation marks omitted)."
- 'The primary response from the State is that the law must be this broad to serve its preventative purpose of keeping convicted sex offenders away from vulnerable victims. The State has not, however, met its burden to show that this sweeping law is necessary or legitimate to serve that purpose. See McCullen, 573 U. S., at ___ (slip op., at 28).'

Criminals will always use new technologies

- 'For centuries now, inventions heralded as advances in human progress have been exploited by the criminal mind. New technologies, all too soon, can become instruments used to commit serious crimes.'

Board of Airport Comm'rs of Los Angeles v. Jews for Jesus, Inc., 482 U. S. 569 (1987) was struck down for breaching the First Amendment

- The better analogy to this case is Board of Airport Comm'rs of Los Angeles v. Jews for Jesus, Inc., 482 U. S. 569 (1987), where the Court struck down an ordinance prohibiting any "First Amendment activities" at Los Angeles International Airport because the ordinance covered all

manner of protected, nondisruptive behaviour including "talking and reading, or the wearing of campaign buttons or symbolic clothing," id., at 571, 575.

- If a law prohibiting "all protected expression" at a single airport is not constitutional, id., at 574 (emphasis deleted), it follows with even greater force that the State may not enact this complete bar to the exercise of First Amendment rights on websites integral to the fabric of our modern society and culture.

But the court should exercise extreme caution before suggesting that the First Amendment provides scant protection for access to social media

- Emphasising that Packingham's case "is one of the first this Court has taken to address the relationship between the First Amendment and the modern Internet. As a result, the Court must exercise extreme caution before suggesting that the First Amendment provides scant protection for access to vast networks in that medium."

Alito's opinion: Social media is not the 21st-century equivalent of public streets and parks, there must remain the ability to restrict the sites that may be visited by dangerous offenders

- Having said that, however, Alito also disputed any suggestion that cyberspace is, as he put it, "the 21st century equivalent of public streets and parks," which would leave states with "little ability to restrict the sites that may be visited by even the most dangerous sex offenders."
- Arguing that "there are important differences between cyberspace and the physical world," he lamented what he described as "loose rhetoric" and "undisciplined dicta" in the majority opinion.
    1. 'After noting that "a street or a park is a quintessential forum for the exercise of First Amendment rights," the Court states that "cyberspace" and "social media in particular" are now "the most important places (in a spatial sense) for the exchange of views." Ante, at 4–5. The Court declines to explain what this means with respect to free speech law, and the Court holds no more than that the North Carolina law fails the test for content-neutral "time, place, and manner" restrictions.'
    2. 'But if the entirety of the internet or even just "social media" sites16 are the 21st century equivalent of public streets and parks, then States may have little ability to restrict the sites that may be visited by even the most dangerous sex offenders. May a State preclude an adult previously convicted of molesting children from visiting a dating site for teenagers? Or a site where minors communicate with each other about personal problems? The Court should be more attentive to the implications of its rhetoric for, contrary to the Court's suggestion, there are important differences between cyberspace and the physical world.'

Social media firms: public utilities or common carriers?

Section 230 effectively gives Big Tech companies common carrier status

- That Big Tech is subject to common-carrier regulation is especially clear because Section 230 already recognises the tech companies as akin to common carriers.
    - Along these lines, Section 230(c)(1) protects Big Tech from being treated as "the publisher or speaker of any information provided by another information content provider."
- In other words, Section 230(c)(1) recognises that the Big Tech platforms and services are conduits for information—that they serve the function of a common carrier.

1. On this account, the section gives them the substantial statutory advantage of immunity from traditional publisher liability, and for a quarter-century they have not objected to it.
2. On the contrary, they lobbied for recognition of their common-carrier-like function, and the corresponding statutory privilege, and they continue to defend it fiercely.

Social media platforms are not just private companies, they enjoyed huge government support that allowed them to build their monopolies

- Common-carrier status is particularly consistent with the First Amendment because the companies aren't merely private actors. Yes, they are private. And they might protest that their dominance is simply a product of their private enterprise and superior product. But they have had profound government support, which helped secure their dominance.
    1. The public privileging of these companies is extraordinary. Consider the fair-use doctrine in copyright law. A teacher can copy a small number of pages to show to a class. Google can copy whole books, and even when it shows only a snippet to the public, it can use the entire volumes to develop its algorithms and offer the public an online index. This appears to have been important for Google's early enticement of the public into its services.
    2. Section 230 privileges tech communication over print and in-person communication by excusing tech companies from liability in the courts. In contrast, paper and in-person communication is still fully subject to liability. The result has been to accelerate and accentuate tech dominance over other modes of speech.
- The problem with Section 230 is that it privileges the companies for serving the function of a common carrier without imposing the corresponding duties.
    1. This makes them uncommon carriers. They are so powerful as to avoid the burdens of common-carrier status while obtaining benefits for their role as conduits.
    2. State antidiscrimination statutes would merely impose a small portion of the common-carrier duties that Big Tech has thus far evaded.
- They achieved this dominance with substantial government privileges, including privileges they sought for serving as a conduit for information. So they can be regulated as common carriers, including with state antidiscrimination provisions.

Common carriage and public utilities get jumbled together, but they are not the same concept

- It's not unusual for common carriage to get jumbled together with other legal concepts, experts say, and it is important to know the difference because the implications could be significant for the future of internet regulation.
- Crucially, and perhaps confusingly, common carriers are not the same as public utilities, even though the terms sometimes get conflated, including in the debate about how to regulate social media.

Public utilities are so essential that the government may run them directly or grant exclusive monopolies. The government can set prices and regulations and require that certain areas are served

- Public utilities are services so essential the government may seek to run them directly, or by granting exclusive monopolies to corporations that then enjoy government-like powers such as eminent domain.
- With a public utility, the government can officially set prices and require that certain areas or populations be served, even if they are unprofitable; that is not the case with common carriers.
- Many public utilities are common carriers, but not all common carriers are public utilities.

Common carriage is an economic regulation that is about ensuring everyone gets the same product. It has nothing to do with monopolies, it is about the service you're getting

- "'Common carriage' is an economic regulation that is about making sure everybody gets the same product," Feld said. "And 'public utility' is about the service being so important, it's not just that you want to have it, you have to have it. … If you're not going to die without it, it's probably not a public utility."
- Social media may be essential to modern democratic societies, but claims that they ought to be considered public utilities carry enormous regulatory implications. And even the Texas and Florida laws stop short of that by resorting to the common carrier framework.
- Common carrier regulation is also not a tool for addressing monopoly or market power, though it is a common misconception that it is, said Barbara Cherry, a law professor at Indiana University. You do not have to be a monopoly to face common carrier obligations, and having monopoly power is not what exposes you to common carrier regulation.
- "Monopoly's got nothing to do with it," she said. "It's got nothing to do with how many carriers there are, it has nothing to do with their market power. it is about the kind of service you provide."

The Florida case claims that social media platforms are akin to newspapers. But newspapers do not hold themselves open to the public for the conveyance of their speech and one paper doesn't hold market dominance

- The recent court opinion questioning the Florida anticensorship statute noted that in censoring some speech, the tech companies are choosing what speech they will convey.
    - From this, the court concluded that the companies' platforms and services were more akin to newspapers than common carriers.
- But unlike a newspaper, these platforms and services are offered to the public for the conveyance of their speech. Unlike a newspaper, they serve the function of a common carrier. What is more, they enjoy market dominance.

Social media firms talking about themselves as utilities

Jack Dorsey has said that Twitter is a public utility

- He insists that Twitter is neither liberal nor conservative; it is a public utility, like water or electricity. "I like technology that is unbiased," he says. His goal in life, however, is a frankly progressive one: by making information freer, he hopes to make the world fairer, kinder, and nicer.

Jack Dorsey and other references to Twitter being a utility

- "Social for us is only one part of what people use Twitter for, and we see the service more as an information utility."

Zuckerberg referencing Facebook being a utility

- Why do you describe Facebook as a "social utility" rather than a "social network?"
    - Zuckerberg: I think there's confusion around what the point of social networks is. A lot of different companies characterized as social networks have different goals — some serve the function of business networking, some are media portals. What we're trying

to do is just make it really efficient for people to communicate, get information and share information. We always try to emphasize the utility component.

- Critics say Facebook is doomed because it is not cool to teens anymore. But Mark Zuckerberg said he doesn't care about Facebook being cool, because now its goal is to be a ubiquitous utility.
    1. "Maybe electricity was cool when it first came out, but pretty quickly people stopped talking about it because it's not the new thing, the real question you want to track at that point is are fewer people turning on their lights because it's less cool?"
    2. He says he wants to create something that is a basic necessity. Responding to Bennett, Zuckerberg says that every economic epoch builds a new fundamental service like electricity. "Our society needs a new digital social fabric," explained Zuckerberg. "We can help build it."

The courts and the question over whether social media is a publisher or common carrier (incl. Florida & Texas rulings)

Government social media accounts can create a public forum

- Government officials routinely use social media to communicate policy, advocate positions, introduce new legislation and for other communication.
- However, once a government entity or government official creates a forum that allows people to comment on posts, the government may run into First Amendment hurdles if the entity or official tries to shut down or silence opposing viewpoints.
- Knight First Amendment Institute v. Trump (2019):
    1. In 2019, the 2nd U.S. Circuit Court of Appeals ruled in Knight First Amendment Institute v. Trump (2019), that President Donald Trump violated the First Amendment by removing from the "interactive space" of his Twitter account several individuals who were critical of him and his governmental policies.
    2. The appeals court agreed with a lower court that the interactive space associated with Trump's Twitter account, "@realDonaldTrump," is a designated public forum and that blocking individuals because of their political expression constitutes viewpoint discrimination.
    3. The U.S. Supreme Court in April 2021 vacated the decision and sent it back to the 2nd Circuit with instructions to dismiss it for mootness — Trump was no longer president. Also, after the Jan. 6, 2021, attack on the U.S. Capitol, Twitter had eliminated his account over concern that his comments were being interpreted as encouragement to commit violence. He was barred from using the platform anymore.
- Davison v. Randall (2019):
    1. In another case, the 4th U.S. Circuit Court of Appeals in Davison v. Randall (2019) found that a Virginia county official created a public forum with her Facebook page. In this case, Phyllis Randall, chair of the Loudon County Board of Trustees, removed one of her constituents Brian Davison from her Facebook page.
    2. The court ruled that the page was a public forum and blocking Davison, who had posted comments about corruption on the county official's page, "amounted to viewpoint discrimination," violative of the First Amendment

Trade associations for the social media companies sued Texas and Florida over there laws, arguing that content moderation was a form of editorial judgment, protected like publishing (but then why should they get Section 230 protection)

- Two states, Florida and Texas, passed similar, though not identical, laws to reduce such blocking, saying the social media companies were discriminating by not allowing certain people to use their platforms based on their political views.
- Trade associations for the social media companies sued the states over the laws, arguing that content moderation, which included removing posts or users, was a form of editorial judgment and protected by the First Amendment as their own speech. Just like the government cannot force a newspaper to publish something, the government cannot force social media companies to allow certain content on their platforms, they argued.
- But Section 230 states:
    - No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

Florida's Circuit Court of Appeals upheld an injunction preventing the law from going ahead, but Texas's Circuit Court of Appeals sided with the state

- In NetChoice v. Attorney General of Florida the 11th Circuit Court of Appeals upheld an injunction preventing the Florida law from going into effect, saying the "Stop Social Media Censorship Act" would likely be found to violate the First Amendment.
    1. The Florida law sought to prohibit social media companies from "deplatforming" political candidates, from prioritising or deprioritising any post or message by or about a candidate and from removing anything posted by a "journalistic enterprise" based on content.
    2. The 11th Circuit held that social media companies are private enterprises that have a First Amendment right to moderate and curate the content they disseminate on their platforms.
- In NetChoice v. Paxton, the court supported Texas's view that social media companies function as "common carriers," like a phone company, and as such, they can be regulated with anti-discrimination laws.
    1. The court said it rejected "the idea that corporations have a freewheeling First Amendment right to censor what people say" on their platforms.
    2. The Texas law "does not regulate the (p)latforms' speech at all; it protects other people's speech and regulates the (p)latform's conduct," the court said.

Florida's law banned misinformation labels which infringe on the First Amendment. But Texas simply banned censorship

- At first blush, Oldham's opinion might seem to conflict with a case from the Eleventh Circuit striking down a similar Florida law. But as Oldham explains, that case was different in two important ways.
- First, Florida's law barred platforms from affirmatively speaking by, for example, attaching misinformation warnings to users' posts. That is, indeed, a violation of the First Amendment—but that is not what Texas' law does. It bans only censorship.
    - When social media companies simply host other people's speech, Oldham's view that they are acting as common carriers seems to fit well. But when they are speaking for themselves, that, of course, is protected speech.
- Second, as Oldham pointed out, the Eleventh Circuit reasoned that social media companies cannot be common carriers if they did not start out as common carries.

- But he made a compelling argument that the Eleventh Circuit is wrong as a matter of historical fact: Many industries began by discriminating against customers, then were made common carriers to fix that exact problem. If that was appropriate for traditional public squares, why not for the modern public square?

Amicus briefs against Florida cited a 1974 Florida case in which the Supreme Court ruled that the Miami Herald was not obliged to post a response from a political candidate the paper criticised

- A 1974 case in which a Florida political candidate sued the Miami Herald for refusing to publish his response to a series of critical editorials.
  - The candidate, Pat Tornillo, argued the Herald was violating a Florida law that gave political candidates the right to have their responses to criticism published in newspapers.
- The Supreme Court ended up striking down Florida's so-called "right-to-reply" law, finding that the law was an "intrusion into the function of editors" and an attempt to impose "a penalty on the basis of the content."
  - The Court even grappled with the fact that newspapers were, at the time, extremely powerful and had undergone substantial consolidation, but ruled in favour of the free press all the same.
- The landmark case, EFF and TechFreedom argue, applies just as readily to social media platforms as it does to newspapers.
  - "Every court that has considered the issue has applied Tornillo to social media platforms and search engines that primarily, if not exclusively, publish user-generated content," the EFF wrote in its brief.

The amicus briefs also cited a ruling where a Boston St Patrick's Day parade was not obliged to give a place to a Gay, Lesbian & Bisexual group

- Another case cited by both groups revolved around the 1993 St. Patrick's Day parade in Boston, in which the Irish-American Gay, Lesbian & Bisexual Group of Boston was denied a place in the parade.
- In a unanimous decision, the Supreme Court found that requiring the organiser — a military veteran named John "Wacko" Hurley — to include the group in the parade would be a violation of the First Amendment.
  - "[W]hen dissemination of a view contrary to one's own is forced upon a speaker intimately connected with the communication advanced, the speaker's [First Amendment] right to autonomy over the message is compromised," the court wrote in its opinion.

Clarence Thomas on the common carrier question

Clarence Thomas refutes this in Biden v. Knight as ultimately Twitter has more control over the space than Trump

- The Second Circuit feared that then-President Trump cut off speech by using the features that Twitter made available to him. But if the aim is to ensure that speech is not smothered, then the more glaring concern must perforce be the dominant digital platforms themselves.
- It seems rather odd to say that something is a government forum when a private company has unrestricted authority to do away with it. The disparity between Twitter's control and Mr. Trump's control is stark, to say the least.
  1. Mr. Trump blocked several people from interacting with his messages. Twitter barred Mr. Trump not only from interacting with a few users, but removed him from the entire platform, thus barring all Twitter users from interacting with his messages.

2. Under its terms of service, Twitter can remove any person from the platform—including the President of the United States—"at any time for any or no reason." Twitter Inc., User Agreement (effective June 18, 2020).

Common carriers must serve all comers and this applies to companies that hold themselves out to the public but do not "carry" freight, passengers, or communications

- Historically, at least two legal doctrines limited a company's right to exclude.
- First, our legal system and its British predecessor have long subjected certain businesses, known as common carriers, to special regulations, including a general requirement to serve all comers.
- Second, governments have limited a company's right to exclude when that company is a public accommodation. This concept—related to common-carrier law—applies to companies that hold themselves out to the public but do not "carry" freight, passengers, or communications

Definitions for common carriers vary, from a carrier possessing substantial market power to a company holding itself out as open to the public

1. Justifications for these regulations have varied. Some scholars have argued that common-carrier regulations are justified only when a carrier possesses substantial market power.
2. Others have said that no substantial market power is needed so long as the company holds itself out as open to the public.

Regulations may be placed on common carriers when a business by circumstances and its nature, rises from private to be of public concern

- And this Court long ago suggested that regulations like those placed on common carriers may be justified, even for industries not historically recognised as common carriers, when "a business, by circumstances and its nature, . . . rise[s] from private to be of public concern." See German Alliance Ins. Co. v. Lewis, 233 U. S. 389, 411 (1914) (affirming state regulation of fire insurance rates).
    - At that point, a company's "property is but its instrument, the means of rendering the service which has become of public interest."

Internet platforms have their own First Amendment rights, but their exclusion rights are restricted if they are common carriers, especially where a restriction doesn't prohibit the company from speaking or endorsing speech. In fact, Section 230 gives them rights

- Internet platforms of course have their own First Amendment interests, but regulations that might affect speech are valid if they would have been permissible at the time of the founding. See United States v. Stevens, 559 U. S. 460, 468 (2010).
- The long history in this country and in England of restricting the exclusion right of common carriers and places of public accommodation may save similar regulations today from triggering heightened scrutiny—especially where a restriction would not prohibit the company from speaking or force the company to endorse the speech. See Turner Broadcasting System, Inc. v. FCC, 512 U. S. 622, 684 (1994)
- Yet Congress does not appear to have passed these kinds of regulations. To the contrary, it has given digital platforms "immunity from certain types of suits," Candeub 403, with respect to content they distribute, 47 U. S. C. §230, but it has not imposed corresponding responsibilities, like non-discrimination, that would matter here.

Social media platforms carry information between users. These firms distribute the speech of the public and federal law dictates that they cannot be treated as publishers or speakers

- Though digital instead of physical, they are at bottom communications networks, and they "carry" information from one user to another.
- A traditional telephone company laid physical wires to create a network connecting people. Digital platforms lay information infrastructure that can be controlled in much the same way.
- And unlike newspapers, digital platforms hold themselves out as organisations that focus on distributing the speech of the broader public. Federal law dictates that companies cannot "be treated as the publisher or speaker" of information that they merely distribute. 110 Stat. 137, 47 U. S. C. §230(c).

Network effects entrench the largest social media companies as carriers and it doesn't matter if there are alternatives.

- The analogy to common carriers is even clearer for digital platforms that have dominant market share.
- Similar to utilities, today's dominant digital platforms derive much of their value from network size. The Internet, of course, is a network. But these digital platforms are networks within that network.
    1. The Facebook suite of apps is valuable largely because 3 billion people use it.
    2. Google search—at 90% of the market share—is valuable relative to other search engines because more people use it, creating data that Google's algorithm uses to refine and improve search results. These network effects entrench these companies.
- Ordinarily, the astronomical profit margins of these platforms—last year, Google brought in $182.5 billion total, $40.3 billion in net income—would induce new entrants into the market.
- That these companies have no comparable competitors highlights that the industries may have substantial barriers to entry
- It changes nothing that these platforms are not the sole means for distributing speech or information.
    - A person always could choose to avoid the toll bridge or train and instead swim the Charles River or hike the Oregon Trail. But in assessing whether a company exercises substantial market power, what matters is whether the alternatives are comparable. For many of today's digital platforms, nothing is.

There may be a need for laws that restrict a platform's right to exclude. And if a government official's social media is a public space, then why does Twitter have the right to close it down?

- If the analogy between common carriers and digital platforms is correct, then an answer may arise for dissatisfied platform users who would appreciate not being blocked: laws that restrict the platform's right to exclude. When a platform's unilateral control is reduced, a government official's account begins to better resemble a "government-controlled spac[e]." (recognising that a private space can become a public forum when leased to the government).
- Common-carrier regulations, although they directly restrain private companies, thus may have an indirect effect of subjecting government officials to suits that would not otherwise be cognizable under our public-forum jurisprudence.
- This analysis may help explain the Second Circuit's intuition that part of Mr. Trump's Twitter account was a public forum. But that intuition has problems.
    1. First, if market power is a predicate for common carriers (as some scholars suggest), nothing in the record evaluates Twitter's market power.

2. Second, and more problematic, neither the Second Circuit nor respondents have identified any regulation that restricts Twitter from removing an account that would otherwise be a "government-controlled space."

Social media platforms resemble the definition of public accommodation

- Even if digital platforms are not close enough to common carriers, legislatures might still be able to treat digital platforms like places of public accommodation. Although definitions between jurisdictions vary, a company ordinarily is a place of public accommodation if it provides "lodging, food, entertainment, or other services to the public . . . in general."
- Twitter and other digital platforms bear resemblance to that definition. This, too, may explain the Second Circuit's intuition. Courts are split, however, about whether federal accommodations laws apply to anything other than "physical" locations.
- Once again, a doctrine, such as public accommodation, that reduces the power of a platform to unilaterally remove a government account might strengthen the argument that an account is truly government controlled and creates a public forum. See Southeastern Promotions, 420 U. S., at 547, 555. But no party has identified any public accommodation restriction that applies here.

The government cannot compel social media companies to censor on its behalf

- For example, although a "private entity is not ordinarily constrained by the First Amendment," Halleck, 587 U. S., at ___, ___ (slip op., at 6, 9), it is if the government coerces or induces it to take action the government itself would not be permitted to do, such as censor expression of a lawful viewpoint. Ibid.
- Consider government threats. "People do not lightly disregard public officers' thinly veiled threats to institute criminal proceedings against them if they do not come around." Bantam Books, Inc. v. Sullivan, 372 U. S. 58, 68 (1963).
- The government cannot accomplish through threats of adverse government action what the Constitution prohibits it from doing directly. See ibid.; Blum v. Yaretsky, 457 U. S. 991, 1004–1005 (1982). Under this doctrine, plaintiffs might have colourable claims against a digital platform if it took adverse action against them in response to government threats.

Arguments against the idea that social media firms are common carriers

Common carrier status would make social media unusable. Facebook took down 25 million pieces of hate speech in one quarter of 2021 but took action against 905 million pieces of spam

- But the social value of forcing tech platforms to publish content that would otherwise violate their policies is questionable at best.
- If Facebook had to carry all the content it removes today, it would be practically unusable. After all, the biggest category of speech Facebook removes is not political speech; it's spam.
    1. Where the company took action on 25 million pieces of hate speech last quarter, it took action against a whopping 905 million pieces of spam.
    2. And that is to say nothing of the tens of millions of pieces of nudity, graphic violence and terrorist propaganda it removed over the same time period.

No common carrier has ever had to serve customers utterly blind to their behaviour

- This, TechFreedom wrote, is precisely what tech platforms are aiming to do by moderating content. "No common carrier has ever had to serve customers utterly blind to their behavior,"

TechFreedom wrote. "Such carriers have always been entitled to refuse service, or bar entry, to anyone who misbehaves, disrupts the service, harasses other patrons, and so on."

Any attempt to filter out spam but keep other speech would put the common carrier status on shaky legal ground

- Forcing Facebook to carry all of those posts is a markedly different thing than forcing the telephone company to carry even offensive calls.
    1. "It doesn't ruin anyone else's experience of a telephone network that people might not like what other people are discussing on the phone," Bergmayer said.
    2. "[People are] mad at particular instances of content moderation where they think the platform got it wrong. You turn it into a common carrier and that problem goes away, but now you've got a thousand new problems that are all way worse."
- One solution to that might be to create carve-outs for spam and other specific types of content, but constitutional experts say that would put any common carrier regulation on shaky legal ground.
- The whole point of imposing a common carrier regime on tech platforms would be to ensure no one's content is getting favoured over anyone else's.
    - "Common carrier laws typically don't have carve-outs. They apply to all content without regard for what it says," said Genevieve Lakier, a University of Chicago law professor, who specialises in speech and constitutional law.

Social media sites do not hold themselves out as serving the public indiscriminately, from the moment users sign up they are told the platforms exercise editorial judgement

- By definition, Newsom wrote in the 11th Circuit ruling, common carriers hold themselves out as serving the public indiscriminately. Social media sites do not. Facebook and Twitter advise users from the moment they sign up that the sites “exercise editorial judgment to curate the content that they display and disseminate,” the 11th Circuit said.

Legislatures cannot simply decree that internet content providers are common carriers just because Twitter and Facebook dominate public conversation

- Nor can legislatures simply decree that internet content providers are common carriers just because Twitter and Facebook dominate public conversation, the appeals court said. “In short, because social-media platforms exercise — and have historically exercised — inherently expressive editorial judgment, they aren't common carriers, and a state law can't force them to act as such unless it survives First Amendment scrutiny,” the court held.

Social media platforms are not like railways, they are more like some of the stops among millions on the Internet’s rail network

- The telecommunications company you pay provides the only transportation of calls from your cell phone to another, and it treats all such calls equally.
- Facebook, Twitter, and the Google-owned YouTube are among many, many options available to those seeking to connect with others on the Internet’s infrastructure.
- Social media companies are not analogous to common carrier infrastructure such as a railroad. It is more accurate to think of these companies as only some of the stops among millions on the Internet’s rail network.

The social media platforms are not monopolies, they compete with each other for digital advertising

- It is correct to note that Google's value is contingent on network effects, but it is misleading to suggest that Google competes in a market for search. Google does not sell search. It competes with many other companies, including Facebook and Twitter in the digital ads market.
- Justice Thomas is incorrect that prominent digital platforms have "no comparable competitors." They compete with each other. Google's way of attracting users and thus ad dollars is to provide excellent search tools.

Social media firms are private entities that have a First Amendment right to expressive conduct

- Social media companies are private entities that have First Amendment rights to decide what content, and which users, to allow on their sites.
- A social media company is engaging in expressive conduct when it curates the content on its site through a combination of promoting, suppressing, filtering, or removing posts or users.

Section 230 encourages social media companies to perform the sort of content-based discrimination that is off-limits to common carriers. Section 230 suggests Congress does not believe the companies are common carriers

- In enacting Section 230 in 1996, Congress understood that the online ecosystem would be more likely to thrive if the companies hosting user-posted content perform content moderation.
- To promote that activity, Congress provided in Section 230(c)(2)(A) that providers of "interactive computer services" (which today includes social media companies) are not liable for "any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected."
- With respect to the enumerated categories of content, U.S. law thus encourages social media companies to perform precisely the sort of content-based discrimination that is off-limits to common carriers.
    - At the very least, this suggests that Congress did not consider "interactive computer services" to be common carriers. It could even be argued that Section 230 pre-empts state legislatures from regulating social media companies as common carriers.

There is much speech that deserves to be taken down

- Third, if the largest social media companies are deemed common carriers and, as the Texas social media law addressed by the Fifth Circuit ruling would require, are (subject to certain exceptions) prevented from blocking content based on the "viewpoint" of the user, that opens the door to all sorts of enormously problematic policy consequences.
- Some users might argue that racist speech is merely expressing a "viewpoint," and that as a common carrier subject (in Texas) to Texas law, the social media company therefore cannot remove it or take steps to impede its propagation.
- Analogous assertions might be made with respect to a long list of content that a social media company has a strong interest in blocking, including posts promoting false medical cures, Holocaust denial, and so on.

As a D.C. circuit court judge, Brett Kavanaugh wrote a dissent in a case, arguing that the FCC's net neutrality protections were a violation of internet service providers' First Amendment rights

- When the FCC reclassified broadband providers as common carriers in its since-overturned Open Internet Rule in 2015, conservative commissioners and legal scholars alike accused the FCC of egregious government overreach.
- In the court case that followed, upholding the FCC's decision, then-D.C. circuit court Judge Brett Kavanaugh himself wrote a dissent, arguing that the FCC's net neutrality protections were a violation of internet service providers' First Amendment rights.
    - "He sounded an incredibly skeptical note about this kind of regulation in general," Lakier said.
- Net neutrality proponents have almost universally slammed Kavanaugh's take in that case. Still, it is hard to see how Kavanaugh could argue that ISPs are entitled to exercise editorial discretion, but social networks are not, suggesting not even the conservative Supreme Court justices are united in Thomas' view.

Arguments for the idea that social media firms are common carriers

Social media firms hold themselves out to the public and provide a service that enables communication, they are the next technological manifestation of the telegraph or telephone networks

- They hold themselves out to the public to provide a service enabling people to communicate with one another. In that respect, they are just a more recent technological manifestation of communications technologies that previously included the telegraph, landline telephone systems, and cellular networks—all of which are regulated as common carriers.

Social media firms have First Amendment rights with respect to their own speech but they do not have an unconstrained right to suppress speech

- Second, while social media companies have First Amendment rights with respect to their own speech, they do not have an unconstrained right to suppress the speech of others.
- In this respect, they are like a telephone company. A telephone company is free to express its own views on issues it deems important.
    1. For instance, it can take public stances on proposed legislation that would impact its business.
    2. It is not free, however, to prevent people from conversing over its networks to express views it disfavours.

Section 230 supports the common carrier classification because it provides a liability shield by ensuring the speech of the user is not the speech of the company

- Section 230 supports, rather than undermines, a common carrier classification because it provides a liability shield through ensuring that the speech of a social media site's users is not the speech of the company that runs the social media site.
- Therefore, if the government compels a social media site to host disfavoured content, it is not compelling the company itself to speak, but is rather compelling the company to refrain from blocking a third party from using its infrastructure to speak.

Social media firms are not like newspapers, as Section 230 established. Traditional publishers are speaking with their content, platforms are simply carrying the speech

- Social media platforms, Oldham wrote, are less like traditional newspapers than they are like phone companies, telegraphs, railroads, and other common carriers.

- Just like a person having a telephone call, the carriers are not 'speaking' simply by carrying their users' messages. Rather, at least in their role as information hosts, they are a "passive receptacle or conduit," and the common law going back centuries has recognised that the government can forbid those companies from discriminating.
    1. This makes sense because when a reasonable person sees an incendiary message on Twitter, they do not immediately assume that Twitter endorses the poster's viewpoint.
    2. On the other hand, someone might reasonably assume that a vile, racist column in the newspaper is sanctioned by the paper's editors, because editors traditionally exercise selective control over their pages.
- Oldham also noted that Congress has also endorsed the view that social media companies are not like newspapers by enacting Section 230 of the Communications Decency Act.
    - Section 230 immunises "interactive computer services," like social media platforms, from civil liability for what their users write on them. Emphasising the internet's capacity to "offer a forum for a true diversity of political discourse," Congress thought it would be burdensome and unfair to treat young internet platforms like traditional publishers.

Florida's law banned misinformation labels which infringes on the First Amendment. But Texas simply banned censorship

- At first blush, Oldham's opinion might seem to conflict with a case from the Eleventh Circuit striking down a similar Florida law. But as Oldham explains, that case was different in two important ways.
- First, Florida's law barred platforms from affirmatively speaking by, for example, attaching misinformation warnings to users' posts. That is, indeed, a violation of the First Amendment—but that is not what Texas' law does. It bans only censorship.
    - When social media companies simply host other people's speech, Oldham's view that they are acting as common carriers seems to fit well. But when they are speaking for themselves, that, of course, is protected speech.
- Second, as Oldham pointed out, the Eleventh Circuit reasoned that social media companies cannot be common carriers if they did not start out as common carries.
    - But he made a compelling argument that the Eleventh Circuit is wrong as a matter of historical fact: Many industries began by discriminating against customers, then were made common carriers to fix that exact problem. If that was appropriate for traditional public squares, why not for the modern public square?

White House pressure on social media and corporate media calls for censorship

Facebook resisted pressure from the White House to censor disfavoured vaccine views

- The Facebook Files reveal that Facebook executives knew censoring disfavoured vaccine views would backfire and explained to White House officials that censoring such views would violate established norms around freedom of speech. But the White House demanded more censorship, anyway.
- In internal emails, Rosa Birch, Facebook's Director of Strategic Response, argued that vaccine censorship would:
    1. "prevent hesitant people from talking through their concerns online…
    2. " and 2 reinforce the notion that there's a cover-up."

- Birch stressed that a large and strong body of research showed the importance of "open dialogue," access to information, and creating "an open and safe space for people to have vaccine-related conversations."
    - Birch worried that censorship might "risk pushing [the vaccine hesitant] further toward hesitancy by suppressing their speech and making them feel marginalized by large institutions."

The White House rejected their concerns and Facebook eventually conceded

- The White House rejected Birch's evidence-based case against censorship.
    - "We are facing continued pressure from external stakeholders, including the white house and the press, to remove more COVID-19 vaccine-discouraging content," Birch wrote to Facebook CEO Mark Zuckerberg and COO Sheryl Sandberg in an April 2021 email.
- But he eventually caved in. "Given what is at stake here," he wrote, "it would also be a good idea if we could regroup to take stock of where we are in our relations with the WH [White House], and our internal methods too."
- And so, in direct response to White House pressure, Birch put forward three stronger enforcement options for the demotion or deletion of "vaccine discouraging content." Listing out the pros and cons of each option, Birch explicitly named satisfying "critics" as a factor in determining which course of action to take.

Demand for censorship also came from mainstream corporate news media

- When the New York Times' Sheera Frenkel published a story about Dr. Joseph Mercola on July 24, 2021, Facebook employees responded to the story by looking for ways to blackhole him.
- The new New York Times story lit a fire under Facebook executives to censor him more. Several Facebook employees engaged in an active effort to search for enforcement grounds, including retroactively looking at offending posts from months earlier.
- All three worked in concert: nonprofits, news media, and the White House. For instance, an email from July 22, 2021, indicates that White House official Andy Slavitt shared a Tweet from NBC "Disinformation reporter" Ben Collins with Facebook staff as part of his campaign to demand more censorship.

The social media companies themselves say that these seem like political and not factual decisions

- Facebook executive and top censor Aaron Berman identified the motivation behind the White House's approach in a July 16 email: the administration was trying to scapegoat social media companies for its own policy failures. "It also just seems like when the vaccination campaign isn't going as hoped, it's convenient for them to blame us," Berman wrote.
    - Nonprofits played a role, particularly a London-based pro-censorship advocacy group called the Center for Countering Digital Hate (CCDH). Facebook considered the radical measure of "off-platform links enforcement" and "blackholing" vaccine critics named by the CCDH as the "Disinformation Dozen."
- As such, the censorship was driven by politics, not science. "This seems like a political battle that's not grounded in facts, and it's frustrating," complained one Facebook executive to Berman.
- Berman agreed: "There are so many untested assumptions in what the administration is saying recently — social media misinfo is increasing, it's leading to death, it has an impact different from misinfo [in] other places — not to mention how their definition of 'misinfo' is completely unclear."

- "The White House rarely provides any specificity about what it wants removed," one employee wrote, "but it routinely complains to us about content identified in critical media reports."

- And why was the White House concerned about the news media? Because the news media shapes public opinion, and public opinion determines the outcomes of elections.

Facebook acknowledged that the administration was pressuring them to censor content that COVID is man made

- For months, mainstream journalists and Democrats have insisted that nobody in the White House was demanding censorship of anybody. They were just "flagging content" and using their own right to free speech to point out "mis- and disinformation."
- But now, newly released emails show that the Biden White House demanded more censorship by Facebook of accurate information about vaccines and Covid's origin.
    1. "Can someone quickly remind me why we were removing — rather than demoting/labeling — claims that Covid is man made," asked Nick Clegg, Facebook's president of global affairs, in a July 2021 email to his coworkers.
    2. Answered a Facebook Vice President in charge of censorship: "We were under pressure from the administration and others to do more. We shouldn't have done it."

The White House even wanted Facebook to take down jokes

- In April of 2021, another Facebook executive emailed CEO Mark Zuckerberg and COO Sheryl Sandberg to say, "We are facing continued pressure from external stakeholders," the person wrote, including the [Biden] White House and the press, to remove more COVID-19 vaccine discouraging content."
- Lest there be any doubt about White House pressure, the Facebook Vice President said, "There is likely a significant gap between what the WH would like us to remove and what we are comfortable removing."
- The White House even demanded that Facebook take down jokes.
    - "The WH has previously indicated that it thinks humor should be removed if it is premised on the vaccine having side effects, so we expect it would similarly want to see humor about vaccine hesitancy removed," said the same Facebook vice president.

Proposals to regulate social media

Congress has repeatedly established regulatory agencies to preserve innovation while minimising hard presented by emerging industries

- For more than a century, Congress has established regulatory agencies to preserve innovation while minimising harm presented by emerging industries.
    1. In 1887 the Interstate Commerce Commission took on railroads.
    2. In 1914 the Federal Trade Commission took on unfair methods of competition and later unfair and deceptive acts and practices.
    3. In 1934 the Federal Communications Commission took on radio (and then television).
    4. In 1975 the Nuclear Regulatory Commission took on nuclear power.
    5. In 1977 the Federal Energy Regulatory Commission took on electricity generation and transmission.

Lindsey Graham's and Elizabeth Warren's Digital Consumer Protection Commission Act would have an independent regulator license and police the internet

- We need a nimble, adaptable, new agency with expertise, resources and authority to do the same for Big Tech.
- Our Digital Consumer Protection Commission Act would create an independent, bipartisan regulator charged with licensing and policing the nation's biggest tech companies — like Meta, Google and Amazon — to prevent online harm, promote free speech and competition, guard Americans' privacy and protect national security.
- The new watchdog would focus on the unique threats posed by tech giants while strengthening the tools available to the federal agencies and state attorneys general who have authority to regulate Big Tech.

U.S programmes

Political police? New docs show DHS program to target "middle-aged pro-life advocates" and "budding conspiracy theorists" under the guise of "deradicalization"

- Newly obtained FOIA documents from America First Legal reveal Department of Homeland Security (DHS) plans to produce training videos that get "bystanders" to intervene against "radicalization" of their peers.
- DHS targeted "suburban Moms" with pro-life beliefs and "old high school friends" who believe in "conspiracies" as examples of radicalised citizens in need of bystander intervention.
- These findings add to the litany of evidence that DHS has shifted its focus from threats of foreign terrorism to monitoring and meddling in domestic US citizen political beliefs.

US Gov't funding 'disinformation' video game 'cat park,' leaked state dept memo reveals

- The US gov't produced a cat-themed "disinformation" video game to "inoculate" young people against populist news content.
- The game aspires to create a "psychological vaccination against fake news" in those surfing social media.
- The US and UK gov'ts plan to embed the game in local schools and educational curricula around the world, especially "ahead of elections."

DHS encouraged children to report their families to Facebook for challenging the US Government's Covid claims

- DHS used US taxpayer dollars to create a cartoon encouraging young people to report their family members to tech platforms for posting 'disinformation' about Covid-19.
- DHS designates US citizen social media opinions about Covid-19 as a 'cyber attack on critical infrastructure' because 'disinformation' is a 'digital threat' to that 'undermines confidence' in public health.
- This means any citizen grievances against US government policies can now be censored by DHS, simply by treating disagreement as a digital threat.

US tax dollars funding text Message censorship In Brazil

- Brazil's election court announced it may nullify election winners who spread online 'misinformation.'
- Hundreds of censorship professionals have been hired to read text message chats in Telegram and WhatsApp for 'misinformation' to report for apps to ban.

- Financing for censorship of Brazilian citizens' text messages is coming from USAID, the State Department, and the National Endowment for Democracy.

A little-known DHS agency assigned to protect cybersecurity has covertly switched its mission to cyber censorship

- DHS pulled off a 'foreign-to-domestic switcheroo' by working with tech companies first to censor 'foreign, inauthentic, coordinated' social media activity (i.e., 'Russian interference') and then switching in summer 2020 to censoring 'domestic, authentic, organic social media activity (i.e., all American citizens accused of spreading 'misinformation').
- DHS invokes a 'whole of society' approach to censorship, meaning every institution in society is pressured to censor the same topics.

DHS quietly purges CISA "mis, dis and malinformation" website to remove domestic censorship references

- More here.

The U.S. State Department funds and partners with a U.K.-based think tank that collaborates with online platforms to censor perceived mis- and disinformation

- The State Department funded the Institute for Strategic Dialogue (ISD), a foreign organisation that works to police online platforms.
- ISD has partnerships with YouTube and Spotify to inform their content moderation decisions, and claims it helps platforms curb "misinformation."
- "By funding organizations – including foreign organizations, no less – that put their thumbs on the scale of hot-button domestic political debates, the federal government is wading into a dangerous Constitutional minefield," Michael Chamberlain, director of government watchdog Protect the Public's Trust, told the Daily Caller News Foundation.

DHS agency appears to be 'burying' evidence of involvement with 'domestic censorship activities': expert

- A federal agency in the Department of Homeland Security (DHS) that hasbeen scrutinised for what critics argue is suppression of dissenting political views under the guise of combating disinformation now appears to be "burying" evidence of its alleged censorship, experts and watchdog groups say.
- The Cybersecurity and Infrastructure Security Agency, or CISA, has come under fire for working with Big Tech companies to flag and take down social media posts related to elections, COVID vaccines, and a range of other issues that were deemed mis-, dis-, and malinformation (MDM).
- Now it appears the agency may be concealing its efforts to monitor domestic content posted by regular Americans and focusing exclusively on its campaign to combat foreign actors in what some observers say is a move designed to hide government overreach, according to research compiled by Mike Benz, the Foundation for Freedom Online's executive director.

The U.S. also spreads misinformation abroad and taxpayer money is used to fund outlets spreading bad information

- The US military, for instance, has deployed fake social media accounts to push certain messages abroad, just as Russia does.
    1. Last year, it was revealed that the Pentagon had used them to spread unverified rumours that Iran was stealing the organs of Afghan refugees.

2. Messages in last year's Twitter Files also exposed how military officials have pretended to be Arab citizens defending the Saudi invasion of Yemen.

- For all the freedom-fighting rhetoric in public, the US government is just as willing to deploy dirty tricks in the service of friendly tyrants.
- Voters, meanwhile, are largely unaware that their tax money is being used to spread falsehoods and outright slander.
    1. In 2019, a scandal erupted when Radio y Televisión Martí, a US state-run broadcaster aimed at audiences in Cuba, ran an antisemitic hit piece on the liberal billionaire George Soros, in which he was described as "a non-practising Jew of flexible morals".
    2. It was the typical sort of conspiracy theory found in Spanish-language anti-communist media, which often traffics in dark fantasies about Left-wing "witchcraft" and the coming dictatorship of "Jews and blacks". Several Radio y Televisión Martí reporters were fired for the Soros report, and an audit found the station rife with "bad journalism" and one-sided "propagandistic" coverage.
    3. The latter accusation was, of course, the point. The explicit policy of the US government — outlined in the 1996 Helms-Burton Act — is to pursue regime change in Cuba. Radio y Televisión Martí, which is run by exiled Cuban dissidents, some of whom spent long and traumatic stints in prison there, is supposed to rile up Cubans. Its mistake was to do so against the wrong target.

The Smith-Mundt Act was designed to great distance between the government's foreign-facing broadcasts and American society, so it would not look like Soviet-style manipulation/disinformation

- Americans are unaware, by design, that they are funding this propaganda. A piece of post-war legislation called the Smith-Mundt Act was designed to create a firewall between American society and the government's foreign-facing broadcasters, to avoid the appearance of Soviet-style domestic manipulation.
- The Smith-Mundt Act also instructs the US government to use "private agencies" for its propaganda "to the maximum extent practicable".
    - In practice, this means dumping a lot of money into disreputable activist groups such as the Iran Disinformation Project and its counterparts in other countries.

Signature reduction: The 60,000-undercover force acting abroad also spreads information and conducts cyber warfare

- Undeterred, the US government has continued to invest in its massive army of undercover social media accounts around the world.
    - It remains unclear exactly how extensive it is, though a report by the Stanford Internet Observatory last year revealed the kind of content the US government pushes clandestinely.
- The largest undercover force the world has ever known is the one created by the Pentagon over the past decade.
    1. Some 60,000 people now belong to this secret army, many working under masked identities and in low profile, all part of a broad program called "signature reduction."
    2. The force, more than ten times the size of the clandestine elements of the CIA, carries out domestic and foreign assignments, both in military uniforms and under civilian cover, in real life and online, sometimes hiding in private businesses and consultancies, some of them household name companies.
- The unprecedented shift has placed an ever greater number of soldiers, civilians, and contractors working under false identities, partly as a natural result in the growth of secret

special forces but also as an intentional response to the challenges of traveling and operating in an increasingly transparent world.

- The explosion of Pentagon cyber warfare, moreover, has led to thousands of spies who carry out their day-to-day work in various made-up personas, the very type of nefarious operations the United States decries when Russian and Chinese spies do the same.

- Newsweek's exclusive report on this secret world is the result of a two-year investigation involving the examination of over 600 resumes and 1,000 job postings, dozens of Freedom of Information Act requests, and scores of interviews with participants and defence decision-makers.
    1. What emerges is a window into not just a little-known sector of the American military, but also a completely unregulated practice.
    2. No one knows the program's total size, and the explosion of signature reduction has never been examined for its impact on military policies and culture.
    3. Congress has never held a hearing on the subject. And yet the military developing this gigantic clandestine force challenges U.S. laws, the Geneva Conventions, the code of military conduct and basic accountability.
- The signature reduction effort engages some 130 private companies to administer the new clandestine world.
    1. Dozens of little known and secret government organisations support the program, doling out classified contracts and overseeing publicly unacknowledged operations.
    2. Altogether the companies pull in over $900 million annually to service the clandestine force—doing everything from creating false documentation and paying the bills (and taxes) of individuals operating under assumed names, to manufacturing disguises and other devices to thwart detection and identification, to building invisible devices to photograph and listen in on activity in the most remote corners of the Middle East and Africa.
- The newest and fastest growing group is the clandestine army that never leaves their keyboards.
    - These are the cutting-edge cyber fighters and intelligence collectors who assume false personas online, employing "nonattribution" and "misattribution" techniques to hide the who and the where of their online presence while they search for high-value targets and collect what is called "publicly accessible information"—or even engage in campaigns to influence and manipulate social media. Hundreds work in and for the NSA, but over the past five years, every military intelligence and special operations unit has developed some kind of "web" operations cell that both collects intelligence and tends to the operational security of its very activities.

The U.N is training countries to censor its citizens

The U.N has been taking its cues from organisations that seek to censor Conservatives

- The Daily Caller published a piece examining a new United Nations policy proposal that outlines how to “combat online ‘mis- and disinformation and hate speech,’” including by demonetising people and social media channels online. The policy proposal is informed by groups that actively censor conservative political speech online, most notably the Global Disinformation Index.

The U.N is training countries and citizens to censor

- The United Nations is training people worldwide to demand censorship by social media platforms of their fellow citizens for "potentially harmful content." At least one U.S.-government funded group, The Atlantic Council, is involved.
    - Its program is called “Social Media 4 Peace.” It is a pilot program for pro-censorship activists based in Bosnia, Herzegovina, Colombia, Indonesia, and Kenya. It is sponsored by the United Nations Educational, Scientific, and Cultural Organization (UNESCO).
- The U.N. effort emphasises research and "monitoring." But, as in the U.S., the explicit goal is to pressure social media platforms to censor disfavoured voices.
    - And the U.N. censors are going further than U.S. censors did. Some even demand censorship of "negative comments about public figures’ appearances." Others require the power to censor “slang” that social media platforms might miss.
- As troubling, Facebook and Google are already working with the UN-funded Censorship Industrial Complex.

The U.N is financing programs to censor information, spread propaganda, brainwash youth, train hackers, and to train spin journalists

- As for the U.N., it is seeking to create “appeals councils” to pressure social media companies to censor disfavoured views and people.
    - The U.N. is U.S. taxpayer-funded, which means Americans are funding the spread of the Censorship Industrial Complex worldwide, indirectly and directly through the Atlantic Council.
- The U.N.’s censorship activists are financing pilot programs to create "new tools" (e.g., artificial intelligence) to censor disfavoured speech automatically.
    - In the U.S., DARPA and NSF are both funding similar tools. The U.N. project touts censorship of covid information as a model for their efforts.
- The same pilot programs (in Bosnia and Herzegovina, Colombia, Indonesia, and Kenya) are developing strategies for spreading propaganda ("peace-building narratives"), brainwashing ("empower") youth ("to be more resilient to harmful content"), training hackers, and spin journalists.

The U.N appears to want to sell these program

- The U.N.’s intent appears to sell the program to other nations. One of its goals is to "Inform the global community of the lessons learnt of the project." And, like the "Election Integrity Project" and "Virality Project," another goal of "Social Media 4 Peace" appears to be to get people comfortable with censorship.
- The “Social Media 4 Peace” program builds on a 2020 propaganda “handbook” for “fighting fake news” called Journalism, 'Fake News' and Disinformation: A Handbook for Journalism Education and Training.

The UNESCO project has links to Jordan, which ranks 134th out of 179 for press freedom

- The whole UNESCO endeavour has a curious relationship with the nation of Jordan.
    - “Unchecked and even untrue facts and news are often inadvertently spread by citizens; the mutation of that news into misinformation has been as contagious as coronavirus,” said Costanza Farina, UNESCO Representative to Jordan. “The Arabic version of this publication comes at a critical moment for all those who practice or teach journalism in the Arab region.”

- But according to Journalists Without Borders, Jordan ranks 134th out of 179 nations in terms of press freedom, making it one of the least free nations in the world. A different ranking, by the Center for Defending Freedom of Journalists, classifies the kingdom as having a "restricted" media environment.
- And last year, the Jordanian parliament voted to increase the punishment for journalists who covered secret trials. Already the nation had banned coverage of "sensitive" and "controversial" issues, including labour protests, corruption, and the royal family.
- What, in the end, is going on? Simple: global elites, panicked by the freedom created by the Internet and social media, are working through the U.N. to impose on the free world the same forms of censorship used in repressive societies like Jordan.

The Five Eyes nations and the E.U's pressure on Meta

The Five Eyes nations have tapped into cultural divisions to stir up social conflict, and now all five use the same language of "disinformation" etc. to demand legislation curbing speech

- It is notable that the CIA and other intelligence agencies have, for decades, tapped into ethnic and racial divisions to stir up social conflict in service of regime change. Could something similar be happening in the U.S. and other Western nations?
- I started noticing the pattern at the same time I started noticing that censorship advocates with close ties to the Intelligence Community in the U.S., Canada, U.K., Australia, and New Zealand were all using the exact same language of "disinformation," "hate speech," and demanding legislation for governments to curb "real-world harm" on line.
- After I tweeted about it, several people pointed out that this group of nations is known as the "Five Eyes" because they have shared intelligence with each other, particularly about each other's citizens, to evade domestic prohibitions on spying, since World War II.

These five countries are running censorship operations, with bodies and departments focused on demanding censorship. They must be stopped and this can be done through exposure

- It's now clear that such spying operations have become censorship operations. So-called "research" into "disinformation" is being created by groups like the UK's Institute for Strategic Dialogue to demand censorship, by social media platforms, of disfavoured voices and to encourage advertisers to boycott Twitter and disfavoured publications.
- We thus have a pressing need to map and expose the Censorship Industrial Complex in all Five Eye nations. We cannot wait for governments to act. We must assume that censorship will continue until we stop it.
- Sunlight remains the best disinfectant. After the Department of Homeland Security's "Disinformation Governance Board" came to light, the public backlash was so strong that the Biden White House killed it. Then, after it was revealed that the Cybersecurity and Infrastructure Security Agency (CISA) was engaged in censorship, it quietly removed references on its website to its domestic "disinformation" efforts.

The CBC sent menacing letters to Twitter, essentially threatening to reform the company

- In a May 6, 2021 letter from CBC to Twitter, the president and CEO of CBC says, menacingly, that "advertisers, public policy makers, and politicians are increasingly focused on the risks" and descries "legislative action to hold digital companies accountable."
- Consider the bullying language in an earlier letter by CDC to Twitter. "Your lack of action on this problem is extremely troubling," they wrote. "It also gives credence to those in this country who believe that legislation is necessary in order to ensure that Twitter enforces its own guidelines, and abides by domestic laws and regulations."

The Biden White House told Facebook that the January 6th insurrections were plotted "on your platform". If that is true, then how is their Section 230 protection

- That bullying language is the same kind of bullying language used by Biden administration officials when demanding Facebook covid censorship.
    - "We are gravely concerned that your service is one of the top drivers of vaccine hesitancy - period," said a White House official in 2021 to a Facebook executive, adding that the company was at risk of "doing the same" thing it did before the Jan 6, 2021 riot at the US Capitol when "an insurrection …was plotted, in large part, by your platform."

The E.U wants to ban "data flows" of European users to America by Facebook. Meta wanted help from the White House to handle the problem, and eventually, the E.U and U.S. signed a deal - so by giving more censorship, Meta got their data

- But newly released internal emails show that Facebook executives felt pressure to comply with White House demands in order to resolve a European Union ban on the social media company's ability to transfer the data of European users to its servers in the United States.
- In July 2021, after a White House official demanded that Facebook censor more information, Facebook's Vice President of Global Affairs and Communications, Nick Clegg, asked his colleagues to comply. The reason? Because of "the bigger fish we have to fry with the Administration — data flows etc…"
    - By "data flows," Clegg was referring to the EU's demand that Facebook stop transferring European user data — which Facebook advertisers value for targeting customers — to the United States.
    - A potential end of EU-to-US data flows is an even more urgent threat to Facebook's business than White House threats to Section 230. About ten percent of Facebook's total global advertising revenue, $1.2 billion, comes from selling ads in the EU.
- The dispute was no small matter. In May of this year, EU regulators fined Meta, Facebook's parent company, a record $1.3 billion for breaking the EU's privacy regulations. The regulator said that Meta had violated a 2020 ruling by the EU's highest court.
- Two months later, on July 10, 2023, the Biden Administration and the European Union announced a deal, the "EU-US Data Privacy Framework."
    - The series of events suggests a quid pro quo. Facebook would bow to White House requests for censorship in exchange for its help with the European Union.

This is a violation of the First Amendment because it involves coercion and the government seeking censorship through contract or conspiracy

- "This is a gross violation of the First Amendment," Columbia Law School Professor Philip Hamburger told Public, "not only because it involves what the Supreme Court considers 'coercion,' but also because it's equally unconstitutional for the government to seek censorship through contract or conspiracy. And that's what happened here."

The E.U kept fining Meta

- While neither Congress nor the Biden Administration have shown much willingness to follow through on their threats to modify Section 230, the European Union has imposed fine after fine on Meta/Facebook. Last November, EU regulators fined Meta $291 million for a leak of its data.
    - And in January of this year, they fined Meta $429 million for making users accept personalised ads in order to use Facebook.

- All of which raises the question: why did EU leaders cut a deal with the Biden White House to allow Meta to move data to the United States? While it is clear what Facebook and the White House got out of the secret quid pro quo, what did Europe get?

Worldwide push toward censorship

Ted Cruz has accused the FTC of meeting with European officials to discuss incoming EU rules to rein in Big Tech. The EU opened a San Francisco office as it cracks down on Big Tech

- Sen. Ted Cruz called for details on the Federal Trade Commission's work with its European counterparts in a letter to FTC Chair Lina Khan on Tuesday.
- The conservative Texas lawmaker criticised Khan and other FTC staff for meeting with European Commission officials to discuss incoming EU rules designed to rein in Big Tech companies, which are largely U.S.-based.
    - "It is one thing for the EU to target U.S. businesses," the letter said, but "it is altogether unthinkable that an agency of the U.S. government would actively help the EU" on its digital platform regulation.
- Last fall, the EU opened the San Francisco office—the only secondary office the EU has ever opened in a country where it already had a delegation—stating that it was necessary "to strengthen transatlantic technological cooperation and to drive the global digital transformation based on democratic values and standards."
- The timing of the office's establishment, however, suggests more is at play. The EU's San Francisco office opened its doors six weeks after the European Council approved the Digital Markets Act ("DMA") and four weeks before the European Council approved the Digital Services Act ("DSA").
    - More here.

France wants to shut down social media during riots, just days after decrying internet shutdowns elsewhere in the world

(link)

Under the guise of preventing "harm" and holding large tech companies accountable, several countries are establishing a vast and interlinked censorship apparatus

- Politicians, NGOs, and their enablers in the news media claim that their goal is merely to protect the public from "disinformation." But vague definitions and loopholes in new laws will create avenues for broad application, overreach, and abuse.

These restrictions are happening with almost no publicity and outcry. The media are blacking out talk because they support the new laws

- Officials have introduced these policies mostly in the dead of night with little publicity or outcry. There has been a virtual blackout of what's happening by mainstream news media corporations, with many appearing to support the new laws.
- As shown with the Twitter Files, the Censorship Industrial Complex is as much about discrediting accurate facts, true narratives, and content creators who threaten its power while boosting the ones that do.
- We are thus witnessing the emergence of a governmental apparatus with the power to control the information environment in ways that determine what people believe to be true and what is false.

The Biden administration tried to create a department of censorship. After their failure, they are regrouping with NGOs

- Last year, the Biden administration tried to create a department of censorship ("Disinformation Governance Board") at the Department of Homeland Security that triggered a strong enough backlash to shut it down.
- The censorship board was the brainchild of "former" CIA Fellow Renee DiResta of the Stanford Internet Observatory and her allies, including Senator Warner, The Atlantic Council, the University of Washington, and Graphika.
- What's happening now appears to represent the re-grouping of censorship advocacy that occurred after that defeat. With some notable exceptions, the demand for censorship is being driven by center-Left parties, with NGOs playing a subservient role.

The censors are tapping into social grievances to get their way, and often they have direct ties to military and intelligence. It used to be 'national security', now it is 'preventing harm'

- Politicians are invoking a Woke defence of "preventing harm" that is very different from the older pretext for censorship, national security. The push is race-based, immigration-based (e.g., Ireland), trans-based (e.g., Ireland and Australia), and safety- or health-based (e.g., the EU).
- And yet it is obvious that such censorship has nothing whatsoever to do with "protecting vulnerable communities" and everything to do with framing populist political voices as racist, homophobic, and climate denying witches.
- In many cases, the people advocating the censorship have direct ties to military and intelligence organisations, and are cynically tapping into historically meaningful movements, and manipulating emotions including guilt, revenge, and anger to advance sectarian political goals.

The left is taking its usual position of denying that there is any censorship industrial complex

- It is for that reason that former liberals like Lawrence Tribe and the New York Times have taken to denying the existence of a censorship industrial complex while simultaneously demanding more censorship.

Censors like Jacinda Arden say misinformation is often "imported", ignoring how her own views are imported

- Consider the case of Arden. She imposed the most extreme Covid policies of any leader in the world in the world, including "zero Covid," outdoor masking, and vaccine passports. Arden smeared protesters of her Covid policies as "imported," and thus illegitimate, a classic "disinformation" tactic.
- In fact, Arden is herself a tool of foreign elites, including the World Economic Forum's Klaus Schwab. And much of her own support came from ex-pats who no longer live in New Zealand.

In 2017, Germany passed a law preventing the dissemination of hate speech and fake news stories

- When Twitter banned Trump, he found a seemingly unlikely defender: Chancellor Angela Merkel of Germany, who criticised the decision as a "problematic" breach of the right to free speech.
- This wasn't necessarily because Merkel considered the content of Trump's speech defensible. The deplatforming troubled her because it came from a private company; instead, she said through a spokesman, the United States should have a law restricting online incitement, like the one Germany passed in 2017 to prevent the dissemination of hate speech and fake news stories.

In Ireland and Scotland, police can invade people's homes to confiscate devices to prevent hate speech from escalating

- "Keeping hate speech from escalating into something more dangerous" is precisely the justification for censorship that politicians in Ireland and Scotland are making to be able to invade people's homes and confiscate their phones and computers, as Irish reporter Ben Scallan described yesterday.
- Consider the twisted logic. Irish police must invade people's homes in order to make sure that their hate materials do not escalate into something that could be illegal.
    - That is a totalitarian move toward the police enforcing "precrime," as depicted in the terrifying science fiction thriller Minority Report.

Scotland made "stirring up hatred" a criminal offence. Even hate speech at the dinner table in people's homes is criminalised

- In 2021, the Scottish government made "stirring up hatred" a criminal offense. Its sweeping law, which comes into effect next year, even criminalised hate speech at the dinner table in people's homes.
- An NGO called "The Coalition for Racial Equality and Rights" (CRER) was the driving force behind the legislation. It produced a report about online hate speech, and at least one of its employees advocated to the government that it adopt the legislation. CRER went on to advise the government through the Justice Committee that the law should include expansive reporting and should consider "insulting" behaviour to be part of "stirring up hatred."

Ireland has 30,000 NGOs with an annual budget of €6 billion. The annual budget of Ireland is €103 billion. As such, these groups wield enormous power and influence within Ireland.

- One of the main groups leading the demand for Ireland's home hatred censorship legislation is the Irish Network Against Racism. It, like CRER in Scotland, is a branch of the European Network Against Racism, or ENAR. The Open Societies Foundations, which Soros created and funds, donates heavily to ENAR. And NGOs like this have a significant impact on Irish politics when it comes to issues like hate speech laws.

- The Republic of Ireland, which has a population of just 5 million people in total, has a whopping 30,000 NGOs, with an annual budget of around €6 billion. For a sense of scale here, Ireland's entire annual budget is only €103 billion.
- If you're an NGO worker who makes your bread and butter on combating "hate," then Ireland not being a hateful country is an existential problem.

Brazil is cracking down on people's speech based on what they say online. Lula's government is creating departments to "tackle hate speech"

- The censorship is coming from the president of Brazil's Supreme Electoral Court (TSE), Alexandre de Moraes, who has used his unique powers to investigate, prosecute, and deplatform high-profile people, including "the Joe Rogan of Brazil," for things they've said online.
- In total, De Moraes has singlehandedly banned over 100 Brazilians on social media between July 2020 and April 2023.
- But instead of pushing back, Lula's government has been trying to formalise and usurp De Moraes' authority for itself.
    1. In his first month as president, Lula created the "Department to Promote Freedom of Speech'' to tackle "disinformation and hate speech on the internet," followed by the "National Prosecutor's Office for the Defense of Democracy."
    2. These two departments would jointly constitute an Orwellian "Ministry of Truth," capable of censoring and punishing those guilty of wrongspeak. And Lula's Workers Party has been pushing through Congress a "Fake News" bill, which would further institutionalise the censorship regime.

More examples of a worldwide push towards censorship

The E.U. is seeking powers to regulate social media companies. They must share their data with "vetted researchers" and cede content moderation to NGOs and their state sponsors

- The key area of action is the European Union. It is seeking sweeping new powers to regulate social media companies. And if it acts, it may change how social media companies operate worldwide, given the EU's economic power and influence globally.
- Under the EU's Digital Services Act, large tech companies must share their data with "vetted researchers" from non-profits and academia, which would cede content moderation to NGOs and their state sponsors.

Macron and the E.U want to shut down social media when it "incites riots". France has also passed a new law that allows to police to spy on people by taking control of their devices

- Social media companies, including TikTok, Snap, and Twitter, caused people in France to riot and so the government should shut them down, say French President Emmanuel Macron and the European Union's top censor, Thierry Breton.
- Said Macron, "When things get out of hand, we may have to regulate them or cut [social networks] off." The reason, Breton explained today, is that "Social media didn't do enough" to remove "content that is hateful, that calls to revolt and to kill." Warned Breton, "If they don't do it, they will be sanctioned immediately."
- And their calls for greater censorship come at the same moment that the Macron government has passed a new law allowing police to spy on people by secretly taking control of their phones and laptop computers and activating the microphone, camera, and GPS.
    - The government says a judge will have to approve all spying, but it is reasonable to worry about abuses of power. In 2013, military contractor Edward Snowden revealed mass US government spying without a warrant.

The Online Safety Bill will give Ofcom the power to push social media sites to remove "offensive" content and issue fines if they fail to do so

- Nadine Dorries has pushed ahead with the dreaded Online Safety Bill (OSB) which, to be clear, will result in censorship. The Tories have thus caved to the decade-long cacophony of intellectually dishonest Left-wing guff about hate speech, where strong words are seen to be no different to an act of violence.
- Under the Online Safety Bill, Ofcom, the state broadcast regulator, will have the whip hand over the online realm, gaining the power to push social media sites to remove "offensive" content and issuing fines if they fail to do so.
- You would be naive to think that this watchful eye would be restricted entirely to personal posts. In many ways, journalism itself will become the concern of the British state and its associated apparatchiks. Big Brother Boris' government may end up ordering social media companies like Gettr to remove content that may have "a significant adverse…psychological impact on an adult of ordinary sensibilities."
- Michelle Donelan, has told Silicon Valley that she'll come after them for "billions of pounds" if children find the wrong content. So the obvious thing for them to do is censor for everyone.

A secretive government unit in Britain made hourly contact with social media companies in an attempt to curtail discussion of controversial lockdown policies during the pandemic

- The Counter-Disinformation Unit (CDU) was set up by ministers to tackle supposed domestic "threats", and was used to target those critical of lockdown and questioning the mass vaccination of children.
    - A secretive government Covid unit accused of seeking to suppress free speech during the pandemic was in "hourly" contact with social media firms, the official in charge of the operation has disclosed.
- Critics of lockdown had posts removed from social media. There is growing suspicion that social media firms used technology to stop the posts being promoted, circulated or widely shared after being flagged by the CDU or its counterpart in the Cabinet Office.
- Documents revealed under Freedom of Information (FoI) and data protection requests showed that the activities of prominent critics of the Government's Covid policies were secretly monitored.
- An artificial intelligence firm (AI) was used by the Government to scour social media sites. The company flagged discussions opposing vaccine passports.
- Many of the issues being raised were valid at the time and have since been proven to be well-founded.
- The BBC also took part in secretive meetings of a government policy forum to address the so-called disinformation.

The US's RESTRICT Act threatens prison and fines for accessing blacklisted websites through VPNs

- The US's RESTRICT Act, sponsored by Senator Mark Warner (D-VA), threatens 20 years in prison or a $250,000 fine for accessing blacklisted websites through "virtual private networks," or VPNs, which are ways to create a private connection between a computer or phone and the Internet.
- There has been no moment similar to this one in the roughly 30 years of widespread public Internet usage in Western societies.

Irish ministers want the police to enter people's homes without a warrant to search devices for hate speech while Damien Collins MP wants to break encryption. The UK government had its secret unit to curb dissent

- In Ireland, Justice Minister Helen McEntee is urging the passage of legislation that would allow the police to enter people's homes without a warrant to search phones and computers for hate speech.
- In Britain, MP Damien Collins wants to break the encryption so he can read private text messaging companies in the name of protecting children.
- The UK government worked with BBC, Google, and Facebook to secretly censor valid criticisms of Covid lockdowns and vaccines for kids.
- And in every English language country there is an aggressive and successful effort by governments, think tanks, and news media companies to force social media platforms to censor critics of environmental alarmism.

Canada can manipulate what its citizens see online, Australia can compel companies to remove posts, the UK and Ireland threaten imprisonment while Brazil threatens fines

- In Ireland, for example, the government may soon be able to imprison citizens simply for possessing material that officials decide is "hateful." Under the RESTRICT Act in the US, the government may soon have the authority to monitor the Internet activity of any American deemed a security risk.
- Governments aim for total control. In Canada, a state agency can filter and manipulate what Canadians see online.
- In Australia, a single government official can compel social media companies to remove posts.
- Governments and allied NGOs intend to force tech companies to comply with their rules. UK lawmakers have threatened to imprison social media managers who do not censor enough content. And Brazil has introduced severe penalties for platforms that fail to remove "fake news."

Countries are funding organisations that advocate for censorship

- Yet this support cannot be taken in isolation; more often than not, it is the result of funding from governments.
- It was, after all, Renee DiResta, a former CIA Fellow at Stanford University, who proposed that DHS create a "Disinformation Governance Board"; in Brazil, meanwhile, a Supreme Court judge is leading calls for greater censorship; in Canada, it is Justin Trudeau who has sought a crackdown on wrongspeech; and in the UK, the Institute for Strategic Dialogue is funded by the UK government and the US Department of Defense.

Background of attitude towards censorship in Europe and America

European nations balance free speech rights with other rights because of their history with fascism and propaganda

- Among democracies, the United States stands out for its faith that free speech is the right from which all other freedoms flow.
- European countries are more apt to fight destabilising lies by balancing free speech with other rights. it is an approach informed by the history of fascism and the memory of how propaganda, lies and the scapegoating of minorities can sweep authoritarian leaders to power.
- Many nations shield themselves from such anti-pluralistic ideas.

1. In Canada, it is a criminal offense to publicly incite hatred "against any identifiable group."
2. South Africa prosecutes people for uttering certain racial slurs.
3. A number of countries in Europe treat Nazism as a unique evil, making it a crime to deny the Holocaust.

A counter-tradition to the idea that good ideas triumph is that totalitarians can invoke free speech to play a trick

- there is a counter tradition, however. it is alert to the ways in which demagogic leaders or movements can use propaganda, an older term that can be synonymous with disinformation.
    - A crude authoritarian censors free speech. A clever one invokes it to play a trick, twisting facts to turn a mob on a subordinated group and, in the end, silence as well as endanger its members.
- Looking back at the rise of fascism and the Holocaust in her 1951 book "The Origins of Totalitarianism," the political philosopher Hannah Arendt focused on the use of propaganda to "make people believe the most fantastic statements one day, and trust that if the next day they were given irrefutable proof of their falsehood, they would take refuge in cynicism."
    - In other words, good ideas do not necessarily triumph in the marketplace of ideas. "Free speech threatens democracy as much as it also provides for its flourishing," the philosopher Jason Stanley and the linguist David Beaver argue in their forthcoming book, "The Politics of Language."

America's history comes from dissent, which means curtailing speech would not survive Supreme Court review

- In the United States, laws like these surely would not survive Supreme Court review, given the current understanding of the First Amendment — an understanding that comes out of our country's history and our own brushes with suppressing dissent.
- The First Amendment did not prevent the administration of John Adams from prosecuting more than a dozen newspaper editors for seditious libel or the Socialist and labour leader Eugene V. Debs from being convicted of sedition over a speech, before a peaceful crowd, opposing involvement in World War I.
- In 1951, the Supreme Court upheld the convictions of Communist Party leaders for "conspiring" to advocate the overthrow of the government, though the evidence showed only that they had met to discuss their ideological beliefs.

The 1960s embraced the vision of the First Amendment. Brandenburg v. Ohio set a high bar for punishing inflammatory words, namely to stop the government from using its power to silence its enemies

- It wasn't until the 1960s that the Supreme Court enduringly embraced the vision of the First Amendment expressed, decades earlier, in a dissent by Justice Oliver Wendell Holmes Jr.: "The ultimate good desired is better reached by free trade in ideas."
- In Brandenburg v. Ohio, that meant protecting the speech of a Ku Klux Klan leader at a 1964 rally, setting a high bar for punishing inflammatory words.
- Brandenburg "wildly overprotects free speech from any logical standpoint," the University of Chicago law professor Geoffrey R. Stone points out. "But the court learned from experience to guard against a worse evil: the government using its power to silence its enemies."

The court was willing to press private entities to ensure they allowed different voices to be heard

- This era's concept of free speech still differed from today's in one crucial way: The court was willing to press private entities to ensure they allowed different voices to be heard.
- As another University of Chicago law professor, Genevieve Lakier, wrote in a law-review article last year, a hallmark of the 1960s was the court's "sensitivity to the threat that economic, social and political inequality posed" to public debate.
- As a result, the court sometimes required private property owners, like TV broadcasters, to grant access to speakers they wanted to keep out.

But in the 1970s, the Supreme Court granted almost total freedom for private owners to decide who could speak through their outlets

- But the court shifted again, Lakier says, toward interpreting the First Amendment "as a grant of almost total freedom" for private owners to decide who could speak through their outlets.
- In 1974, it struck down a Florida law requiring newspapers that criticised the character of political candidates to offer them space to reply.
- Chief Justice Warren Burger, in his opinion for the majority, recognised that barriers to entry in the newspaper market meant this placed the power to shape public opinion "in few hands." But in his view, there was little the government could do about it.

The radio and television offered a precedent for intervention in speech

- There is no consensus on a path forward, but there is precedent for some intervention. When radio and television radically altered the information landscape, Congress passed laws to foster competition, local control and public broadcasting.
- From the 1930s until the 1980s, anyone with a broadcast license had to operate in the "public interest" — and starting in 1949, that explicitly included exposing audiences to multiple points of view in policy debates. The court let the elected branches balance the rights of private ownership with the collective good of pluralism.
- This model coincided with relatively high levels of trust in media and low levels of political polarisation.
    - That arrangement has been rare in American history. it is hard to imagine a return to it.
    - But it is worth remembering that radio and TV also induced fear and concern, and our democracy adapted and thrived. The First Amendment of the era aided us. The guarantee of free speech is for democracy; it is worth little, in the end, apart from it.

Why is censorship growing around the world?

The left-wing authoritarians act as they do to "prevent harm" and "protect the vulnerable", which is narcissistic. The right-wing authoritarians want social order. The censors combine the two

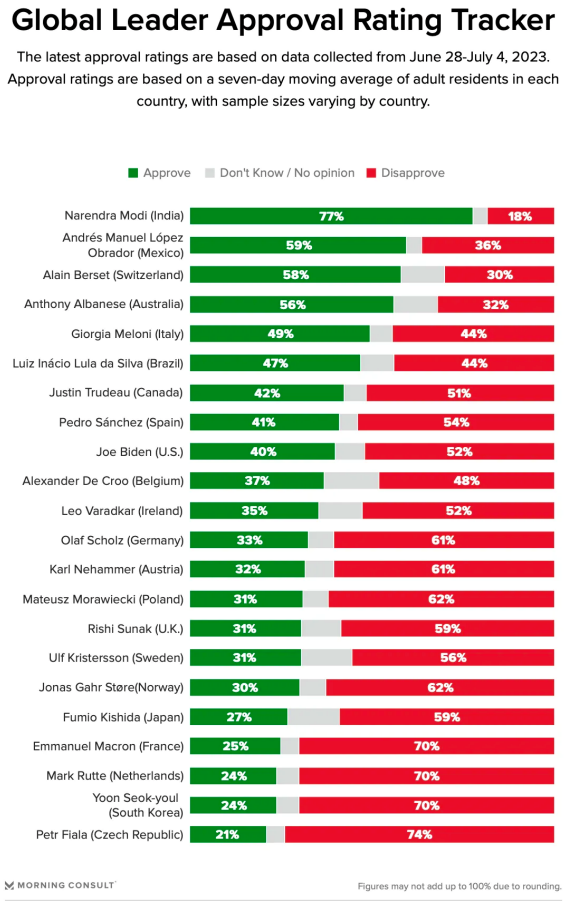
- Many of the people demanding censorship appear to have rather dark psychological motivations.
    - A March study by Swiss psychologists found that Left-wing authoritarianism, like the kind seeking censorship in the name of "preventing harm" and "protecting vulnerable communities," is fundamentally narcissistic, which is defined by a strong sense of entitlement, grandiosity, and "splitting," meaning seeing the world in black and white.
- But in the case of the French riots, the impulse to censor stems more from a desire for social order, which tends to come from right-wing authoritarianism more than left-wing authoritarianism.

- "Individuals with high levels of [right-wing authoritarianism," noted the Swiss psychologists, tend to strive for "conservative social norms and values (i.e., conventionalism)... compliance with established authorities… and antagonistic behavior toward outgroup members."

- What's so disturbing about the call by Macron and Breton for greater censorship is that they are effectively marrying together both Left-wing and Right-wing authoritarianism, the former being about reducing harm, particularly against vulnerable communities, and the latter about maintaining norms like public order, particularly from threats from outgroup members.

Many of the governments calling for censorship are unpopular

- Of course, the elites' crackdowns would not be happening were the French, Irish, and British governments more popular. Macron has a 25% approval rating and a 70% disapproval rating. Irish Prime Minister Leo Varadkar has a 35% approval and 52% disapproval. And British Prime Minister Rishi Sunak has a 31% approval and 59% disapproval rating.



At a time when people want alternatives to the main political parties, alternative options are being shut out of the discourse

- As Stein noted when I spoke to her yesterday, these unseen algorithmic tweaks to the political landscape have the effect of decreasing the visibility of political independents during a time of "record hunger for political alternatives."
- Stein noted a Gallup poll just showed "identification with the Democratic and Republican parties is at an all-time low," and said such digital meddling is "an outrageous excuse for political repression," and "more that Joe McCarthy would be proud of."

there is been a rise of "concept creep" of what's considered harmful

- Some of the demand certainly appears to be grassroots. Since 2016, an increasing number of psychologists have started to document the rise of "concept creep," the dramatic expansion of what people in Western societies consider to be "harmful."
    1. It used to be that one would have to show physical or financial harm from speech for it to be restricted: often, one would have to commit fraud, incite violence or ruin a person's career.
    2. Today, by contrast, a growing number of people consider petty offenses, such as calling a transwoman "he" or denouncing Soros as a "globalist," to be the cause of "real-world harm."

Politics attracts narcissists, which explains why they resort to authoritarian measures

- There is a psychological explanation for why such leaders might demand greater censorship. Politics in general attracts narcissists, who have a grandiose view of their own role in history, who feel entitled to great power, and who tend to view themselves as purely good and their political enemies as purely evil.
- Such narcissism is entirely compatible with free speech so long as the political leader is popular. As they become less popular, and their agendas harder to achieve, they resort to authoritarian measures, as we are seeing around the world.
- To the extent there is coordination on censorship globally, it is happening among elites who prefer a top-down globalist rather than bottom-up internationalist agenda of governance. Macron, Varadkar, and Sunak all prefer the neoliberal model of declining protections for blue collar workers, who are negatively impacted by the influx of blue collar immigrants and neoliberal retirement and pension reforms.
- Because their financial and political supporters want greater immigration, pension reform, and other unpopular policies, Macron, Varadkar, and Sunak are stuck between alienating their base, including their funding base, and alienating the majority of voters. Recognising the reality of their unpopularity, they seek to scapegoat social media companies and seek their censorship. In order to justify this, elites seek to turn every problem, whether it is riots in Paris, Covid-19, or climate change, into a "crisis," one that requires the dramatic curtailment of our civil liberties.

Many of the people calling for censorship have ties to globalist and elitist groups, like NATO, the EU, and the Western Alliance

- Perhaps it is unsurprising, then, that these efforts all share an elitist, anti-populist strain.
- Many of the government agencies, contractors, and NGOs that are advocating for greater censorship have ties to the military, intelligence, and security organisations, spawning what I term the "Censorship Industrial Complex".
- How this is manifested is relatively straightforward: fearing that a wave of populist political victories would undermine NATO, the EU, and the Western Alliance, government intelligence, military and security officials engaged in disinformation campaigns, such as the one claiming Trump was a Russian asset and that the Hunter Biden laptop was Russian disinformation, while demanding censorship of populist and anti-war voices.

There are no leaders or orchestration. These are two religions battling out without any common ground

- I think it is decentralised rather than orchestrated. To be blunt, the "successor ideology," as Wes Yang puts it, is everywhere. Equally, though, the "successor counterrevolution," the pushback, is decentralised too and getting more organised with each passing day. This is

reassuring if you are a fan of one side or the other, but it also bodes ill for the future of society generally, as we have no common goals.

- The conflict is total; it is being waged in every school, business, and platform. I do not think it is appropriate to view the present conflict as a battle between movements with leaders but rather as a conflict between religions. If one leader falls on either side, two more will rise to take their place. This is a battle of world views, not of organisations.
- The First Amendment is the expression of a dead worldview. It is not a worldview itself. It derives its legitimacy from the Enlightenment, and the Enlightenment is dead. The present conflict is over the new basic organising principle to which an overwhelming majority of Americans can consent.
    - Personally, I'd like to see a basic organising principle that people can identify with, which has free speech as a logical consequence of holding that principle. Whether that worldview wins remains to be seen.

Secret Censorship At Facebook's Twitter clone "Threads"

Congress must either break up Facebook or mandate transparency as a condition of giving the social media monopoly Section 230 liability protections

- It's true that Meta has a legal right to censor users, that Twitter censors too, and we are less than 24 hours into the launch of Threads.
- But citizens give Meta broad (Section 230) liability protection that other media companies do not get. It is thus reasonable to expect that, in return, Meta and other social media platforms should be transparent about their censorship decisions and offer users the right to reply.
- And while we should give time to Meta to course correct, Zuckerberg has already made clear through Facebook lawsuits that the company views its "fact checks" as "opinions," not objective facts.
- The implications are that Congress must mandate transparency by Big Tech social media platforms when it comes to making censorship and content moderation decisions.

Within a few hours of launching, Threads was already secretly censoring users and not offering them the right to appeal

- "@Meta/IG just released their new threads platform," said conservative commentator Derek Utley at Twitter, "and I've been informed by multiple users that I'm censored on their new platform. Sheesh, can't a dude catch a break."
- Another conservative, Rogan O'Hanley, said, "First 5 minutes on Threads and already censored. What a platform."

Congress's intention when it created Section 230, as part of the Communications Decency Act in 1996, was to maximise free speech, not maximise corporate profits

- Meta's business model is about getting the public to spend more time online so Meta can profile us more and make advertising money. For that reason, Threads has next to zero privacy protections, allowing companies to know one's location and consumer preferences.
- Unlike Twitter, Threads collects data about "Health & Fitness," "Financial Info," "Sensitive Info," and "Other Data."

Worldwide push against censorship

Poland's government has proposed a new law to stop social media platforms from deleting content or banning users who do not break Polish laws.

- The proposed bill would see social networks fined up to 50 million zloty (£9.8m, $13.4m) for failing to restore deleted posts or accounts.
- But critics have an issue with it:
    1. "The need for regulation should not serve the Polish government's desire to control news and information on social media," said Iris de Villars, head of RSF's Tech Desk.
    2. "The freedom of speech council is clearly designed to be used for political purposes. We urge the government to reconsider this proposal which appears particularly nonsensical since it does not comply with the European Union's proposed Digital Services Act which provides for the possibility of an appeal to an independent body."

White House and dark money NGO hype hate crisis to demand censorship

In July, Biden announced a new agenda to fight rising antisemitism, which includes enforcing more censorship of hate speech

- The White House is now "[calling] on Congress to hold social media platforms accountable for spreading hate-fueled violence."

The CCDH claims that Twitter fails to act on 99% of hate posted by Twitter Blue subscribers, but based these claims on 100 tweets

- In a report published on June 1, the CCDH found that "Twitter fails to act on 99% of hate posted by Twitter Blue subscribers." Since the CCDH started its pro-censorship campaign, Twitter/X has lost 60-70% of its total advertising revenue.
- But there is not adequate data to support these claims. Though media outlets promoted the CCDH "report" about hate speech on Twitter/X, it was comprised entirely of a blog post less than 900 words long, based on a review of a scant 100 Tweets. By comparison, 500 million Tweets are sent every day.
- The CCDH "report" showcases ten examples of racist and antisemitic posts, but it does not make the other 91 Tweets it supposedly analysed available. Of these ten examples, seven of them had fewer than 50 "likes," and two had only about 50 views. Three of the accounts featured in the report have since been suspended, but the CCDH has not updated its findings.

Government intel and security agencies behind NGO demands for more censorship by X/Twitter

- The US and other Western governments fund ISD, the UK government indirectly funds CCDH, and, for at least 40 years, ADL spied on its enemies and shared intelligence with the US, Israel and other governments.
- The reason all of this matters is that ADL's advertiser boycott against X may be an effort by governments to regain the ability to censor users on X that they had under Twitter before Musk's takeover last November.
- Internal Twitter and Facebook messages show that representatives of the US government, including the White House, FBI, Department of Homeland Security (DHS), as well as the UK government, successfully demanded Facebook and Twitter censorship of their users over the last several years.

The ADL cannot support its claims that antisemitism is rising nor can it support its claim that offensive speech online motivates violence

- But there is no good evidence of that. Public has debunked claims by ISD and CCDH of an increase. And researchers have repeatedly debunked ADL's claims of rising antisemitism for years.
    - In 2009, an Israeli filmmaker found that ADL could not support its claims of an antisemitism crisis. Wrote NPR in a review of the film, "When he presses ADL staffers for evidence to back up their claims of a sharp spike in North American anti-Semitism in 2007, they can offer only wan transgressions…"
- Eleven years later, Liel Leibovitz noted in Tablet that ADL had, for a report, "counted hundreds of threatening calls to Jewish community centers made by a mentally troubled Israeli teenager. You had to read the report's fine print to learn that the number of violent attacks against Jews that year had actually decreased by 47%."
- ADL, ISD, and CCDH have not presented any good evidence that offensive speech online directly causes "hate-motivated violence," nor that censorship prevents it.

The role of NGOs and "independent" groups

there is a trust and safety industrial complex that uses their contacts in major corporations to get their way

- there is a trust and safety industrial complex where cancellations and pressure campaigns are well organised by outside groups who have contacts within the trust and safety organisations of major corporations.
    - For example, Alex Jones got banned by most major platforms within 24 hours. This was not because Alex Jones violated all of those platforms' policies at the same time, and it was not an accident.

Activist employees can easily act across an entire industry to get their way. Put another way, activists within corporations can force corporations to independently and simultaneously reach the same conclusions to "unperson" someone from the internet

- It is unlikely that these actions were coordinated at a corporate level for competitive purposes. It is more likely that these were political decisions arrived at by individual corporations separately through internal consensus.
- The issue is that activist employees within each trust and safety organisation are well placed enough to trigger a preference cascade across the entire industry without requiring formal corporate actions.
    - Senior employees within each organisation are sympathetic to subordinate, activist employees' points of view, so they are willing to allow their trust and safety functions to be abused in this way.
- Put another way, activists within corporations have the ability to force corporations to independently and simultaneously reach the same conclusions about entities or persons who are to be un-personed from the Internet without requiring the corporations to coordinate their unpersoning activities formally. it is an ideology, not a group.

NGOs have strayed from their original missions to become partisan groups. They have huge power in their capacities as formal advisors to corporations

- NGOs like [Southern Poverty Law Center] SPLC, and [Anti-Defamation League] ADL, despite straying from their original missions to become partisan groups, have enormous power in their capacities as formal advisors to corporate [diversity, equity, and inclusion] DEI compliance

strategies, especially since companies are willing to pretend that these groups are 1970s-style civil rights groups — which they are not — instead of partisan operations for the Left, which they are. Color of Change is a newer entrant to that business.

- Additionally, purportedly independent tech-focused groups like Graphika, the Stanford Internet Observatory, and Tech Against Terrorism are staffed by individuals who adopt an ostensibly politically neutral, professionalised tech policy-focused approach to the same problems.
    - However, the philosophy each of these groups holds towards content that deviates from the globalist-left consensus generally results in identical conclusions about whether given types of content should be wiped from the Internet, even if the political objectives of each group are not identical.

The EU has forced many U.S. companies to ban content that is legal in the U.S

- The EU's DSA [Digital Services Act] will force many U.S. companies to adopt European compliance programs, which will allow these compliance programs to be weaponised against American citizens. European countries routinely issue legally binding (in Europe) content takedown requests for otherwise entirely legal content in the United States.
- Even now, U.S. and offshore NGOs routinely tattle-tale on Internet users who spew wrongthink to both the U.S. FBI and overseas law enforcement. The DSA, by forcing any corporation wishing to do business in Europe to adopt an EU-wide compliance strategy for these EU takedown requests, will empower these NGOs, and ordinary political activists, to force takedowns of American content that offends European laws since European rules provide for the removal of content which in America would be fairly anodyne right-wing speech and which would be protected in any case by the First Amendment, and thus immune from government sanction in the U.S.

Weaponising anti-disinformation to smear and censor opponents has diminished trust in authority. The Vitality Project even protected Big Pharma by advocating for the censorship of true vaccine side effects

- Weaponising anti-disinformation to censor and smear their opponents is resulting in exactly what the expert class feared: diminished trust in authority.
- The moral depravity of the Virality Project protecting BigPharma by advocating for the censorship of true vaccine side effects is beyond astounding. Imagine doing this for a car company whose airbags were unsafe, because it might cause people to stop buying cars.

Progressives think they are in charge but they are being used. Powerful people cynically harness well-intentioned ideas about protecting people's health

- While progressives might believe they are in charge, I think it is much more the case that we are being used.
    1. Under the cover of social justice, the corporate machine rolls on.
    2. The US government and its allies, realising that information was the future of conflict, slowly but surely engineered a takeover of the independent, adversarial organisations that should be holding them to account.
- Some say this shift began under the "humanitarian intervention" rubric built for the Balkan conflicts. This was stepped up further when Condoleezza Rice provided a feminist cover for invading Afghanistan.
- The elites grab the ideas that serve their purposes, hollow them out, and get to work. Wealth inequality became much worse under COVID-19, even as the halls of power became more diverse. "Progressives" hardly said a word.

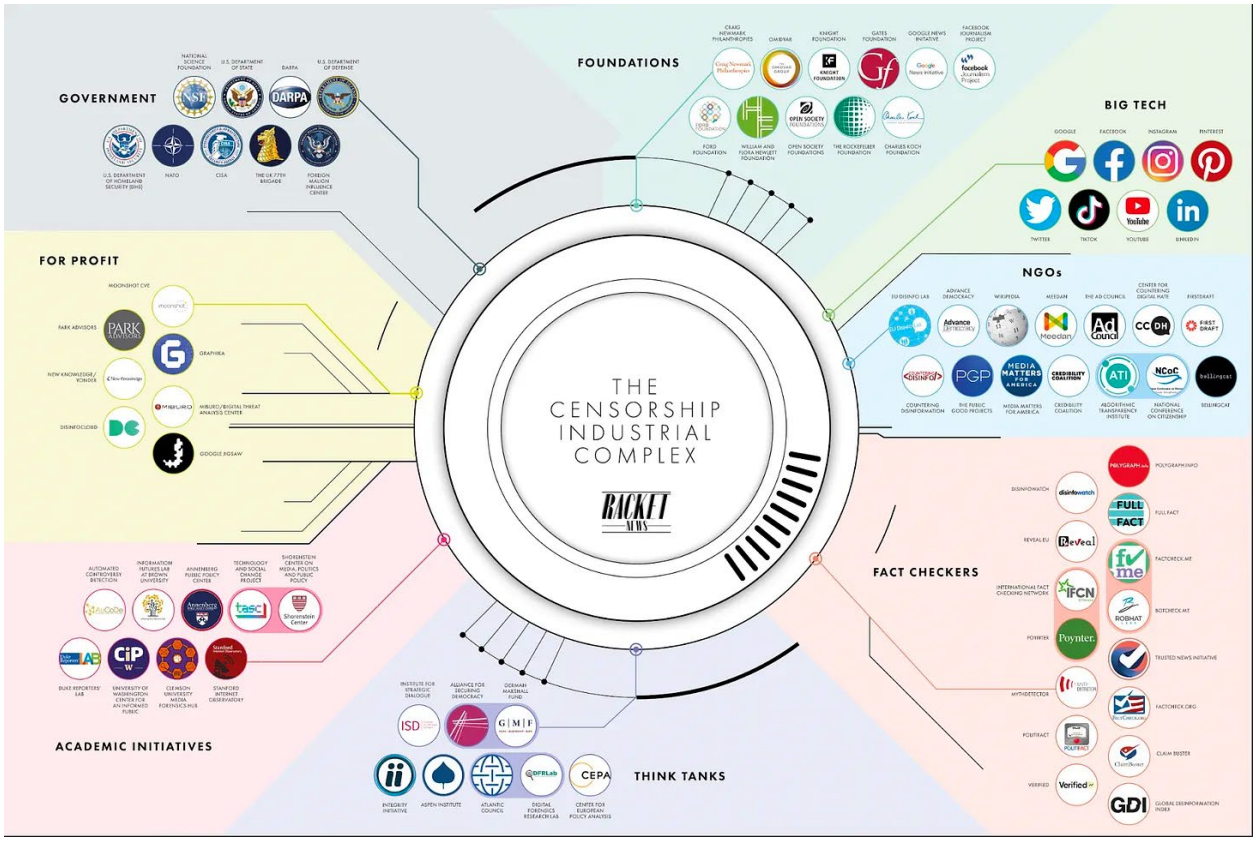
- The cultural shift is only partly organic. The Virality Project shows how powerful people cynically harnessed well-intentioned ideas about protecting people's health, when in reality, they were protecting and advancing the interests of Big Pharma and expanding the infrastructure for future information control projects.

Anti-disinformation groups and fact-checkers

Misinformation vs disinformation

- Misinformation is false or inaccurate information—getting the facts wrong. Disinformation is false information which is deliberately intended to mislead—intentionally misstating the facts.

The Censorship Industrial Complex - 50 organisations to know



(link)

The anti-disinformation ecosystem receives billions of dollars in funding, often from military and intelligence groups. In short, these groups have been bought and compromised

- As of now we've compiled close to 400 organisations globally, and we are just getting started.
    - Some organisations are legitimate. There is disinformation. But there are a great many wolves among the sheep.
- I underestimated just how much money is being pumped into think tanks, academia and NGOs under the anti-disinformation front, both from the government and private philanthropy.
    - We're still calculating, but I had estimated it at hundreds of millions of dollars annually and I'm probably still being naive - Peraton received a USD $1B dollar contract from the Pentagon.

- In particular, I was unaware of the scope and scale of the work of groups like the Atlantic Council, the Aspen Institute, the Center for European Policy Analysis and consultancies such as Public Good Projects, Newsguard, Graphika, Clemson's Media Forensics Hub and others.
- Even more alarming was just how much military and intelligence funding is involved, how closely aligned the groups are, how much they mix in civil society. Graphika for example received a $3M Department of Defense grant, as well as funds from the US Navy and Air Force.
    - The Atlantic Council (of Digital Forensics Lab infamy) receives funds from the US Army and Navy, Blackstone, Raytheon, Lockheed, the NATO STRATCOM Center of Excellence, and more.
    - Graphika also does work for Amnesty International and other human rights campaigners. How are these things compatible?
- Government and philanthropic oligarchs have colonised civil society and proxied this censorship through think-tanks, academia, and NGOs.
    - Tell this to the sector, however, and they close ranks around their government, military, intelligence, Big Tech, and billionaire patrons. The field has been bought. It is compromised. Pointing that out is not welcome.

Leading "anti-disinformation" groups seem to be hiding from scrutiny

- But of the 50 top "anti-disinformation" governmental and nongovernmental groups in the world, which Matt Taibbi's investigative team at Racket identified, only one has agreed to answer our questions, and only 10 even bothered responding to our repeated requests for an interview.
    - It's reasonable to wonder if this low response rate has something to do with the fact that I have repeatedly called for all of them to be defunded and dismantled because they are violating a fundamental human right.
- But the key "disinfo" censorship groups are not giving substantive interviews to other independent journalists. Indeed, over the last several weeks, they have increasingly gone quiet.
    1. Last week the pro-censorship Atlantic Council's DFR Laboratory cancelled the online launch event for its new report, "Telegram, WeChat, and WhatsApp Usage in the United States." It might have had something to do with the fact that, a few weeks earlier, we had tweeted critically about it, signed up to attend, and encouraged others to join us.
    2. Two weeks ago, BBC heavily promoted the launch of its own "anti-disinfo" program called "Verify," but has refused to answer questions about it or make its 27-year-old host, whose role is apparently to fact-check all of the news, available for an interview.
    3. And now, the lead censorship organisation, Stanford Internet Observatory, is refusing to respect a House Judiciary Committee subpoena for records in the form of "tickets" from the Jira project management software system.
        - Rep. Jim Jordan said the lawyer representing Stanford had confirmed to committee staff that Stanford Internet Observatory has documents and communications related to its "flagging" of content for censorship by social media companies but would not give them to the members of Congress.
- Why? What are Stanford Internet Observatory, Atlantic Council's DFR Lab, BBC, and other pro-censorship organisations hiding?

Such groups receive joint training on tackling "disinformation", often by groups that are funded by governments

- Tens of millions and perhaps hundreds of millions of dollars are going to groups like SIO, BBC, ISD, and dozens of others to demand censorship and spread disinformation.

- And the censorship continues. At this moment, human rights NGOs and philanthropically-supported news media organisations are at a luxury resort in Costa Rica to receive training in "necessary skills to counter disinformation, identify weaponized narratives, and detect online harassment and hate speech."
- Who will do the training? The Atlantic Council's DFR Lab. That is the same groups that cancelled last week's release of a report that appeared to make the case for government surveillance and censorship of direct messages.
- The Stanford Internet Observatory, the University of Washington, the Atlantic Council's Digital Forensic Research Lab, and Graphika all have inadequately-disclosed ties to the Department of Defense, the C.I.A., and other intelligence agencies. They work with multiple U.S. government agencies to institutionalise censorship research and advocacy within dozens of other universities and think tanks.
- What is DFR Lab? A product of the U.S. and UK governments, particularly their intelligence arms. On its board are even two former CIA directors. The group is openly tied to NATO.
- Another group with U.S. State Department funding and strong military ties is the Institute for Strategic Dialogue, which is currently spreading disinformation about my position on climate change and refuses to respond to our inquiries.

there is no valid evidence that misinformation travels six times faster than facts

- Still, experts and journalists with the New York Times, AP, and BBC warn that fake news travels six times faster than factual news. "The system that connects us," said former CNN journalist and Nobel Laureate Maria Ressa at a recent summit on disinformation, "spreads lies faster than facts — six times faster."
- But the idea that fake news travels six times faster than factual news is itself fake news. The source of the claim, which journalists frequently repeat and never fact-check, is an MIT study of a tiny number of tweets, not news articles.
- And the roughly 126,000 tweets that MIT researchers analysed to inform the study's findings are equivalent to the number of tweets published in a mere 21 seconds today. In other words, they generalised from 21 seconds of tweets to the whole of the Internet to make their sweeping claim.

The self-anointed fact-checkers often get it wrong yet information continues to be censored because of their recommendations

- There are many cases of fact-checkers spreading disinformation that then results in censorship. Facebook censored stories claiming Covid-19 might have come from a lab. Last week, Public documented the role played by Anthony Fauci in creating junk science to create a fake debunking of the lab leak, which the White House and others used to justify censorship.
- Fact-checkers have thus been forced to make an embarrassing series of retractions. PolitiFact, the dean of all fact-checking organisations, was forced in 2021 to retract its false debunking of a doctor who said COVID-19 was a "man-made virus created in the lab."
- And just last week, the BBC was forced to retract its false claim that UK politician Nigel Farage was not de-banked for political reasons because, as it turned out, he was.
- More dangerously, fact-checkers spread disinformation and demand censorship based on that disinformation. During the pandemic, Facebook alone removed 20 million posts and labelled more than 190 million claims related to Covid-19, relying on International Fact-Checking Network (IFCN) approved organisations to accomplish this massive "content moderation."

A primary purpose of fact-checking, since its inception over the last decade, is as a gatekeeping tool for legacy and establishment news media. They are also overwhelmingly liberal

- In late June, hundreds of people attended the "GlobalFact10," a meeting for fact-checkers to discuss ways to grow their influence and power, hosted by the International Fact Checkers Network (IFCN). Sponsors included Facebook's parent corporation Meta, YouTube, TikTok, LogicallyFacts, the International Center for Journalists, Politifact, AFP, and Craig Newmark Philanthropies, started by the founder of Craigslist.
- The annual summit began in 2014. Bill Adair, the founder of Politifact, invited 50 people to London to address "misinformation," resulting in the creation of the IFCN at the Poynter Institute, which is responsible for establishing international fact-checking standards.
    - Today there are 150 accredited signatories that abide by the rules of the IFCN, which represents nearly half (40%) of all active fact-checkers in the world.
- There is a financial motivation. Mainstream journalists, like BBC, have an interest in reducing competition.
    - A primary purpose of fact-checking, since its inception over the last decade, is as a gatekeeping tool for legacy and establishment news media. It is a response to the internet, social media, and alternative media and a way to delegitimise non-establishment sources of information.
- There is also ideology. The fact-checkers and their donors are overwhelmingly liberal and progressive and believe that there is too little social media censorship of their political opponents, not too much.

The fact-checking industry is booming and continues to grow

- Thanks to hundreds of millions of grants from wealthy individuals, including Bill Gates, Pierre Omidyar, and George Soros, the fact-checking industry is growing rapidly.
    - Over the last five years, the number of fact-checking organisations worldwide has grown by nearly 50% to over 400 active initiatives in over 100 nations and 69 languages.
- Other major supporters of the aforementioned Poynter Institute include the Knight Foundation, Ford Foundation, Robert R. McCormick Tribune Foundation, Peter and Carmen Lucia Buck Foundation, Tides Foundation, and Tides Center, Omidyar Network Fund, Carnegie Corp. of New York, Annie E. Casey Foundation, the National Endowment for Democracy, Google, and Facebook.

Fact-checkers often display the "third person effect", when self-centred individuals think they are immune from mass messaging that has influence on others. Their perceived ability to discern fact from fiction in this third-person way can bleed into narcissism (which I've included elsewhere)

- There is also a psychological aspect to fact-check-based censorship. Many fact-checkers appear blind to the possibility that they themselves might be censored and believe they are somehow immune to deception.
- They demonstrate what is known as the "third person effect," which is the tendency for some self-centred individuals "to perceive that mass-media messages have only minimal influence on them but greater influence on other people."
- First Amendment Scholar Clay Calvin argues individuals who exhibit third-person effects tend to favour censorship in the name of safety. "[The] effect has both a perceptual aspect (what we believe about the influence of messages) and a behavioral component (censorship)."
- When fact-checkers perceive they have unique abilities to discern truth from fiction and project such perceptions onto the public, the third-person effect can begin to bleed into narcissism.

These fact-checkers plonk themselves in the middle of people who score highly in Openness and Compassion (Democrats). No one asks what they are up to

- The size and power of the fact-checking industry is intimidating. They have tens of millions of government and philanthropic donations behind them. They heavily shape what Facebook and other platforms censor. And the people demanding more censorship are manipulative, exhibiting "Dark Triad" behaviours of narcissism, psychopathy, and Machiavellianism.
- "They gravitate to organizations, roles, and lines of action where minimal real work is required to gain control and influence," said Brophy. "It's a dangerous combination when they're placed in the middle of a group of people that are high in Openness and Compassion (Democrats). No one is asking the question 'What are you really up to here.'"

The fact-checkers tendency to stretch that language beyond its limitations undermines the credibility of their project

- And while the language of fact-checking is powerful, it's also limited," noted the Columbia Journalism Review recently. Its author, Greg Marx, noted that "the fact-checkers' tendency to stretch that language beyond its limitations undermines the credibility of their project."
- And underneath the arrogance, fact-checkers are plainly insecure. Neither the MIT researchers who claim that fake news travels six times faster than real news, nor the journalists who cited that number, or the FDA which repeated it, returned our emails or phone calls. Their silence may reflect their own lack of confidence.
- The silence of the fact-checkers and censors may also reflect a growing power by Public and our allies at Environmental Progress to hold powerful political and media figures to account. The UN recently dialled back its claims of rising hate, complaining simply of the existence of hate rather than its increase.

These groups often police narratives, blatantly drifting from anti-disinformation to monitoring wrongthink

- I also underestimated just how explicit many organisations were regarding narrative policing, at times blatantly drifting from anti-disinformation to monitoring wrongthink.
- Stanford's Virality Project recommended that Twitter classify "true stories of vaccine side effects" as "standard misinformation on your platform," while the Algorithmic Transparency Institute spoke of "civic listening" and "automated collection of data" from "closed messaging apps" in order to combat "problematic content", i.e. spying on everyday citizens.
- In some cases the problem was in the title of the NGO itself - Automated Controversy Monitoring for instance does "toxicity monitoring" to combat "unwanted content that triggers you." Nothing about truth or untruth, it is all narrative control.

Antony Blinken spoke at an "anti-disinformation" conference about the Hunter Biden laptop weeks before it was released, then none of the journalists present covered it

- Lowenthal, who in his "Insider's Guide to 'Anti-Disinformation'" describes himself as a "progressive-minded Australian," printed a series of exchanges between journalists who attended a summer "tabletop exercise" at the Aspen Institute about a hack-and-leak operation involving Burisma and Hunter Biden, weeks before the actual event.
- When the actual scandal broke not long after, the existence of that tabletop exercise clearly become newsworthy, but none of the journalists present, who included David Sanger of the New York Times and current Rolling Stone editor Noah Schactman — said a word.
    - Perhaps, as was common with anti-disinfo conferences, the event was off the record. (We asked, and none of the reporters commented).

- It doesn't matter. Lowenthal showed how another "anti-disinformation" conference featured the headline speaker Anthony Blinken.
    - He's currently suspected of having "triggered" the infamous letter signed by 50 intelligence officers saying the Hunter Biden laptop story had the "classic earmarks of a Russian information operation."
- As Lowenthal writes: "See how it works? The people accusing others of "disinformation" run the biggest disinformation campaigns themselves."

The International Factchecking Network

The network contacted YouTube and offered their services, telling them they weren't doing enough

- "That is why we urge you to take effective action against disinformation and misinformation, and to elaborate a roadmap of policy and product interventions to improve the information ecosystem — and to do so with the world's independent, nonpartisan fact-checking organizations."
    - "We are ready and able to help YouTube. We wish to meet with you to discuss these matters and find ways forward on a collaboration, and look forward to your response to this offer."
- "Your company platform has so far framed discussions about disinformation as a false dichotomy of deleting or not deleting content. By doing this, YouTube is avoiding the possibility of doing what has been proven to work: our experience as fact-checkers together with academic evidence tells us that surfacing fact-checked information is more effective than deleting content."
- "And given that a large proportion of views on YouTube come from its own recommendation algorithm, YouTube should also make sure it does not actively promote disinformation to its users or recommend content coming from unreliable channels."
- Some solutions:
    1. A commitment to meaningful transparency about disinformation on the platform: YouTube should support independent research about the origins of the different misinformation campaigns, their reach and impact, and the most effective ways to debunk false information. It should also publish its full moderation policy regarding disinformation and misinformation, including the use of artificial intelligence and which data powers it.
    2. Beyond removing content for legal compliance, YouTube's focus should be on providing context and offering debunks, clearly superimposed on videos or as additional video content. That only can come from entering into a meaningful and structured collaboration taking the responsibility and systematically investing in independent fact-checking efforts around the world that are working to solve these issues.
    3. Acting against repeat offenders that produce content that is constantly flagged as disinformation and misinformation, particularly those monetising that content on and outside the platform, notably by preventing its recommendation algorithms from promoting content from such sources of misinformation.
    4. Extend current and future efforts against disinformation and misinformation in languages different from English, and provide country- and language-specific data, as well as transcription services that work in any language.
- The Democratic National Committee calls for establishing a "political misinformation policy" and repeatedly cites the International Fact-Checking Network's partnerships with tech companies as a model for the party's national censorship policy.

The International Fact Checking Network did the same thing with Facebook after the 2016 election

- On Nov. 17, 2016, a new organisation called the International Fact-Checking Network (IFCN) published an open letter to the beleaguered Facebook CEO.
    - "We would be glad to engage with you about how your editors could spot and debunk fake claims," the IFCN generously offered on behalf of the letter's signatories, a group of 20 nominally independent fact-checking organisations grouped under its network.
- The following month, Facebook announced that the IFCN would be its main partner in a new fact-checking initiative that would vet information—all information—on the world's largest and most influential social media platform.

The IFCN is a division of the Poynter Institute, which is funded by tech companies, charity groups with political agendas, and the US government

- The IFCN was launched in 2015 as a division of the Poynter Institute, a St. Petersburg, Florida-based media nonprofit that calls itself a "global leader in journalism" and has become a central hub in the sprawling counter-disinformation complex.
- Poynter's funding comes from the triumvirate that undergirds the U.S. nonprofit sector: Silicon Valley tech companies, philanthropic organisations with political agendas, and the U.S. government.
    - The nonprofit sector, as it is euphemistically called, is an immense, labyrinthine engine of ideological and financial activism that was valued at almost $4 trillion in 2019, the overwhelming majority of which is dedicated to "progressive" causes.
- The IFCN's initial funding came from the U.S. State Department-backed National Endowment for Democracy, the Omidyar Network, Google, Facebook, the Bill & Melinda Gates Foundation, and George Soros' Open Society Foundations.

The IFCN and other groups allow governments to outsource censorship and messaging, it gives tech groups control over regulators, and it gives journalists jobs in one of the media's only remaining growth fields

- The IFCN's fact-checking operation offers something different to all of the various players who directly and indirectly shape its mission.
    1. For government officials, it provides a means to outsource both political messaging and the responsibilities of censorship.
    2. For technology companies, it is a method of exercising control over their own regulators by putting them on the payroll.
    3. And for journalists, watching their industry collapse and their status erode as the public turns on them, its steady work in one of the media's only remaining growth fields, as information regulators.

Anyone who resists the new mandate is accused of helping Russia, bringing fascism to America and worse. Fact-checkers see themselves as saviours of liberal democracies

- The consequences for anyone who resisted the new mandate were serious. Social media companies and newsrooms that did not get with the program and empower the brigades of truthy technocrats were accused of helping Russia, bringing fascism to America, supporting white supremacy, and worse.
- Contrary to the preferred self-image of data scientists, neutrally officiating claims from the sidelines, fact-checkers tend to see their work in salvationist terms.

1. In his final day on the job in 2019, the IFCN's founding director, Alexios Mantzarlis, published a blog post where he wrote: "fact-checkers are no longer a fresh-faced journalistic reform movement; they are wrinkly arbiters of a take-no-prisoners war for the future of the internet."
2. Mantzarlis provided a useful overview of their guiding mission, which is to turn back the tide of populism empowered by the internet and restore the hierarchies of knowledge, which, in the technocratic mind, are the proper foundation of liberal societies.
3. Mantzarlis now works at Google as a policy lead.

Invasion of the fact-checkers

Meta/Facebook has been paying activists to serve as neutral fact-checkers while, in reality, using their power to censor their political enemies (Australia)

- The context is that this fall, Australians will vote in a special national election, the Australian Indigenous Voice referendum, on whether to give special political powers to native peoples. Facebook is funding those in favour of the referendum to censor its opponents.
    - "An audit of RMIT Voice fact checks showed the 17 Voice checks between May 3 and June 23 this year were all targeting anti-Voice opinions or views," Sky News Found.
- Meta allowed the Royal Melbourne Institute of Technology (RMIT) to censor disfavoured views even while "knowing it was a breach of the rules Zuckerberg established to distance himself from fact-checking responsibilities," reported SkyNews.
- The RMIT, which is a respected technical university like America's MIT, "used the powers Facebook has given it to throttle Sky News Australia's Facebook page with false fact checks multiple times this year, breaching the Meta-endorsed IFCN Code of Principles and preventing millions of Australians from reading or watching Sky News Australia's journalism."
- How did the fact-checkers abuse their powers? By smearing their political enemies as racists. "Fact-checkers employed by RMIT have led to numerous code breaches," reports Sky News, "including one fact-checker using her social media account to label Opposition Leader Peter Dutton a fear-mongering racist for his views on the Voice."

Tech companies downgrade content that is flagged as false so fewer people see it. America's fact-checkers serve the interests of platforms and Democratic Party operatives, destroying truth in the media

- At Meta—the parent company of Facebook and Instagram—content flagged as false or misleading gets downgraded in the platform's algorithms so fewer people will see it. Google and Twitter have similar rules to bury posts.
- In reality, America's new public-private "Ministry of Truth" mainly serves the interests of the tech platforms and Democratic Party operatives who underwrite and support the fact-checking enterprise.
    1. This, in turn, convinces large numbers of normal Americans that the officially sanctioned news product they receive is an ass-covering con job—an attitude that marks many millions of people as potentially dangerous vectors of misinformation, which justifies more censorship, further ratcheting up the public's cynicism toward the press and the institutional powers it now openly serves.
    2. On and on it goes, the distrust and repression feeding off each other, the pressure building up until the system breaks down or explodes.

"Authoritative" sources used to "debunk" claims can come from state-funded experts abroad and feature self-anointed "experts"

- Here's another recent incident that illustrates why some people might be wary of the fact-checking authorities' claim that they are acting to protect the public.
    1. Last month, Instagram placed a warning label on an American human rights lawyer's post blaming rising inflation in the United States on "corporate greed."
    2. Certainly not! Independent fact-checkers duly found the statement was "missing context and could mislead people." The warning linked to a fact-check in the French government-backed news outlet Agence France-Presse (AFP).
    3. On the authority of that single article, which quotes three American experts—a neoconservative think tank employee, a liberal think tank employee, and a university economics professor—the offending post was effectively disappeared.
- You may wonder why Facebook's designated fact-checker for a claim about inflation in the United States is a state-backed French agency, or who determines how many experts are required to issue a ruling—and what qualifications make one an "expert."

Claims will be labelled as mostly false to protect their interests, then when the situation changes the claims can be called outdated. They use people's trust in traditional journalism practices to shut down dissent

- A news outlet reported that Biden's White House would hand out crack pipes to drug addicts. The media attacked the claim, even though it was true, and then tried the line that the administration never intended for all the money to be for crackpipes - which the original outlet never claimed was the case.
- In true Stalinoid fashion, Snopes added an editor's note to its entry explaining that it had changed its rating from "Mostly False" to "Outdated" after HHS "stipulated that federal funding would not be used to include pipes in the safe smoking kits."
- Translation: The Beacon's reporting was essentially accurate all along, and labelling it false was a stalling tactic to buy time for the government to prepare a response that could then be retroactively applied to rewrite the past.
- The result is a familiar yet peculiar double game: If an article points out that a network of bureaucratic and educational activists are inculcating the notion that math is racist, that claim is right-wing hysteria. But when a journalist determines that crack pipes are innocuous, that is fact-checking.

Kamala Harris said herself that the 1994 crime bill contributed to mass incarceration, but when a Bernie supporter said the same a year later his claim was labelled as false

- "That 1994 crime bill, it did contribute to mass incarceration in this country" then-presidential candidate Kamala Harris told reporters in 2019 when she was running against Biden.
- The following year, after Biden clinched his party's nomination, an Instagram post by a left-wing Bernie Sanders supporter that accused him of contributing to mass incarceration was marked "False" with a label warning users: "Independent fact-checkers say this information has no basis in fact."

Big Tech censors itself to avoid its monopolies being broken. But in that framework, a Republican government could make the same demands

- Fact-checking didn't originate as a partisan Democratic plot against reality, though. It became a necessary feature of the new journalistic industrial complex in order to inoculate large tech platforms from government regulatory pressure and the threat of "private" lawsuits from the NGO sector.

- In other words, it was a concession by tech companies to the not-so-subtle threat that if they didn't start censoring themselves, they might get their windows—or their monopolies—broken by the state.

- In that framework, at least, fact-checking is just as potentially dangerous to Democrats under a Republican-controlled White House and Congress as it is to Republicans when Democrats rule Washington.

The fact-checkers help label unpopular progressive policies as factual and relieve policy makers of any obligation to build broad majorities that support their ideas

- Yet in reality, when it comes to benefiting from state censorship, Democrats and Republicans are not created equal. Another driving force behind the growth of the fact-checking complex is the necessity of enforcing loyalty to progressive ideas that cannot survive on their own.
    1. Stripped of their specialised language and social and bureaucratic context, key articles of Progressive Church faith are repulsive to most ordinary voters, regardless of gender or race.
    2. That is true of the racialised approach to education that was just roundly rejected by San Francisco parents in recent school board elections.
    3. It is also true of calls to defund the police, to teach transgender ideology to kindergarteners, and of approaches to addiction that appear to promote continued drug use.
    4. Policies that Biden administration officials would have boasted about in front of an audience of academics and public health administrators sound different—meaning, crazy—to people who have not been socialised to accept professional class bullshit.
- That is where the fact-checkers come in with their tin badges and unearned air of authority. They can declare that a story is not merely mistaken or overwrought but dangerously defective—because we, the fact-checkers, paid by the tech giants and NGOs that are in turn funded by a seemingly endless tide of dark money from billionaires who want to be woke, or at least buy a woke insurance policy, said so.
- This method of governance relieves policy makers of any obligation to build broad majorities that support their ideas.
    1. Maybe it really is a good idea to distribute crack pipes to addicts because it will save lives, as advocates claim.
    2. But if they believed they had the truth on their side, we might expect to see the people who champion these policies arguing for their merits and convincing a coalition of voters to support them.
    3. Instead, we see the opposite: the naked use of power and coercion to stifle arguments by people who believe they have a mandate of heaven, and the truth is whatever they say it is.

Traditional journalism has collapsed and fact-checking services have taken their place. But early fact-checkers were college graduations checking articles, they weren't arbiters of truth

- The trend lines for journalism and fact-checking have been moving in opposite directions for three decades now.
    1. Between 1990 and 2017, daily and weekly newspapers lost more than a quarter of a million jobs, over half of their workforce.
    2. The decline accelerated during the pandemic with at least 6,154 media workers laid off from the beginning of March 2020 through August 2021 and 128 news organisations shut down during the same period.

- As journalism collapses, it opens up a space for successor practices grouped under the banner of countering disinformation.
    - In 2014, there were 44 fact-checking organisations in the United States, according to the Duke University Reporters' Lab census. As of the June 2021 census, there were 341 "active fact-checking projects," 51 more than in the previous year.
- "Publishers hope fact-checking can become a revenue stream. Right now, it is mostly Big Tech who is buying," ran the headline of an article published last September by Harvard University's Nieman Lab.
    - In other words, the same internet platforms that have turned journalism into a hollow shell while incentivising the hyperpolarised clickbait that cratered public trust in the media, and which happen to be major donors to the Democratic Party with an existential interest in pleasing the government, are also the benefactors of a new meta-journalism that places itself above mere reporting as the final arbiter of what is true, while benefiting from labour costs that are a fraction of what was spent in traditional newsrooms.
- The reality was that in the earlier journalistic landscape, fact-checking was a job mostly reserved for recent college graduates whose apprenticeship in the journalistic trade involved making sure that busy reporters correctly reported the date of Moldova's first democratic election after the fall of the Soviet Union.
    - You can only marvel at the audacity of powerful NGOs planting stories in the press to foster an illusion about the power of fact-checkers that in short order created that very reality.

The fact-checker's role is not to investigate the truth but to uphold the credibility of official sources and their preferred narratives. This is why you get shameless U-turns

- In February 2020, The Washington Post chided Arkansas Sen. Tom Cotton for promoting a "debunked" "conspiracy theory" that COVID-19 had escaped from a lab.
    - In May 2020, the Post's Glenn Kessler, who is a member of the IFCN advisory board, said it was "virtually impossible" for the virus to have come from a lab. Those were the facts ... until a year later, when Kessler published a new article explaining how the "lab-leak theory suddenly became credible."
- How to understand the epistemological process that could lead a seasoned fact-checker to do a 180 on a matter of utmost public importance in less than a year?
- The simple answer, which has nothing to do with Kessler's individual character or talents, is that when it really counts, the fact-checker's role is not to investigate the truth but to uphold the credibility of official sources and their preferred narratives.
    - Kessler's mind changed at the very moment when the Democratic Party machinery began charting a new course on an issue that was hurting the party at the polls.

In a closed network, error-based consensus can easily acquire the weight of legal regulation, with seeming unanimity serving as "proof" that opposing opinions are laughably ill-informed, dangerous, or simply insane

- A key feature of the modern fact-checking apparatus is that individual errors can quickly become system failures. That the various members of the IFCN, spread out over news organisations across the world, overwhelmingly agree with each other is no surprise, since consensus is the point of their work.
- But in a closed network, error-based consensus can easily acquire the weight of legal regulation, with seeming unanimity serving as "proof" that opposing opinions are laughably ill-informed, or dangerous, or simply insane. That is precisely what happened when Google,

Facebook, and Twitter, with the full weight of the "facts" behind them, collectively censored information about the "fringe" lab-leak conspiracy.

The BMJ whistleblower story was thoroughly researched, but a sloppy fact-check led to it being labelled. And yet no appeals process was possible: the fact-checkers and Facebook both absolving themselves

- Then there are questions that more directly impact public health, like vaccine safety and masking.
    1. Last November, the BMJ, a British medical journal founded in 1840, published an article based on claims made by a whistleblower who had worked for Ventavia Research Group, while the company was contracted by Pfizer to assist in its COVID-19 vaccine trials.
    2. According to the BMJ report, the whistleblower, Brook Jackson, alleged that during the trials Ventavia had "falsified data, unblinded patients, employed inadequately trained vaccinators, and was slow to follow up on adverse events reported."
    3. After a week of record traffic for the BMJ's website, the magazine discovered that posts sharing the article on social media were being tagged with the familiar warning, "independent fact-checkers say this information could mislead people."
- Says who? The determination was made by Lead Stories, one of the partnered organisations in Facebook's network that, in a data sample taken in January 2020, was responsible for half of all fact-checks that month on the social media platform.
    1. It doesn't take a particularly close reading to see that while the BMJ's original investigation is scrupulously put together with hard evidence and measured claims, the Lead Stories takedown is built on sloppy insinuation, sleights of hand, and an underlying credulity toward official sources.
    2. In its "fact-check," Lead Stories draws attention to the fact that Jackson's Twitter account "agreed with anti-vaccine activist and COVID misinformation-spreader Robert F. Kennedy Jr.'s criticism of Sesame Street's storyline in which Big Bird encourages kids to get a COVID-19 vaccine."
    3. That is just the kind of ad hominem, hard to follow, logic-chopping argument that would get laughed out of the room at a high school debate camp but has become the final word on real matters of public health.
- Nor is any appeal of these decisions practically possible.
    1. When the BMJ's editors appealed to Lead Stories to remove the "missing context" warning label it had placed on the original BMJ article, the fact-checking site's editor, Alan Duke, denied any responsibility. "Sometimes Facebook's messaging about the fact-checking labels can sound overly aggressive and scary," Duke responded to the journal. "If you have an issue with their messaging you should indeed take it up with them as we are unable to change any of it."
    2. The BMJ's editors then turned to Facebook, where they were told: "Fact checkers are responsible for reviewing content and applying ratings, and this process is independent from Meta." Is that clear enough for you? Kick rocks, sucker

The convergence of government power with fact-checking is deliberate, and it becomes impossible to know in whose interests communication systems are in operation

- My point here is that the convergence of government power with fact-checking is neither a conspiracy nor an accident. A 2018 report from the Columbia Journalism Review offered "lessons for platform-publisher collaborations as Facebook and news outlets team to fight misinformation." It also offered a warning:

- "If Facebook creates entirely new, immensely powerful, and utterly private fact-checking partnerships with ostensibly public-spirited news organizations, it becomes virtually impossible to know in whose interests and according to which dynamics our public communication systems are operating."

Mis/disinformation studies

- Mis- and disinformation studies are too big to fail: Six suggestions for the field's future (Harvard article)

Harvard Journal bragged that 'mis/disinformation studies' are 'too big to fail' and the events of 2016 catalysed online censorship

- "The field of mis- and disinformation studies is here to stay." So declares the opening line of a report titled "Mis- and disinformation studies are too big to fail: Six suggestions for the field's future," published last September by the Harvard Misinformation Review.
- "Disinformation studies" is academic speak for online censorship. As the Harvard report itself concedes, the field was born (specifically it says these events were catalysts) "after Brexit and the election of Donald Trump—arguably catalysts for the emergence of the field." That is, per Harvard, the involvement of US academics in online censorship happened as a reactionary response to right-wing populist political success on both sides of the Atlantic.

"Disinformation studies" is a merger of social sciences and computer sciences, each converging on a common target (law-abiding citizens) to censor social media

- As a technical matter, "disinformation studies" is a merger of social sciences (psychology, sociology, anthropology) and computer sciences (AI, machine learning, network theory), each converging on a common target (law-abiding citizens) to censor on social media.
- University social science teams conduct a "network mapping" of so-called "misinformation communities" online for takedown, and their findings are converted into specific algorithm targets by the university computer science teams.
- The Harvard report defines "mis/disinfo studies" as such:
    - 'It is firmly entrenched in various academic disciplines, with work coming from areas such as sociology, communication, medicine and pharmacology, as well as computer science.'

Misinformation studies has now become "too big to fail" and the government has dished out dozens of grants to dozens of universities and colleges

- This presents a challenge. With mis-/disinformation studies in our view being "too big [and important] to fail," the question is then what to do with this state of affairs: how should we address the real shortcomings of the field to ensure its positive long-term impact?
- Here too, in the case of Big Tech's merger with academia for the field of censorship studies, Too Big To Fail also relies on government financial support. The Harvard Misinformation Review report begins its "Too Big To Fail" argument by citing "A broad range of funding bodies and governments [that] have devoted significant financial resources" to academic departments involved in censorship studies.
    - 'This presents a challenge. With mis-/disinformation studies in our view being "too big [and important] to fail," the question is then what to do with this state of affairs: how should we address the real shortcomings of the field to ensure its positive long-term impact?'
- Foundation for Freedom Online has already documented how in just the first two years of the Biden Administration, 64 government censorship grants were spread across 42 different

colleges and universities. This incredible range of recipients covers every level of the country's higher education institutions, both regionally and in terms of prestige:

Colleges & Universities Getting NSF Grants for "Mis/Disinformation," FY2021-2022

1. University of Southern California
2. University of Washington
3. MIT
4. Bowdoin College
5. Washington State University
6. Wesleyan University
7. University of North Carolina Chapel Hill
8. Carnegie Mellon University
9. State University of New York
10. University of Wisconsin
11. George Washington University
12. Syracuse University
13. Michigan State University
14. Arizona State University
15. Montana Technological University
16. Penn State University
17. University of Oklahoma
18. University of Texas at Austin
19. Rensselaer Polytechnic Institute
20. UCLA
21. City University of New York
22. Leland Stanford Junior University
23. Florida Institute for Human & Machine Cognition Inc.
24. University of Michigan
25. Indiana University
26. UC Irvine
27. Kent State University
28. University of Colorado
29. Stevens Institute of Technology (Inc)
30. Lehigh University
31. University of Maryland Baltimore
32. National Academy of Sciences
33. Texas State University
34. University of Utah
35. New York University
36. Georgia Tech Research Corporation
37. UC Davis
38. University of Georgia Research Foundation, Inc.
39. University of Connecticut
40. Old Dominion University
41. Northwestern University
42. Ohio State University

Research centres at Harvard have extensive links to the Cybersecurity and Infrastructure Security Agency's (CISA) domestic censorship operations at the Department of Homeland Security (DHS)

- As FFO previously reported, Harvard University's Belfer Center – a "research" centre within the same Kennedy School that publishes the Harvard Misinformation Review – has extensive links to the Cybersecurity and Infrastructure Security Agency's (CISA) domestic censorship operations at the Department of Homeland Security (DHS).
- The Belfer Center even produced a plan for CISA and DHS officials to censor individuals who opposed mail-in voting or vote-counting procedures ahead of the 2020 election, all under the label of "mis- and disinformation studies."
- But they weren't just studying content they viewed as mis- and disinformation – they were actively engaged in censoring that content.

The report's authors concede that the field of mis- and disinformation studies is the direct descendant of programmes that emerged during Cold War which intend to manipulate gullible populations

- But Harvard's abundant connections to government censors should perhaps be unsurprising given that, as Camargo and Simon put it, the field of mis- and disinformation studies is the direct descendant of "mass communication and persuasion, propaganda studies, and behavioral science" that emerged during "the U.S. Cold War environment of the 1950s."
- The authors concern both today's "mis/disinfo" fields and the US Cold War mind war apparatus were "concern[ed] with the manipulation of supposedly gullible populations and their implicit emphasis of technocratic control continue to shape the field of mis-/disinformation to this day."
- In other words, Camargo and Simon freely admit that the field of mis- and disinformation studies exists to stop gullible people from believing what they see with their own eyes – through the intervention of government censors.

Joan Donavan at the Harvard Institute published a paper that was later retracted for failing to meet basic standards of validity

- In a different, also unreported incident, she took heat from the political left. In January of 2021, a Shorenstein Center journal, Misinformation Review, whose editorial board includes Donovan, published a paper led by another researcher, Mutale Nkonde.
    - The paper accused a group called American Descendants of Slavery of engaging in what it called "disinformation creep."
- The paper relied on research from the progressive group MoveOn, and provoked heated denials from its subjects. In December of 2021, the journal retracted the study, finding that it "failed to meet professional standards of validity and reliability," and that its conclusions were based on "a few selected tweets."

G.O.P. targets researchers who study disinformation ahead of the 2024 election

- On Capitol Hill and in the courts, Republican lawmakers and activists are mounting a sweeping legal campaign against universities, think tanks and private companies that study the spread of disinformation, accusing them of colluding with the government to suppress conservative speech online.
- The group behind the class action, America First Legal, named as defendants two researchers at the Stanford Internet Observatory, Alex Stamos and Renée DiResta; a professor at the University of Washington, Kate Starbird; an executive of Graphika, Camille François; and the senior director of the Atlantic Council's Digital Forensic Research Lab, Graham Brookie.

The media

Civil institutions like the media and politicians are supposed to maintain distance from one another in democracy. The censorship industrial complex has brought these groups into concert

- Civil society institutions, the media, politicians, and government are supposed to maintain distance from one another in democracy.
- The Censorship-Industrial Complex shows an opposite instinct, for all of these groups to act in concert, essentially as one giant, incestuous intelligence operation — not of the people, but paternalistically "for" the people, or so they believe.
    1. Journalists attend conferences where news happens and do not report it, breaking ranks neither with conference organisers, nor with each other.

2. The Trump era has birthed a new brand of paranoid politics, where once-liberalising institutions like the press and NGOs are encouraged to absorb into a larger whole, creating a single political cartel to protect against the "contagion" of mass movements.

- As Lowenthal notes, this explains why so many "anti-disinformation" campaigns describe language as a kind of disease, e.g. "infodemic," "information pollution," and "information disorder."

The media increasingly believes that news outlets should collaborate, but it is rivalry that keeps the press honest, and what we have is an elite concentration of power. Otherwise, you get events like the Hamilton 68 fiasco

- Surrounded by the "disease" of dangerous political ideas, checks and balances are being discarded in favour of a new belief in banding together.
- The Guardian's Luke Harding laid out this idea a few years ago, in a gushing review of a book about Bellingcat by its founder, British journalist Eliot Higgins:
    - "Higgins thinks traditional news outlets need to establish their own open source investigation teams or miss out. He's right. Several have done so. The New York Times has recruited ex-Bellingcat staff. Higgins approves of this. In his view, rivalry between media titles is a thing of the past. The future is collaboration, the hunt for evidence a shared endeavour, the truth out there if we wish to discover it."
- Harding makes this sound cheery, but the rivalry of media titles is the primary (if not only) regulatory mechanism for keeping the press honest. If the Times, Washington Post, CNN, and MSNBC no longer go after each other for uncorrected errors — like the Hamilton 68 fiasco exposed in the #TwitterFiles, or Harding's own infamous report that former Trump campaign manager Paul Manafort managed to have a secret meeting in London's Ecuadorian embassy with the world's most-watched human, Assange — they can and will indulge in collective delusions.
    - A "shared endeavour" vision of politics is just a synonym for belief in elite concentration of power.

A commitment to a new homogeneous politics binds all this together, which is why we get a shared vocabulary of information disorder, like "credibility" or "media literacy"

- Binding all this is a commitment to a new homogeneous politics, which the complex of public and private agencies listed below seeks to capture in something like a Unified Field Theory of neoliberal narrative, which can be perpetually tweaked and amplified online via algorithm and machine learning.
    - This is what some of the organisations on this list mean when they talk about coming up with a "shared vocabulary" of information disorder, or "credibility," or "media literacy."
- Anti-disinformation groups talk endlessly about building "resilience" to disinformation (which in practice means making sure the public hears approved narratives so often that anything else seems frightening or repellent), and audiences are trained to question not only the need for checks and balances, but competition.
    - Competition is increasingly frowned upon not just in the "marketplace of ideas" (an idea itself more and more often described as outdated), but in the traditional capitalist sense. In the Twitter Files we repeatedly find documents like this unsigned "Sphere of Influence" review circulated by the Carnegie Endowment that wonders aloud if tech companies really need to be competing to "get it right"

The new media leaders see themselves as gatekeepers and they see classic journalism as an unacceptable breach of the perimeter

- As noted in Lowenthal's thread, the story of the #TwitterFiles and the Censorship-Industrial Complex is "really the story of the collapse of public trust in experts and institutions, and how those experts struck back, by trying to pool their remaining influence into a political monopoly."
    - The losers in any advancement of this story would include anyone outside the monopoly, and they can be on either the right or the left.
- The intense negative reaction by traditional press to the #TwitterFiles stories published to date is rooted in a feeling of betrayal.
    - The new media leaders see themselves as doing the same service police officers in the stop-and-frisk era called "order maintenance," pouncing on visible signs of discord or disruption. They are gatekeepers, and the #TwitterFiles — classic old-timey journalism that assumes the public has a right to know things — represents an unacceptable breach of the perimeter.
- In days gone by the digital rights field would have paid close attention to the #TwitterFiles, as we did with the Wikileaks or Snowden revelations.
    1. Much of the same field that once lauded Wikileaks and Snowden are now the ones who have become compromised.
    2. The Files make plain egregious acts of censorship were enabled or ignored by NGOs and academia, often not because they were wrong, but because the ideas came from the wrong people.

Role of academic institutions

'Virality Circuit Breakers:' Taxpayer-funded researchers devise new stealth censorship strategies

- A digital free-speech watchdog is warning that federally funded researchers have captured and examined millions of Twitter posts they deemed to be "misinformation" during the 2020 election and used them to devise new strategies that one day could empower Big Tech to censor or throttle content while keeping the affected users and the public in the dark.
- The Foundation for Freedom Online says the work done last year by members of the University of Washington Center for an Informed Public after receiving taxpayer grants devised new strategies like "virality circuit breakers" and "nudges" that could prevent certain users from spreading content without any apparent evidence they were being censored.
- The study is a roadmap on "how to censor people using secret methods so that they wouldn't know they're being censored, so that it wouldn't generate an outrage cycle, and so that it'd be more palatable for the tech platforms who wouldn't get blowback because people wouldn't know they're being censored," Mike Benz, a former State Department diplomat specialising in U.S. foreign policy on international communications and information technology matters told the "Just the News, No Noise" television show on Monday night.

Nature Magazine: disinformation experts are under investigation by Jim Jordan (pro-Trump) for suppressing Conservative voices

- Foundation for Freedom Online was given nearly full credit from Nature Magazine for the backlash against the censorship industry.
- "The idea of a coordinated censorship regime originated last year from a series of reports by the Foundation for Freedom Online, a self-described watchdog organisation set up by a former US State Department diplomat. Conservative billionaire Elon Musk added fuel to the idea when he released internal Twitter files to a few writers after purchasing the company in 2022. Those files revealed the firm's deliberations about content rules, as well as communications

pertaining to Twitter's 'partnership' with the FBI, security agencies and other outside organisations, including academic groups studying disinformation."

Academic links to intelligence agencies

Renée DiResta "worked for the CIA" before Stanford disinformation role, according to video remarks from her supervisor Alex Stamos

- For years, Renée DiResta has been one of the most prominent thought leaders, ubiquitous media voices, and influential "disinfo experts" in the emergent field of professional social media censorship (i.e. the "content moderation" vocation associated with "counter-disinformation" work).
- To DiResta's already controversial censorship industry career arc (detailed extensively here), it appears one more peculiar factoid can be added: Renée DiResta "worked for the CIA" before being recruited to perhaps the most powerful domestic censorship coordinating centre in all of academia, with close ties to Big Government and Big Tech: the Stanford Internet Observatory.

The hoax of the century

The Hamilton 68 hoax was false, none of it was true and real people were labelled as Russian stooges without evidence - but the media wasn't interested and Twitter let the story run

- A new outfit called Hamilton 68 claimed to have discovered hundreds of Russian-affiliated accounts that had infiltrated Twitter to sow chaos and help Donald Trump win the election.
    - Russia stood accused of hacking social media platforms, the new centers of power, and using them to covertly direct events inside the United States.
- None of it was true. After reviewing Hamilton 68's secret list, Twitter's safety officer, Yoel Roth, privately admitted that his company was allowing "real people" to be "unilaterally labeled Russian stooges without evidence or recourse."
- When proof emerged earlier this year that Hamilton 68 was a high-level hoax perpetrated against the American people, it was met with a great wall of silence in the national press.
    - The discovery prompted Twitter's head of trust and safety, Yoel Roth, to suggest in an October 2017 email that the company take action to expose the hoax and "call this out on the bullshit it is."
    - In the end, neither Roth nor anyone else said a word.

Obama signed into law the Countering Foreign Propaganda and Disinformation Act. A relic of the Cold War was now seen as an existential threat, with citizens minds vulnerable to "cognitive hacking"

- In his last days in office, President Barack Obama made the decision to set the country on a new course.
    - On Dec. 23, 2016, he signed into law the Countering Foreign Propaganda and Disinformation Act, which used the language of defending the homeland to launch an open-ended, offensive information war.
- Something in the looming specter of Donald Trump and the populist movements of 2016 reawakened sleeping monsters in the West.
    1. Disinformation, a half-forgotten relic of the Cold War, was newly spoken of as an urgent, existential threat. Russia was said to have exploited the vulnerabilities of the open internet to bypass U.S. strategic defenses by infiltrating private citizens' phones and laptops.

2. The Kremlin's endgame was to colonise the minds of its targets, a tactic cyber warfare specialists call "cognitive hacking."

Defence industry stated that America was losing influence in warfare, that its freedoms, like the Privacy Act of 1974 meant it was at a disadvantage to its adversaries

- "The U.S. Is Losing at Influence Warfare," warned a December 2016 article in the defense industry journal, Defense One.
    1. The article quoted two government insiders arguing that laws written to protect U.S. citizens from state spying were jeopardising national security.
    2. According to Rand Waltzman, a former program manager at the Defense Advanced Research Projects Agency, America's adversaries enjoyed a "significant advantage" as the result of "legal and organizational constraints that we are subject to and they are not."
- The point was echoed by Michael Lumpkin, who headed the State Department's Global Engagement Center (GEC), the agency Obama designated to run the U.S. counter-disinformation campaign.
    - Lumpkin singled out the Privacy Act of 1974, a post-Watergate law protecting U.S. citizens from having their data collected by the government, as antiquated.

As the internet was becoming part of daily life in America in 1996, the U.S. Army published 'Field Manual 100-6' about the need for information dominance

- In 1996, just as the Internet was becoming part of daily life in America, the U.S. Army published "Field Manual 100-6," which spoke of "an expanding information domain termed the Global Information Environment" that contains "information processes and systems that are beyond the direct influence of the military."
    - Military commanders needed to understand that "information dominance" in the "GIE" would henceforth be a crucial element for "operating effectively."
- You'll often see it implied that "information operations" are only practiced by America's enemies, because only America's enemies are low enough, and deprived enough of real firepower, to require the use of such tactics, needing as they do to "overcome military limitations."
- We rarely hear about America's own lengthy history with "active measures" and "information operations," but popular media gives us space to read about the desperate tactics of the Asiatic enemy, perennially described as something like an incurable trans-continental golf cheat.

Americans think in terms of war and peace, but its enemies are born into a state of constant conflict. This means America's open information landscape is a military weakness, the "Censorship-Industrial Complex" is just the Military-Industrial Complex reborn for the "hybrid warfare" age.

- Indeed, part of the new mania surrounding "hybrid warfare" is the idea that while the American human being is accustomed to living in clear states of "war" or "peace," the Russian, Chinese, or Iranian citizen is born into a state of constant conflict, where war is always ongoing, whether declared or not.
    - In the face of such adversaries, America's "open" information landscape is little more than military weakness.
- In March of 2017, in a hearing of the House Armed Services Committee on hybrid war, chairman Mac Thornberry opened the session with ominous remarks, suggesting that in the wider context of history, an America built on constitutional principles of decentralised power might have been badly designed:

1. Americans are used to thinking of a binary state of either war or peace. That is the way our organisations, doctrine, and approaches are geared. Other countries, including Russia, China, and Iran, use a wider array of centrally controlled, or at least centrally directed, instruments of national power and influence to achieve their objectives…
2. Whether it is contributing to foreign political parties, targeted assassinations of opponents, infiltrating non-uniformed personnel such as the little green men, traditional media and social media, influence operations, or cyber-connected activity, all of these tactics and more are used to advance their national interests and most often to damage American national interests…
3. The historical records suggest that hybrid warfare in one form or another may well be the norm for human conflict, rather than the exception.

Just as the war industry rebranded itself as the defence section, the "anti-disinformation" ecosystems present themselves as defensive, but there is nothing defensive about it

- Much like the war industry, pleased to call itself the "defense" sector, the "anti-disinformation" complex markets itself as merely defensive, designed to fend off the hostile attacks of foreign cyber-adversaries who unlike us have "military limitations."
- The CIC, however, is neither wholly about defense, nor even mostly focused on foreign "disinformation."
    - It's become instead a relentless, unified messaging system aimed primarily at domestic populations, who are told that political discord at home aids the enemy's undeclared hybrid assault on democracy.
- They suggest we must rethink old conceptions about rights, and give ourselves over to new surveillance techniques like "toxicity monitoring," replace the musty old free press with editors claiming a "nose for news" with an updated model that uses automated assignment tools like "newsworthy claim extraction," and submit to frank thought-policing mechanisms like the "redirect method," which sends ads at online browsers of dangerous content, pushing them toward "constructive alternative messages."

The national security infrastructure fused with the social media platforms, where this new war would be fought

- Step one in the national mobilisation to defeat disinfo fused the U.S. national security infrastructure with the social media platforms, where the war was being fought.
    - The government's lead counter-disinformation agency, the GEC, declared that its mission entailed "seeking out and engaging the best talent within the technology sector." To that end, the government started deputising tech executives as de facto wartime information commissars.
- At companies like Facebook, Twitter, Google, and Amazon, the upper management levels had always included veterans of the national security establishment.
    1. But with the new alliance between U.S. national security and social media, the former spooks and intelligence agency officials grew into a dominant bloc inside those companies; what had been a career ladder by which people stepped up from their government experience to reach private tech-sector jobs turned into an ouroboros that moulded the two together.
    2. With the D.C.-Silicon Valley fusion, the federal bureaucracies could rely on informal social connections to push their agenda inside the tech companies.

The United States is still in the earliest stages of a mass mobilisation that aims to harness every sector of society under a singular technocratic rule

- The mobilisation, which began as a response to the supposedly urgent menace of Russian interference, now evolves into a regime of total information control that has arrogated to itself the mission of eradicating abstract dangers such as error, injustice, and harm—a goal worthy only of leaders who believe themselves to be infallible, or comic-book supervillains.
- A state organised on the principle that it exists to protect the sovereign rights of individuals, is being replaced by a digital leviathan that wields power through opaque algorithms and the manipulation of digital swarms.

If the underlying philosophy of the war against disinformation can be expressed in a single claim, it is this: You cannot be trusted with your own mind: Hunter Biden wasn't a mistake, it was the system working

- In a technical or structural sense, the censorship regime's aim is not to censor or to oppress, but to rule. That is why the authorities can never be labelled as guilty of disinformation.
- Not when they lied about Hunter Biden's laptops, not when they claimed that the lab leak was a racist conspiracy, not when they said that vaccines stopped transmission of the novel coronavirus.
- That is not a sign that the concept is being misused or corrupted; it is the precise functioning of a totalitarian system.

The hoax of the century: Trump, Russia, and domestic extremism

An ex-FBI counter-intelligence analyst melded Russian-friendly accounts and Trump supporters, effectively arguing that politics was now war and Trump supporters were the enemy within

- According to the article, Trump voters and Russian propagandists were promoting the same stories on social media that were intended to make America look weak and incompetent.
    - The authors made the extraordinary claim that the "melding of Russian-friendly accounts and Trumpkins has been going on for some time."
- It meant that the people they called "Trumpkins," who made up half the country, were attacking America from within. It meant that politics was now war, as it is in many parts of the world, and tens of millions of Americans were the enemy.

An argument goes that Twitter makes falsehoods believable through sheer repetition. But this is what the advertising industry does

- "Watts pointed out to me that Twitter makes falsehoods seem more believable through sheer repetition and volume. He labelled it a kind of 'computational propaganda.' Twitter in turn drives mainstream media."
    - That second bit is your point.

Trump used social media to connect directly with his supporters, so to ensure this never happened again, the intelligence community had to break the independence of the social media platforms

- Trump had used sites like Twitter to bypass his party's elites and connect directly with his supporters.
- Therefore, to cripple the new president and ensure that no one like him could ever come to power again, the intel agencies had to break the independence of the social media platforms.
- Conveniently, it was the same lesson that many intelligence and defense officials had drawn from the ISIS and Russian campaigns of 2014—namely, that social media was too powerful to

be left outside of state control—only applied to domestic politics, which meant the agencies would now have help from politicians who stood to benefit from the effort.

After Trump's election, the media decided that social media was to blame. Articles against Facebook were common and Facebook announced a new push against fake news after comments by Obama

- At first, Facebook's CEO Mark Zuckerberg dismissed the charge that fake news posted on his platform had influenced the outcome of the election as "pretty crazy."
- But Zuckerberg faced an intense pressure campaign in which every sector of the American ruling class, including his own employees, blamed him for putting a Putin agent in the White House, effectively accusing him of high treason.
- The final straw came a few weeks after the election when Obama himself "publicly denounced the spread of fake news on Facebook."

Hunter Biden's laptop wasn't the norm because it was so brazen. Most take place under censorship mechanisms carried out under the auspices of "election integrity"

- The vast majority of the interference in the election was invisible to the public and took place through censorship mechanisms carried out under the auspices of "election integrity."
    - The legal framework for this had been put in place shortly after Trump took office, when the outgoing DHS chief Jeh Johnson passed an 11th-hour rule—over the vehement objections of local stakeholders—declaring election systems to be critical national infrastructure, thereby placing them under the supervision of the agency.
- In 2018, Congress created a new agency inside of the DHS called the Cybersecurity and Infrastructure Security Agency (CISA) that was tasked with defending America's infrastructure—now including its election systems—from foreign attacks.
- In 2019, the DHS added another agency, the Foreign Influence and Interference Branch, which was focused on countering foreign disinformation.
- As if by design, the two roles merged. Russian hacking and other malign foreign-information attacks were said to threaten U.S. elections. But, of course, none of the officials in charge of these departments could say with certainty whether a particular claim was foreign disinformation, simply wrong, or merely inconvenient.

Chapter 6 is about counter-intelligence apparatus moving into counter-disinformation. The threat now is right-wing fanatics and Trump supporters from within

- As journalist Glenn Greenwald observed, George W. Bush's "'with-us-or-with-the-terrorists' directive provoked a fair amount of outrage at the time but is now the prevailing mentality within U.S. liberalism and the broader Democratic Party."
- Why did Americans allows these people to take their liberties? It is possible to venture a guess:
    - Americans did not choose them. Americans are no longer presumed to have the right to choose their own leaders or to question decisions made in the name of national security. Anyone who says otherwise can be labelled a domestic extremist.

The intelligence agency sees social media as a new battlefield, where information rebellions must be quelled

- A few weeks after Trump supporters rioted in the U.S. Capitol on Jan. 6, 2021, former director of the CIA's Counterterrorism Center Robert Grenier wrote an article for The New York Times advocating for the United States to wage a "comprehensive counterinsurgency program" against its own citizens.
- Then came testimony to Congress from Clint Watts:

1. "Civil wars don't start with gunshots. They start with words," Clint Watts proclaimed in 2017 when he testified before Congress.
2. "America's war with itself has already begun. We all must act now on the social media battlefield to quell information rebellions that can quickly lead to violent confrontations."

"An extraordinary shadow effort", i.e the deep state, worked during the 2020 election and successfully pressured social media companies to take a harder line against disinformation

- In February 2021, a long article in Time magazine by journalist Molly Ball celebrated the "Shadow Campaign That Saved the 2020 Election."
    1. Biden's victory, wrote Ball, was the result of a "conspiracy unfolding behind the scenes" that drew together "a vast, cross-partisan campaign to protect the election" in an "extraordinary shadow effort."
    2. Among the many accomplishments of the heroic conspirators, Ball notes, they "successfully pressured social media companies to take a harder line against disinformation and used data-driven strategies to fight viral smears."
- The deep state refers to the power wielded by unelected government functionaries and their paragovernmental adjuncts who have administrative power to override the official, legal procedures of a government.
- But a ruling class describes a social group whose members are bound together by something deeper than institutional position: their shared values and instincts.
    1. Faced with an external threat in the form of Trumpism, the natural cohesion and self-organising dynamics of the social class were fortified by new top-down structures of coordination that were the goal and the result of Obama's national mobilisation.
    2. In the run-up to the 2020 election, according to reporting by Lee Fang and Ken Klippenstein for The Intercept, "tech companies including Twitter, Facebook, Reddit, Discord, Wikipedia, Microsoft, LinkedIn, and Verizon Media met on a monthly basis with the FBI, CISA, and other government representatives … to discuss how firms would handle misinformation during the election."

The hoax of the century: from darling to demon

The Clinton administration stated that the individual should be left in control of the way they use the internet, and mocked China's internet crackdown

- The Clinton administration's 1997 "A Framework for Global Electronic Commerce" put forth the vision: "The Internet is a medium that has tremendous potential for promoting individual freedom and individual empowerment" and "[t]herefore, where possible, the individual should be left in control of the way in which he or she uses this medium."
- The smart people in the West mocked the naive efforts in other parts of the world to control the flow of information.
    - In 2000, President Clinton scoffed that China's internet crackdown was "like trying to nail Jell-O to the wall."

Obama's White House met weekly with Google and there were 252 cases of people moving between jobs at the White House and Google. Hillary even decried tech censorship around the world

- There were also deep personal ties connecting the two powers, with 252 cases over the course of Obama's presidency of people moving between jobs at the White House and Google.

- From 2009 to 2015, White House and Google employees were meeting, on average, more than once a week.
- As Obama's secretary of state, Hillary Clinton led the government's "Internet freedom" agenda, which aimed to "promote online communications as a tool for opening up closed societies." In a speech from 2010, Clinton issued a warning about the spread of digital censorship in authoritarian regimes:
    - "A new information curtain is descending across much of the world," she said. "And beyond this partition, viral videos and blog posts are becoming the samizdat of our day."

These people saw internet freedom as a positive force when it empowered their interests, but something that needed to be curtailed when it broke down their hierarchies of power

- It is a supreme irony that the very people who a decade ago led the freedom agenda for other countries have since pushed the United States to implement one of the largest and most powerful censorship machines in existence under the guise of fighting disinformation.
- These people—politicians, first and foremost—saw (and presented) internet freedom as a positive force for humanity when it empowered them and served their interests, but as something demonic when it broke down those hierarchies of power and benefited their opponents.

As they hoovered up data the tech giants got too powerful, so the ruling parties gave them two choices: break up their monopolies or drop the pretense of neutrality and get in line

- The primary business of digital networking has come to be the creation of ultra-secret mega-dossiers about what others are doing, and using this information to concentrate money and power."
    - Because digital economies produce ever-greater concentrations of data and power, the inevitable happened: The tech companies got too powerful.
- What could the leaders of the ruling party do? They had two options.
    1. They could use the government's regulatory power to counter-attack: Break up the data monopolies and restructure the social contract underwriting the internet so that individuals retained ownership of their data instead of having it ripped off every time they clicked into a public commons.
    2. Or, they could preserve the tech companies' power while forcing them to drop the pretense of neutrality and instead line up behind the ruling party—a tempting prospect, given what they could do with all that power.
- They chose option B.

The hoax of the century: NGOs, fact-checkers, and the deep state

NGOs have placed their work below the private billionaires who fund them and above American citizens. This boom in jobs came as traditional media collapsed and lined perfectly with the American security state

- To save journalism, to save democracy itself, Americans should count on the foundations and philanthropists—people like eBay founder Pierre Omidyar, Open Society Foundations' George Soros, and internet entrepreneur and Democratic Party fundraiser Reid Hoffman.
- In other words, Americans were being asked to rely on private billionaires who were pumping billions of dollars into civic organisations—through which they would influence the American political process.

1. First, it placed them in a position below the billionaire philanthropists but above hundreds of millions of Americans whom they would guide and instruct as a new information clerisy by separating truth from falsehood, as wheat from chaff.
2. Second, this mandate, and the enormous funding behind it, opened up thousands of new jobs for information regulators at a moment when traditional journalism was collapsing.
3. Third, the first two points placed the immediate self-interest of the NGO staffers perfectly in line with the imperatives of the American ruling party and security state. In effect, a concept taken from the worlds of espionage and warfare—disinformation—was seeded into academic and nonprofit spaces, where it ballooned into a pseudoscience that was used as an instrument of partisan warfare.

Disinformation involves no technical knowledge, it involves ideological orientation. Just look at Prince Harry joining the Aspen Institute's Commission on Information Disorder

- The modern "fact-checking" industry, for instance, which impersonates a well-established scientific field, is in reality a nakedly partisan cadre of compliance officers for the Democratic Party. Its leading organisation, the International Fact-Checking Network, was established in 2015 by the Poynter Institute, a central hub in the counter-disinformation complex.
    1. Everywhere one looks now, there is a disinformation expert. They are found at every major media publication, in every branch of government, and in academic departments, crowding each other out on cable news programs, and of course staffing the NGOs.
    2. There is enough money coming from the counter-disinformation mobilisation to both fund new organisations and convince established ones like the Anti-Defamation League to parrot the new slogans and get in on the action.
- How is it that so many people could suddenly become experts in a field—"disinformation"—that not 1 in 10,000 of them could have defined in 2014?
    1. Because expertise in disinformation involves ideological orientation, not technical knowledge.
    2. For proof, look no further than the arc traced by Prince Harry and Meghan Markle, who pivoted from being failed podcast hosts to joining the Aspen Institute's Commission on Information Disorder. Such initiatives flourished in the years after Trump and Brexit.

The DHS has stated that third-party nonprofits should be used as a "clearing house for information to avoid the appearance of government propaganda

- But it went beyond celebrities. According to former State Department official Mike Benz, "To create a 'whole of society' consensus on the censorship of political opinions online that were 'casting doubt' ahead of the 2020 election, DHS organised 'disinformation' conferences to bring together tech companies, civil society groups, and news media to all build consensus—with DHS prodding (which is meaningful: many partners receive government funds through grants or contracts, or fear government regulatory or retaliatory threats)—on expanding social media censorship policies."
- A DHS memo, first made public by journalist Lee Fang, describes a DHS official's comment "during an internal strategy discussion, that the agency should use third-party nonprofits as a "clearing house for information to avoid the appearance of government propaganda."
- The institutions that claim to act as watchdogs on government power rented themselves out as vehicles for manufacturing consensus.

Covid-19 was used to kick journalists off Twitter for reporting accurate information that was inconvenient. Children were even encouraged to report their families for disinformation

- Berenson was kicked off Twitter after tweeting that mRNA vaccines do not "stop infection. Or transmission." As it turned out, that was a true statement.
- In the record of a meeting in December 2020, Food and Drug Administration adviser Dr. Patrick Moore stated, "Pfizer has presented no evidence in its data today that the vaccine has any effect on virus carriage or shedding, which is the fundamental basis for herd immunity."
- Dystopian in principle, the response to the pandemic was also totalitarian in practice. In the United States, the DHS produced a video in 2021 encouraging "children to report their own family members to Facebook for 'disinformation' if they challenge US government narratives on Covid-19."

A "Ministry of Truth" was ushered in without any fanfare

- In January 2021, CISA "transitioned its Countering Foreign Influence Task Force to promote more flexibility to focus on general MDM [ed. note: an acronym for misinformation, disinformation, and malinformation]," according to an August 2022 report from the DHS's Office of Inspector General. After the pretense of fighting a foreign threat fell away, what was left was the core mission to enforce a narrative monopoly over truth.
- The new domestic-focused task force was staffed by 15 employees dedicated to finding "all types of disinformation"—but specifically that which related to "elections and critical infrastructure"—and being "responsive to current events," a euphemism for promoting the official line of divisive issues, as was the case with the "COVID-19 Disinformation Toolkit" released to "raise awareness related to the pandemic."
    - Kept a secret from the public, the switch was "plotted on DHS's own livestreams and internal documents," according to Mike Benz. "DHS insiders' collective justification, without uttering a peep about the switch's revolutionary implications, was that 'domestic disinformation' was now a greater 'cyber threat to elections' than falsehoods flowing from foreign interference."
- Just like that, without any public announcements or black helicopters flying in formation to herald the change, America had its own ministry of truth.

The government and NGOs sent tickets to the tech companies that flagged objectionable content they wanted to be scrubbed. This allowed the DHS to outsource its work to the Election Integrity Project (EIP)

- Together they operated an industrial-scale censorship machine in which the government and NGOs sent tickets to the tech companies that flagged objectionable content they wanted scrubbed. That structure allowed the DHS to outsource its work to the Election Integrity Project (EIP), a consortium of four groups:
    1. The Stanford Internet Observatory.
    2. Private anti-disinformation company Graphika (which had formerly been employed by the Defense Department against groups like ISIS in the war on terror)
    3. Washington University's Center for an Informed Public
    4. The Atlantic Council's Digital Forensics Research Lab.
- Looking at the censorship figures that the DHS's own partners reported for the 2020 election cycle in their internal audits, the Foundation for Freedom Online summarised the scope of the censorship campaign in seven bullet points:
    1. 22 million tweets labelled "misinformation" on Twitter;

2. 859 million tweets collected in databases for "misinformation" analysis;
3. 120 analysts monitoring social media "misinformation" in up to 20-hour shifts;
4. 15 tech platforms monitored for "misinformation," often in real-time;
5. <1 hour average response time between government partners and tech platforms;
6. Dozens of "misinformation narratives" targeted for platform-wide throttling; and
7. Hundreds of millions of individual Facebook posts, YouTube videos, TikToks, and tweets impacted due to "misinformation" Terms of Service policy changes, an effort DHS partners openly plotted and bragged that tech companies would never have done without DHS partner insistence and "huge regulatory pressure" from government.

For the ruling class, free speech is a threat to liberal democracy

- A book by Yale philosopher Jason Stanley and linguist David Beaver stated: "Free speech threatens democracy as much as it also provides for its flourishing."
- So the problem of disinformation is also a problem of democracy itself—specifically, that there is too much of it. To save liberal democracy, the experts prescribed two critical steps: America must become less free and less democratic.
    1. This necessary evolution will mean shutting out the voices of certain rabble-rousers in the online crowd who have forfeited the privilege of speaking freely.
    2. It will require following the wisdom of disinformation experts and outgrowing our parochial attachment to the Bill of Rights.
- This view may be jarring to people who are still attached to the American heritage of liberty and self-government, but it has become the official policy of the country's ruling party and much of the American intelligentsia.
    - Former Clinton Labor Secretary Robert Reich responded to the news that Elon Musk was purchasing Twitter by declaring that preserving free speech online was "Musk's dream. And Trump's. And Putin's. And the dream of every dictator, strongman, demagogue, and modern-day robber baron on Earth. For the rest of us, it would be a brave new nightmare." According to Reich, censorship is "necessary to protect American democracy."
- To a ruling class that had already grown tired of democracy's demand that freedom be granted to its subjects, disinformation provided a regulatory framework to replace the U.S. Constitution. By aiming at the impossible, the elimination of all error and deviation from party orthodoxy, the ruling class ensures that it will always be able to point to a looming threat from extremists—a threat that justifies its own iron grip on power.

The tech itself

The International Panel on the Information Environment says misinformation and algorithmic bias are an existential threat

- "Algorithmic bias, manipulation and misinformation has become a global and existential threat that exacerbates existing social problems, degrades public life, cripples humanitarian initiatives and prevents progress on other serious threats," the panel wrote in its inaugural announcement.

Facebook's algorithm is 'influential' but doesn't necessarily change beliefs, researchers say

- But four new studies published on Thursday — including one that examined the data of 208 million Americans who used Facebook in the 2020 presidential election — complicate that narrative.

- In the papers, researchers from the University of Texas, New York University, Princeton and other institutions found that removing some key functions of the social platforms' algorithms had "no measurable effects" on people's political beliefs. In one experiment on Facebook's algorithm, people's knowledge of political news declined when their ability to reshare posts was removed, the researchers said.
- At the same time, the consumption of political news on Facebook and Instagram was highly segregated by ideology, according to another study.
    - More than 97 percent of the links to news stories rated as false by fact checkers on the apps during the 2020 election drew more conservative readers than liberal readers, the research found.

Philip Hamburger interview

(from the 55:00 mark)

Hamburger works for the New Civil Liberties Alliance

- July 4th ruling (Missouri) says stop pressuring these companies to censor people. This helps put the issue on the map. The Twitter Files did this to an extent, but when you get a court ruling even the New York Times must acknowledge that something is going on, and other courts must notice.
- Hamburger works for the New Civil Liberties Alliance.
    - Alliance is the key word, they work with others.

Philip Hamburger and the New Civil Liberties Alliance have been working on three cases

- On the Gina Chingeze case, the judge said it is quite improbable that the administration would be engaging in censorship.
- Then they've been working on the second case, the Missouri case. This one emphasises Conservative speech.

The third case demonstrates that peoples' lives are at stake because of censorship

- The third case is Dresden vs Farrehty, led by Casy Norman.
    1. This one emphasises personal speech, the government suppressed adverse effects about the vaccine and people were terribly harmed by them.
    2. Rhian Dresden set up a private Facebook group for people to talk about these problem, it was private speech.
    3. Ernest Ramirez wanted to share his grief about his dead son, and the group was shut down by Facebook, under pressure from Rob Flaherty and the White House.
    4. This is private speech which has been conveniently turned into political speech.
- Censorship can be a case of life and death.

The government talks about working through private companies to reduce freedom of speech to get around the First Amendment. You cannot hire/use someone to break laws for you

- People argue that private companies should be allowed to censor, so people like Michael are arguing for the censorship of private companies. States are private plaintiffs too.
- The Supreme Court doesn't say coersion is the only way to stop rights.
- The first amendment talks about "abridging" freedom of speech, which just means reducing speech. That is not a high standard, and the government has clearly been doing that.

- The government talks about working through the private companies to reduce freedom of speech to get around the first amendment.
- People argue that Facebook hasn't been converted into a government actor, but that is not necessary.

Some argue that the government has a right to speech and that these cases violate their right to speak. This is not true, the First Amendment doesn't empower the government (which is now using qualified immunity to act freely)

- But the First Amendment doesn't empower or give a right to government, it is a limit on government. The First Amendment doesn't apply here.
- With qualified immunity, the government can get away with anything and will not be liable. So because of this, government officials feel liberated and that they can do what they want.
- Phillip feels that the Supreme Court needs to clarify the issue.

The states are a counterbalance to the federal government, which uses the Commerce Clause. We've lost the idea that freedom of speech is a maxim to abide by

- The Commerce clause has been expanded to justify regulation of speech. Wilson originally rallied for this because he didn't believe the government could regulate speech in the way they could commerce.
- The states pushed back against the 1798 sedition act, which was concerned with French influence and so made it so the government wasn't liable.
- The states are a counter-balance to the federal government and that is why you need individuals.
- The fear is that with the internationalisation of communication companies, we're losing our rights and expectations of freedoms.
- We've lost the idea that freedom of speech is a maxim to abide by, that even government officials would not go against it. Maddison spoke of that.

Government officials use regulatory extortion to get private companies to do their bidding, and we've never been able to censor at this scale or even to censor people as opposed to books for example

- We've never had what we have now, which is a massive system of censorship. it is been deliberately done to avoid the first amendment with it happening through private companies.
- Government officials use regulatory extortion to get private companies to do their bidding, whether it be banks or social media companies. This is happening in Europe and Britain too.
    - The way to fight back is to treat these companies as common carriers, which is what Texas has done. We need common carriers statutes.
- Even the inquisition didn't for the most part deplatform people, it went after books. There was nothing stopping you from coming back the next day with a new book.

Mechanisms of warfare created after 9/11 are being used to censor private citizens. Also, you cannot deamplify someone's voice - it is like saying you can get on the bus but sit at the back. This is about scientists and fathers wanting to talk about their dead children, it is not about Nazis

- Deamplifying someone's voice is the same as saying someone can get on the bus but they must get to the back.
- These mechanisms were developed after 9/11, so mechanisms of warfare have been turned against us.
- This is not just about censoring swatzikas, this is about a father wanting to talk about his son or scientists presenting evidence.

How to fight Big Tech censorship: the Censorship Industrial Complex

An IRS agent turned up at Matt Taibbi's house while he was testifying before Congress

- The Wall Street Journal reported that, two weeks ago, while journalist Matt Taibbi and I were testifying before Congress on the weaponisation of the federal government, an IRS agent showed up at his house. "What an amazing coincidence," I tweeted.

Today, a federally-funded Censorship Industrial Complex and Big Tech Internet platforms are undermining our freedom of speech

- Large Internet technology companies have been censoring Americans, often under pressure from U.S. government employees and contractors.
- Today's censorship takes myriad forms reminiscent of what George Orwell famously called "wrongspeak," including the censoring of so-called "misinformation, disinformation, and malinformation" on the origins of COVID, COVID vaccines, emails relating to Hunter Biden's business dealings, climate change, renewable energy, fossil fuels, and many other issues.
    - "If government officials are directing or facilitating such censorship," notes George Washington University law professor Jonathan Turley, "it raises serious First Amendment questions. It is axiomatic that the government cannot do indirectly what it is prohibited from doing directly."

Congress must defund and dismantle the Censorship Industrial Complex to protect freedom of speech

- It should immediately cut funding to the Defense Department,9 Department of Homeland Security, the National Science Foundation, and any other government agency used to create tools or justifications for Internet censorship.
- And, to prevent the Censorship Industrial Complex from reemerging, hydra-headed, from other government agencies or government contractors, both parties should support a bipartisan truth and reconciliation commission to root out any remaining vestiges of it in other government agencies, and understand how such a Complex was created in the first place.

How to fight Big Tech censorship: Section 230 needs change

Section 230 is depriving the American people of their unalienable right to freedom of speech

- While those steps are urgent, they are insufficient. Even without direct government censorship, Internet "platforms," a category that includes search companies (e.g. Google and ChatGPT) and Internet companies (e.g. Facebook and Twitter), have been caught violating their own terms of service to censor and deplatform disfavored views and voices.
- Section 230 of the Communications Decency Act, which exempts Big Tech Internet companies from liability for user content, has allowed these companies to operate as monopolies.

Using the protections afforded to private companies by Section 230, Big Tech censorship frequently has violated the spirit of free speech intended by America's founders.

- As these companies and their defenders often repeat, they are private companies, and so when government is not demanding or directing, Big Tech censorship does not violate the First Amendment.
- What's more, in censoring disfavored views, Big Tech frequently ends up maligning and harming people, who are then deprived by Section 230 of an opportunity to sue for harm or even appeal their treatment.

The only guaranteed remedy to Big Tech censorship is the elimination of Section 230 liability protections

- Doing so would allow individual citizens to sue Internet companies for the harm they cause but at the cost of ending Internet platforms and potentially reducing overall freedom of speech.
- That is because the same Internet platforms that are censoring some Americans are providing many others with a platform to share their views, however, censored and controlled.
- As such, we should seek an alternative allowing Internet companies to continue operating while protecting the public's unalienable right to free speech.

Congress could reduce rather than eliminate liability protections in Section 230, taking out 'otherwise objectionable'

- The law currently protects the right of Internet platforms to "restrict access to or availability of material that the provider or user considers being obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable."
- Congress could simply remove the words "otherwise objectionable," which effectively gives Internet platforms blanket protection to censor any content.
- This would allow citizen-users to sue the Internet platforms that unjustly censor or deplatform them.

How to fight Big Tech censorship: Big Tech companies need to change

At the same time, opening up Internet companies to many more lawsuits could significantly undermine their ability to function as profitable private enterprises in providing a free speech platform

- Already, in response to pressure from both Democrats and Republicans, Facebook has reduced the sharing of political content overall.
- It is not hard to imagine that Internet platforms would significantly reduce overall speech to avoid lawsuits.
- As such, simply reducing liability protections within Section 230 appears to be an option for protecting citizens and users, but one with significant potential downsides, both for private interests and the public's interest in freedom of speech.

Tech companies regularly violate transparency terms to shut down viewpoints

- But tech companies regularly violate and/ rewrite their terms of service in response to specific events, as occurred with "misgendering," the deplatforming of a sitting president, and the release of the emails from the hard drive of the son of another.
- Big Tech often does so secretly, as with Covid vaccine censorship, providing little to no information about why they have done so. And they rarely offer an appeals process for censored and deplatformed citizen-users

An existing transparency proposal before Congress would further empower and strengthen the Censorship Industrial Complex rather than eliminate it

- The Platform Accountability and Transparency Act would only grant access to content moderation decisions to NSF-certified researchers, reinforcing the highly secretive, partisan, and ultimately unconstitutional network of government agencies and contractors that should instead be defunded, dismantled, and investigated immediately.

A case can be made that Internet platforms must not be allowed to deplatform or disallow verified users

- Free speech happens online, and denying a person the right to express themselves on Internet platforms violates the spirit, if not the letter, of the First Amendment.
    1. We do not allow electricity, water, and garbage collection monopolies to deprive citizens of their rights to power, water, and trash collection.
    2. A similar argument can be made that we should not allow Internet monopolies to deprive citizens of their right to free speech.
- The effect of deplaforming is serious. If individuals and policymakers are excluded from multiple platforms, they are effectively denied their personhood, their right to express themselves, and to make a living.

At the same time, preventing Internet companies from censoring and de-platforming content and users could constitute government overreach, hence the verified users' exception

- It would require government oversight over private decisions to temporarily or permanently suspend (deplatform) individuals who have broken terms of service, thereby risking First Amendment protections against compelled speech.
- As an alternative to mandating a guranteed right of access, Congress should pass a nonbinding resolution stating its view that Internet platforms should not derpive access to verified users save for very rare cases and, when that occurs, such cases should be publicly disclosed immediately, with the right of reply granted.
- Congress should make clear that it would seriously consider new legislation if Internet platforms are unjustly depriving citizen-users of access.

Three proposed transparency requirements (and other suggestions from Congress testimonies)

The three proposals are: Government Transparency, Big Tech Transparency, and Right to Reply

- Congress should instead simply require, first, the reporting of all content moderation requests and communications by government employees and contractors to Internet companies, second, transparency by Internet companies in changes to terms of service and content moderation decisions, and third, the mandatory granting by Section 230 companies to censored citizens the right to receive an explanation for the action and the right to provide a reply.
- It’s worth considering these three proposed transparency requirements in detail.

Government Transparency

- Government officials and contractors should be required by law to disclose any and all conversations and communications with Internet platforms, both their employees and contractors, relating to censorship and content moderation.
    1. Nobody expects law enforcement agencies to disclose aspects of confidential criminal investigations done with online platforms.
    2. Those interactions should be governed by existing privacy protections starting with the requirement of law enforcement to obtain a warrant before requiring searches and seizures.
- But if government officials are going to ask platforms to censor individuals or disfavored content, whether relating to the war in Ukraine or vaccine side effects, they should be required to immediately report that information within hours of making such requests, in as public of a way as possible, including on a government web site and on the social platforms in question.

Big Tech Transparency

- By law, Internet platforms should be required to immediately and publicly disclose content moderation decisions, including censoring and limiting content, temporarily suspending or deplatforming users, and changes to their terms of service.
    - Government reporting on content moderation communications with Internet platforms will require no additional work by Internet companies and will impose a modest burden on government employees and contractors.
- Such transparency would allow private corporations to decide how to manage content while also providing citizens and users visibility into content management decisions.
- This transparency would allow the debate over the content to take place in other media and, hopefully, on platforms with different content management policies and practices.

Right to Reply

- Section 230 companies should be required by law to give censored citizen-users of their platforms the right to respond to their corporate accusers.
- The combination of transparency by the platforms and the response by censored citizens will bring out from behind the Silicon Curtain the substantive issues while also giving the censored author or voice their due public voice, should they choose to defend themselves publicly.
- That is particularly important since public censorship comes with the stigma of being labelled a liar and/or purveyor of disinformation by some the most powerful organs of mass communication in human history.
- It is no understatement to say that Facebook, Twitter and other social media platforms are capable of ruining livelihoods and lives. Such Goliaths must provide censored citizens an opportunity to use their voice.

Congress should cut off funding to censors and mandate instant reporting of all conversations between social media and the government regarding content moderation. Congress should also limit the broad permission given to social media platforms to censor and deplatform

- Congress should immediately cut off funding to the censors and investigate their activities. Second, it should mandate instant reporting of all conversations between social media executives, government employees, and contractors concerning content moderation. Third, Congress should limit the broad permission given to social media platforms to censor, deplatform, and spread propaganda.

Memo

Three questions: What immunities could a new platform enjoy from section 230 and what are the minimum requirements for a new platform to enjoy immunity based on current law

- You have asked us to provide analysis and recommendations regarding whether and to what extent a new Internet media platform that provides a forum for users to publish speech or other information (the “New Platform”) could expect to enjoy the immunities provided by section 230 of the Communications Decency Act (“CDA § 230”), including the ability to censor content and/or deplatform users without legal liability.
- You have asked us to assume that the New Platform might use third party web content management system (“CMS”) services and/or a third-party hosting service (e.g. WordPress or similar) to operate its platform.

- You have asked us to advise on the minimum requirements necessary for a New Platform to qualify for such immunity, based on the current state of the statutory and common law.

Answer: A new platform is likely to enjoy protections

- A New Platform that enables users to publish information is likely to enjoy protection under CDA 230(c)(1) – which would render it immune from liability for content posted by users and from its decision to remove user content and delete user profiles – so long as certain narrow caveats are avoided.
- A New Platform that offers such services is also likely to enjoy protection under CDA 230(c)(2) – which would offer additional immunity for content that New Platform may have had a hand in creating – so long as New Platform maintains clear guidelines or policies regarding what types of content it considers to be "obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable," and enforces those policies with bare minimum reasonable consistency.

Section 230 doesn't mean a third-party hosting service, like WordPress, would be liable. The original platform is liable

- First, it is well-established that "§ 230 immunity [is] quite robust," and courts have routinely "adopt[ed] a relatively expansive definition of interactive computer service."
    - We also considered, and rejected, the possibility if the New Platform used a third-party content management service and/or third-party hosting service in connection with operating its platform (e.g. WordPress), that a court would consider those third parties to be the "provider(s)" since they, not New Platform, own the servers or host the content.

Even small platforms, like student websites, are protected under Section 230. So, a new platform is likely to be protected by Section 230

- Second, the few cases that do address the issue of § 230 immunity for smaller platforms support our conclusion.
    - Our experience with litigating §230 claims further supports the conclusion that courts will be liberal in defining what constitutes an "interactive computer service," as this term has even been applied (in an unpublished opinion) to a school's operation of its student website.
- In short, our research reflects that a New Platform that provides a forum on which users may publish information is highly likely to be deemed a provider of an interactive computer service, sufficient to avail itself of immunity under § 230(c)(1), even presuming that the New Platform uses the services of a third-party CMS and/or host.
    - 230(c)(1) immunity would render New Platform immune from liability based on content posted by users, and from New Platform's decision to remove content and delete user profiles.

A platform will not be treated as a publisher or speaker of any information, nor will they be punished for editorial decisions to remove content. It cannot be sued or held liable

- § 230(c)(1) states that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."
- Cases nationwide have interpreted § 230(c)(1) to give platforms immunity not only for liability based on content posted by its users, but also for the platform's decision to remove user-generated content or to delete user profiles.

- Thus, any "activity that can be boiled down to deciding whether to exclude material that third parties seek to post online is perforce immune under section 230."
- To summarise: if a New Platform is held to be a provider of an interactive computer service, then under CDA 230(c)(1) it will be free to remove user-posted content and delete user accounts ("deplatform") without legal liability, nor can it be sued for content posted by its users.

There are exceptions to Section 230: the provider must have had no role in the "creation or development of posted information", nor are they exempt from constitutional claims, federal criminal claims, intellectual property claims, certain federal and state laws relating to sex trafficking, and certain privacy laws applicable to electronic communications

- There are a few important caveats to § 230(c)(1) immunity. First, the provider must have had no role in the "creation or development" of information posted by users.
- Further, § 230 does not immunise a defendant from constitutional claims, federal criminal claims, intellectual property claims, certain federal and state laws relating to sex trafficking, and certain privacy laws applicable to electronic communications.

Platforms have protection when making editorial decisions to remove content, and that decision can be subjective

- In other words, § 230(c)(2) can offer a platform additional immunity beyond what (c)(1) provides, by shielding a platform from liability for censoring even content that it had a hand in creating, presuming the platform acted in good faith and the content meets the description set forth in the statute.
- The statute is focused on the provider's subjective intent of what is "obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable" (CDA 230(c)(2)), and ""does not require that the material actually be objectionable; rather, it affords protection for blocking material 'that the provider or user considers to be' objectionable."

The only way a platform could be caught out is if they promised that users would not be removed

- Accordingly, we should assume that if a New Platform's managing agents engage in direct correspondence with users regarding what they can or cannot expect about enforcement of the platform's guidelines or policies, such conduct can open New Platform up to potential liability for non-speech-related claims, regardless of § 230(c)(2) protection.
    - (E.g., a statement to New Platform users that "nobody will ever get deplatformed for unpopular opinions here" could be problematic down the line when New Platform engages in content moderation.)

Section 230: the basics

Section 230 provides immunity from liability for providers. They shall not be treated as publishers or speakers

- Section 230 is a section of Title 47 of the United States Code that was enacted as part of the Communications Decency Act of 1996, which is Title V of the Telecommunications Act of 1996, and generally provides immunity for online computer services with respect to third-party content generated by its users.
- At its core, Section 230(c)(1) provides immunity from liability for providers and users of an "interactive computer service" who publish information provided by third-party users:

- 'No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.'

Section 230c protects civil liability in the good faith removal or moderation of third-party material they deem fit to remove and for illegal material on a federal level

- Section 230(c)(2) further provides "Good Samaritan" protection from civil liability for operators of interactive computer services in the good faith removal or moderation of third-party material they deem "obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected."
- Section 230 protections are not limitless and require providers to remove material illegal on a federal level, such as in copyright infringement cases.

Section 230 was great for the development of the internet

- Section 230 has often been called "The 26 words that made the Internet".
- These protections allowed experimental and novel applications in the Internet area without fear of legal ramifications, creating the foundations of modern Internet services such as advanced search engines, social media, video streaming, and cloud computing.
- NERA Economic Consulting estimated in 2017 that Section 230 and the DMCA, combined, contributed about 425,000 jobs to the U.S. in 2017 and represented a total revenue of US$44 billion annually.

Section 230 under the spotlight: free speech and government oversight

Section 230 has become relevant in recent years because of hate speech and election interference

- In the following years, protections from Section 230 have come under more scrutiny on issues related to hate speech and ideological biases in relation to the power that technology companies can hold on political discussions and became a major issue during the 2020 United States presidential election, especially with regard to alleged censorship of more conservative viewpoints on social media.

Some experts have suggested that Section 230 should not be repealed entirely but modified

- Numerous experts have suggested that changing 230 without repealing it entirely would be the optimal way to improve it.
- Google's former fraud czar Shuman Ghosemajumder proposed in 2021 that full protections should only apply to unmonetised content, to align platforms' content moderation efforts with their financial incentives, and to encourage the use of better technology to achieve that necessary scale.
- Researchers Marshall Van Alstyne and Michael D. Smith supported this idea of an additional duty-of-care requirement.
- However, journalist Martin Baron has argued that most of Section 230 is essential for social media companies to exist at all.

Senator Josh Hawley's proposal has received bipartisan support, although more FTC oversight could continue to fuel fears of a big government oversight

- In June 2019, Hawley introduced the Ending Support for Internet Censorship Act (S. 1914), that would remove section 230 protections from companies whose services have more than 30 million active monthly users in the U.S. and more than 300 million worldwide, or have over $500 million in annual global revenue, unless they receive a certification from the majority of

the Federal Trade Commission that they do not moderate against any political viewpoint, and have not done so in the past 2 years.

- There has been criticism—and support—of the proposed bill from various points on the political spectrum.
    1. A poll of more than 1,000 voters gave Senator Hawley's bill a net favorability rating of 29 points among Republicans (53% favor, 24% oppose) and 26 points among Democrats (46% favor, 20% oppose).
    2. Some Republicans feared that by adding FTC oversight, the bill would continue to fuel fears of a big government with excessive oversight powers.
    3. Nancy Pelosi, the Democratic Speaker of the House, has indicated support for the same approach Hawley has taken.
    4. The chairman of the Senate Judiciary Committee, Senator Graham, has also indicated support for the same approach Hawley has taken, saying "he is considering legislation that would require companies to uphold 'best business practices' to maintain their liability shield, subject to periodic review by federal regulators."

Legal experts have criticised the Republicans' push to make Section 230 encompass platform neutrality, saying 230 was never about the neutrality of private companies

- Wyden stated in response to potential law changes that "Section 230 is not about neutrality. Period. Full stop. 230 is all about letting private companies make their own decisions to leave up some content and take other content down."
- Kosseff has stated that the Republican intentions are based on a "fundamental misunderstanding" of Section 230's purpose, as platform neutrality was not one of the considerations made at the time of passage.
    - Kosseff stated that political neutrality was not the intent of Section 230 according to the framers, but rather making sure providers had the ability to make content-removal judgement without fear of liability.
- There have been concerns that any attempt to weaken Section 230 could actually cause an increase in censorship when services lose their exemption from liability.

Lawsuits against tech companies have generally failed as free speech is only protected against the government and not by private entities

- Attempts to bring damages to tech companies for apparent anti-conservative bias in courts, arguing against Section 230 protections, have generally failed.
- A lawsuit brought by the non-profit Freedom's Watch in 2018 against Google, Facebook, Twitter, and Apple on antitrust violations for using their positions to create anti-conservative censorship was dismissed by the D.C. Circuit Court of Appeals in May 2020, with the judges ruling that censorship can only apply to First Amendment rights blocked by the government and not by private entities.

The First Amendment protects hate speech, not Section 230, which is why articles calling for hate speech to be removed in the wake of mass shootings have been criticised

- Notable articles on these concerns were published after the El Paso shooting by The New York Times, The Wall Street Journal, and Bloomberg Businessweek, among other outlets, but which were criticised by legal experts including Mike Godwin, Mark Lemley, and David Kaye, as the articles implied that hate speech was protected by Section 230, when it is in fact protected by the First Amendment.
- In the case of The New York Times, the paper issued a correction to affirm that the First Amendment protected hate speech, and not Section 230.

Democratic proposals against Section 230

Congress has stated that the shield/protection of Section 230 may be removed if companies do not use their “sword” effectively enough

- Members of Congress have indicated they may pass a law that changes how Section 230 would apply to hate speech as to make tech companies liable for this. Wyden, now a Senator, stated that he intended for Section 230 to be both "a sword and a shield" for Internet companies, the "sword" allowing them to remove content they deem inappropriate for their service, and the shield to help keep offensive content from their sites without liability.
- However, Wyden warned that because tech companies have not been willing to use the sword to remove content, they could be at risk of losing the shield.

Biden has called for America to follow the lead of the GDPR in regards to standards for online privacy

- Fellow candidate and former vice president Joe Biden has similarly called for Section 230 protections to be weakened or otherwise "revoked" for "big tech" companies—particularly Facebook—having stated in a January 2020 interview with The New York Times that "[Facebook] is not merely an internet company.
- It is propagating falsehoods they know to be false", and that the U.S. needed to "[set] standards" in the same way that the European Union's General Data Protection Regulation (GDPR) set standards for online privacy.

Zuckerberg says it is impractical and expensive to monitor all traffic, and that liability should instead be given on the basis that companies have mechanisms in place to remove such posts once identified

- In March 2021, Facebook's Mark Zuckerberg, Alphabet's Sundar Pichai, and Twitter's Jack Dorsey were asked to testify to the House Committee on Energy and Commerce relating to the role of social media in promoting extremism and misinformation following the 2020 election; of which Section 230 was expected to be a topic.
- Prior to the event, Zuckerberg proposed an alternate change to Section 230 compared to previously proposed bills. Zuckerberg stated that it would be costly and impractical for social media companies to traffic all problematic material, and instead it would be better to tie Section 230 liability protection to companies that have demonstrated that they have mechanisms in place to remove this material once it is identified.

Senators Klobuchar and Luján introduced the Health Misinformation Act to make companies liable for the publication of "health misinformation" during a "public health emergency"

- In July 2021, Democratic senators Amy Klobuchar and Ben Ray Luján introduced the Health Misinformation Act, which is intended primarily to combat COVID-19 misinformation. It would add a carveout to Section 230 to make companies liable for the publication of "health misinformation" during a "public health emergency" — as established by the Department of Health and Human Services — if the content is promoted to users via algorithmic decisions.

After Frances Haugen’s testimony to Congress, House Democrats proposed a bill to remove Section 230 protections for service providers related to personalised recommendation algorithms that present content to users if those algorithms knowingly or recklessly deliver content that contributes to physical or severe emotional injury

- Following Frances Haugen's testimony to Congress that related to her whistleblowing on Facebook's internal handling of content, House Democrats Anna Eshoo, Frank Pallone Jr., Mike

Doyle, and Jan Schakowsky introduced the "Justice Against Malicious Algorithms Act" in October 2021, which is in committee as H.R.5596.

- The bill would remove Section 230 protections for service providers related to personalised recommendation algorithms that present content to users if those algorithms knowingly or recklessly deliver content that contributes to physical or severe emotional injury.
    1. “The last few years have proven that the more outrageous and extremist content social media platforms promote, the more engagement and advertising dollars they rake in,” said Representative Frank Pallone Jr., the chairman of the Energy and Commerce Committee.
    2. “By now it’s painfully clear that neither the market nor public pressure will stop social media companies from elevating disinformation and extremism, so we have no choice but to legislate, and now it’s a question of how best to do it,” he added.

[1] U.S. Constitution, Bill of Rights, Amendment I, see https://www.archives.gov/founding-docs/bill-of-rights-transcript.
[2] United Nations, "Universal Declaration of Human Rights", Preamble; Article 18, Paris 1948, see https://www.un.org/en/about-us/universal-declaration-of-human-rights.
[3] Imad Khan, "Facebook Is Blocking News in Canada With Google To Follow: What To Do," *CNET*, August 1, 2023.
[4] Big Brother Watch, "Ministry of Truth: The secret government units spying on your speech" January 10, 2023, https://bigbrotherwatch.org.uk/wp-content/uploads/2023/01/Ministry-of-Truth-Big-Brother-Watch-290123.pdf.
[5] Ben Scallan, "Soros-Funded NGOs Demand Crackdown on Free Speech As Politicians Spread Hate Misinformation," Public, August 23, 2023.
[6] "Building a digital army: UN peacekeepers fight deadly disinformation", UN News: Global perspective Human stories, 19 August 2023, https://news.un.org/en/story/2023/08/1139682.
[7] Jack Houghton, "THE FACT CHECK FILES: Inside the secretive and lucrative fact checking industry behind a foreign-funded bid to censor Voice debate," Sky News Australia, August 23, 2023.
[8] The Associated Press, "EU law targets Big Tech over hate speech, disinformation," NPR, April 23, 2022.
Kelvin Chan, "Big Tech crackdown looms as EU, UK ready new rules," AP, April 25, 2023.
[9] Taylor Dysart, "The Ottawa trucker convoy is rooted in Canada's settler colonial history", the Washington Post, 11 February 2022, https://www.washingtonpost.com/outlook/2022/02/11/ottawa-trucker-convoy-is-rooted-canadas-settler-colonial-history/; Gary Mason, "Trucker convoy has evolved into something far more dangerous", "Ethnic media brings 'lived experience' lens to coverage of protests", New Canadian Media, 18 February 2022, https://newcanadianmedia.ca/ethnic-media-brings-lived-experience-lens-to-coverage-of-protests/.
[10] Michael Shellenberger, "World on cusp of woke totalitarianism as governments act to end free speech" *National Post*, May 8, 2023, https://nationalpost.com/opinion/world-on-cusp-of-woke-totalitarianism-as-governments-act-to-end-free-speech.
[11] Ryan Mac and Tiffany Hsu, "Twitter's U.S. Ad Sales Plunge 59% as Woes Continue," *New York Times,* June 5, 2023, https://www.nytimes.com/2023/06/05/technology/twitter-ad-sales-musk.html; Jordan Valinsky, "Elon Musk blames the ADL for 60% ad sales decline at X, threatens to sue", *CNN,* September 5, 2023, https://edition.cnn.com/2023/09/05/tech/elon-musk-adl-lawsuit/index.html.
[12] Ryan Tracy, "Facebook Bowed to White House Pressure, Removed Covid Posts," July 28, 2023, https://www.wsj.com/articles/facebook-bowed-to-white-house-pressure-removed-covid-posts-2df436b7.
[13] Interim Staff Report of the Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government U.S. House of Representatives (10 July 2023), "The FBI's collaboration with a compromised Ukrainian intelligence agency to censor American speech" July 10, 2023, https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/fbi-sbu-staff-report-7.10.23-sm.pdf.
[14] Michael Shellenberger, "Inside the Censorship Industrial Complex," Public, April 13, 2023.
[15] Justin McCarthy, "U.S. Approval of Interracial Marriage at New High of 94%," Gallup, September 10, 2021.
[16] YouTube, "A long term vision for YouTube's medical misinformation policies," August 15, 2023.
[17] Ashley Rodriguez, "YouTube's algorithms drive 70% of what we watch," QZ, July 13, 2018.
[18] Hana Kiros, "Hated that video? YouTube's algorithm might push you another just like it," MIT Tech Review, September 20, 2022.
[19] Meta, "Q2 2022 Earnings," July 27, 2022.
[20] Rachael Davies, "Nearly half of the posts you see on Instagram are from accounts you don't follow," Evening *Standard,* April 28, 2023.
[21] Hana Kiros, "Hated that video? YouTube's algorithm might push you another just like it," MIT Tech Review, September 20, 2022.
[22] Robert Epstein, Vivian Lee, Roger Mohr, and Vanessa R. Zankich, "The Answer Bot Effect (ABE): A powerful new form of influence made possible by intelligent personal assistants and search engines," PLOS ONE, June 1, 2022.
Robert Epstein and Ronald E. Robertson, "The search engine manipulation effect (SEME) and its possible impact on the outcomes of elections," PNAS, August 4, 2015.
[23] Video by Various, "Why Content Moderation Costs Social Media Companies Billions," CNBC, February 27, 2021.
[24] Philip Hamburger and Clare Morel, "The First Amendment Doesn't Protect Big Tech's Censorship," WSJ, July 31, 2021.
[25] "DLD 2012- @Jack Dorsey: "Twitter has a Business Model That Works" Tech Crunch, January 21, 2012.
[26] Laura Locke, "The Future of Facebook," TIME, July 7, 2007.
[27] Josh Constine, "Facebook Doesn't Want to Be Cool, It Wants to Be Electricity," TechCrunch, September 18, 2013.
[28] Will Oremus, "Why Facebook won't let you turn off its news feed algorithm," The Washington Post, February 11, 2021.
[29] Naomi Nix, "Meta is done moderating. On Threads, users decide what they see," Washington Post, July 14, 2023.
[30] "Top spenders 2023" Open Secrets, accessed September 12, 2023, https://www.opensecrets.org/federal-lobbying/top-spenders.
[31] Justice Clarence Thomas, "Supreme Court of the United States: Biden v. Knight First Amendment Institute No. 20–197" concurring opinion, April 5, 2021, https://www.supremecourt.gov/opinions/20pdf/20-197_5ie6.pdf.
[32] Michael Shellenberger, "Elite Crackdown on Free Speech Worldwide Intensifies", *PUBLIC,* August 24, 2023, https://public.substack.com/p/elite-crackdown-on-free-speech-worldwide.

This research has been produced and published by ARC Research, a not-for-profit company limited by guarantee registered at Companies House with number 14739317, which exists to advance education and promote research.

ISBN: 978-1-916948-13-6

www.arc-research.org

October 2023