

SUPPORT US

HOME > REVIEWS

Is Social Media a Threat to Democracy?

September 1, 2022 • By Allen Mendenhall



Social Media,
Freedom of
Speech, and the
Future of Our
Democracy
LEE C. BOLLINGER

WHEN GUTENBERG INVENTED the printing press in the 15th century, he couldn't have anticipated the chaos and disruption that his innovation would unleash. The rapid production and proliferation of books circulated novel ideas throughout Europe, preserved ancient texts at risk of extinction, and grew literacy

rates among the lower classes. This progress occasioned a torrent of violence and extremism. The

Protestant Reformation, propelled by Martin Luther, mobilized a fearsome, fanatical populism that far exceeded his hopes or desires. Before long, Europe was fractured by religious warfare, mass murder, draconian restrictions on texts and speech, and the criminalization of blasphemy and heresy. It took decades if not centuries before humanity adjusted to this new technology and learned to use it mostly for good.

We have entered a similar period of technological revolution with the internet and Big Tech. Figures on the left and right — divided on most other things — excoriate private social media corporations like Facebook or Twitter that enjoy broad power to influence public discourse and popular opinion. When Mark Zuckerberg, the CEO of Facebook — now Meta — testified before Congress in 2018, Republicans and Democrats grilled him about matters as wide-ranging as consumer deception, Russian interference in the 2016 presidential election, and censorship of conservative commentary. Nobody in Congress seemed content to allow social media companies — not just Facebook — to continue their course unabated.

What, however, are alternative courses? And are state actors (government agents and agencies) equipped

and authorized to assess, mediate, police, and regulate the illimitable information that social media produces every second of every day?

Social Media, Freedom of Speech, and the Future of Our Democracy, edited by Lee C. Bollinger and Geoffrey R. Stone, pursues answers to these questions and features contributions by luminaries from higher education (e.g., David A. Strauss, Cass R. Sunstein, Erwin Chemerinsky, and Lawrence Lessig) and politics (e.g., Sheldon Whitehouse, Amy Klobuchar, and Hillary Clinton). The reason for this high-profile eclecticism is, in the editors' words, to "bring together a broad range of experts with competing views." Notably, however, it does not feature any Republicans (conservatives).

After assembling the essays for this volume, Bollinger and Stone convened a "Commission" to analyze the manuscript and seek consensus about solutions to the communicative and societal problems that social media has magnified. The Commission yielded three propositions, none of which, I'm sorry to report, is prescriptive:

[first,] that, while the benefits of expanding the opportunities for individuals to communicate and of increasing the range of available voices in the marketplace of ideas are tremendous and

must be preserved, the structure of the system that has evolved poses extraordinary risks to sound public discussion and decision-making [...] [second,] that this state of affairs will not solve itself and will require interventions from forces outside the technology sector [...] [and third,] that this is a time for profound self-reflection about how to address our current challenges in order to achieve the fundamental values and goals of our constitutional system of government.

How disappointing to conclude by stating the obvious: that the problem is real and requires remedies and further contemplation. A list of concrete, practical reforms would have been more helpful and exciting.

That is precisely what a group of attorneys at the law firm of Debevoise & Plimpton LLP — Andrew J. Ceresney, Jeffrey P. Cunard, Courtney M. Dankworth, and David A. O’Neil — provides in a succinct section of the opening statement that, frankly, makes much of the rest of the book superfluous, circumlocutory, and redundant. These attorneys cut to the chase and present the core legal issues and possible reforms that the other contributors merely dance around or theorize about.

What are those reforms?

(1) “Self-Regulation by Social Media Platforms.” Twitter and Facebook et al. could, voluntarily, suspend or deplatform those who abuse the privilege of using the platform or violate the platform’s rules or standards. This solution has been controversial and difficult to implement.

(2) “Establishing a Self-Regulatory Organization.” An entity like the Securities and Exchange Commission — which regulates pricing for tradable securities or commodities to prevent fraud and deception — could regulate social media.

(3) “Legal and Regulatory Approaches.” Before successful lawsuits can proceed, laws must be enacted or altered at either, or both, the state and federal level. The likelihood of effective legislation in this area is minimal at present.

(4) “Repealing or Amending Section 230 of the Communications Decency Act.” More on this momentarily.

(5) “Oversight by a New or Existing Government Agency.” The recent attempt to create a Disinformation Governance Board within the Department of Homeland Security — directed by Nina Jankowicz for less than a month — failed miserably. How much more challenging would it be to create a new agency for this purpose?

In short, practical reform won’t be easy.

Back to Section 230, which figures prominently in many of the chapters. This federal legislation — criticized by both Trump and Biden — grants broad immunity from liability to social media companies transmitting illicit third-party content through their platforms. It can protect these companies for removing or *not* removing harmful content from their platforms.

Contributor Mary Anne Franks submits that Section 230 “has been interpreted by courts to provide wide-ranging, preemptive immunity to online intermediaries for the choices they make about what content they choose to leave up, even if they know of its unlawful nature and take no reasonable steps to

address it.” She advocates reforming Section 230 “to allow people who have been injured by online harms to have their day in court.” She even proposes a revised version of Section 230 that’s too lengthy to quote here. Contributor Sheldon Whitehouse declares that “Section 230 is outdated, and we need to be rid of it.” He adds, “I would support simply repealing Section 230 and letting courts sort it out.”

ix

A work of this nature featuring numerous contributors with various styles and differing approaches, from the theoretical to the practical, is impossible to summarize, so here are instead some highlights.

Cass Sunstein’s short essay distinguishes between lying and falsehoods. “[M]any false statements,” he explains, “are not lies; people who make or spread them sincerely believe them to be true.” He endorses a regulatory “framework” in the form of a box-filled “matrix” for categorizing statements according to their probability of harm. A journalist’s innocent mistake about a trivial matter isn’t likely to cause imminent harm, whereas deliberate falsehoods about dangerous prescription drugs, for example, might cause imminent harm.

An intriguing essay by evelyn douek suggests that the “juridification” or “formalization” of content moderation — think of the tribunals (e.g., Facebook’s Oversight Board) that issue precedential decisions as if to mimic common law processes and procedures — is quixotic. Besides the unmanageable amount of speech online, companies operating these tribunals have a conflict of interest, predicating their business model on the circulation of discourse that they also purport to regulate.

Jamal Greene argues that a state-run social media platform with government-moderated content is feasible both legally and practically. Genevieve Lakier submits that lawmakers could craft constitutional antidiscrimination laws that cover social media content and companies. Nathaniel Persily avers that the “internet and the rise of social media require the creation of new legal categories even as we struggle to fit these new institutions and relationships into old conceptual boxes.” He weighs strong and weak arguments for treating social media companies as common carriers providing public accommodations.

Amy Klobuchar calls for “a renewed antitrust movement — [one that] is grounded in a pro-competitive economic agenda that will actually help capitalism and innovation, not just among tech

companies, but across the economy.” She stresses the necessity of bipartisanship in this area.

Partisan balance, in fact, would have lent more credibility to this collection. The examples of “fake news” point in only one direction. References to the 2020 presidential election results abound, but there’s no mention of, say, the Christopher Steele dossier. The complaints about COVID-19 health misinformation leave out Anthony Fauci and the Center for Disease Control, which proffered conflicting information over the last two years regarding matters as basic as mask wearing.

David Strauss warns that “social media allow people to make sure, to a greater degree than before, that their views are reinforced repeatedly and to seek out the most extreme and emotionally satisfying forms of reinforcement.” Confirmation bias is a problem, of course, but it isn’t limited to virtual spaces and social media. Viewers choose Fox News over CNN or MSNBC over Newsmax. They tune into Joe Rogan or Cenk Uygur. Could the accusation of confirmation bias apply to this book as well? The contributors almost uniformly advocate government regulation of social media while acknowledging that private remedies are also an option, however inadequate.

Erwin Chemerinsky and Alex Chemerinsky are the collection's nonconformists, dissenting that "overall, the premise in analyzing speech should be to increase expression and in that way the internet and social media have brought us a golden age of free speech."

These two insist not only that "Section 230 is desirable" and requires "only minor revisions," but also that it "has been unfairly blamed for many of the problems that are inherent to the internet and social media."

Elon Musk's aborted acquisition of Twitter highlights the need to place social media under a microscope.

The technological developments our generation has experienced, unprecedented in human history at this scope and scale, "may not have created the problem" of mass propaganda and fake news, "and they are not solely responsible" for that problem, asserts Larry Kramer, "but they have *enabled* it — providing a necessary (indeed, indispensable) accelerant and catalyst for a change so extreme as to amount to a change in kind."

The tribulations of social media raise difficult questions about the political ideals that are fundamental to "America": Is it so good after all for every person to have a voice if the result is demagoguery, hatred, and violence? What if "the

people” rally into self-imposed autocracy or, wittingly or unwittingly, spread disinformation that wreaks havoc on their communities? What if they submit themselves, by majority rule, to oppression, or wield discursive apparatuses to marginalize, subjugate, or attack minority communities? What if miscreants capture control of the information stream, circulating falsehoods, deep fakes, and deception with such range and regularity that the true and the real are beyond recognition? What if social media reveals that democracy is, in its purest form, a raging, deleterious contest between disparate groups vying for power?

Two incompatible themes emerge here, one holding that social media *threatens* democracy and the other *decriing* the democratization of information. It seems ironic to suggest that energizing the masses with modes of expression is *undemocratic* and that, to save democracy, government must confine expression to fewer people. Yet Lessig asks, “Why would our Constitution prohibit us from protecting our democracy in this way?”

What is democracy, anyway? readers may wonder as that term gets tossed around. Jack Balkin questions whether “the digital public sphere,” for instance, “adequately protects the values of political democracy, cultural democracy, and the growth and spread of

knowledge.” What’s the difference between political and cultural democracy? And how to factor Yochai Benkler’s claim that “American democracy does not have a social media problem. [It] has an institutional and political-cultural problem manifested in and reinforced by media market imperatives”?

Kate Starbird, for her part, states, “pervasive disinformation — continuous falsehoods that slowly erode our trust in information — undermines democracy.” Renée DiResta remonstrates that sharing and retweeting tools empowered “ordinary people” to become “arbiters of what should spread” and “amplify content that they liked or agreed with.” She says, “Suddenly, everyone had access to tools for creation *and* distribution — affordances that enabled not only speech but the potential for reach.”

One takeaway proposition (which could subject this book to charges of hypocrisy) is that saving democracy requires undemocratic control: that undemocratic measures by gatekeepers who possess correct information must guard democracy from the multitude that cannot be trusted with information.

“Solving the disinformation problem won’t cure all that ails our democracies or tears at the fabric of our world,” intoned Barack Obama at a speech in

Chicago in April, “but it can help tamp down divisions and let us rebuild the trust and solidarity needed to make our democracy stronger.” *Social Media, Freedom of Speech, and the Future of Our Democracy* is a small step in that direction even if it offers few viable solutions for our fragmented, rambunctious society that shows no sign of pacifying anytime soon.

❧

Allen Mendenhall is associate dean and Grady Rosier Professor in the Sorrell College of Business at Troy University and executive director of the Manuel H. Johnson Center for Political Economy. Visit his website at AllenMendenhall.com.

*Did you know LARB is a
reader-supported
nonprofit?*

LARB publishes daily without a paywall as part of our mission to make rigorous, incisive, and engaging writing on every aspect of literature, culture, and the arts freely accessible to the public. We could not do this work without the support of our readers and members. If you enjoyed this article, please consider joining as a member or making a one-time donation today. Thank you!

GIVE TODAY! →

Allen Mendenhall

Allen Mendenhall is associate dean and Grady Rosier Professor in the Sorrell College of Business at Troy University and executive director of the Manuel H. Johnson Center for Political Economy. Visit his website at AllenMendenhall.com.

LARB CONTRIBUTOR

RECOMMENDED

Metaverse Myopia

Evan Selinger has reservations about the metaverse....

What Makes Censors Tick?

Stephen Rohde reviews Robert Corn-Revere's "The Mind of the Censor and the Eye of the Beholder: The First Amendment and the Censor's Dilemma." ...

The Endless Struggle Between Censorship and Free Speech

Stephen Rohde reviews “Free Speech: A History from Socrates to Social Media” by Jacob Mchangama....

The Key to Democracy: A Century of Free Speech

Ian Rosenberg’s “The Fight for Free Speech” is a terrific introduction to the problem of freedom of speech in our society....

Our Censors, Ourselves: Commercial Content Moderation

David C. Brock considers two recent books about largely unseen workforce moderating the tech giants....



